

Mémoire de l'ACPPU Concernant le projet de loi d'intérêt privé n° 234

Loi modifiant la Charte de l'Université de Montréal

7 février 2018

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Introduction

Créée en 1951, l'Association canadienne des professeures et des professeurs d'université (ACPPU) est le porte-parole national du personnel universitaire. Elle représente actuellement 70 000 professeurs, bibliothécaires, chercheurs et autres professionnels universitaires travaillant dans 122 universités et collèges partout au Canada. L'ACPPU défend ouvertement la liberté académique et travaille activement, dans l'intérêt public, à améliorer la qualité et l'accessibilité de l'enseignement postsecondaire au Canada.

C'est à ce titre que l'ACPPU se doit d'intervenir à la suite du dépôt du Projet de loi d'intérêt privé n° 234 Loi modifiant la Charte de l'Université de Montréal. Nous remercions la Commission de la culture et de l'éducation de l'Assemblée nationale de permettre à l'ACPPU de soumettre ce mémoire et de comparaître devant les membres de la Commission.

Liberté académique

Soulignons que la principale motivation de notre intervention est la liberté académique. Nous appuyons sans réserve la définition de ce concept, tel qu'adopté par l'UNESCO en 1997 :

«L'exercice des libertés académiques doit être garanti aux enseignants de l'enseignement supérieur, ce qui englobe la liberté d'enseignement et de discussion en dehors de toute contrainte doctrinale, la liberté d'effectuer des recherches et d'en diffuser et publier les résultats, le droit d'exprimer librement leur opinion sur l'établissement ou le système au sein duquel ils travaillent, le droit de ne pas être soumis à la censure institutionnelle et celui de participer librement aux activités d'organisations professionnelles ou d'organisations académiques représentatives.

Tous les enseignants de l'enseignement supérieur devraient pouvoir exercer leurs fonctions sans subir de discrimination d'aucune sorte ni avoir à craindre de mesures restrictives ou répressives de la part de l'État ou de toute autre source. Les enseignants du supérieur ne pourront effectivement se prévaloir de ce principe que si le milieu dans lequel ils évoluent s'y prête.

Cette condition ne peut elle-même être satisfaite que dans un climat démocratique; c'est pourquoi il incombe à tous de contribuer à l'établissement d'une société démocratique.¹»

Trois dangers

Projet de loi 234 présente trois dangers, de la perspective de l'ACPPU : une atteinte à la liberté académique, une déformation de la gouvernance collégiale et une altération des conditions de travail en dehors de la négociation régulière avec le corps syndical.

La valorisation des « membres indépendants » risque ainsi de brimer la liberté académique et de miner la collégialité de l'Université de Montréal. Elle rendra plus floue la division claire qui doit subsister entre les affaires administratives et les affaires académiques. Comment? En augmentant le nombre de membres externes de l'Université et en diminuant le nombre de membres internes sur les instances universitaires. Si cela est mis en place, cela déformera l'équilibre bicaméral de la gouvernance de cette université. Partout au Canada, les lois qui régissent les universités respectent la collégialité entre la gestion et le professorat.

La Charte de l'Université, comme document légiféré, doit demeurer au niveau général. Il vaut mieux inscrire les détails spécifiques de la gouvernance et la gestion dans les statuts de l'Université et dans les conventions collectives. Ce projet de loi constitue donc une ingérence dans les conditions de travail des professeurs de l'Université de Montréal. Comme loi, ces changements seront figés dans un document que les membres de la communauté universitaire ne pourront pas changer ou améliorer. Nous croyons que ce genre d'altération profonde devrait être négocié à travers le processus de négociation régulier entre les syndicats et l'administration de l'Université.

1. <http://unesdoc.unesco.org/images/0011/001102/110220f.pdf#page=30>

Préserver le modèle québécois

Notre perspective nationale s'appuie sur une recherche que nous menons présentement sur la gouvernance des établissements postsecondaires les plus importants du pays. L'ACPPU étudie présentement les lois et les politiques qui régissent 31 universités, soit : Acadia, Alberta, Bishop's, UBC, Calgary, Carleton, Concordia, Dalhousie, Laval, Lethbridge, Manitoba, McGill, McMaster, Montréal, Memorial, Mount Allison, Nouveau Brunswick, Ottawa, Queen's, Regina, Saskatchewan, Sherbrooke, Simon Fraser, St. Francis Xavier, Thompson Rivers, Toronto, Trent, Victoria, Waterloo, Western, et York. Notre rapport sera rendu public dans quelques semaines.

En ce qui a trait aux normes de la gouvernance universitaire, l'ACPPU a constaté un modèle québécois qui est assez unique au Canada. Au sein des universités anglophones du Canada, on constate une tradition de concentration du pouvoir vers le conseil d'administration ou un comité de direction. Au sein des universités québécoises, on y voit un rôle accru des autres instances universitaires, soit une répartition du pouvoir et un désir de concertation manifeste.

L'ACPPU croit qu'il faut préserver ce modèle québécois de la collégialité académique. Ce n'est pas un modèle parfait, mais la participation du professorat aux grandes décisions est l'exemple à suivre.

La valorisation du terme « membre indépendant »

Si ce projet de loi est adopté, les « membres indépendants » auront dorénavant une voix dominante au sein de l'Université, ramenant les professeurs au simple niveau d'employés. La gouvernance ne sera plus un partenariat entre deux parties égales, travaillant ensemble pour l'intérêt public.

L'ACPPU croit qu'introduire ce concept de membre indépendant dans la Charte de l'Université de Montréal, n'est ni nécessaire pour bien gérer l'Université, ni approprié, dans un contexte où la collégialité constitue la pierre d'assise de l'institution. La présence d'un nombre plus important de personnes provenant de l'extérieur aura pour effet de diluer les voix internes –

particulièrement celles des professeures et professeurs mais aussi des étudiantes et étudiants. Par ailleurs, soulignons que le terme « membre indépendant » n'existe pas dans les lois qui régissent l'Université Laval, l'Université de Écart en matière d'avancement professionnel Sherbrooke ou l'Université de Toronto, par exemple. Ce terme n'est pas plus utilisé dans les lois encadrant les universités en Colombie-Britannique ou en Alberta.

Cette idée que les membres qui n'ont aucun lien avec l'Université sont plus impartiaux ne résiste pas à l'histoire récente. Au fil des ans, l'ACPPU a mené plusieurs enquêtes et publié plusieurs rapports démontrant des problèmes de liberté académique causés justement par les intérêts « externes » qui ont réussi à s'infiltrer au sein des instances universitaires. Pensons notamment à notre Rapport d'enquête sur le *Enbridge Centre for Corporate Sustainability* à l'Université de Calgary de 2017², le Rapport Olivieri de 2001³ ou encore le Rapport sur le licenciement du Dr. Leduc à l'Université du Collège St. Michel de 2006⁴.

La liberté académique est un outil essentiel à la libre pensée. Elle permet aux professeurs d'enseigner, de faire de la recherche et d'exercer leur droit de critique sans droit de regard et sans peur de représailles. Les professeurs peuvent ainsi critiquer les décisions et les politiques de l'Université, tout comme ils peuvent s'exprimer sur tout sujet d'intérêt public. Il est plus probable que les membres « indépendants » seront moins aptes ou moins à l'aise de protester ou de poser des questions à la direction de l'établissement, car leurs postes au Conseil (ou à un autre corps universitaire) dépendront des liens qu'ils entretiennent avec les autres membres du Conseil ou avec le gouvernement. D'ailleurs, l'idée de « membre indépendant » ignore le

2. https://www.caut.ca/sites/default/files/caut-ahic-report-calgary-enbridge-centre-for-corporate-sustainability_2017-10.pdf

3. <https://bulletin-archives.caut.ca/docs/af-reports-indepedent-committees-of-inquiry/the-olivieri-report.pdf?sfvrsn=0>

4. <https://bulletin-archives.caut.ca/docs/default-source/af-ad-hoc-investigatory-committees/report-on-the-discontinuance-of-dr-laurent-leduc-at-the-university-of-st-michael%27s-college-university-of-toronto-%282006%29.pdf?sfvrsn=6>

fait que les liens que possède un membre externe avec les sociétés ou agences externes pourraient les mettre en conflit d'intérêts.

Traditionnellement, les membres dits « externes » ne proviennent pas de la communauté universitaire. Ce sont souvent des gens d'affaires, des avocats, etc. En septembre 2016, l'ACPPU a d'ailleurs publié une enquête qui révélait que la majorité des membres des conseils d'administration des universités venaient du secteur privé.⁵

L'ACPPU a constaté que le secteur privé étend de plus en plus son contrôle sur la gouvernance des plus grandes universités canadiennes. Banquiers, avocats, cadres de compagnies et autres acteurs du monde des affaires représentent désormais 49,1 % des membres des conseils d'administration des 15 grandes universités de recherche.

L'enquête de l'ACPPU révèle en effet que 194 des 395 membres répertoriés en date du 1er mai 2016 venaient du secteur corporatif. Cela se compare à 165 personnes provenant de la communauté universitaire (administration, personnel académique et de soutien et étudiants), soit 41,8 %. Le reste des membres est composé de 32 personnes venant des services publics (8,1 %).

Ces voix externes sont donc déjà présentes au Conseil. De plus, ces membres n'ont aucune expérience dans le domaine de l'éducation postsecondaire. Il ne sert à rien de les identifier comme « indépendants », sauf si on veut envoyer le message que l'opinion des professeures et des étudiants est moins importante. En bref, l'ACPPU est convaincue qu'en valorisant le terme « membre indépendant », l'administration se retrouvera à miner la liberté académique des professeurs, car leur voix sera diluée, voire noyée.

L'exemple le plus récent de ce que nous avançons est celui de l'Université de Calgary. L'ACPPU a ordonné une enquête indépendante à la suite d'infractions alléguées à la liberté académique au *Enbridge Centre for*

Corporate Sustainability.⁶ Après une minutieuse enquête sur le terrain, les enquêteurs ont conclu que la rectrice, Elizabeth Cannon, s'était placée dans une situation de conflit d'intérêts au moment où elle pilotait l'ouverture de ce centre de recherche financé par le géant gazier et pétrolier, alors qu'elle siégeait à un des conseils d'administration de cette compagnie. Le problème ici est que, suivant la définition du secteur privé – définition qui sera enchâssée dans la Charte de l'Université de Montréal si le projet de loi 234 est adopté, Mme Cannon était considérée comme une administratrice « indépendante ».

Le cas de l'Université Mount Allison démontre un autre danger de valoriser la présence de « membres indépendants » aux conseils d'administration de nos universités. Entre les années 2013 et 2015, l'Université de Mount Allison a dépensé presque 1 million de dollars en frais juridiques, montant payé pour des services rendus par un cabinet externe. Or, le président du conseil d'administration était un associé de ce cabinet d'avocats. L'histoire nous enseigne donc qu'être « indépendant » de la communauté universitaire ne veut pas dire exempt de conflits d'intérêts avec pour résultat que des intérêts privés peuvent profiter d'un bien public pour faire de l'argent.⁷

La gestion d'une université est beaucoup plus complexe que la gestion d'une entreprise privée qui n'applique pas le concept de liberté académique et qui n'a pas à servir l'intérêt public. La liberté académique est garante de la qualité de l'enseignement supérieur et de la recherche. Et cette liberté académique dépend de la gouvernance bicamérale. Les voix des professeures et professeurs sont essentielles pour que l'université remplisse sa mission dans notre société.

5. <https://www.caut.ca/fr/bulletin/2016/09/qui-si%C3%A8ge-%C3%A0-votre-conseil-d%E2%80%99administration>

6. <https://www.caut.ca/fr/latest/2017/10/enquete-enbridge-luniversite-de-calgary-etait-clairement-en-situation-de-conflit>
7. <http://www.mafa.ca/2016/03/18/mount-allison-legal-fees-2014-15-474000-set-another-record/>

Le mercantilisme par la philanthropie

Par ailleurs, la volonté d'intégrer les philanthropes au sein des instances et de participer à la gouvernance de l'Université n'est qu'un moyen détourné pour permettre aux entreprises d'influencer les décisions. Il est impossible de prétendre qu'un philanthrope soit indépendant, lorsque, de manière directe ou indirecte, il a des relations ou des intérêts de nature financière, commerciale ou professionnelle.

Il est évident que ces intérêts créeront une influence induite sur la prise de décision de l'Université, qui est en constante recherche de financement. Cela pourrait mener, à terme, à une dérive dangereuse pour notre démocratie et devenir une nuisance à la liberté académique.

Prenons l'exemple des frères Koch, aux États-Unis. Les fondations privées dirigées par ces industriels milliardaires versent plusieurs millions de dollars dans les universités et les collèges américains chaque année. Une récente enquête du Centre pour l'intégrité publique⁸ a révélé que les frères Koch considèrent que les programmes d'enseignement supérieur financent une partie «entièrement intégrée» d'un vaste réseau organisationnel luttant pour adopter des politiques gouvernementales de déréglementation et pour faire élire des candidats politiques épousant l'idéologie conservatrice. Les programmes d'enseignement supérieur financés par les fondations des frères Koch adhèrent à leur philosophie de promotion du libre-marché du capitalisme du laisser-faire. Dans plusieurs cas, les frères Koch ont réussi à attacher des conditions à leurs contributions, notamment le contrôle des programmes d'études et, plus récemment, l'obtention de renseignements personnels sur les étudiants.

La liberté académique dans ces établissements est bel et bien compromise.

8. <https://www.publicintegrity.org/2015/12/15/19007/koch-brothers-supersize-higher-ed-spending>

De nouvelles missions?

Le Projet de loi 234 met en place deux nouvelles missions qui entraîneront inévitablement des conséquences sur les conditions de travail et les tâches des professeurs, soit la création et les services à la communauté. Nous devons noter que ces nouvelles missions n'ont jamais fait l'objet d'une négociation collective auprès des représentants légaux des professeurs.

La Charte actuelle de l'Université de Montréal définit la mission de l'Université comme étant l'enseignement et la recherche. Ces missions ne sont pas définies dans le projet de loi. Cela soulève de nombreuses interrogations par rapport aux impacts qu'auront ces nouvelles missions sur la mission première de l'Université, celle de l'enseignement et de la recherche, et sur les conditions de travail des professeurs.

Les changements à la gestion de l'Université

À travers plusieurs changements du Projet de loi 234, les administrateurs de l'Université de Montréal tentent de faire indirectement ce qu'ils ne peuvent pas faire directement; soit en négociation, soit aux autres instances universitaires. L'administration changera ainsi unilatéralement les conditions de travail des professeurs. Ces changements majeurs vont introduire un système plus autoritaire, plus vertical, où le pouvoir sera concentré de plus en plus dans les mains de quelques gestionnaires. Comme le SGPUM l'a expliqué dans son mémoire à la Commission, l'imposition de ces changements de conditions de travail par législation pourrait même aller à l'encontre des Chartes canadienne et québécoise, et du droit du travail.

Par ailleurs, le projet de loi diminue explicitement le poids des professeurs pour les questions académiques, ce qui est, traditionnellement, leur domaine. Dans les changements, on y voit encore une hausse du nombre de membres externes à travers l'étiquette « indépendant ». L'ACPPU est troublée par cette dilution de la collégialité. Sur les sujets académiques, les professeurs doivent pouvoir agir sans ingérence afin de protéger leur liberté académique. Cela dit, il est bon d'avoir une garantie que

les professeurs composeront au moins la moitié de l'assemblée.

Le projet de loi enlève toutefois à l'assemblée universitaire son rôle disciplinaire. La discipline universitaire est liée à l'enseignement et à la recherche. Il est donc impératif que des questions de cette nature soient examinées par des professeurs. C'est lié à la liberté académique, car les membres du Conseil d'administration qui ne sont pas des professeurs pourront discipliner un étudiant, un professeur ou un chercheur sans comprendre comment les gestes allégués sont protégés par la liberté académique. En outre, les membres « indépendants » du Conseil pourraient imposer des mesures disciplinaires sans avoir à consulter l'assemblée universitaire.

Le pouvoir de la Commission des études de surveiller « l'arrimage de l'enseignement avec la recherche » pourrait être une ingérence dans la liberté académique des professeurs. Actuellement, la collégialité confie les affaires académiques au professorat. Même si les étudiants et les gestionnaires des autres universités siègent aux instances académiques de leur institution, les professeurs disposent normalement de la grande majorité des sièges. Il est ainsi très rare d'y trouver des membres externes ou des membres « indépendants ». Ici, le professorat ne comptera que cinq membres. L'administration y compris les doyens, formera dorénavant la majorité à cette Commission. À l'Université Laval, il n'y a pas de membre externe à la Commission des études et la majorité de membres sont des professeurs qui ne sont pas des administrateurs.

La chaîne de commandement resserrée

Tous les changements proposés dans la structure hiérarchique de l'Université auront pour effet de renforcer la chaîne de commandement des doyens, des vice-recteurs et du recteur au Conseil, en mettant de côté l'assemblée universitaire.

L'ACPPU croit qu'il est dangereux de centraliser les pouvoirs de cette manière sans faire mention de l'assemblée universitaire et de sa juridiction sur les affaires académiques. Même si les vice-recteurs et les

doyens sont des administrateurs, ils ont aussi des responsabilités académiques. Pour des questions académiques, ils doivent donc en débattre à l'assemblée universitaire. Or ce projet de loi est muet à ce sujet, ce qui aura pour effet d'isoler l'assemblée universitaire, qui est pourtant le seul corps universitaire où le professorat représente la majorité.

D'ailleurs, dans le projet de loi, le doyen sera le « gardien » des nominations aux postes de vice-doyen. Le Conseil ne peut pas nommer de vice-doyens sans la recommandation du doyen, ce qui concentrera le pouvoir dans les mains d'un seul individu. Il vaut mieux que ces postes soient décidés par un vote de l'assemblée de la faculté. La collégialité requiert nécessairement la participation démocratique des professeurs pour le bien de l'université et pour l'intérêt public.

La Charte de l'Université Laval et la Charte de l'Université de Sherbrooke ne contiennent pas de telles dispositions au sujet des doyens et vice-doyens. En outre, cette clause a été retirée de la loi encadrant les activités de l'Université de Toronto. La gouvernance bicamérale comprend les deux rôles des doyens et vice-doyens – ils sont des administrateurs, mais ils sont aussi des membres du personnel académique et la chaîne de commandement devrait reconnaître les deux aspects de leurs fonctions.

Conclusion

En conclusion, notons que la dernière refonte de la charte de l'Université de Montréal remonte à 50 ans. En ce sens, il est important de faire quelques constats :

Premièrement, une fois adoptée, cette charte pourrait demeurer figée pour très longtemps. Il s'agit d'un document fondamental qui ne peut être modifié rapidement. Des clauses nuisibles pourraient l'être pour des années.

Deuxièmement, s'il y a effectivement lieu de moderniser la Charte, il demeure que l'Université de Montréal fonctionne tout de même bien sous le régime actuel. Il n'y a donc pas urgence d'agir.

Troisièmement, il n'y a pas de crise appréhendée, à une exception près : celle qui découle du processus actuel, qui

pourrait envenimer les relations de travail tout en brimant la liberté académique des professeurs.

Selon nous, pour faire des changements aussi fondamentaux, il faut que ce soit bien fait et il faut prendre le temps de bien le faire, en menant les recherches et les consultations nécessaires et tout ça de manière démocratique et collégiale. Force est de constater que l'opposition des professeurs de l'Université de Montréal est manifeste et que l'imposition de cette charte contre leur gré, sans négociation, serait une erreur grave.

Sous le prétexte de moderniser sa Charte, la direction de l'Université de Montréal suggère ni plus ni moins de mettre fin à la collégialité dans son institution en plus de changer radicalement les conditions de travail des professeurs sans passer par la négociation. Nous nous inquiétons des conséquences de la concentration des pouvoirs dans les mains du Conseil d'administration de l'institution, surtout si l'on prend en considération la modification de façon radicale de la composition de ce conseil pour y inclure des administrateurs venant de l'extérieur du milieu universitaire.

En conséquence, l'ACPPU demande donc le rejet du projet de loi actuel, car il met en péril le principe de la collégialité en plus de porter atteinte aux droits et libertés fondamentales des professeurs.

Report of the CAUT Ad Hoc Investigatory Committee

Into the **Enbridge Centre for Corporate Sustainability** At the University of Calgary

October 2017



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Report of the CAUT Ad Hoc Investigatory Committee Into the Enbridge Centre for Corporate Sustainability At the University of Calgary

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1| Introduction & Summary of Findings

Post-secondary institutions serve the common good by pursuing, fostering, and disseminating understanding and knowledge. To do so, they must embrace and defend academic freedom as a foundational principle. Academic freedom includes the right to teach, research, engage in public debate, and express opinions freely without fear of intimidation or reprisal. The failure to protect and promote academic freedom imperils a university's autonomy and *raison d'être* by undermining the ability of its faculty to do their work as researchers and teachers. Simply put, a university that does not protect and promote academic freedom is not truly a university.

As the Supreme Court of Canada has stated, academic staff are expected to meet their responsibilities to their students, their disciplines, and the public in a "free and fearless" way.¹ If their ability to act in this way is threatened or abridged, it is a serious matter warranting robust investigation and effective remedies.

In the present case, the Canadian Association of University Teachers (CAUT) established an Investigatory Committee as a result of an ongoing media investigation of the circumstances surrounding the establishment of the Enbridge Centre for Corporate Sustainability (ECCS) at the Haskayne School of Business (HSB) of the University of Calgary (U of C). This step by CAUT was informed by evidence uncovered by journalists based largely on information disclosed through freedom of information requests. The story first

attracted national attention in November 2015.

Between March 2011 and July 2012, the U of C worked to secure a sponsorship from Enbridge, a major oil and gas pipelines company based in Calgary, to establish a research institute at the Haskayne School of Business. Dr. Joe Arvai, a recently-appointed Haskayne faculty member, was asked to be the director of the institute that eventually became the ECCS. In this context, Arvai came into conflict with the sponsor and his Dean over a number of important decisions about the ECCS, including the naming of the centre, the choice of its partner institutions, and the role of the director. Arvai informed us that he was eventually removed from his position as director a week after he informed Enbridge's public relations firm of his opposition on scientific grounds to the Northern Gateway pipeline. Arvai later left the U of C entirely.

While Dr. Arvai was director of the ECCS, senior administrators at the U of C took steps that in our view compromised his academic freedom. The compromises are especially troubling due to a clear appearance of a conflict of interest on the part of U of C President Elizabeth Cannon. At the relevant time, Cannon held a seat on an Enbridge board² and was highly remunerated

1. "...[Faculty members] must have a great measure of security of employment if they are to have the freedom necessary to the maintenance of academic excellence which is or should be the hallmark of a university. Tenure provides the necessary academic freedom to allow free and fearless search for knowledge and the propagation of ideas." *McKinney v. University of Guelph*, [1990] 3 SCR 229, 1990 CanLII 60 (SCC).

2. In a submission to the McMahon review, President Cannon drew a distinction between this board – the Enbridge Income Fund Holdings Board – and Enbridge Inc., while noting that the board was affiliated with and 70% owned by Enbridge Inc. (Statement of Elizabeth Cannon to the *McMahon review*, December 2, 2015). For present purposes, these circumstances of majority ownership establish clearly that the board and Enbridge Inc. were part of the same business and reasonably understood by University staff and the public to have a shared interest in Enbridge's corporate reputation. Cannon herself acknowledged as much when she told the HSB Dean in August 2012 that she was "on one of their [Enbridge's] boards!"

in that role. The U of C Board of Governors evidently approved this conflicting role without requiring Cannon to disclose the conflict publicly and recuse herself from Enbridge-related activities at the university. Moreover, senior administrators at the U of C, including Cannon, intervened directly in the operations of the ECCS. While the clearest intervention by Cannon came after Arvai's departure, before his departure the HSB Dean invoked the President's name and the Dean's understanding of her views in the course of putting pressure on Arvai.

In carrying out our mandate, we examined evidence in emails provided in response to a freedom of information application by the Canadian Broadcasting Corporation (CBC) about the ECCS. Our review of these documents was supplemented by communications with a small number of current and former faculty at the U of C, one or more student representatives at the U of C, and the former Dean of HSB. The Committee conducted in-person interviews on the University campus and at a Calgary hotel, and via teleconferences with former U of C faculty Dr. David Keith (now at Harvard) and Dr. Arvai (now at the University of Michigan). We also considered U of C Board policy documents, Board Agendas and Minutes posted online, and the report produced at the Board's request by The Honourable Terrence F. McMahon, Q.C., a practicing lawyer and former Justice of the Court of Queen's Bench, in December 2015.

Among those who spoke to us directly, only Professors Keith and Arvai were willing to discuss their views about the ECCS for attribution. Interviewees who spoke to us off the record expressed concern about possible reprisal, the impact on their career prospects, or other negative consequences. A story in the *National Observer*, following from the Ad Hoc Investigatory Committee's visit to the U of C campus in April 2016, ascribes similar concerns

to U of C faculty members (Christopher Adams, "Teachers investigate whether University of Calgary is in bed with Big Oil," *National Observer*, 10 August 2016).

In response to a request to discuss our investigation, former HSB Dean Leonard (Len) Waverman stated in an email to us on April 20, 2016, that, over his 50-year academic career, he has had "an unwavering commitment to academic freedom and academic integrity." He also highlighted several provisions in the ECCS terms of reference: the ECCS would "provide a neutral ground for thoughtful and relevant research, analysis and education;" the ECCS academic advisory group would include a range of academics, with one non-voting spot available for an Enbridge designate; and the ECCS external advisory board would include representatives of various communities alongside academics and an HSB student, with Enbridge selecting one member and able to communicate non-binding recommendations to the ECCS Director for other members. Dr. Waverman also stated that the ECCS terms of reference conveyed "what was always the intention for the Centre as a neutral, scholarly forum with academic freedom firmly in place."

Members of the senior administration at U of C and the U of C Board of Governors declined to meet or interact with our Investigatory Committee despite invitations to do so. Dr. Dru Marshall, Vice-President Academic and Provost, took the step of alerting U of C faculty and senior leadership about our Committee's planned visit to the university campus in April 2016, after we informed U of C administrators of the planned visit and requested to meet with them. Marshall's email of March 18, 2016, to U of C faculty stated that former Justice McMahon's report had found no wrongdoing in relation to the ECCS and that the CAUT Investigatory Committee could not compel anyone to talk with its members. In the

same message, Marshall also mischaracterized CAUT's position on maintaining the confidentiality of participants in its investigations. This intervention was an early indication of the U of C administration's unwillingness to discuss issues of substance with the Investigatory Committee and of its apparent strategy to frustrate or discredit our inquiry. Thus, the U of C did not participate constructively in the only formal investigation of the ECCS that has been initiated by any entity other than the U of C itself.

On the basis of the evidence before the Investigatory Committee, we find:

Conflict of interest

a) There was a clear appearance of a conflict of interest in U of C President Elizabeth Cannon's serving on the Enbridge Income Fund Holdings Board for significant remuneration while she was president of the U of C. The appearance of a conflict should have been readily apparent to anyone who knew of the circumstances, despite the fact that contracts governing her first term as President and her renewal for a second term, as approved by the U of C Board of Governors, explicitly entitled Dr. Cannon to sit on external corporate boards and be paid for that activity.

b) The best way for Dr. Cannon to have avoided this clearly apparent conflict was for her not to occupy a position, especially a paid one, on an external corporate board during her tenure as U of C President. At the very least, Dr. Cannon should have recused herself publicly from all Enbridge-related discussions and decisions at the U of C in order to alleviate concerns about her ability to influence U of C decision-making in ways that would benefit Enbridge. Even if the U of C Board of Governors felt that there was some reasonable basis for approving

Dr. Cannon's dual role, its members should have insisted that Dr. Cannon withdraw from any university activities that were of an apparent interest to the external boards on which she sat or the corporations that paid her in that role.

c) In the case of the ECCS, Dr. Cannon evidently did not recuse herself publicly from such activities. On the contrary, she intervened directly and in writing with the Dean of the HBS, stating that Enbridge was not happy with the progress of the ECCS and that she wanted to have a good relationship with Enbridge, emphasizing that she was on one of Enbridge's boards. It is reasonable to assume that Dr. Cannon viewed Enbridge's level of happiness as linked to its reputational goals and, tangentially, to its capacity to remunerate those serving on its boards, including herself.

d) Dr. Cannon's statement to the McMahon review that, during her term as president, "absolutely no business related to Enbridge came before the Board of Governors" such that "conflict of interest declarations were not required" is hard to square with the fact that the Board of Governors was itself a party to the sponsorship agreement. If this Enbridge-related matter did not come before the Board, therefore, it was due to a serious governance failure – downplayed by Cannon as an "administrative lapse" – of an administration led by Cannon herself. Cannon's reliance on this failure by her own administration in order to deny her duty to disclose her conflicting role at Enbridge constitutes an unacceptable evasion of responsibility.

e) We think it likely that President Cannon, and clear that Board Vice-Chair Bonnie DuPont, had news of the Enbridge sponsorship well before the ECCS' eventual launch in March 2012. In any event, as of March 2012 at the latest, both Cannon and DuPont should have informed the Board of the sponsorship and Cannon should have recused herself from any involvement.

f) The accumulation of the President's dual role and appearance of a conflict of interest, her failure to recuse herself publicly, and the Board's evident approval or acquiescence in this conflict and non-recusal amount, in our view, led to a significant failure of leadership that very likely has harmed the U of C's reputation for academic independence and objectivity.

g) In the case of the ECCS, these concerns were amplified by the presence of one or more current or former Enbridge officials on the U of C Board of Governors, Dr. Cannon's high level of remuneration as an Enbridge board member, and Enbridge's sponsorship of and involvement in the ECCS. Worse, the President's clear, apparent conflict of interest impinged directly on decision-making about the ECCS.

Academic freedom and external influence

h) In the culmination of a series of events, Dr. Arvai's academic freedom was compromised as a result of the U of C's mishandling of the Enbridge Centre. This mishandling appears to have been due to a desire on the part of senior U of C leadership to please a significant donor. On repeated occasions, one or more University officials who should have been affirming and defending Arvai's academic freedom instead undermined it.

i) Enbridge sought to influence the establishment and public launching of the ECCS. On the record before us, senior administrators in the HSB and U of C should have but did not convey to Enbridge that its attempted influence over the Centre was inappropriate. These administrators also should have but did not take firm and consistent steps to ensure that Enbridge respected the authority and obligation of academic staff to determine the academic direction of the Centre. These

failures by senior administrators appear to have been motivated by a desire to avoid offending the donor.

j) We found Dr. Arvai's explanation for his departure as ECCS director to be credible and very troubling. Dr. Arvai informed us that the then-HSB Dean, Len Waverman, phoned him to discuss his removal as director one week after Arvai told Enbridge's public relations firm of his opposition on scientific grounds to the Northern Gateway pipeline. Arvai told us that the public relations firm asked him about the pipeline at a meeting in advance of the ECCS's launch and that the question arose because, although "canned" media (which we understand to mean media not expected to ask awkward or probing questions) would attend the launch, other media might also attend and ask about the Northern Gateway pipeline.

k) Even if we put aside the issue of Arvai's departure completely, we think that his academic freedom was infringed over the course of his tenure as ECCS director. Enbridge was able to make suggestions about the Centre's name and the Centre's director was pressed to accept those suggestions over his academic judgment. Enbridge was given special access to the University's academic and other staff to discuss or determine academic priorities. Enbridge was allowed to recommend partners for the Centre, with pressure brought to bear on the Centre's director to accept them. Enbridge was given extensive influence over the planning and design of the Centre's public launch. In each of these respects, it should have been apparent to University officials that Enbridge had a related public relations interest that was in conflict with the Centre's academic mission. Viewed in isolation, some of the actions of U of C administrators would not rise to the level of an encroachment on academic freedom, but as an accumulation, in our view they do.

Management of donations

l) The Enbridge sponsorship was skewed in Enbridge's favour from the start. The university made unfunded promises to Enbridge, including commitments to enhance Enbridge's reputation, at the university's risk and expense. The ECCS's planned activities were based on an annual budget of \$500,000, which was more than double Enbridge's financial outlay under the sponsorship agreement. Even this originally proposed \$500,000 budget did not cover the cost of a salary for a full director of the ECCS, implying that time committed by Dr. Arvai or other full-time academic directors would, at least in part, be voluntary or dependent on other University resources.

m) The funding shortfall was supposed to be made up by more fundraising. Specific companies were identified, all with operations in the oil and gas industry. As far as we can tell from the record, these fundraising efforts were unsuccessful, leading eventually to requests that Enbridge revisit the ECCS's mission and design, including its name. When the ECCS's funding constraints became untenable, it was the Centre's directors who were held accountable, instead of the administrators who negotiated the skewed sponsorship agreement, the Board members who were party to it, and the senior U of C leadership who failed to exercise proper oversight.

n) The Enbridge sponsorship reveals how easily a university can make itself dependent on corporate money. To carry out its plan to meet its commitments to Enbridge, the U of C had to raise more money than it received from Enbridge in the first place. This liability in turn created inherent pressures to compromise academic objectivity where it came into conflict with donor priorities. Whether intentionally or not, the design of the ECCS subordinated the university's responsibilities as an academic body to the priorities of prospective donors in the oil and gas industry.

Governance

o) There appears to have been a significant failure of collegial governance, accountability and oversight in the establishment of the ECCS. As far as we can tell, the Enbridge sponsorship was never vetted beyond the HSB Development Office. The Enbridge sponsorship does not appear to have come before the U of C Board of Governors for approval. There was also a lack of notice and discussion of the Enbridge sponsorship in the U of C General Faculties Council. These oversights indicate that the processes of review and accountability for the ECCS were deeply inadequate and constitute a serious breakdown of collegial governance.

p) Based on our review of the ECCS and wider media reports, there are worrying signs of a culture of silencing and reprisal at the U of C.

The McMahon Review

q) The U of C has relied repeatedly on the report of former Justice McMahon to excuse conduct of its senior administrators in relation to the ECCS. Yet McMahon's report and conclusions are undermined by his limited acknowledgement and consideration of the role of academic freedom at universities and in relation to the ECCS in particular. The conclusions he reached also appear to us to have given significant benefit of the doubt to senior U of C officials. In contrast, two named individuals, Joe Arvai and Len Waverman, appear not to have received a similar benefit of the doubt and were the subject of damaging criticism by McMahon.

r) It was also misleading for the U of C Board of Governors, in a press release on November 19, 2015, to have described the McMahon review as "independent" and as reflecting "an open and transparent process."

The McMahon review was not fully independent of the Board and was not open and transparent with respect to the supporting evidence for McMahon's conclusions. Finally, the review process, especially its selective approach to confidentiality, was, in our view, inconsistent with principles of fairness and thoroughness. (See Appendix A for our detailed commentary on the McMahon report).

At the conclusion of this report, we make recommendations based on these findings.

2| The Investigatory Committee's Mandate

The Canadian Association of University Teachers established the Ad Hoc Investigatory Committee to look into alleged violations of academic freedom and conflict of interest at the University of Calgary. The Committee's mandate was as follows:

- a)** Examine allegations of conflict of interest, violations of academic freedom, and inappropriate external interference surrounding the establishment and operations of the Enbridge Centre for Corporate Sustainability at the University of Calgary;
- b)** Investigate the circumstances involving the departure of the first Director of the Enbridge Centre for Corporate Sustainability to determine if his academic freedom was violated;
- c)** Consider other issues related to conflict of interest, governance, academic freedom, and the management of donations at the University of Calgary that may arise in the course of the investigation; and,
- d)** Make appropriate recommendations.

The Committee operated under the CAUT Procedures in Academic Freedom Cases. It was tasked with gathering relevant documentation and arranging to meet with appropriate persons in order to obtain a full and fair understanding of the facts.

3 | Fulfilling the Mandate

As described in the Executive Summary above, the Investigatory Committee attempted to contact key participants at the U of C, or formerly at the U of C, in order to learn as much as possible about the relevant facts. We focused our review on the U of C itself and decided not to involve Enbridge or other private companies or parties, other than former Justice McMahon and the U of C's outside legal counsel. We considered Enbridge's conduct and objectives regarding the ECCS based solely on the record before us, especially the Memorandum of Agreement between Enbridge and the U of C, email communications between Enbridge staff and U of C staff, and public statements by Enbridge about the ECCS.

The Committee sought to speak with as many people as possible who were directly involved in the establishment of the ECCS. The Committee specifically contacted senior U of C administrators and offered to meet with them during the Committee's visit to the U of C in March 2016. Members of the senior administration, including former Board member Bonnie DuPont and President Elizabeth Cannon, declined to meet with us, as did members of the U of C staff who were involved in establishing the sponsorship agreement and the ECCS itself, such as HSB Director of Development Kim Kadatz. As discussed in Appendix A, steps were taken to seek access to the information provided by the U of C to the McMahon review. No information was provided by former Justice McMahon, the University Board, or the University leadership in this respect. Some information was provided by the U of C in response to a freedom of information request by the Committee, but it did not include the full range of important information submitted to the McMahon review, including interview statements by senior administrators.

After reviewing the evidence and completing an initial drafting process for our report, notices of potential findings of misconduct by the Committee were sent to various U of C administrators. No response was received on any substantive issue raised in these notices or otherwise in relation to the U of C's handling of the ECCS. Rather, the Chair of the U of C Board of Governors, Gordon M. Ritchie, replied to several of the notices by raising process-related objections to the Committee's investigation and alleging bias on the part of the Committee chair, Professor Len Findlay, based on statements Findlay gave to a public audience about the conduct of U of C administrators in relation to the ECCS. These statements were given without the knowledge of Professors Hearn and Van Harten and did not reflect their views or those of the Committee. Out of respect for Mr. Ritchie's concern and with an abundance of caution, Hearn and Van Harten asked Findlay to resign from the Committee, and he agreed to do so. Further, Hearn and Van Harten committed to reviewing the report and its findings in their entirety. Informed of these steps, Ritchie maintained that they were insufficient and declined, on behalf of several of the notified senior administrators, to engage with any of the substantive issues raised by our findings. Ritchie maintained that the proper and legitimate review of the ECCS was the McMahon review, not the present Committee. We have included our relevant correspondence with Mr. Ritchie in Appendix G of this report.

While it would have been useful to hear directly from these and other officials and staff on matters of substance related to the ECCS and to access the full record provided as part of the McMahon review, we are confident in the findings and recommendations that we have made based on other sources, including interviews

with current or former members of the U of C community and an extensive written record produced in response to freedom of information requests. If we gain access to further information and that information warrants further action or further recommendations, the Investigatory Committee will produce a supplement to the current report.

4 | Conflict of Interest at the University of Calgary

Since at least 1987, the University of Calgary, like other universities, has had policies in place regarding conflict of interest (*University of Calgary Code of Conduct* 10: “History”). For the events of concern in the present review, the most relevant policy is the U of C Board of Governors’ Conflict of Interest Policy enacted January 1, 2006, which has as one of its purposes to “preserve and enhance public confidence in the integrity, objectivity and impartiality of the decision-making processes” of the Board and its Committees. We examine the relevance of that policy below. As a further reference, we also consider the current University Code of Conduct of January 1, 2015, and a related Code of Conduct for members of the U of C Board of Governors. These documents attest to the responsibilities of Board members and the possibility that the Board offers a necessary but potentially problematic interface between the University and external constituencies. For example, the codes are intended to “provide a framework to guide ethical conduct of Members in a way that upholds the integrity and reputation of the Board and the University” and specify that the Board “operates within the public trust and strives to achieve the highest ethical conduct in all of its operations.” Board members “are expected to behave in a way that aligns with this Code and the University Code,” although the codes “do not cover every specific scenario” so that members “are expected to use both the wording, and spirit and intent behind the Codes to guide their conduct.”

These documents on conflicts of interest provide useful reference points for evaluating the appropriateness of the conduct of the U of C Board and its senior administrators in relation to the Enbridge Centre. We focus in particular on Dr. Cannon’s conflicting role as, on the one hand, the U of C president and a U of C

Board member and, on the other hand, a paid Enbridge board member. In our view, Cannon’s conduct was not consistent with the norms and values expressed in the Board’s Policy of January 1, 2006, or with the more recent codes noted above. Regardless of which of these documents apply to Cannon in the relevant period, it is clear that Cannon and the U of C Board failed to take appropriate steps to avoid the actual or apparent conflicts arising from her dual role.

While President Cannon informed former Justice McMahon that she was “minimally” involved in the Enbridge Centre and that the “touchstone” for her involvement was the Centre’s public launch in late March 2012, as we discuss below, her level of involvement in the Centre was more than minimal. Even if she had not involved herself in the Centre at all, her conflicting role and failure to recuse herself publicly from Enbridge-related activities at the U of C still posed a serious problem. In our view, Cannon’s known connections to Enbridge gave a reasonable basis for all U of C administrators and staff to assume that the President would prefer it if they worked to appease Enbridge in their decision-making. As an illustration, the Haskayne BS Dean, Len Waverman, conveyed such a message to Joseph Arvai in early March 2012, after Arvai had expressed concerns about Enbridge’s role. Waverman told Arvai that “(p)utting these issues in writing... jeopardizes our relationship with Enbridge” and that “Elizabeth [Cannon] will have a fit if she sees this” (Email of March 8, 2012). This example demonstrates that Cannon was “involved” in the Enbridge Centre throughout her term as president because of the power of her office and the message that

3. Statement of Elizabeth Cannon [to the McMahon review], December 2, 2015.

her conflicting role potentially sent to others at the university.

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Examples of Supporting Material from the Factual Record Regarding Concerns that Enbridge May Be Using the ECCS as a Public Relations Vehicle:

They [Enbridge officials] feel they were charged with coming up with a plan they feel will maximize PR for Enbridge. We have caused them to rethink...

— Email from Kim Kadatz, HSB to Dean Waverman of HSB, May 3, 2011

We need to be careful so as not to position the Centre as a vehicle for public relations for Enbridge.

— Email from Kim Kadatz, to Dean Waverman and Joe Arvai, December 19, 2011

I am becoming increasingly uneasy again about how Enbridge is viewing the centre, namely (as Kim mentions) as a PR vehicle for the company.... I cannot and will not be able to run the centre that way.... There's a widely held perception that the U of C is in the pocket of industry. We have a chance to correct that with this centre...

— Email from Joe Arvai, HSB faculty member and ECCS Director, to Len Waverman, HSB Dean, and Kim Kadatz, December 19, 2011

*It sounds to me like a classic case of 'he who pays the piper calls the tunes'.... Enbridge is doing too much tune calling, in my view, to the point that the Centre's usefulness to HSB academics is being sacrificed to Enbridge's PR objectives. The most brazen of this approach is the altering of the IRIS name itself.... **The Enbridge Centre for Corporate Sustainability**.... smacks of us being apologists for the fossil fuel industry rather than independent scholars and teachers doing work in a broadly defined area. We built IRIS over 17 years now with strong industry support without being seen as industry apologists. I'm concerned that we may have stepped over the line....*

— Email from Harrie Vredenburg, HSB faculty member, to Len Waverman, August 26, 2011

Enbridge has been difficult – especially their [public relations] firm who were trying to use events to buttress Enbridge's name with little insight into the academic needs to be distant and to run the Centre as we see fit....

— Email from Len Waverman, HSB Dean, to Elizabeth Cannon, President of the U of C and Dru Marshall, U of C Provost, August 23, 2012

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Based on the U of C policy and codes, it is plain and obvious that Dr. Cannon's appointment to an Enbridge board created a conflict of interest with her role as U of C President and Board member. In turn, Cannon, as President, should have been strictly required to operate at arm's length from Enbridge-associated projects at U of C. In the case of the 2006 policy in effect when she was hired as President two years later, a "Conflict of Duty" is defined to include circumstances in which a Board or committee member "has or appears to have" a conflict between their duties to act "in the best interests of the University" and their actual or apparent duties "because of another role and/or Private Interest." In the circumstances of the ECCS, it is clear that Cannon's actual or apparent duties as an Enbridge board member created or appeared to create a conflict with the best interests of the U of C, especially its obligation and efforts to maintain its reputation for independent research at a U of C centre that was funded by and of interest to Enbridge. Further, the 2006 Policy defines a "Conflict of Interest" as resulting from "a situation or circumstances involving a Private Interest" that is sufficient to influence, or appear to influence, a Board member's exercise of an official power or performance of an official duty. Cannon's remuneration as an Enbridge board member clearly falls within the Policy's notion of a "Private Interest," meaning "a corporate, financial personal or private affiliation, relationship or involvement" that is "outside the scope" of Cannon's appointment to the Board and service on Board

committees. Whether her dual role is treated as a conflict of duty, a conflict of interest, or both, Dr. Cannon is required under the policy to “maintain an arm’s length separation” between her Enbridge relationship and her official functions as U of C president.⁴

This assessment is supported by U of C codes, which, since January 1, 2015, have stated that a “Conflict of Interest” exists when “an individual takes part in a decision in the course of carrying out their University responsibilities, where they know or ought to know that the decision may result in a real or perceived Private Benefit to them or to a Related Person or Related Entity” or when “an individual uses their position with the University to influence or seek to influence a University decision which they know or ought to know may result in a real or perceived Private Benefit to a Related Person or Related Entity.” There is no reasonable basis to doubt that Dr. Cannon’s appointment at Enbridge qualifies as a “Private Benefit,” meaning “a financial or personal benefit,” and that Enbridge was a “Related Entity,” a major corporation with several related internal boards, including an Income Fund Holdings Board whose members, including Cannon herself, stood to benefit from Cannon’s intervention regarding the ECCS. On this basis, we think it clear that Cannon was in a specific situation of appearance of conflict when, as U of C President, she intervened in U of C decision-making

relating to the ECCS. More broadly, she was in a general conflict when, as the U of C President, she also served and was paid lucratively as an Enbridge board member.⁵ A university president plays a crucial role in institutional governance. In President Cannon’s case, she has had membership on all eight of the Board’s standing committees and voting privileges on six of them, including the Board’s Executive Committee but excluding its Audit Committee and its Human Resources and Governance Committee. In the latter two settings, the president is a non-voting *ex officio* member. In these various roles, the president plays a central part in determining policies and making decisions at the U of C. With that role comes a responsibility for the president to recuse herself from Board deliberations when she has, or may reasonably appear to have, a conflict of interest.

When she became President of the U of C, Dr. Cannon had been serving on the Enbridge Income Fund Holdings Board for six years, four of these as Dean of Engineering at the U of C. She continued in this remunerated role as President and was permitted to do so in her contract with the U of C Board of Governors (discussed below). In the circumstances, it would be expected that Cannon recuse herself publicly from any U of C matters involving Enbridge when they came before the Board or the president’s office. We found no evidence in the minutes of the Board’s open sessions that Cannon recused herself from such matters. The issue apparently did not arise at various stages when it might, and indeed ought to, have arisen: at the time of the

4. It is unclear to us why Dr. Cannon’s statement to Dean Waverman that she served on an Enbridge board was evidently redacted from emails provided by the U of C in response to FOIP requests. We encountered this statement by Cannon only in the McMahon Report and, as discussed in Appendix A, are not persuaded by former Justice McMahon’s assessment that “no negative inference can be reasonably drawn” from Dr. Cannon’s eventual resignation from the Enbridge Income Fund Holdings Board.

5. President Cannon stepped down from this Enbridge board in November 2015 in response, as she put it, “to the Media coverage and my concern over public misconceptions.” — Statement of Elizabeth Cannon [to the McMahon review], December 2, 2015

Enbridge sponsorship, at the time of the establishment of the ECCS, at the time of the signing of a Memorandum of Agreement stipulating the name of the new entity and the conditions to be met by both parties to the agreement, and at any other times in the operation of ECCS when Cannon became aware of Enbridge's concerns or suggestions about the ECCS. This evident lack of recusal may have arisen in part because the Enbridge sponsorship agreement that led to the ECCS, unlike similar agreements, was not brought before the U of C Board for approval.

We remain unclear as to why Board approval was not sought and are struck and troubled by what appears to have been a serious oversight in university governance. Nonetheless there is nothing in the record before us to suggest that the Board would have withheld approval of the sponsorship agreement. The primary question in our minds is why President Cannon did not identify herself publicly to the Board at relevant times as being in a conflict of interest with respect to the ECCS, or, at least, appearing to be in a conflict of interest because of the reputational benefits that the ECCS promised to bring to Enbridge.

Disclosure is key to providing reassurances about apparent conflicts of interest. In this respect, the U of C Board's Policy of January 1, 2006, required Board members "to disclose immediately all Private Interests that could compete with" their functions and duties as Board members. The Board's agenda regularly includes a prominent item called "Conflict of Interest" and Board members may speak to this item early in the Board's open session or later in the Board's closed sessions. For the Board's open sessions, conflicts are recorded from time to time in Board minutes that are available online from February 2010 onwards. Our review identified no evidence in these minutes that President Cannon made any declaration of a conflict in the Board's open sessions

after she joined the Board as a voting member on October 8, 2010.⁶ We find this lack of public disclosure about her conflicting role at Enbridge deeply troubling.

President Cannon informed the McMahon review that she had been a member of the Enbridge Income Fund Holdings Board since 2003, that she "disclosed this fact each and every year," that her membership on this board was within the terms of her U of C contract, and that it was "consistently disclosed by [her] to the [U of C] Board of Governors."⁷ We were unable to ask Cannon pertinent questions arising from these statements, including how her membership on the Enbridge board was disclosed, whether she acknowledged that it created a conflict of interest regarding Enbridge-related activities at the U of C, whether the conflict was disclosed publicly, and whether Cannon committed to recusing herself from Enbridge-related activities at the U of C due to the conflicting role. We found no evidence on the record before us, including the McMahon report, which answered these questions. Most importantly, we found no evidence that Cannon publicly disclosed her

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6. At that time, Bonnie DuPont – a former group vice-president at Enbridge and then-Chair of the Board's Human Resources and Governance Committee (HRGC) – advised the Board "that providing voting privileges to the President [Dr. Cannon] is standard practice" (Board Minutes for October 8, 2010, item 7b). In fact, this practice was a departure from the immediate past practice, as prescribed in the preceding version of the HRGC's Terms of Reference, with relevant revisions brought to the Board for approval at its meeting of October 8, 2010. The change may reflect the transition from an acting president to a full-time one and appears consistent with the role of Dr. Cannon's full-time predecessors as president of the U of C.
 7. Statement of Elizabeth Cannon (to the McMahon review), December 2, 2015.

conflicting role on the Enbridge board and that she committed to recusing herself from Enbridge-related activities at the university.

In her submission to the McMahon review, President Cannon stated that she “fully disclosed” her “involvement” with the Enbridge Income Fund Holdings Board “at all times.”⁸ Remarkably to us, she also stated that, during her term as President, “absolutely no business related to Enbridge came before the Board of Governors” such that “conflict of interest declarations were not required.”⁹ In these statements Cannon implies that she did not acknowledge to the Board of Governors that she had a conflict of interest with respect to Enbridge when she disclosed her membership on the Enbridge board. Thus, both she and the Board of Governors saw no reason for her to recuse herself from Enbridge-related activities. However, we find it hard to square Cannon’s statement that “no business related to Enbridge” came before the Board of Governors during her presidency with the fact of Enbridge’s sponsorship of the ECCS, especially when the sponsorship agreement itself, dated July 1, 2011, states explicitly that is an agreement between Enbridge and “The Governors of the University of Calgary.” How can the U of C Board of Governors, in whose name the sponsorship agreement with Enbridge was concluded, not have undertaken any business with respect to that agreement?

If Cannon’s statement is accurate and this Enbridge-related matter did not come before the U of C Board, it reflected a serious governance failure – downplayed by

8. Ibid.

9. Ibid.

Cannon as an “administrative lapse”¹⁰ – of an administration led by Cannon herself. In the circumstances, we do not understand how Dr. Cannon, as President and a Board member, was totally unaware of Enbridge’s sponsorship for almost a year, as she told McMahon. We think it more likely that news of a sponsorship by such a prominent company would have found its way to Cannon as well as to Bonnie DuPont, who was then Vice-Chair of the Board. In either case, it was Cannon’s or DuPont’s duty to see that the Board was informed of the sponsorship and, in Cannon’s case, to recuse herself from any involvement. We find support for our view of when President Cannon was in a position to become aware of the sponsorship in these details from the record:

Concerning Elizabeth Cannon:

- HSB Director of Development Kim Kadatz stated in April 2011 that the President had arranged her schedule for an ECCS launch date of May 18, 2011.
- Kadatz later canvassed the President’s office regarding her availability for a new ECCS launch date on July 25, 2011, which was “the 1st anniversary of [Enbridge’s] spill in Michigan,” noting that “the gift announced at that time will offer more public relations value for them” (Email of April 27, 2011).

10. Ibid (“Normally, a donation or sponsorship proposal for the naming of a Centre is tabled before the executive leadership team for review, and then for approval by the Board of Governors.... It appears from my review that those responsible [Development] failed to take these steps. In looking into the reasons why, I am satisfied that the oversight was simply an administrative lapse.”).

- Kadatz and others at the U of C canvassed additional dates for the President’s availability in October and November 2011 for the postponed ECCS launch (Emails of August 11, 12, 16, and 18, 2011).
- It was conveyed to Joe Arvai in August 2011 that the President’s office had said that “Enbridge is very keen” about an ECCS launch date of November 3, 2011, that the President was booked for that date, and that it was “really important” for Arvai to attend the event. He committed to doing so by re-arranging his schedule (Emails of August 22, 2011).
- Kadatz prepared a draft “Event Memo” for an ECCS launch planned for November 10, 2011. The memo referred to President Cannon as the host of the event, indicated that she would greet Enbridge guests and make the opening remarks, and specified as an objective of the event to “[p]rovide meaningful recognition and acknowledgement to Enbridge.”
- Kadatz canvassed additional dates for the President’s availability in January and February 2012 for the further-postponed ECCS launch (Email of September 30, 2011). In December, Kadatz stated that the President was booked for a launch date on February 8, 2012 (Email of December 21, 2011). Kadatz later canvassed the President’s availability for other launch dates in late February 2012 (Email of January 10, 2012).
- Kadatz stated in February 2012 that she would share the event plan for the launch, which was by then set for March 27, with Elizabeth Cannon’s office in order to get started with her speech writing (Email of February 23, 2012).
- HSB Dean Len Waverman stated in March 2012 that he was tired of dealing with Joe Arvai and that “Elizabeth will have a fit if she sees this,” evidently

referring to an email string in which an Enbridge official raised concerns about Arvai notifying him of his concerns about the ECCS (Email of March 8, 2012).

- Waverman told Arvai in March 2012 that “Elizabeth is going to take my head off,” while telling Arvai he was being too pushy and jeopardizing their relationship with Enbridge (Voicemail of March 8, 2012).

Concerning Bonnie DuPont:

- Waverman stated in June 2011 that Bonnie DuPont, then Vice-Chair of the U of C Board of Governors, would “intervene for us at Enbridge” regarding the name of the ECCS (Email of June 4, 2011).
- Kadatz stated in July 2011 that DuPont “was critical in obtaining this commitment [to the ECCS sponsorship] from Enbridge” (Email of July 22, 2011).
- DuPont stated to U of C administrators in July 2011 that it was “great news” that the Enbridge deal was done and that she had been informed separately by Enbridge of this result (Email of July 27, 2011).
- Kadatz’s draft event memo for the ECCS launch included Bonnie DuPont as an attendee in her capacity as Vice-Chair of the Board (Email and attachment of September 20, 2011).
- Waverman told Bonnie DuPont in October 2011 that Enbridge was “upset” and had pulled the ECCS launch planned for November 10 and that he was concerned “the \$\$ are at risk.” He asked DuPont whether she could be the ECCS director, with Dr. Arvai as academic advisor. She declined on the basis that she was on the U of C Board (Emails of October 20, 2011).

- Joe Arvai stated in December 2011 that DuPont was confirmed as a member of the ECCS external advisory board (Email of December 15, 2011).
- Kadatz stated in March 2012 that President Cannon had chosen Bonnie DuPont as Cannon's back-up for the ECCS launch on March 27 (March 18, 2012).

These aspects of the record support the view that Cannon likely learned of the Enbridge sponsorship, and that DuPont was clearly aware of the sponsorship, well before the ECCS's public launch in March 2012. Regardless of whether Cannon was aware of the ECCS before that date, both her conduct and that of DuPont reveal a failure of leadership and disregard for U of C governance processes. Ultimately, the failure precluded the Board from reviewing and approving the sponsorship agreement, to which it was a party, and from taking steps to ensure that Cannon recused herself from any decisions related to the ECCS. Cannon's further reliance on the excuse of an "administrative lapse" by her own administration, in order to deny her duty to disclose her conflicting role at Enbridge, comprises an unacceptable evasion of responsibility.

Simply, President Cannon should have put her role on the Enbridge Income Fund Holdings Board on the open record and recused herself accordingly from Enbridge-related activities at the university. These would have been steps toward alleviating reasonable concerns that Cannon's Enbridge role conflicted with her role as U of C President. Disclosure of real and potential conflicts of interest by senior officials is a crucial first step in any effort to protect a university's reputation and ensure public confidence in its capacity for independent research and teaching. President Cannon and the U of C Board as a whole should have been attuned to this issue, considering, for example, earlier reports about Bruce

Carson and his tenure at the Canada School of Energy and Environment, where Carson was allegedly involved in well-paid influence peddling for the oil and gas industry and was ultimately convicted of illegal lobbying.¹¹ Board members may also have been aware that students use expressions such as "Oilsands U" to describe the U of C and its ties to the oil and gas industry and, as Dr. Arvai put it when raising concerns about the ECCS, "[t]here's a widely held perception out there that the U of C is in the pocket of industry" (Email of December 19, 2011). If Board members and senior administrators are unaware or dismissive of these types of criticisms of the U of C, we question whether they are fulfilling their role to protect the university's academic reputation.

As president of the U of C, Dr. Cannon was operating under a contract signed in 2010 and renewed in 2014, which included the following clause (at 3.1):

Dr. Cannon shall devote the whole of her working time, attention and ability to the affairs of the University and shall faithfully serve and use her best efforts to promote the interests of the University. Notwithstanding the aforesaid, Dr. Cannon may hold appointments to the Boards of organizations as requested by the University in addition to accepting up to two (2) appointments to Board(s) or holding similar part-time position(s), which are outside the University sphere and for personal compensation, provided the same is approved, in advance, by the Executive Committee of the Board, such approval not to be unreasonably withheld.

This provision is problematic in several respects. First, it commits the whole of Cannon's time and attention to

11. Greg Weston, *CBC News*, October 11, 2011; "Bruce Carson, former Harper aide, fined \$50,000 for illegal lobbying," *Canadian Press*, November 4, 2016.

“promot[ing] the interests of the university,” yet it also allows her to maintain appointments to boards where representation is requested by “the University,” and allows her to maintain up to two board memberships of her choosing for personal compensation. The requirement for the Board’s Executive Committee to approve such positions offers some reassurance, but it does not adequately address the corresponding conflicts of interest that may arise. Also, the notion of such service occurring “outside the University sphere” is complicated by the make-up of the Board, whose members often have dual roles traversing the corporate and university domains. Finally, it is unclear what it means for the Executive Committee to “unreasonably withhold” approval of an outside board position.

Considering the U of C’s policies on conflict of interest and the above clause of President Cannon’s contract with the U of C, we do not understand how it can be reasonable or proper to allow a highly compensated university president to earn additional generous remuneration in roles that may lead to dual loyalties to the university and an outside company. The appearance of a conflict should have been obvious to anyone who knew of Cannon’s role on the Enbridge board and her compensation for that role. The best way for Cannon to have avoided this conflict was for her not to occupy a position, especially a paid one, on an external corporate board during her tenure as U of C President. At the very least, Cannon should have recused herself publicly from all Enbridge-related discussions and decisions at the U of C in order to alleviate concerns about her ability to influence U of C decision-making in ways that benefited Enbridge. Even if the U of C Board of Governors felt that there was some reasonable basis for approving Cannon’s dual role, its members should have insisted that Cannon withdraw from any university activities of interest to the external boards on which she sat or the

corporations that paid her in that role. In the case of the ECCS, Cannon evidently did not recuse herself publicly from such activities, as exemplified by her direct intervention with the Dean of the HBS in which she informed him that Enbridge was not happy with the progress of the ECCS and that she wanted to have a good relationship with Enbridge, stressing that she was on one of Enbridge’s boards.

The accumulation of President Cannon’s dual role and conflict of interest, her failure to recuse herself publicly at relevant times, and the Board of Governors’ evident approval or acquiescence in the conflict and non-recusal in our view amounts to a significant failure of leadership that very likely has harmed the U of C’s reputation for academic independence and objectivity.

5| Implications for Academic Freedom

Academic freedom is key to the effective, ethical functioning of a university, a principle that is reflected in the CAUT's Policy Statement on Academic Freedom (Appendix C). This CAUT statement is clearer and more uncompromising than the one produced by the Association of Universities and Colleges Canada (AUCC, which is now Universities Canada [UC]; for a detailed critique of the AUCC/UC document see CAUT's "Open Letter" on the topic in Appendix D) in 2011. The AUCC/ UC statement of November 2011 nonetheless affirms that academic freedom goes beyond the concept of free speech in that it "allows universities to set their research and educational priorities" and "must be based on institutional integrity, rigorous standards for enquiry[,] and institutional autonomy."

Limiting ourselves to the AUCC/ UC statement of 2011, in our view Dr. Joe Arvai's academic freedom was compromised as a result of the U of C's mishandling of the Enbridge Centre. This mishandling appears to have been due to a desire on the part of senior U of C leadership to please a significant donor. The compromising of Arvai's academic freedom unfolded as follows. (See also the Chronology in Appendix B.)

Examples of Supporting Material from the Factual Record Regarding U of C Administrators' Efforts to Appease Enbridge:

It is Enbridge's strong preference through Steve Wuori that the university for the partnership...be Central Michigan University. That university gave Enbridge and Steve very valuable advice on the situation they were dealing with last summer and Steve has stated this is his choice...

— Email from Kim Kadatz, HSB Director of Development, to Dean Waverman of HSB and Joe Arvai, Director of ECCS, April 13, 2011

On reflection, it does make sense that we include mention in Pat's [Pat Daniels, Enbridge CEO] remarks given the

connection made to CMU during the Michigan incident [an Enbridge pipeline spill into the Kalamazoo River]...

— Email from Dan O'Grady, Enbridge National Manager of Community Partnerships and Investment, to Russ Peters, cc'd Kim Kadatz, Joe Arvai, and others, February 2, 2012

... they [Enbridge] will be postponing any announcement [of the Centre] from May 18 until July 25 which is the first anniversary of their spill in Michigan. This gift announced at that time will offer more public relations value for them.

— Email from Kim Kadatz to Kira DeVries, cc'd to Len Waverman, Joe Arvai, and others, April 27, 2011

Dan [O'Grady] and I agreed that we need to iron out the name and focus before we jump to an announcement. This is very important for us and them but they don't like to be pushed and we will need to take direction from them on timing.

— Email from Kim Kadatz to Len Waverman, HSB Dean, May 3, 2011

I like the Enbridge name [for the Centre] or Joe's... don't want to get in the way of the gift – take Dan [O'Grady]'s name!

— Email from Len Waverman to Joe Arvai, ECCS Director, and Kim Kadatz, May 4, 2011

Early in his career at the U of C, Dr. Arvai was introduced as a "real star" by Leonard Waverman, the Dean of the Haskayne Business School, in a communication to an Enbridge official responsible for Community Partnerships and Investment (Email of March 28, 2011). After a relatively short time period, however, Waverman came to describe Arvai as an "amazing ego and royal pain" (Email of July 3, 2012). From the email record, it appears that Waverman's evaluation of Arvai evolved in this way because, as academic director of the Enbridge Centre, Arvai refused to compromise his views about the core academic role of the Centre. In a chronology and commentary that

Arvai wrote and shared with us, he argued that his academic freedom could have operated to Enbridge's advantage:

I told Len [Waverman] at one point early on, that having someone like me who opposed NGP [the Northern Gateway Pipeline] as the director of the Enbridge Centre would be a coup for Enbridge. My reasoning was that it would demonstrate how committed to scholarship Enbridge was, and that the creation of the Enbridge Centre was not a stunt designed to garner goodwill for NGP.

Yet, the email record demonstrates that senior university officials were willing to adjust the university's research and educational priorities according to Enbridge's requests concerning partner institutions, the naming of the Centre, the definition of its research agenda and outputs, the development of the protocol and agenda for the Centre's launch, and the determination of the kinds of professional invitations the Centre's academic director could accept. On various occasions when Arvai took a different position from Enbridge, he came into conflict with the U of C's senior leadership.

An example of how Dr. Arvai's academic freedom as the Centre's director was compromised can be found in the process for selecting academic partners for the ECCS. Arvai was told that Enbridge wanted the University of Northern British Columbia (UNBC) and Central Michigan University (CMU) as collaborating institutions with the ECCS. He was understandably skeptical about Enbridge's motives, considering that UNBC was on the proposed path for the Northern Gateway pipeline promoted by Enbridge, and CMU was one of the closest universities to the Enbridge oil spill of July, 2010, into the Kalamazoo River in Marshall, Michigan. Arvai was concerned about the academic implications of these proposed collaborations. CMU, for example, had only one faculty member working in the area of corporate

sustainability and no resources to commit. Collaboration with them made little sense academically. The email record indicates that Enbridge's "strong preference" was for CMU to be chosen because it gave them "very valuable advice on the situation they were dealing with last summer" (Email of April 13, 2011). In spite of his repeated objections, Arvai was pressured into accepting CMU as a collaborator. His concerns arose again when Enbridge pressured him to include a CMU representative on the ECCS's external advisory board in addition to their designated member as per the sponsorship agreement. In response to Arvai's concerns, Dean Waverman told him that "(Steve) Wuori (Executive Vice-President at Enbridge) will be upset" and that Arvai "needs to go along with Enbridge (since) the monies we give to CMU are tiny – it won't be viewed as a payoff" (Emails of March 7, 2012 and March 8, 2012). Waverman added that Arvai's "(p)utting these issues in writing... jeopardizes our relationship with Enbridge" and that "Elizabeth [Cannon] will have a fit if she sees this" (Email of March 8, 2012). Thus, Arvai's ability to direct the Centre's scholarly mission, including the assurance that its mission would not be driven by Enbridge's public relations interests, was directly undermined by a more senior administrator who expressed concern about appeasing President Cannon and a donor with whom Cannon was personally and financially connected.

Another compromise of Dr. Arvai's academic freedom involved his right to disseminate his research and offer scholarly advice in settings of his choosing. While academic director of the Enbridge Centre, Arvai was invited by then-President Obama to serve on the US Environmental Protection Agency's (EPA) Scientific Advisory Board. One would expect the U of C to have celebrated this invitation, especially since Arvai worked to ensure that the EPA could accommodate his role at

the Enbridge Centre. Arvai soon found, however, that Enbridge had concerns about a possible conflict of interest between Arvai's role on the EPA advisory board and Enbridge's own corporate values. Indeed, after Arvai's appointment to the EPA, Enbridge took steps to influence the parameters of Arvai's role as director of the Enbridge Centre. On November 2, 2011, Dan O'Grady, National Manager of Community Partnerships and Investment at Enbridge, wrote to Dean Waverman:

We believe it would be helpful to ensure the agreement clearly states that if the Director is unable to fulfill his duties in keeping with our agreed upon expectations, that the University would begin a search for a suitable replacement. We would like your assurance that there are no unexpected or unknown affiliations that would prevent Joe from fulfilling his duties as Director? (Email of November 15, 2011)

Faced with these concerns and the request from Enbridge, senior U of C officials had a responsibility to make clear that the academic director of the ECCS was free to determine his own outside academic and advisory activities. Yet, they appear instead to have reacted by attempting to appease Enbridge at the expense of Dr. Arvai's academic freedom. For example, when Arvai realized that the U of C's announcement of his EPA appointment had not been made, he asked the HSB Communications department: "who is asking you to hold the EPA announcement. And why?" (Email of October 25, 2011). In response, he was informed, "Len [Waverman] doesn't want to piss off Enbridge any more" (Email of October 25, 2011). The same individual emailed Waverman to confirm that they were working to ensure that the news of Arvai's EPA appointment did not "come from Haskayne" because it "could be an affront to Enbridge" (Email of October 25, 2011). These email exchanges indicate that the HSB leadership and communications staff were more concerned with

appeasing a corporate donor than supporting the academic freedom of Arvai and, in turn, the academic mission of the Enbridge Centre.

Dr. Arvai's academic freedom was also at issue in the process of naming the ECCS. The inclusion of the term "Enbridge" in the name was not a surprise or the main problem. Rather, the name as a whole was a relevant concern because of what it conveyed about the Centre's academic focus, values, and capacities. For Arvai, the Centre's naming drew on his research expertise and knowledge of relevant academic and policy networks. Arvai was the Svare Chair in Applied Decision Research at the U of C and was known externally as a leader in the area of "triple bottom line" decision-making: a form of corporate leadership and decision-making that takes into account financial, social, and environmental interests. The email record shows that the process of naming the Centre became a source of concern for Arvai because it pitted academic values against corporate sensitivities. Weighing in on the issues around potential ECCS collaborators and the naming of the Centre in an April 13, 2011 email to Arvai, copied to the HSB Director of Development, Dean Waverman opined that "If CMU is the price we pay in the short run – that's the price – but only the SR [short run?]. The name is for them to choose[.]" Eventually, Arvai is told by Waverman to "take Dan's (Dan O'Grady, National Manager of Community Partnerships and Investment at Enbridge) name!" (Email of May 4, 2011) for the Centre.

In his interview with the Investigatory Committee, Dr. Arvai stated that conceptualizing and planning for the ECCS's role was an academic task but that he was prepared to work reasonably with Enbridge on a range of issues. In his contribution to the *Globe and Mail* on November 6, 2015, Arvai described his approach to such partnerships:

... when it comes to corporate donations to universities—like the one for the Enbridge Centre—I believe that donors have every right to raise certain questions, and to have measured expectations. For example, I think donors should be able to suggest—but not necessarily select—individuals who could effectively serve in an advisory capacity. And, they should be granted a meaningful voice in the dialog that results in the establishment of a Centre’s name and mission. They should not be allowed to require that support from an academic centre be available only to individuals who share their ‘core values.’

The email record also shows that Dr. Arvai was willing to work with Enbridge on naming and other issues. On May 18, 2011, Arvai wrote, “It might make sense for me to spend some meaningful time at Enbridge... learning about the company’s interests; this way I could help to guide the strategic direction of the Centre in the direction of some of Enbridge’s key areas of interest/influence.” In the process of establishing the Centre, Arvai sought to be cooperative. He eventually accepted the donor’s proposed name and the collaboration with CMU. Despite his serious concerns about Enbridge’s “evolving” demands, he agreed to remain the Centre’s director and work with Enbridge on the Centre’s launch event.

More broadly, Dr. Arvai’s academic freedom to determine the research agenda and outcomes at the ECCS was clearly affected by the pressure brought to bear by senior U of C officials. Arvai expected donor pressure to some degree, as he states in his *Globe and Mail* article, but felt that Enbridge was demanding “way way too much” for a “tiny amount of money” (Email of December 20, 2011). Dean Waverman and Kim Kadatz occasionally shared these concerns, as the email record indicates, but their support for Arvai’s position was inconsistent at best, and Waverman and Kadatz both repeatedly chose to side with Enbridge instead of Arvai.

They did so in initial conversations about naming and collaborators. They did so in the case of Arvai’s defense of the rights of post-doctoral researchers to “go where their research interests take them” [both geographically and intellectually] (Email, March 8, 2011). They did so when Arvai insisted that academics alone should define what constitutes a “research output” (Email, June 5, 2012). In these cases and others, Arvai sought to affirm the academic mission of the ECCS against the apparent desires of senior administrators to please the sponsor.

Notably, Dr. Arvai’s concerns were shared by at least one academic colleague, Professor Harrie Vredenburg, former director of an earlier U of C Centre called IRIS (International Resource Industries and Sustainability). Vredenburg told Dean Waverman on August 26, 2011, that the Enbridge sponsorship was “a classic case of ‘he who pays the piper calls the tunes’” and that “Enbridge is doing too much tune calling, in my view, to the point that the Centre’s usefulness to HSB academics is being sacrificed to Enbridge’s PR [public relations] objectives.” Vredenburg pointed to the naming issue, noting that it “does not reflect the Calgary/ Western Canadian economy” and “smacks of us being apologists for the fossil fuel industry rather than independent scholars and teachers doing work in a broadly defined area.” This communication from Vredenburg lends further credence to Arvai’s view that Enbridge’s interventions, with the support of senior U of C administrators, threatened to undermine the Enbridge Centre’s academic mission.

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Examples of Supporting Material from the Factual Record Regarding Joe Arvai’s Defense of the Centre’s Academic Role:

We cannot maintain our credibility as serious scholars/ researchers if the sponsors can dictate the Centre’s agenda... I

cannot serve as the Centre's Academic Director if any of its sponsors are allowed to meddle in its academic activities.

— Joe Arvai, HSB faculty member and ECCS Director, to Len Waverman, HSB Dean, November 2, 2011

I also heard a comment that Enbridge questioned why we had so many (currently 2 out of 5 members) 'academics' on the Advisory Board. The answer is simple: Because we're an academic centre.

— Email from Joe Arvai to Len Waverman and Kim Kadatz, HSB Director of Development, December 19, 2011

This kept me up last night. They are giving us a tiny amount of money and are asking for way, way too much. Their expectations don't match their donation. We're currently on the road to a disappointing relationship with them.

— Email from Joe Arvai to Len Waverman, December 20, 2011

I've built a solid academic reputation and career on being a credible, defensible and impartial policy advisor. Aspects of the CMU arrangement, and this centre more generally, could paint me and us in a bad light. It seems I am one of only a small few who sees it this way.... Kim, I know you'll tell me 'it's in the gift agreement' ... But frankly, the arrangement with this centre has been evolving since we started and I am, once again, growing less and less comfortable....

— Email from Joe Arvai to Kim Kadatz and Dean Waverman of HSB March 10, 2012

How did Dr. Arvai's tenure as academic director of the ECCS come to an end? No U of C administrator spoke to us about this issue and a timeline submitted by the U of C to the McMahon review stated that there were "[n]o documents" relevant to the "resignation" of Arvai as ECCS director.¹² In his interview with us, Arvai recalled

12. "Timeline of Primary Events for Enbridge Centre for Corporate Sustainability," undated.

that then-Dean Waverman phoned him to discuss his removal as ECCS director one week after Arvai told Enbridge's public relations firm, National Public Relations, of his opposition on scientific grounds to the Northern Gateway pipeline. Arvai told us that National Public Relations asked him about the pipeline at a meeting in advance of the ECCS's launch and that the question arose because, although "canned" media (which we understand to mean media not expected to ask awkward or probing questions) would attend the launch, other media might also attend and ask about the Northern Gateway pipeline. Arvai explained further that, while he sought to step down previously as academic director, he agreed to stay on at Waverman's request for three reasons. First, he was only one and a half years into his position at the U of C and needed to make it work after having relocated to Calgary. Second, he wanted to avoid upsetting Waverman out of concern that his position would be reviewed and his career harmed. Third, Arvai's wife was seeking a faculty position after obtaining her PhD and Arvai wanted to support her by being "a good soldier." He also gave the example of another tenured faculty member, David Layzell, who had been dismissed as academic director of a U of C research centre and subsequently re-located to a basement office in the Biology building after standing up to the University Administration on issues of energy and the environment.

We found Arvai's explanation for his departure as ECCS director, following his earlier attempts to resign, to be credible and very troubling. Yet, even if we put aside this issue completely, we think that Arvai's academic freedom was infringed over the course of his tenure as ECCS director. That infringement may not appear extreme or acute at first glance. Enbridge did not direct whom to hire at the U of C, for instance, or ghost write academic

publications. Rather, Enbridge’s priorities were translated into pressure on academic decision-making in more subtle and incremental ways. Enbridge was able to make suggestions about the Centre’s name and the Centre’s director was pressed to accept those suggestions over his academic judgment. Enbridge was given special access to the University’s academic and other staff to discuss or determine academic priorities. Enbridge was allowed to recommend partners for the Centre, with pressure brought to bear on the Centre’s director to accept them. Enbridge was given extensive influence over the planning and design of the Centre’s public launch. In each of these respects, it should have been apparent to University officials that Enbridge had a related public relations interest in conflict with the Centre’s academic mission. Viewed in isolation, some of Enbridge’s actions would not rise to the level of an encroachment on academic freedom but, as an accumulation of interventions, in our view they do.

Examples of Supporting Material from the Factual Record Regarding Enbridge’s Reaction to Joe Arvai’s Appointment to an EPA Advisory Committee:

I’ve asked them if they would consider combining the EPA announcement in there so that it can still be timely yet not come from Haskayne... This way, the news is shared in a timely fashion... but it’s not associating Haskayne with it directly, which could be an affront to Enbridge.

— Email from Kim Lawrence, HSB Director of Communications and Marketing, to Dean Waverman of HSB and Julie Phillips, cc’d Kim Kadatz, October 25, 2011

The Director will not have any relationships or activities which impinge on his or her role as Academic Lead or on his or her ability to speak on any issue involving the Center.

— Email from Len Waverman, citing Enbridge’s requests concerning the Centre’s academic director, to Joe Arvai, November 1, 2011

I’ve been going over the TOR for Enbridge Centre. They don’t address the Enbridge issues – Director won’t have conflicts...

Can we redo these together in the am?

— Email from Len Waverman to Kim Kadatz, November 27, 2011

This case of the ECCS is an example of the indirect or inconspicuous ways in which private funding can compromise academic freedom. It is one thing for a private funder to make suggestions, quite another for an academic director to be put under pressure by senior administrators for raising concerns about them. If Dr. Arvai had not stood up to what he thought were inappropriate suggestions from Enbridge, it is reasonable to assume that he would not have run into difficulties with senior University officials and that Enbridge’s suggestions may have continued or escalated under his directorship. Once it became known that Arvai was no longer the Centre’s academic director, it is likewise reasonable to infer that a message was received by others at the HB, particularly future directors of the Centre, to the effect that suggestions from Enbridge were to be taken more as directions. Whether the Centre’s incoming director took this approach is not the central question. The question is whether it would be reasonable to expect any new director or Dean to be influenced by the circumstances of the previous director’s term at the Centre and his eventual departure. We have no doubt that it would be.

The resulting impact of these actions on the reputation of the university is that the U of C becomes known as a place where the public interest in free and independent academic research, teaching, and service can readily be undermined by private funders’ priorities. Put differently, it becomes known as a place where the apparently conflicting loyalties of a university president – who is being paid by a private sponsor as well as the university –

can directly shape the university's decision-making. In the case of the Enbridge Centre, we know enough from the record to say with confidence that these conflicting loyalties played out in the U of C administration's relationship with academic staff, specifically Dr. Arvai, and contributed to compromises of academic freedom.

We did not seek to review in detail what transpired at the ECCS after Dr. Arvai's departure as its director.¹³ Yet we were able to make a few observations about the two-year period after Arvai's departure using documents that were disclosed to us by the U of C in November 2016. The observations support our finding that the ECCS's academic mission, as characterized and defended by Arvai, was in conflict with the U of C administration's goal to deliver a public relations benefit for Enbridge and to cultivate relations with other corporate donors. These observations are as follows:

- In June 2012, shortly after Arvai's departure, the ECCS interim director reported to Enbridge that the ECCS's overarching marketing and communications goals would be, among other things, "to enhance the reputation of the partners – the Haskayne School of Business, the University of Calgary, Central Michigan University, and Enbridge." A marketing and communications plan for the ECCS, marked "draft," laid out a plan to capture the "reach" of the centre,

including "circulation of a publication, program viewers, website analytics, number of hard copy pieces distributed, attendance at events, Twitter analytics and more." The ECCS also committed to provide monthly updates on its marketing and communications activities to the ECCS "project team (including Enbridge)." ("Progress report on initiation of the Enbridge Centre for Corporate Sustainability," Memo from ECCS interim director Loren Falkenberg to Steve Wuori [of Enbridge], June 13, 2012).

- In the same June 2012 report, the ECCS interim director reported to Enbridge that the ECCS would coordinate with Central Michigan University (CMU) to plan public talks in Michigan. A CMU contact had been asked by the ECCS's external advisory board, which included an Enbridge official, "to develop a presentation on the impact of the pipeline leak, and the remediation steps taken by different stakeholders" ("Progress report on initiation of the Enbridge Centre for Corporate Sustainability," Memo from ECCS interim director Loren Falkenberg to Steve Wuori [of Enbridge], June 13, 2012).
- From the start, the ECCS faced a chronic funding shortfall because the Enbridge-funded budget was inadequate for the Centre's planned activities. We discuss this issue in more detail below. The relevant point here is that, faced with this budget crunch, the new ECCS director (Bob Page), appointed in November 2012, worked actively until late 2013 to attract more corporate support. Page focused these efforts on companies operating in the oil and gas industry, including Cenovus, ConocoPhillips, Ledcor, and Suncor ("Dean's Report to the Academic Advisory Group, Enbridge Centre for Corporate Sustainability," Report by Haskayne Business School Dean Jim Dewald, April 21, 2014; "Minutes – Enbridge Centre for Corporate Sustainability

13. After Arvai's departure in March 2012, the ECCS was run by an interim director, Loren Falkenberg, a faculty member and associate dean at the Haskayne Business School. In November 2012, a new director, Bob Page, was hired. Page was a non-tenured adjunct faculty member at Haskayne who had previously worked for ten years as a vice-president of TransAlta, an electricity power generator formerly known as Calgary Power. We have not sought to investigate the role of these subsequent directors of the ECCS and make no findings or conclusions with respect to them.

Academic Advisory Meeting,” November 22, 2012; and March 5, 2013).

- Various ECCS activities in 2013, including speaker series and honorary fellowships, also appeared oriented toward organizations in the oil and gas industry. The organizations included the Alberta Energy Regulator, the Canadian Association of Petroleum Producers, the Canadian Energy Pipeline Association, the Canadian Oil Sands Innovation Alliance, and Suncor (“Minutes – Enbridge Centre for Corporate Sustainability Academic Advisory Meeting,” March 5, 2013; May 14, 2013; and October 7, 2013).
- The ECCS began its Enbridge Research in Action Seminar series with a public talk on May 2, 2013, delivered by Brenda Kenny, who was president of the Canadian Energy Pipeline Association at the time. The talk was held at the U of C’s downtown campus and drew a crowd of 240. In its report of the talk, the U of C’s UToday bulletin posted the headline “Haskayne speaker series: Pipeline industry invites dialogue, counters false claims” and noted that the ECCS was supported by a \$2.25 million “gift” from Enbridge. The report also mentioned that the next talk in the Enbridge Seminar series would be delivered by three retired energy chief executives from Enbridge, Nexen, and TransAlta, respectively (“Haskayne speaker series: Pipeline industry invites dialogue, counters false claims”, UToday, May 2, 2013; “Minutes – Enbridge Centre for Corporate Sustainability Academic Advisory Meeting,” May 14, 2013).

These observations about the ECCS after Arvai’s departure provide further support for our conclusion that the U of C was primarily interested in running the ECCS in a way that delivered a public relations benefit

for Enbridge and the oil and gas industry. Within a few months of Arvai’s departure, the ECCS was used to give an academic platform for public talks in Michigan on the remediation of the Enbridge oil spill into the Kalamazoo River in 2010. The ECCS committed to Enbridge that it would work toward enhancing Enbridge’s reputation and report monthly on its marketing efforts. In 2013, the ECCS director actively worked to cultivate relationships with other companies in the industry, and the ECCS launched a speaker series that provided a university-backed forum for oil and gas industry representatives to convey their viewpoint to public audiences. These observations support the conclusion that the ECCS’s academic mission was compromised by a desire to appease Enbridge and the oil and gas industry as a way to attract more corporate funding. It was in this context that the infringements on academic freedom at the ECCS took place.

6 | External Influence, Institutional Autonomy, & Academic Integrity

Partnerships between universities and external actors, where they have adequate funding to support an academic purpose, can be very positive. Yet senior university administrators must ensure that donors do not become owners or come to believe they are entitled to act as if they are. A public university is not a private think tank. Universities must protect their autonomy in academic matters, no matter the source of funding that supports academic work in teaching and research. In the CAUT report, *Open For Business On What Terms?*, the ECCS is discussed as one of several case studies of research collaborations (40-43) and assessed in detail later in the document (119-25). The report reviews the texts of the Enbridge-U of C Donor Agreement and the Terms of Reference for the Enbridge Centre, accessed through a CAUT FOIP request. In its discussion, the report notes the absence of conflict of interest language in the Donor Agreement and contradictions between the role given to Enbridge in the Donor Agreement on the one hand and, on the other, the affirmations of academic freedom and institutional autonomy in the Centre's Terms of Reference.

As it turns out, the “contradictory aspect to this collaboration” (*Open For Business* 42) was evident in the ECCS negotiations from the beginning. As a powerful company, Enbridge would not donate to a university without some view to the upside for its own business and reputation. It is clear that Enbridge had a view of what it wanted from the ECCS, demonstrated by their insistence about naming and collaborators, their concerns about Dr. Arvai's EPA appointment, and their efforts to control communications about the ECCS and the ECCS launch event. As the email record indicates, Enbridge had a strong sense of their rights and status as a donor.

Our primary concern is with how Enbridge's position as donor played out in the HSB and U of C senior administration. We highlight two examples, both involving former Enbridge Vice-President Bonnie DuPont, who was at the time Vice-Chair and later Chair of the U of C Board of Governors, and who was described by the HSB Director of Development as “our volunteer” who was “critical in obtaining this commitment from Enbridge” (Email of July 22, 2011). When differences of view emerged at the ECCS and Enbridge about Dr. Arvai's EPA appointment, Dean Waverman broached the question of a new executive director with Ms. DuPont in an email of October 20, 2011. The subject of the email was “Troubles at Enbridge”:

Bonnie, met with Glen and Steve yesterday—explained situation—Joe Arvai is running the Center—he has an internal Board and an external one—speakers ready to go—the ad for Associate Director is posted tomorrow. They are upset, pulled the big announcement with Pat and Elizabeth for the 10 Nov! I am concerned that the \$ are at risk!

They want a spokesperson, What about Bonnie DuPont Adjunct Prof and Director, Joe is Academic Advisor, David Lertzman is Outreach Advisor. We will have a strong Associate Director—no work for you + gives you platform to raise \$\$\$\$.

DuPont replied:

Oh Dear... not good. Len, I would take this on as you describe if I was not on the Board of Governors... but I still have a year plus a few months left in my term so I simply cannot do it... who do they want in the role?

In the context of the Enbridge-U of C agreement, Waverman and DuPont were both concerned about the donor having become “upset” about Dr. Arvai, and

Waverman acted promptly to reassure Enbridge in the hopes of maintaining Enbridge's monetary commitment. In doing so, Waverman did not meet his responsibility to support Arvai in his academic role, preferring instead to try to recruit DuPont in the role of a "spokesperson" for Enbridge and to give her a "no work" platform to raise money. In doing so, Waverman sought to replace an academic with clearly relevant expertise, who had insisted on protecting the Centre's academic mission as he saw it, with a former Enbridge Vice-President who would appease Enbridge.

As it happened, DuPont, not Waverman, raised the concern about her dual role as a member of the U of C Board of Governors and then asked, "Who do they want?" In the context of the exchange, we read the "they" in this question as a reference to Waverman's "Glen and Steve" at Enbridge. This interpretation is supported by a subsequent email of October 20, 2011, in which Waverman informed Glenn Herchak (Enbridge's Director of Communications) and Steve Wuori (Enbridge's Executive Vice-President, Liquids and Pipelines) that "Bonnie DuPont would be delighted to be Director when she comes off U of C Board in 14 months." We see this part of the record as providing further evidence that Waverman and DuPont were willing to appease Enbridge, even to the point of displacing Arvai in his role as academic director.

As the email record shows, Enbridge also exerted significant influence over the timing and nature of the planned "soft" and "hard" launches of the ECCS. About \$14,000 was allocated for the event itself. In the planning process, U of C promotional and communications staff were progressively pushed to the side to make way for Enbridge officials and their team at National Public Relations (NPR), a public relations firm hired by Enbridge to manage the ECCS launch. NPR staff worked

to direct the promotion and launch, including choosing the host and location, vetting speakers and the content of their presentations, and insisting that Enbridge sign off on the questions asked to participants in a promotional video about the ECCS. This level of involvement by a private donor in the public launch of a university research centre is unusual.

Plans evolved and the early target date for the launch, which coincided with the anniversary of the Kalamazoo River oil spill, came and went in 2011. It then emerged that President Cannon might not be able to represent the U of C at the launch, in which case Cannon indicated that, if she could not attend, Bonnie DuPont should replace her. This was a noteworthy choice, considering that Ms. DuPont was a U of C Board member and not a member of the University's academic staff. Why not choose the U of C Vice-President of Research, for example, when the ECCS was a research initiative and he a distinguished scientist and an authentic academic representative? We do not know the answer to this question, having been unable to put it to Cannon directly, but we see it as an indication that Cannon was more concerned about giving a favourable platform for Enbridge-associated business voices than affirming the Centre's academic credibility.

7 | Inadequate Funding and the Pressure to Raise More Corporate Money

The level of funding provided by the Enbridge sponsorship – \$225,000 annually over ten years – was woefully inadequate for the ECCS’s envisioned activities. This finding is supported by our review of documents produced to us by the U of C in November 2016, which reveal the ECCS’s financial difficulties after its public launch in March 2012. From then until at least early 2014, the ECCS suffered a chronic funding shortfall.

The ECCS’s planned activities were based on an annual budget of \$500,000. This amount was more than double the average annual amount committed by Enbridge under the sponsorship. Even the \$500,000 budget did not cover the cost of a salary for a full director of the ECCS, implying that time committed by Arvai or other full-time academic directors would, at least in part, be voluntary or depend on other University resources (“Dean’s Report to the Academic Advisory Group, Enbridge Centre for Corporate Sustainability,” Report by Haskayne Business School Dean Jim Dewald, April 21, 2014).

To illustrate, the new ECCS director, Bob Page,¹⁴ reported in or around late 2013 (about one year into his term) that the ECCS’s budget issues had been “a serious concern” since before he became director “because the cash flow... from Enbridge was less than half of the cost of the basic work plan.” Page said the ECCS was “living on borrowed time” and could only fund its activities because various planned activities had not yet taken place. To remedy the situation, he sought to create a “named opportunity” for another donor to cover all or part of the cost of the ECCS director’s salary. Page also proposed

that part of the ECCS’s administrative costs, “such as 10% of salary, benefits, and office expenses” be charged to other funds at Haskayne (“Enbridge Centre for Corporate Sustainability,” Report on Budget and Financial Management by [unnamed] Director, undated).

From the start, then, the ECCS was hobbled by a built-in funding gap. In other words, the U of C committed to Enbridge that the ECCS would carry out a range of activities with less than half of the ECCS’s cost funded by the Enbridge sponsorship. The shortfall was to be made up by more corporate fundraising (“Minutes – Enbridge Centre for Corporate Sustainability Academic Advisory Meeting,” November 22, 2012). To raise the money, Page reported in 2013 that he would target various companies including Cenovus, ConocoPhillips, Ledcor, and Suncor, all of which, we note, have operations in the oil and gas industry (“Minutes – Enbridge Centre for Corporate Sustainability Academic Advisory Meeting,” March 15, 2012). By late 2013, Page reported that these fundraising efforts had been unsuccessful, complaining that, while he had “many friends who are executives in Calgary energy firms, none of these firms are on the approved list for us to approach” (“Enbridge Centre for Corporate Sustainability,” Report on Budget and Financial Management by [unnamed] Director, undated).

The funding shortfall eventually led to requests that Enbridge revisit the ECCS’s design, including its name. In April 2014, the ECCS director (apparently someone other than Bob Page at that point) reported that Enbridge was considering “special project payments” to cover costs for events, such as a planned sustainability summit that had been postponed due to budget constraints. Enbridge was also willing to consider changing the Centre’s name by replacing the word “Enbridge” with “Canadian” in order to facilitate fundraising (“Minutes – Enbridge Centre for Corporate

14. Although the author’s name for the relevant document is redacted, it appears to have been Bob Page, who was appointed as the new ECCS director in November 2012.

Sustainability Academic Advisory Meeting,” April 28, 2014). Today, the Centre is called the Haskayne Centre for Corporate Sustainability, though Enbridge’s name remains attached to student scholarships and a speakers series (website of the Haskayne Centre for Corporate Sustainability, visited May 26, 2017).

In April 2014, Haskayne Dean Jim Dewald reported on the ECCS’s fundraising failures. Dewald had been appointed a year earlier to replace Len Waverman, who had left the U of C. Dewald stated that the ECCS’s activities had to be adjusted to fit the Enbridge-funded budget of \$225,000 instead of the “fully funded” budget of \$500,000. At the time, ECCS salaries and benefits costs alone were more than the entire Enbridge-funded budget. Dewald reported that the ECCS would have to “engage leverage” by pursuing activity-specific sponsorship to meet the ECCS’s original objectives, including the costs of Enbridge student awards, the Enbridge speaker series, outreach, and materials and supplies. Dewald also proposed to cut the Centre’s academic staff; the ECCS’s full-time director would be replaced by an associate director, who would receive guidance from a faculty member serving as the ECCS academic director for an annual stipend of \$15,000 (“Dean’s Report to the Academic Advisory Group, Enbridge Centre for Corporate Sustainability,” Report by Haskayne Business School Dean Jim Dewald, April 21, 2014).

This financial situation indicates that, from a business point of view, the Enbridge sponsorship was always skewed in Enbridge’s favour. The university made unfunded promises to Enbridge at the university’s risk and expense. On this basis, we think the U of C did a poor job from the outset in pursuing and negotiating the sponsorship. The ECCS simply did not have enough money from Enbridge to meet its commitments as

understood by U of C administrators. And yet, U of C senior officials subsequently treated these commitments as obligations that had to be met in order to protect the university’s reputation in the eyes of its sponsor. As former Justice McMahon put it, in the context of clearing President Cannon of wrongdoing, Cannon’s responsibility was “to protect the [U of C’s] reputation... as an institution that honours its commitments to donors” (see Appendix A; Report of the Honourable Terrence F. McMahon, Q.C., Barrister and Solicitor, to the Board of Governors of the University of Calgary, 14 December 2015, p 9). In the case of the ECCS, the problem was that those at the U of C who assumed these commitments to Enbridge over-promised in their ability to meet the commitments from the outset. When the constraints became untenable, it was the Centre’s directors who were held accountable, instead of the administrators who negotiated the sponsorship agreement, the Board members who were party to its skewed terms, and the senior U of C leadership who failed to exercise proper oversight.

In these circumstances, U of C administrators came under pressure to raise more money for the ECCS, and they looked to the oil and gas industry to do so. As we discuss below, Len Waverman came under pressure in August 2012 when the U of C Provost, Dru Marshall, instructed him that “[d]ollars from donors such as Enbridge create tremendous leveraging opportunities,” asked him to explain “[w]hat dollars have been leveraged from other sources,” and warned him that they were at a critical point for the ECCS “that could result in reputational damage.” President Cannon followed up to tell Waverman that Enbridge was “not very happy,” that they were “looking for success and not seeing it” from him, and that it was “not good for [Waverman] or the university.” These messages from the Provost and the President show how the ECCS’s underfunding created a

type of funding trap whereby the university had to find more money just to deliver what it had already promised to Enbridge. The fundraising push that followed at the ECCS, under Bob Page, targeted corporations in the oil and gas industry and coincided with other ECCS activities which provided a university-backed forum for oil and gas industry representatives to present their views to public audiences. Even before the President's intervention with Waverman in August 2012, the ECCS had committed to regular reports to Enbridge on its marketing activities, assuring them that part of the Centre's mission was to enhance Enbridge's reputation.

In this context, U of C administrators put their commitments to a corporate donor ahead of the university's academic credibility. They leveraged university resources to support Enbridge's reputation. They assumed the risk that, as a result of the ECCS, the U of C would likely be seen as an institution that willingly tailors its academic activities to the priorities of oil and gas companies.

Thus, the Enbridge sponsorship reveals how a university can enter into a cycle of dependency on corporate donors. To carry out its plan for meeting its commitments to Enbridge, the U of C had to raise more money than it got from Enbridge in the first place. The dependency led to inherent pressures to compromise academic integrity and objectivity in order to appease a funder. Whether intentionally or not, the ECCS's design subordinated the university's responsibilities as an academic institution to the preferences of corporate donors. The story of the ECCS is a cautionary tale about how easily a university can set itself up for industry capture.

8 | Governance, Institutional Culture, & Academic Leadership

The culture of a university campus may describe its teaching or research intensiveness, student activities, or other, less tangible elements that contribute to a sense of shared purpose. Alberta's Post-Secondary Learning Act stipulates that the core mission of a university is to ensure that "Albertans have the opportunity to enhance their social, cultural and economic well-being through participation in an accessible, responsive and flexible post-secondary system." With this in mind, a campus culture, in our view, should be supported by governance mechanisms that include faculty, students, and staff as well as senior university officials. In the case of the U of C, the Board of Governors, Senate, and General Faculties Council are the primary venues for members of the campus community to evaluate the direction of the institution and guide how collective practices and goals are achieved across the community. In addition, senior university leaders should engage in transparent and accountable administrative decision-making that supports shared governance.

From the email record and our interviews, there appears to have been a significant failure of collegial governance, accountability and oversight in the establishment of the ECCS. The email record indicates that HSB's Development Officer Kim Kadatz was the central point person in the negotiation of the sponsorship agreement with Enbridge. The HSB Dean, Len Waverman made his preferences known but, in general, Kadatz was the primary liaison. In early stages of the sponsorship, this role was to be expected of Kadatz in her role as HSB Development Officer. Yet Kadatz played a central role in the ECCS well past the stage of Enbridge's initial sponsorship. She was involved in discussions about the Centre's naming, terms of reference, partner institutions, academic parameters, and public launch. Further, the email record indicates that Enbridge continued to rely

heavily on Kadatz long after the sponsorship agreement was signed. Indeed, Enbridge appears to have preferred to deal with her and was eventually instructed to deal directly with the Centre's director, Dr. Arvai. In these respects, it is troubling that Kadatz does not appear to have reported or been accountable to anyone besides HSB Dean Len Waverman in her activities. Too much power over academic affairs was thus concentrated in the hands of a non-academic staff person, whose job was to cultivate positive relations with outside donors.

As far as we can tell, the Enbridge sponsorship was never vetted at all beyond the HSB Development Office. The Enbridge sponsorship does not appear to have come before the U of C Board of Governors for approval. More problematic still is the lack of notice and discussion of the Enbridge sponsorship in the U of C General Faculties Council (i.e. Senate). These oversights indicate that the processes of review and accountability for the ECCS were deeply inadequate. Indeed, we think they reveal a serious breakdown of collegial governance in relation to this example of corporate sponsorship at the U of C.

At the ECCS's launch in March 2012, the materials prepared for President Cannon – who spoke at the launch – called Enbridge's sponsorship "non-conditional" and a "gift." Both terms suggest a philanthropic gift with no strings attached. That situation is far removed from the Enbridge sponsorship, which involved prolonged negotiations between Enbridge and the U of C about the name, mandate, and operating values of the Centre. Numerous proposals and counter-proposals made by Enbridge in the negotiation of the sponsorship agreement and in the establishment and launch of the Centre show that the sponsorship was unquestionably and troublingly conditional.

It is unclear to us, and we could not ask her directly, whether President Cannon – based on her prepared notes – actually described Enbridge’s sponsorship as non-conditional and a “gift” at the Centre’s launch. If she did, then her role at the launch, which she called the touchstone for her involvement with the Centre, began with a publicly misleading description of Enbridge’s relationship with the U of C. Cannon stated to the McMahon review that her speaking notes and other background materials for the Centre’s launch were prepared by her office, with input from the U of C’s Development Office, and that she likely read the remarks the night before or on the day of the launch. Those circumstances do not excuse her from responsibility for any misleading claim that the Enbridge sponsorship was non-conditional. As president, Cannon must take responsibility for her official statements and ensure their accuracy, especially on such a key concern as the attachment of conditions to a corporate donation. She should acknowledge this point, clarify whether she or any other university official described Enbridge’s sponsorship as non-conditional, and, if so, correct the public record.

There appear to have been serious inadequacies of leadership when it comes to maintaining collegiality, academic integrity and trust within the University community. In the present case, Dr. Arvai consistently attempted to draw attention to what he perceived as overreaches by Enbridge and conflicted priorities in relation to ECCS. Almost every time he did so in the email record, Len Waverman and Kim Kadatz responded with justifications for Enbridge’s position and messages that he should accept what was on offer. On the timing of the ECCS launch, for example, Kadatz wrote on May 3, 2011 that “they (Enbridge) don’t like to be pushed and we will need to take direction from them on timing.” In relation to Arvai’s objections to

mentioning CMU at the launch, Kadatz stated unabashedly that, “The fact that Enbridge had a spill in Michigan and now wants to use this investment as a way to make amends and possibly receive some positive PR is acceptable” (Email of March 17, 2012). When Arvai expressed doubts about his continued role and attempted to step down as ECCS academic director, Waverman replied: “You can’t just walk away as Enbridge has been told you are Director + you negotiated the name” (Email of September 10, 2011). When it became apparent that Enbridge was uncomfortable with Arvai’s EPA appointment and Arvai continued to express doubts about his role as academic director, Waverman told him, “we have a concern that Enbridge are going to pull the grant... I really need you to reconsider this because if it goes belly up my ass is on the line and I won’t feel happy with you either” (Voicemail October 20, 2011). Arvai relented and continued as academic director through the fall and winter of 2011-2012.

After compromising on the Centre’s name, CMU’s involvement, control of the ECCS launch and promotion, and other issues, Arvai refused to add another Enbridge representative to the ECCS external advisory board, as he felt doing so would contravene the sponsorship agreement. In response, Waverman wrote to Kim Kadatz, calling Arvai an “amazing ego and royal pain” (Email of March 7, 2012). After Arvai wrote again to Waverman on March 8, 2012, about his wish to step down, Waverman replied: “Joseph – if you pull out now – weeks before the public launch – my head is taken off my shoulders – the Centre is likely closed.” Once again Arvai relented, only to depart as academic director eleven days later. On March 19, 2012, Waverman wrote to Enbridge and told them, “Joe Arvai is no longer Director of the Centre, there are too many conflicts and demands!”

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Examples of Supporting Material from the Factual Record Regarding Arvai's Departure as the Centre's Academic Director:

I've made my limits clear from the beginning. I'm living up to the letter of the law in the sponsorship agreement with respect to CMU. But no further... Also, know that this is non-negotiable for me...

— Email from Joe Arvai, ECCS Director, to Len Waverman, to HSB Dean, March 7, 2012

Amazing ego and royal pain.

— Email referring to Joe Arvai from Len Waverman, HSB Dean, to Kim Kadatz, HSB Director of Development, March 7, 2012

Joe Arvai is no longer Director of the Centre, there are too many conflicts and demands! Loren [Falkenberg, Associate Dean of Research at HSB] and I will represent the Centre at the launch and we will move ahead on all the exciting outreach and research...

— Email from Len Waverman to Enbridge officials, March 19, 2012

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Examples of Supporting Material from the Factual Record Regarding the Partnership with Central Michigan University:

Each time that we raise concerns about CMU with Enbridge, it raises for them a concern that we are not committed to our partnership with Enbridge. We are not in a position where we can tell Pat Daniel [CEO of Enbridge] what he can or cannot say about CMU... The fact that Enbridge had a spill in Michigan and now wants to use this investment as a way to make amends and possibly receive some positive PR is acceptable.

— Email from Kim Kadatz to Len Waverman, March 17, 2012

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It must be acknowledged that Len Waverman was himself subject to problematic treatment by U of C Provost Dru Marshall and President Cannon in emails after Arvai's departure. Several months later, after an interim academic director was installed to replace Arvai, President Cannon intervened to express concern about finding a new ECCS director. On August 21, 2012, she wrote to Waverman: "The recruitment of a Director needs to be a very high priority and you need to lead this. Please send Dru and myself the detailed information for this... so we know where this is and how it will be managed and concluded successfully." Provost Marshall also communicated to Waverman that, "Dollars from donors such as Enbridge create tremendous leveraging opportunities. What dollars have been leveraged from other sources to make this work? We are at a critical point here – one that could result in reputational damage if we do not manage the situation" (Email of August 23, 2012). Waverman responded to Cannon by blaming Joe Arvai, who he described as having "pi[ss]ed off Enbridge big time" (Email of August 23, 2012). In response, Cannon had strong words for Waverman (Email of August 23, 2012):

Enbridge is not very happy... They are looking for success and not seeing it. I will be frank and add that they are not seeing your leadership on this file and are feeling that once the funding was committed, the interest from you was lost. This is not good for you or the university.

In this way, Waverman was put in a difficult position. He was informed by the U of C President, herself an Enbridge board member, that Enbridge was not happy with his performance and that this result was presumably not good for his career. Clearly, Waverman was being held accountable to the President, without any corresponding acknowledgement of the President's evident conflict of interest or the need for her to avoid

involvement with any Enbridge-related matters at the University. Under these circumstances, it is fair to expect that Waverman felt pressured to sacrifice the academic mission of the ECCS where it conflicted with demands from Enbridge. Indeed, in response to Cannon, Waverman himself raised concerns about Enbridge’s interventions in the ECCS. He told Cannon: “Enbridge has been difficult – especially their PR firm who were trying to use events to buttress Enbridge’s name with little insight into the academic needs to be distant and to run the Centre as we see fit..” (Email of August 23, 2012).

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Examples of Supporting Material from the Factual Record Regarding President Cannon’s Involvement in the ECCS While Being Remunerated for Sitting on a Board at Enbridge:

Enbridge is not very happy.... We need content and strategic leadership and that is what Enbridge is looking for.... They are looking for success and they are not seeing it. I will be frank and add that they are not seeing your leadership on this file and are feeling that once the funding was committed, the interest from you was lost. This is not good for you or the university. I want to have a good relationship with Enbridge given that Al Monaco is incoming CEO and our grad (and I am on one of their Boards!). Our interest is well beyond HSB.

— Email from Elizabeth Cannon to Len Waverman, August 23, 2012, with the mention of her Enbridge board membership apparently redacted in what was made available in FOIP disclosures to the CBC

It has been a set of unseen circumstances, but that is not an excuse, it is a reason for a leader to step up and take charge, I will, late but I will.

— Email from Len Waverman to Elizabeth Cannon, August 23, 2012

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On the record before us, senior U of C officials were more concerned about procuring corporate donors and “leveraging opportunities” than defending and modeling academic integrity and administrative transparency. At times, they used threats or intimidation in an effort to keep Enbridge happy. The conflict intensified to the point where it became intolerable for distinguished scholars like Dr. Keith and Dr. Arvai, and damaging to the University’s academic reputation.

We have a distinct impression – based on the email record, multiple interviews, and media coverage – that there is a culture of silencing, and at worst intimidation or reprisals, at the U of C. In our interviews with them, both Dr. Keith and Dr. Arvai attested to this. Keith felt that he and another colleague from the Institute for Sustainable Energy, Environment, and Economy were forced out. He also had deep concerns about the U of C’s capacity to govern itself in relation to corporate donations, expressing disappointment at a “culture of circumspection and not rocking the boat.” In a CBC radio interview on November 2, 2015, Keith stated:

The issue is that a public institution whose job it is to balance competing interests and do high quality research in the public interest abjectly failed to do that... The university failed in its mission to correctly balance interests, to take money from donors and use that money independently. I was appalled and many of my colleagues inside the U of C were similarly appalled but for various reasons felt they couldn't speak out... This is an institution that seems to have had some pretty serious management failures and there was no investigation to understand what the problems were and fix them.

Dr. Arvai concurred with this view in our interview with him, noting serious failures in management and leadership and a “culture of reprisal” in the senior U of C administration.

Media reports have also provided evidence of a University culture of silencing and intimidation, particularly in relation to the interests of the oil and gas industry. A recent article in the *National Observer*, for example, quoted Urban Studies Department Coordinator Byron Miller as stating that the U of C's industry ties produce an "unspoken, but nonetheless understood sense that we have to be careful about what we [professors] say and do." The article also cites Geography professor Gwendolyn Blue, who states that the U of C atmosphere "prevents a critical commentary, particularly around corporate influence." The article quotes another faculty member as feeling "downright scared" after publicly criticizing U of C's strategic plan. When Political Science professor Barry Cooper described U of C's management culture as "deeply flawed" in the press, he noted that, while he had not experienced reprisals, his junior colleagues were very concerned about speaking out publicly. The *National Observer* article reaffirmed these views about U of C administration's "culture of secrecy" by revealing that President Cannon "personally approved more than \$90,000 in legal fees to fight an information request from the public broadcaster." The story in question "detailed a 2012 information request that outlined the relationship between the U of C and the fundraising arm of the Conservative party" (Adams, *The National Observer*, August 10, 2016).

Our Committee observed firsthand this culture of silencing and intimidation. Shortly before our site visit to U of C on March 16, 2016, Provost Dru Marshall emailed all U of C faculty members (Appendix E), questioning our authority to conduct an investigation and erroneously suggesting that we would not protect the confidentiality of interviewees. We responded to these claims in writing at the time (Appendix F). We believed then and continue to believe that Marshall's email is fairly construed as an implied warning to U of C

faculty members not to speak with us. In this sense, it was an unfortunate intervention that risked interfering with a transparent and independent review of what happened at the Enbridge Centre.¹⁵ We also believe that Marshall's reaction was disrespectful of the longstanding role of the CAUT in Canadian academic life and CAUT's legitimate concern, on behalf of its members, for the academic health of the U of C and other Canadian universities.

Taken together, all of these examples point to significant failures in collegial governance, management structures and senior leaderships at the U of C, which appear to have contributed to a culture of silencing and reprisal. The situation at the U of C is perhaps best illustrated by the comments of a former director of another short-lived centre at the U of C, the Institute for Sustainable Energy, Environment and Economy. Distinguished scientist David Layzell FRSC, communicating to the *National Observer* about the ECCS, said "I really don't feel that I can talk with you about this," and added, "Maybe that says more than us actually talking."

15. U of C faculty members were subsequently quoted as describing Provost Marshall's actions as "threatening" (Metro News, April 13, 2016).

9 | Recommendations

- a)** The governance structure and processes of the University of Calgary Board of Governors should be reviewed. The review should examine the composition of the Board of Governors, how Board appointments are made, how diversity on the Board is understood and achieved, how transparency in the Board's decisions can be improved, and how the Board's decisions can be linked more consistently to the principles and practices of academic freedom, collegial consultation, and collegial governance.
- b)** As part of its conflict of interest policies, the University of Calgary should prohibit its president and other senior officials from serving for remuneration on any external corporate board. Service on external boards should be limited to non-profit, civic, governmental, and academic organizations and should not be remunerated beyond covering expenses incurred in activities related to such service. CAUT should urge this practice be followed at all post-secondary institutions in Canada.
- c)** President Cannon and the Board of Governors should acknowledge publicly that it was wrong for her, as U of C president, not to have recused herself from Enbridge-related matters at the U of C when she was in a clear conflict of interest due to her role as a well paid Enbridge board member.
- d)** President Cannon should confirm whether she or any other university official publicly misrepresented Enbridge's sponsorship as "non-conditional" and a "gift" and, if so, ensure that the public record is corrected. She should also acknowledge that her conduct in relation to the Enbridge Centre, and the conduct of senior U of C officials under her direction, damaged the University of Calgary's academic reputation. She should apologize for the resulting distress caused to Dr. Arvai and his family.
- e)** The University of Calgary should review its relationships with external entities and provide a public report on whether and how those partnerships comply with the principles laid out in the CAUT's report entitled *Open For Business: On What Terms?*
- f)** The University of Calgary should implement a policy governing the creation of externally-sponsored research institutes on campus. The policy should explicitly mandate that any such institutes be bound by and respect academic freedom as a primary value.
- g)** Agreements based on external sponsorships, gifts, or partnerships at the U of C and other universities should be assessed rigorously, and independently of those who negotiate them, prior to being accepted by the University. The assessment should ensure that the university's commitments to a sponsor, donor, or partner do not put the university in a situation of further financial dependency on outside corporate interests in order to avoid pressures for administrators and faculty to compromise on the principles laid out in the CAUT's *Open for Business: On What Terms?* report.
- h)** Processes of collegial governance and shared decision-making involving U of C senior leadership and U of C faculty, staff and students should be reviewed and strengthened, as should the overall accountability of the U of C senior leadership. This review should also focus on bolstering the role of collegial governance bodies in overseeing and vetting corporate sponsorships and donations to the U of C.
- i)** The University of Calgary should release in full and unredacted – to Joe Arvai, Leonard Waverman, and any individual or organization that was subject to negative findings or conclusions in the McMahan report and is

identifiable based on the contents of that report – all documents provided to former Justice McMahon for the purposes of his review. Barring personal privacy concerns, the University should also make public all such documents.

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Appendices

Appendix A

Assessment of the Report by The Honourable Terrence F. McMahon, Q.C, Barrister and Solicitor, to the Board of Governors of the University of Calgary

Appendix B

Summary of Emails: Significant Actors and Timeline of Events

Appendix C

CAUT Policy Statement on Academic Freedom

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Appendix E

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Appendix F

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Appendix G

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Appendix H

CAUT Guiding Principles for University Collaborations

Appendix A

Assessment of the Report by The Honourable Terrence F. McMahon, Q.C, Barrister and Solicitor, to the Board of Governors of the University of Calgary

After media reports and the ensuing public debate about the Enbridge Centre, the University of Calgary's Board of Governors announced, on November 6, 2015, a review of the Centre "from its creation to current operations."¹ In this appendix, we offer comments and assessments about the resulting McMahon review.

I. Background to the McMahon review

The Board of Governors described its review as independent, noting that the review would be conducted by an external third-party reviewer.² For this role, a committee of the University's Board appointed Terrence F. McMahon, Q.C., a private lawyer and arbitrator and former judge of the Alberta Court of Queen's Bench. The committee also hired another external private lawyer, Phyllis Smith, to serve as counsel to the Board and to advise on the process of the review including its terms of reference.

The Board announced the appointment of former Justice McMahon on November 19, 2015. He completed his report less than a month later on December 14, 2015, having interviewed twelve persons who are listed in an appendix to his report. McMahon also reviewed "binders of documents released pursuant to a FOIP [Freedom of Information and Privacy] request" as well as "[a]dditional documents... provided by some of the persons interviewed."³ Based on his review, former Justice McMahon concluded, in summary, that the University and its employees had not engaged in any misconduct in relation to the Centre, that the Centre did not compromise the academic freedom of the University or its staff, that there had been no breach of the then applicable University Policies or Procedures but for what McMahon characterized as a minor issue involving Board of Governors' approval of donations that carry naming rights, and that there had been various changes to University Policies and Procedures related to the subject matter of his review.

II. A summary of our comments and assessments of the McMahon review

While we think it a positive step for the University to have recognized that an independent and transparent review of the Enbridge Centre was needed, we are critical of the McMahon review for four reasons:

¹ University of Calgary Board of Governors, press release, "University of Calgary Board of Governors launches independent review" (6 November 2016), <https://www.ucalgary.ca/utoday/issue/2015-11-06/university-calgary-board-governors-launches-independent-review><https://www.ucalgary.ca/utoday/issue/2015-11-06/university-calgary-board-governors-launches-independent-review>.

² University of Calgary Board of Governors, press release, "Board of Governors Committee announces details of independent review" (19 November 2015), <https://www.ucalgary.ca/utoday/issue/2015-11-19/board-governors-committee-announces-details-independent-review>.

³ Report of the Honourable Terrence F. McMahon, Q.C., Barrister and Solicitor, to the Board of Governors of the University of Calgary (14 December 2015), p 1. As of 23 February 2017, the McMahon report appeared no longer to be available on the University Calgary's website; we have a copy on file.

1. We think it misleading to characterize the review as “independent” of the University of Calgary considering that it was established, mandated, and staffed by the University’s Board or a Board committee or by the Board’s counsel.
2. The review and resulting report did not come with an acknowledgment and discussion by McMahon of the central role of academic freedom at universities, at the University of Calgary in particular, or in relation to concerns expressed about the Enbridge Centre. The evident lack of appreciation of the central role of academic freedom appears to us to have affected and limited in a significant way the findings and conclusions of the McMahon review.
3. Conclusions reached in the McMahon report, in light of the available factual information, appear repeatedly to have given the benefit of the doubt to senior University officials. In contrast, two named individuals, Joe Arvai and Len Waverman, appear not to have received a similar benefit of the doubt but were instead the subject of damaging criticism in the report.
4. The review process was premised on non-disclosure of the sources of information that was adverse to individuals who had raised concerns about or were otherwise involved in the Enbridge Centre. Yet the review goes on to identify and draw negative conclusions about those individuals. We think that this process, especially its selective approach to confidentiality, was inconsistent with principles of fairness and thoroughness. Based on our review of the available information and the McMahon report, we think the negative conclusions or comments by McMahon – about Joe Arvai, Len Waverman, and unnamed but identifiable organizations that had criticized the University – should be disregarded.

We explain these criticisms in more detail below.

III. Our requests for disclosure related to the McMahon review

To be fair and comprehensive in our investigation, we sought disclosure from former Justice McMahon and from President Cannon of information considered by McMahon in his review. We took this step after noting the Board of Governors’ announcement of the review on November 19, 2015 in which it was stated that the Board was “committed to an open and transparent process.”⁴ In addition, we filed a formal request for information from the University pursuant to the FOIP Act although we also indicated to President Cannon that we would welcome disclosures outside of the University’s formal and legally mandated process for freedom of information.

In reply to our request for information, former Justice McMahon referred us to the University Board’s external counsel, Phyllis Smith,⁵ who in turn informed us that McMahon had not retained any of the records we requested; that, in any event, they would not be produced to us; and that names of individuals who may have approached him in his investigation but who were not listed as interviewees in his report would not be produced to us.⁶ A reply on behalf of President Cannon indicated that our request would be dealt with through the University’s formal freedom of information process.⁷ In November 2016, we received a disclosure in response to our formal FOIP request that included useful information, but, critically, did not include all information submitted by

⁴ University of Calgary Board of Governors, press release, “Board of Governors Committee announces details of independent review” (19 November 2015), <https://www.ucalgary.ca/utoday/issue/2015-11-19/board-governors-committee-announces-details-independent-review>.

⁵ Email of May 20, 2016, from Terrence F. McMahon, Q.C.

⁶ Letter of June 7, 2016, from Phyllis A. Smith.

⁷ Email of July 8, 2016, from Jo-Ann Bance, Executive Director, Office of the President, University of Calgary.

U of C officials to the McMahon review or in the custody and control of McMahon or the University's external counsel.

Due to the non-disclosure of information considered in the McMahon review, we have been unable to compare comprehensively the information provided by the University or other officials to McMahon, on the one hand, to information available to us on the other hand. That said, in our examination of the McMahon report, we were able to rely on the extensive record arising from University FOIP disclosures pre-dating the McMahon review. We were also able to rely on interviews we conducted at the University and elsewhere, as discussed in our report.

IV. Differing mandates

Our review had a different mandate from that of former Justice McMahon.⁸ The purpose of the McMahon review was to examine the circumstances surrounding the creation and operation of the Centre and determine whether there was any breach of University policies or procedures then in place, or improper conduct in connection with the creation and operation of the Centre. McMahon was also asked several specific questions about the conduct of University officials in relation to the negotiation with Enbridge and operation of the Centre, the involvement of Enbridge in the Centre and any compromise of academic freedom arising from that involvement, any direct or indirect breach of the University's policies or procedures, and any changes to the University's policies and procedures in matters relevant to the subject matter of the review.

Our mandate overlapped extensively with that of the McMahon review, as we were referred to concerns about conflict of interest, academic freedom, and inappropriate external interference in relation to the Enbridge Centre. Our mandate was also more open-ended; unlike those of former Justice McMahon, our determinations concerning improper conduct were not limited to possible breaches of University Policies or Procedures, for example. Also, our mandate included a broadly worded reference to "other issues" of conflict of interest, governance, academic freedom, and the management of donations at the University of Calgary that might arise in the investigation. Former Justice McMahon confirmed in his report that he understood his mandate to be "confined to the four specific questions" laid out in his terms of reference and that other questions that might arise were "for another time".⁹

V. Differing approaches to academic freedom

As our report indicates, we have approached academic freedom, in tandem with potential conflict of interest, as a central concern in relation to the Enbridge Centre. In contrast, the nature, importance, and role of academic freedom were not discussed in the McMahon report. Former Justice McMahon mentions academic freedom rarely and does not indicate that he was guided by the principles of academic freedom at any point, nor does he explain or describe what those principles meant to him.

For example, in his conclusions about whether University officials had engaged in "improper" conduct in relation to the Centre, McMahon states that he took the term "improper" to mean "contrary to University Policies or Procedures, contrary to sound business practice, or contrary to the reasonable expectations of reasonable and knowledgeable people."¹⁰ There is no mention of academic freedom in this description of potentially improper conduct in relation to the Centre. By our reading, this approach means that any conduct found by McMahon to have been contrary to a

⁸ McMahon report, Appendix A.

⁹ McMahon report, p 1.

¹⁰ McMahon report, p 13.

principle of academic freedom would not amount to improper conduct in his report unless it fit into one of the other three categories. In other words, the role of academic freedom was assimilated or subordinated to institutional policy and processes, commercial practice, and the notion of “reasonable people” without specifying in what ways such people are “knowledgeable” about academic freedom or how it can be violated.

Besides this definitional question, there is no discussion of the principles of academic freedom in the McMahon report. Where the term is mentioned, on five occasions in the 17-page report, it is dealt with in a presumptive or perfunctory manner. The first mention comes in passing in a description of concerns raised by others about the conduct of University officials in relation to the Centre.¹¹ The other four mentions come in summary statements by McMahon about his views or conclusions that academic freedom was not violated. One of these mentions comes when McMahon accepts as “the fairest,” with very little discussion, an interviewee’s view that the naming of the Enbridge Centre “had nothing to do with academic freedom or institutional independence.”¹² Two others come when McMahon states his view that email correspondence between Joe Arvai and University officials did not have “a hint of an encroachment or a threat to academic freedom” and when he describes the Enbridge agreement as having “no avenue for inappropriate influence or interference with academic research or freedom.”¹³ The remaining mention comes at the end of the McMahon report, when he refers to academic freedom in a general conclusory statement that “[n]one of the involvement by Enbridge as described above resulted in any encroachment upon or compromise of the academic freedom of the University or its staff.”¹⁴

It is significant to us that, even while making broad claims about it, McMahon did not discuss academic freedom, its meaning, its importance in a university, the responsibilities it entails for University officials, or the ways in which it may be violated by University officials or outside actors. We suggest that a discussion of at least some of these topics is an important step when drawing conclusions about whether academic freedom has been violated.

In the present case, academic freedom had been raised explicitly as a topic of concern in one of the four questions put to former Justice McMahon, which asked whether Enbridge’s involvement in the Centre compromised the academic freedom of University staff members involved in the Centre. Also, academic freedom was arguably raised implicitly by other questions put to McMahon about the conduct of University officials in relation to the Centre and about University policies. Finally, the very limited discussion of academic freedom in the McMahon report contrasts with statements by the chair of the University Board’s committee, Mark Starratt, publicized in a press release by the Board announcing the review. That press release states that questions had been raised about the Centre and “the potential infringement of academic freedom of those involved,” that “academic freedom is a fundamental value of all universities,” and that the Board intended for the review to make findings and recommendations “that will address the questions that have been raised, and enhance transparency.”¹⁵

We trust that former Justice McMahon turned his mind to the question of academic freedom at some level, having used the term to state his views and conclusions. Yet we see little indication

¹¹ McMahon report, p 4. “There were several points of discussion between the parties both before and after the [Enbridge] agreement was signed, that have since been characterized as improper, inappropriate or a risk to academic freedom.”

¹² McMahon report, p 4.

¹³ McMahon report, p 11.

¹⁴ McMahon report, p 15.

¹⁵ University of Calgary Board of Governors, press release, “University of Calgary Board of Governors launches independent review” (6 November 2016), <https://www.ucalgary.ca/utoday/issue/2015-11-06/university-calgary-board-governors-launches-independent-review><https://www.ucalgary.ca/utoday/issue/2015-11-06/university-calgary-board-governors-launches-independent-review>.

that he weighed the information available to him against any elaborated understanding of what academic freedom means and how it is achieved and of how it might be open to threat in the administration of a university. Missing from the report, as we read it, is the assessment one would expect to find in between, on the one hand, McMahon's and the Board's outlining of concerns about academic freedom and, on the other hand, McMahon's conclusions about whether academic freedom was violated. This gap in the reasoning is concerning mainly because of other content of the McMahon report but also because McMahon himself, despite his wealth of legal and judicial experience, is not an academic and does not appear to have a personal record of acculturation in or commitment to academic freedom.

VI. Differences in our assessments

Academic freedom was the *raison d'être* of our investigation, whereas it appears not to have played a central role for former Justice McMahon. The following are examples.

Potential conflict between private sponsorship and academic freedom

Former Justice McMahon states that Enbridge's funding of the University was a "sponsorship," not a "gift." From his perspective, this distinction was significant because a sponsorship, unlike a gift, "entitles a donor to whatever recognitions and benefits may be agreed" between the university and that donor. Framed in this way, the key question then becomes whether senior leadership of the university have met a responsibility to ensure that commitments to donors are met.

From our perspective, the key question is different. It is whether "recognitions and benefits" associated with outside funding amount to or lead to unacceptable intrusions into the research, teaching, and administrative freedom of the university's staff and students, including their ability to determine academic priorities without undue influence by a donor. Former Justice McMahon does not seem to have been concerned about this potential threat to academic freedom. Indeed, he does not mention the possibility that a sponsor or a donor may demand and receive conditions that infringe on academic freedom or otherwise undermine the institutional integrity of the university. Yet McMahon does take time to address more peripheral issues such as whether different types of donors would receive a tax receipt.

This omission of a discussion of academic freedom from McMahon's assessment elides the conflict that can arise between academic freedom and conditional private financing of a university research centre.

Potential conflict between academic freedom and donor publicity

Drawing on his interview with the University's Director of Development, former Justice McMahon expresses the view that "there is nothing wrong with a donor seeking positive publicity from a donation."

It is challenging to assess this ambiguous statement. If McMahon means that good publicity for a donor is acceptable in relation to the mere announcement of a donation, with acceptable academic conditions, then it makes sense to us. Yet if McMahon means that good publicity is acceptable *as a condition in itself* of the donation, then the statement is very troubling from the perspective of academic freedom. For example, it is incompatible with academic freedom for a private donor to expect, as a condition of their donation, that academic researchers at a university will ensure that their research activities present the donor in a positive light.

Suffice it to say that the lack of explanation by McMahon on this point makes it difficult to evaluate his conclusions. It also suggests that he did not thoroughly consider how private funding could, and often does, conflict with academic freedom.

Indeed, when discussing the prospect of good publicity for Enbridge, McMahon says that “[a] corporate donor is responsible to its shareholders for its expenditures” and that, because Enbridge’s funding was a sponsorship not a gift, “the Enbridge Board had to be able to justify committing to” its payment to the University. McMahon continues: “[t]hat justification was to be found in repair to a damaged public image in Michigan and to reinforcement of its considerable stature in Calgary.” These statements suggest that McMahon accepted that a private donor could and indeed should expect a university, as a condition of the funding, to alter its academic activities in order to support the donor’s public relations goals. If that was his view, we think it entirely incompatible with academic freedom, including the freedom to set priorities, carry out research, and report findings without being influenced by how those decisions will affect a donor’s reputation.

In the same vein, McMahon states that Enbridge’s motivation – to enhance its image in Michigan and Calgary – did not have “any negative impact on the university or its academic programs.” We disagree and think that this statement indicates a lack of appreciation for how a university’s reputation can be damaged if there is a reasonable basis to suspect that its academic activities have been shaped by a private donor’s own priorities.

Similarly, McMahon expresses the view that “[a]n intent to enhance the donor’s reputation can and usually does easily co-exist with a genuine intent to benefit one’s community.” The more germane point, we think, is that a donor’s “intent to enhance” its reputation, where it amounts to an express or implicit condition for the donation, does not “easily co-exist” with a university’s reputation for reliable and independent research, especially in areas where academic research may harm the donor’s reputation. McMahon does not mention this potential contradiction between academic freedom and external funding.

Potential conflict between President Cannon’s dual role and academic freedom

Former Justice McMahon states that there is no indication in any of the documents he reviewed that President Cannon was involved “in any way” with the “operation,” among other things, of the Centre. Yet the FOIP materials we reviewed make clear that President Cannon took steps to involve herself precisely in the Centre’s operation and that these steps are reasonably viewed to have put direct pressure on the Dean of the Haskayne School of Business and, through him, indirect pressure on the Centre’s academic director for the purpose of accommodating Enbridge’s priorities.

McMahon also characterizes any efforts by President Cannon to encourage academic staff to support Enbridge’s priorities as a case of “doing what Presidents do.” He cites an open-ended statement by the University of the President’s role as including “[d]eveloping and maintaining positive and productive relationships with stakeholders.”¹⁶ With respect, this characterization of a university president’s role is clearly incomplete if one takes seriously the principles of academic freedom. A president may be expected to maintain positive relations with donors. Yet he or she also has a fundamental responsibility to ensure that those relations do not compromise academic freedom and the core research and teaching missions of the university.

¹⁶ McMahon report, p 7-8.

McMahon also draws the conclusion that President Cannon's conduct "in matters arising from the operation of the Enbridge Centre" was "proper, responsible and required of her as President to protect the reputation of the University of Calgary as an institution that honours its commitments." Yet he does not mention the President's responsibility to protect the University's reputation by safeguarding academic freedom in the face of pressure to appease donors.¹⁷ Thus, he does not address the issue that a university that "honours its commitments to donors" may, in doing so, dilute or abandon its commitment to the independence and integrity of its faculty, and thus sacrifice its academic reputation. McMahon's handling of this issue downgrades the position that must be afforded to academic freedom in a well-run university.

Clearly, we reached different assessments from those of former Justice McMahon after reviewing a similar record. The conduct of senior University officials in this case was very troubling for us, where, for McMahon, it was not troubling at all. Our different assessments may or may not be explained by our differing approaches to academic freedom. Regardless, we respectfully disagree with many of McMahon's views and conclusions.

VII. Differing characterizations of factual information

We now turn to specific illustrations of how our characterizations of factual information differed from those of former Justice McMahon. In our view, former Justice McMahon frequently gave the benefit of the doubt to senior University officials – especially President Cannon and, to a lesser extent, Board member and former Enbridge Vice-President Bonnie DuPont – while being much more critical of Joe Arvai, the Centre's academic director, and Leonard Waverman, the Dean of the Business School at the time of Arvai's tenure as director.

We provide below some examples of McMahon's favourable treatment of senior officials and then of his comparatively unfavourable treatment of Arvai, Waverman, and "unnamed organizations." As we discuss later in this review, we think that McMahon's negative comments about Arvai, Waverman, and unnamed organizations were unfair and should be disregarded.

1. Characterizations by McMahon that were favourable to senior University officials

President Cannon's statement about her Enbridge board membership

As discussed in our main report, Elizabeth Cannon, while President of the University, held a highly remunerated position on an Enbridge board. In one of her emails to then Dean of the Business School, Leonard Waverman, President Cannon indicated that she wanted to have a good relationship with Enbridge, apparently out of an interest to secure future funding, and that she was "on one of their Boards!"

In the McMahon report, President Cannon's statement that she was on an Enbridge board is interpreted favourably – as a disclosure by the president of her role at Enbridge and as a message that she was communicating to Waverman, at the time, solely in her role as university president. Yet the statement from President Cannon is clearly open to other interpretations.

For example, neither we nor McMahon can know how academic staff would react to being informed that she had noted her personal role at Enbridge when communicating internally about the Centre. We think it reasonable to expect that staff might assume that Cannon's Enbridge role was not

¹⁷ McMahon report, p 9.

entirely ring-fenced from her role as president – indeed, they could reasonably assume that a university president who sits on an external corporate donor’s board will be especially interested in the donor’s priorities at the university.

Similarly, President Cannon’s statement (emphasized by an exclamation mark) could reasonably be taken by Waverman as a reminder from the president that she was committed to Enbridge’s cause as a result of her connection, even if that cause was thought to conflict with academic priorities at the university. For a reasonable administrator, the knowledge that one’s superior is a member of an external corporate board at least raises the possibility that she is interested in favouring the corporation that pays her.

These and other less favourable interpretations of President Cannon’s statement were not mentioned in the McMahon report. We think it an over-reach, therefore, for McMahon to conclude that “[t]he only reasonable conclusion to draw from this intervention by Dr. Cannon” was that “she was responding to an obligation as President to persuade a Dean to do his job; to put in place a Director; and to undertake some academic activity within the mandate of the Enbridge Centre.” The president’s statement is clearly open to other reasonable interpretations, including that she wanted to convey that she was connected personally to Enbridge, that she wished to maintain that connection and the associated remuneration, that she was keen to get more funding from Enbridge, and that, for any or all of these reasons, she expected Waverman to ensure that Enbridge’s priorities were met.

Bonnie DuPont’s conveying of Enbridge concerns

Enbridge’s concerns about the Centre were communicated to President Cannon by U of C Board member and former Enbridge Vice-President Bonnie DuPont. Former Justice McMahon stated in his report that “Dr. Cannon had no communication with Enbridge [on Enbridge’s concerns as relayed to her by DuPont] at any time”. Yet that conclusion does not necessarily follow from McMahon’s subsequent reasoning that “[t]here is no paper trail indicating otherwise.” Simply, McMahon may not have been privy to communications involving Enbridge that were not reflected in the record available to him. By drawing the conclusion he does, McMahon elides his limited ability to gather all of the relevant information. He also does not discuss the issue that DuPont, due to her former role at Enbridge, may have served as a natural go-between between Cannon and Enbridge.

An unanswered question, which we would have put to President Cannon and Ms. DuPont if allowed the opportunity, is why DuPont thought it appropriate to express concerns at all to Cannon about the Centre, considering the prospect that DuPont would be seen to have had a conflict of interest arising from her own past role at Enbridge. McMahon does not raise this question in his report.

President Cannon’s role as U of C president and Enbridge board member

Former Justice McMahon concluded that President Cannon did not involve herself in “the operations or activities” of the Enbridge Centre, leading him to conclude that President Cannon need not have recused herself from any contact with then Dean Leonard Waverman about the Centre.¹⁸ Here, McMahon is presumably referring to the issue of whether Cannon, as a paid Enbridge board member, should have declined to use her presidential office in any dealings with the Centre.

¹⁸ McMahon report, p 8.

We have a different view on this point. We think that President Cannon, due to her dual role as Enbridge board member and U of C president, had no choice but to avoid any contact, direct or indirect, with academic staff responsible for the Centre. Otherwise, she risked an unavoidable perception that she was using her Presidential office to appease a donor who was paying her directly for services rendered elsewhere. Instead, Cannon exacerbated the problem of her dual role by involving herself directly in decision-making about the Centre. Likewise, we find it hard to understand how the President's intervention with Waverman on issues of staffing at the Centre can be said not to have involved her in the Centre's "operations" or "activities."

President Cannon's resignation from the Enbridge board

Another example of how President Cannon was given the benefit of the doubt in the McMahon report came when McMahon discusses her decision to resign from the Enbridge board. That decision, he says, was "in response to media coverage" of the Centre. McMahon interprets the decision positively, stating that "no negative inference can be reasonably drawn from that gesture."

Yet it is possible and we think reasonable to infer that President Cannon withdrew from the Enbridge board for other reasons. For example, she or others at the University may have thought that media investigations into the Centre had exposed an untenable conflict of interest in Cannon's dual role as president and Enbridge board member. This less favourable conclusion was dismissed in the McMahon report on the ambiguous basis that it was not "reasonable," without further explanation. It is another example of how McMahon portrayed Cannon's conduct in a positive light and ignored less favourable interpretations.

2. Characterizations by McMahon that were unfavourable to other individuals and organizations

Questioning of Joe Arvai's ability to run a "neutral" academic forum

Former Justice McMahon notes that, at the time of Dr. Arvai's appointment as Academic Director of the Centre, then-Dean Leonard Waverman was "aware... of some of Dr. Arvai's negative views regarding pipelines and the oil sands development." McMahon then commented that Waverman "does not appear to have considered whether Dr. Arvai's interests were consistent with the objectives of the proposed centre, that is to establish a neutral academic forum."

Thus, McMahon implies, based on his negative inference about Waverman's statement, that Arvai may have lacked neutrality because of opinions he expressed. McMahon's comment goes further, suggesting that the Centre's objective may be undermined if its academic director were to be critical of oil pipelines. McMahon seems either not to see or to undervalue the distinction between the freedom and responsibility of an academic to express evidence-based views and the public relations priorities of a private donor.

Negative comments about then-Dean Leonard Waverman

Former Justice McMahon also casts aspersions on then-Dean of the Haskayne Business School Leonard Waverman. Indeed, Waverman comes across in the McMahon report largely as unmotivated or disorganized in his supervision of the Centre.

For example, McMahon states that "[t]here is no paper evidence of a search process for a Director" prior to Joe Arvai's appointment after he was enlisted by Waverman. McMahon then comments that

"Dr. Arvai was close at hand and available."¹⁹ In the absence of a paper trail to the contrary, McMahon implies that Waverman appointed Arvai because it was the easy thing to do. Similarly, when Waverman later urged Arvai not to resign as director, McMahon attributes this action to Waverman's lack of initiative, not to any confidence on his part in Arvai or to a defence of Arvai as the Centre's director. According to McMahon, "[it] can be inferred from the records that the easier solution for Dean Waverman was to leave Dr. Arvai in place and hope for the best." We ask, the "best" for whom? McMahon is silent on the matter of decanal responsibility to support the academic freedom and intellectual authority of a faculty member in the business school he led. Further, after Arvai left the Centre and another Haskayne professor was chosen to replace him, McMahon comments that, "[o]nce again, inertia seems to have enveloped the Dean." McMahon also states that, immediately before Arvai's departure, "[t]here is no evidence that the Dean had a Plan B" and that Waverman's handling of the matter with Enbridge did not reflect "good donor stewardship." Finally, in his concluding assessment that nothing on Waverman's part amounted to improper conduct, McMahon maligns Waverman by stating that the history "infers a lack of attention and a disinclination to take the lead and accept responsibility."²⁰

These statements by McMahon clearly were harmful to Waverman's reputation and did not give Waverman the benefit of the doubt or degree of credence that McMahon extended to President Cannon.

Negative comments about Joe Arvai's state of mind

Former Justice McMahon also draws negative conclusions about the Centre's former director, Joe Arvai. Arvai was a key source of criticism of the University's handling of the Centre and Enbridge's role. For example, based on his view of "the record" (it is not clear whether McMahon is referring to the FOIP record alone or other information provided by interviewees), McMahon makes negative comments about Arvai's state of mind. According to McMahon, "the record plainly shows" Dr. Arvai's "mistrust" of Enbridge and its motivations; also, according to McMahon, Arvai "anticipated that Enbridge would interfere with his role as Director and with the academic activities of the Centre."²¹

Yet the record before us – including our interview with Arvai, who recalled giving similar information to McMahon – can reasonably be described as showing that Arvai engaged constructively in his role as the Centre's director and repeatedly attempted to find common ground with Enbridge in developing an academic forum that was open to different perspectives on pipelines or Enbridge. Why then does McMahon instead speak of Arvai having a negative attitude toward Enbridge? It is not clear to us, and McMahon does not elaborate on details from the record to support his claims about Arvai's state of mind.

Negative comments about Joe Arvai's commitment to the Centre

Similar to his treatment of Leonard Waverman, former Justice McMahon maligns Joe Arvai by characterizing him as insufficiently committed to the Enbridge Centre. According to McMahon, "Dr. Arvai had many other interests" and "travelled frequently". As a result, Arvai was "in no position to invest the time necessary to craft an appropriate program for the centre, and so it did not get done."

¹⁹ McMahon report, p 9.

²⁰ McMahon report, p 10.

²¹ McMahon report, p 9.

Further, McMahon raises “concerns” – not attributed to any named person or organization – about the hiring of Arvai’s wife as the Centre’s associate director. Although he notes the absence of any evidence that Arvai played an improper role in the hiring of his wife, McMahon comments that “[o]ne might wonder about the wisdom of hiring Dr. Arvai’s wife at a time when Dr. Arvai had repeatedly threatened to leave.” It is curious that McMahon mentions this concern, but not the comparable issue of the wisdom of President Cannon receiving payment for sitting on an Enbridge board while in a position to use her presidential office to advance Enbridge’s interests.

Despite his negative comments, McMahon concluded that Arvai’s conduct was not improper. According to McMahon, Arvai and Waverman simply did not give the Centre “the time and attention it required.”²² In this respect, McMahon does not discuss other, more favourable possibilities, such as that Arvai and Waverman had busy, successful careers with many demands on their time, or that their time and attention were frustrated for much of 2011 by Enbridge’s myriad demands regarding the ECCS. He does not give them the benefit of the doubt when the Centre’s activities did not proceed as quickly as the donor may have preferred. Nor does he mention that Enbridge’s donation was not enough to cover the salary of a full-time academic director for the Centre or that the expectations of Enbridge or President Cannon may have been unrealistic to the extent that they depended on a substantial subsidy for the Centre from general university resources and staff.

Questioning of Arvai’s appointment and position as director

When discussing Joe Arvai, former Justice McMahon states that the “obvious question that arises from a review of the records” is “why did Dr. Arvai accept or retain his position as director of the Centre?” Yet that question seems obvious to us only if one accepts McMahon’s unsupported claims that Arvai mistrusted Enbridge before and while he served as the Centre’s director. Indeed, the question is close to irrelevant if one reads the available record differently, as we do. From the record before us, we have observed that Arvai was eager to contribute to his new University after relocating to Calgary with his family, that he responded favourably to the Dean’s request to act as the Centre’s director, that he worked hard to make the Centre a forum for objective and independent research, and that he took seriously his responsibility to protect the Centre’s academic role.

Criticism of organizations with “their own agenda”

Former Justice McMahon asserts in his report that organizations who raised “serious allegations”, in his words, about President Cannon’s apparent conflict of interest had “their own agenda.”²³ He did not name the organizations in question, although it seems fairly straightforward for a reader to identify the prime candidates based on the public debate on that point. In any event, McMahon did not substantiate this maligning statement about the relevant organizations, providing another example of how he declined to lend credence to sources that had expressed concerns about academic freedom or conflict of interest at the University.

VII. Concerns about the process of the McMahon review

We have additional concerns about the process of the McMahon review.

²² McMahon report, p 12.

²³ McMahon report, p 5.

We are particularly concerned that McMahon named in his report two individuals, Joe Arvai and Leonard Waverman, who had raised concerns about the Centre or acted at a lower level in the University hierarchy than President Cannon and other senior officials. The named individuals are discussed at length and criticized in the McMahon report.

In contrast, McMahon did not name other individuals who supplied information to him. In doing so, his process gave University and Enbridge officials an opportunity to convey, under a cloak of confidentiality, information to McMahon that was potentially adverse to Arvai, Waverman, or others. McMahon's negative comments about Arvai, Waverman and others were then published by the University.

Selective approach to identification of individuals

In his terms of reference, McMahon was directed by the University's Board of Governors to "protect the privacy of those persons interviewed" and to not "refer to any such person by name in the report or in a fashion that will permit identification." The Board indicated some exceptions where permission was specifically granted or where "it is necessary and critical" to McMahon's findings "that the names of such individuals be referred to" in his report.

McMahon states in his report that "in most cases" he did not attribute information to specific individuals, except where it was necessary to explain an email. He did so recognizing that his review "was not an adversarial process" and that there were not "opposing and clearly articulated positions". He also noted that "the affected persons" and the University were "aware of the public and media attention that has been generated and the importance of this review".

From these statements, it is unclear to us how McMahon decided to name some individuals and not others. We accept that there may be legitimate concerns about privacy in any review; we ourselves have taken care to protect individuals' identities where requested to do so, especially to address concerns we heard from individuals about possible reprisals from the university administration. We also have not named any individuals without permission, except where their relevant conduct or statements are already a matter of public record.

Our doubts about the McMahon review's process arise from his selective naming of some individuals – especially when criticizing Arvai and Waverman – without also naming other individuals who may have provided information to McMahon that was adverse to Arvai or Waverman. Before making statements that were harmful to the reputations of Arvai, Waverman, and organizations, McMahon should in principle have given those persons or organizations an opportunity to know the source of any adverse information and to reply to it.

Consequent unfairness and lack of thoroughness

The upshot of this selective approach to confidentiality is that former Justice McMahon may have criticized individuals based on information from others whose identity was unknown to those who were criticized and to the public. It is a matter of fairness and thoroughness, we think, to allow an individual or organization to be informed about and to reply to allegations against them. Even if the matters examined by McMahon were not part of a formal adversarial dispute, as he notes, that does not mean that principles of fairness are inapplicable. Put differently, while the process used by McMahon was not adversarial, the position of some individuals clearly was potentially adverse to that of Enbridge and senior University officials.

There were various instances in which McMahon criticizes individuals or organizations. In summary:

- He states that Leonard Waverman had “a lack of attention and a disinclination to take the lead and accept responsibility.”
- He states that Joe Arvai had “mistrust of Enbridge and its motivations,” was “in no position to invest the time necessary to craft an appropriate program for the centre,” and, along with Waverman, did not give the Centre “the time and attention it required.”²⁴
- He states that unnamed organizations that had criticized President Cannon had “their own agenda” without further specifics and without substantiating the claim.

McMahon also identified in his report Professor Sandra Hoenle – then President of the University of Calgary Faculty Association – as someone who had raised concerns publicly about the Enbridge Centre and who was contacted for his review, but, he stated, “no interview occurred.”²⁵

In fairness to Hoenle, we think it should be reported that, although she declined an interview with McMahon, she did in fact submit a written statement to him after being asked to provide input. McMahon did not mention the contents of that statement or the fact that it was submitted. As a result, the McMahon report could leave an erroneous impression that Professor Hoenle refused to participate in his review.

With her permission, we have reproduced below Professor Hoenle’s statement to McMahon, which she shared with us at our request:

I have consulted with the Faculty Association Executive, and we would submit that the behaviour of President Cannon with regard to the Enbridge Centre was inappropriate. While she followed the letter of Conflict of Interest guidelines by disclosing both her directorship role of Enbridge’s income fund and the personal compensation she received in that role, she should have recused herself from any involvement in the “operation and activities of the Centre.”

As a former academic, Dr. Cannon would surely know what is and is not appropriate in a conflict of interest situation: no participation in any action or comment in any situation where that conflict of interest exists. On at least one documented instance, this was not the case; namely her email to the (then) Dean of the Haskayne School of Business. In this email, dated Thursday, August 23, 2012, she provides direct instructions to make Enbridge “happy.” Further, while her contract allows President Cannon to sit on two corporate boards, that fact alone neither makes this provision of the employment contract appropriate nor moral.

This statement raises important questions about President Cannon’s communication with Leonard Waverman about the Centre and her dual role as President and an Enbridge board member. Issues relevant to these questions were not addressed in the McMahon report, as we have discussed in the case of McMahon’s favourable treatment of President Cannon. Professor Hoenle’s written

²⁴ McMahon report, p 12.

²⁵ McMahon report, Appendix B.

statement demonstrates that the relevant issues were put to McMahon, allowing one to conclude that he decided, without explanation, not to discuss them in his report.

Independence and transparency

University officials described the McMahon review as “independent” and “transparent.” Yet the McMahon review was an investigation of the University conducted by an outside party chosen by the University. It was not fully independent of the University because the decision to investigate, the mandate, and the appointment of the investigator were in the hands of a committee established by the Board of Governors of the U of C. As far as we are aware, the only investigation of these matters that was established independently of the University, outside of media investigations, is ours.

On this point, it is disappointing that the University Administration responded to our investigation by refusing our invitations to participate and by informing University staff that our review was by “an external body that has no official standing on our campus” and that the Canadian Association of University Teachers “does not have standing to investigate the matters set out in [our] terms of reference.”²⁶ It appears from these statements that the University was unwilling to subject itself to the only formal investigation initiated by an entity other than the University itself.

The University’s response to our investigation was also unhelpful at another stage. After we had concluded the main part of our investigation, letters were sent in confidence to various University officials to provide notice of potential findings of misconduct on their part and an opportunity to reply. In response, the Chair of the University’s Board of Governors, Mr. Gordon M. Ritchie, raised legitimate concerns with the CAUT about public statements by the then-chair of the Investigatory Committee, as we have discussed elsewhere in this report. Shortly after it communicated these concerns to the CAUT, and well before there was any reasonable opportunity for the Investigatory Committee to address the concerns, the University made the concerns public in an apparent attempt to discredit the Investigatory Committee as a whole. Again, it is disappointing that the University would take this highly oppositional and unconstructive approach to the only formal investigation initiated by an entity other than the University itself.

The University also described the McMahon review process as “transparent.” Yet the McMahon review was based on information that is not publicly available, in spite of requests for disclosure. Thus, the McMahon review appears to have afforded University officials an opportunity, to participate and respond to concerns raised by others about the University entirely anonymously. In contrast, key individual or organizations who raised concerns were themselves named and criticized in the McMahon report.

However one describes it, we do not find this process reassuring if the aim was to have an independent, thorough, and transparent account of the conduct of University officials in relation to the Enbridge Centre.

²⁶ Email of 18 March 2016 from University of Calgary Provost and Vice-President (Academic) Dru Marshall to “all academic staff and senior leadership team members” at the University of Calgary.

Appendix B

Summary of Emails: Significant Actors and Timeline of Events

SIGNIFICANT ACTORS

University of Calgary

Elizabeth Cannon	President
Bonnie DuPont	Vice-Chair, Board of Governors
Dru Marshall	Provost
Joe Arvai	Professor, Haskayne School of Business Director, Enbridge Centre for Corporate Sustainability
Kim Kadatz	Director of Development, Haskayne School of Business
Leonard Waverman	Dean, Haskayne School of Business
Victoria Arvai	Associate Director, Enbridge Centre for Corporate Sustainability
Jaydeep Balakrishnan	Associate Dean, Haskayne School of Business
Frances Bowen	Director, International Resources Industries and Sustainability Centre, Haskayne School of Business
Lesley DiMarzo	Administrative Assistant to Joe Arvai
Loren Falkenberg	Associate Dean, Haskayne School of Business; Interim director, Enbridge Centre for Corporate Sustainability
Robin Gregory	Advisory Board member, Enbridge Centre for Corporate Sustainability
Kim Lawrence	Director, Communications and Marketing, Haskayne School of Business
Harrie Vredenburg	Professor and Suncor Energy Chair, Haskayne School of Business Affiliated with the Institute for Sustainable Energy, Environment, and Economy

Enbridge

Pat Daniel	CEO
Steve Wuori	Executive Vice-President, Liquids and Pipelines
D'Arcy Levesque	Vice-President, Government Affairs

Paul Hunt	Director, Sustainability
Dan O’Grady	National Manager, Community Partnerships and Investment
Glenn Herchak	Director of Communications, Community Relations and Investment
Beth Diamond	National Public Relations (working for Enbridge)

ACRONYMS (TIMELINE OF EVENTS)

BD	Bonnie DuPont
CMU	Central Michigan University
DM	Dru Marshall
DO	Dan O’Grady
DL	D’Arcy Levesque
EC	Elizabeth Cannon
EN	Enbridge
EPA	Environmental Protection Agency (United States)
HV	Harrie Vredenburg
IRIS	Industries and Sustainability Centre
JA	Joe Arvai
JB	Jaydeep Balakrishnan
KK	Kim Kadatz
KL	Kim Lawrence
LD	Lesley DiMarzo
LF	Loren Falkenberg
LW	Leonard Waverman
PH	Paul Hunt
RG	Robin Gregory
U of C	University of Calgary
UNBC	University of Northern British Columbia

TIMELINE OF EVENTS**MARCH 2011**

Key Events:

- The Centre is proposed to Enbridge and initial documents are exchanged
- UNBC is proposed by Enbridge as potential Centre partner, U Michigan also suggested
- Arvai objects to U Michigan
- Central Michigan U (CMU) proposed by Enbridge
- Rationale re: CMU discussed

Item#	Event/document	Relevant quotes
1-3	Kim Kadatz sends Dan O'Grady Haskayne Strategic Plan	"forms the framework around why this Centre naming is so important to our energy strategy" (KK)
1-6	Recognition and Benefits For Enbridge List	Proposed awards will be developed in consultation with EN, "to ensure recipients reflect the core values important to Enbridge..."
1-7	Recognition and Benefits For Enbridge List	"Customized opportunities to meet with researchers pursuing projects of interest."
1-8	Enbridge Centre for International Research in Sustainability – Initial Proposal to Enbridge	"This investment will build relationships with your critical stakeholders in a respected and neutral university-based forum. You will provide input into research being undertaken. You will gain first access to new insights... Enbridge at the core of HSB's efforts to improve the quality of public debate on energy futures over the long term." Offer to provide guidance about "how to maintain a social license to operate... and business practices to support a social license to grow."
1-9	Enbridge Centre for International Research in Sustainability – Initial Proposal to Enbridge	"The outcomes will be both better research and more attention to what the Alberta energy sector is doing to develop resources sustainably."
1-17 1-16	Joe Arvai Objects To U Michigan As Partner For Enbridge Centre. Leonard Waverman Agrees As Does Frances Bowen.	"Frankly, I see zero upside in coordinating with the U of M." (JA)
1-20	Arvai Objects To Exclusivity In Terms Of Partners And To Using Partners Just For Enbridge's Sake.	"I understand Enbridge wants to convey a 'We care' image to some of these areas of interest but forcing it to happen as part of a donation agreement won't work in my view. Bottom line: I think we need to be more pragmatic about how we set this up." (JA)
1-20	Enbridge wants as partners both University of Northern British Columbia and U Michigan.	"Enbridge will expect to see in the gift agreement... that the school will endeavor to engage with both UNBC and UMich in the work of this Centre. " (KK)

1-28	Waverman and Kadatz remind Arvai that he needs to take a "positive view."	"Joe, Getting Enbridge making a significant gift to HSB would be huge for us." (LW) "Thanks Leonard. This is the positive view we need!" (KK)
1-47	Arvai expresses confusion over which Michigan university is to be a partner. Kadatz discusses Enbridge connection.	"There are a couple of ties to Michigan – the location of the incident and the fact that Steve Wuori is an alumni of one of these schools – it may be CMU. I think their highest need is to have some presence in the state but Steve will be able to guide you...." (KK)

APRIL 2011

Key Events

- Enbridge insists on CMU, no UNBC, and name change.
- Enbridge approves gift.
- Enbridge proposes communication plan.
- Enbridge brings in National Public Relations to manage gift announcement.
- First Draft of Gift Agreement.
- Enbridge suggests an undergrad program.
- Gift announcement timed according to public relations value for Enbridge.

Date	Item #	Event/document	Relevant quote
13-4-11	2-7	Enbridge wants CMU.	"Enbridge's strong preference through Steve Wuori (is) Central Michigan University. That university gave Enbridge very valuable advice on the situation they were dealing with last summer and Steve has stated his choice...." (KK)
13-4-11	2-7	Enbridge does not want UNBC.	"Enbridge will not be pursuing a partnership with UNBC at this stage based on no response from that institution." (KK)
13-4-11	2-7	Enbridge suggests name change.	"Enbridge would like to change the name to: Enbridge Sustainability Research Centre vs. Enbridge Centre for International Research in Sustainability." (KK)
15-4-11	2-17	CMU Sustainability Unit has a staff of one person.	"We ended the call with him talking about how his sustainability unit was small – just one person: him – and how he was looking to find funding so that he can expand." (KK)
18-4-11	2-22	Enbridge approves gift.	"Leonard – FYI – Pat Daniel has said yes to the gift – I heard from Dan O'Grady today." (KK)
19-4-11	2-30	Pat Daniel's connections to U of Alberta.	"Yes this is an excellent achievement given Pat Daniel's connection to UofA." (JB)
19-4-11	2-32/33	Beth Diamond from National Public Relations brought in by Enbridge to handle gift announcement. U of Calgary to follow Enbridge's lead re. announcement plan.	"The U of C have confirmed their agreement to support this communication plan." (DO)
20-4-11	2-53/54	Enbridge Inc. and	"...focus on the translation of that research knowledge to the

		Haskayne School of Business Agreement	corporate energy sector and inform energy and environmental policy in North America and internationally."
20-4-011	2-59	Invitation to bring Arvai into the "Enbridge family."	"the earlier <i>we bring you into the Enbridge family</i> to hash this thing out the more ahead we'll be in the long run." (DO) [emphasis added]
26-4-11	2-76/77	Enbridge would like an undergrad program in future.	"Enbridge talked about their desire for, at some point in the future, an undergraduate program as part of HSB in the area of corporate social responsibility." (JA)
27-4-11	2-82	Enbridge wants gift announcement for public relations value.	"they will be postponing any announcement from May 18 until July 25 which is the first anniversary of their spill in Michigan. This gift announced at that time will offer more public relations value for them." (KK)

MAY 2011

Key Events

- Naming debate continues. Waverman encourages Arvai to take "Dan's name" for the Centre.
- Arvai suggests spending more time at Enbridge to learn its interests.

Date	Item #	Event/document	Relevant quotes
3-5-11	3-5	Kadatz and Waverman discuss Enbridge's sensitivity and public relations concerns.	"Dan and I agreed that we need to iron out the name and focus before we jump to an announcement. This is very important for us and them but <i>they don't like to be pushed and we will need to take direction from them on timing.</i> " (KK) [emphasis added] "They were charged with coming up with a plan <i>they feel will maximize PR for Enbridge.</i> We have caused them to rethink..." (KK) [emphasis added]
4-5-11	3-20	Waverman encourages Arvai and Kadatz to take name suggested by Enbridge	"I like the Enbridge name of Joe's – don't want to get in the way of the gift agreement – <i>take Dan's name!</i> " (LW to KK and JA) [emphasis added]
6-5-11	3-35	Arvai has met with Enbridge and they agree on "Social Responsibility."	"The short name for the Centre would be: The Enbridge Centre for Social Responsibility. I like it and we can a good job with this. They like it too." (JA)
18-5-11	3-64	Arvai suggests spending more time at Enbridge.	"it might make sense for me to spend some meaningful time at Enbridge – maybe one day or week or two – learning about the company's interests. This way, <i>I could help to guide the strategic direction of the centre in the direction of some of Enbridge's key areas of interest/influence.</i> " (JA) [emphasis added]
24-5-6-	3-79	Kadatz lets Arvai, Waverman and Kim Lawrence know what Enbridge's concerns are and worries that some of its name	"I have heard that they may want to change the name to the Enbridge Centre for Sustainability and Corporate Leadership. I am not fond of this name as it competes with the Centre for Leadership that we are also working on, and I also believe that it appears self-serving for Enbridge. Please give some thought to other possible versions of the name." (KK)

		suggestions re. "leadership" are self-serving	
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June/July 2011

Key Events

- Naming issues continue.
- Bonnie DuPont referred to as a critical "volunteer" helping to get the deal done.
- Agreement is signed and finalized.

Date	Item #	Event/document	Relevant quotes
1-6-11	4-1	Arvai thanks Waverman for meeting with his wife Victoria Arvai.	
4-6-11	4-2	Waverman: Bonnie DuPont will handle name conflict with Enbridge.	"Bonnie DuPont will intervene for us at Enbridge on name..." (LW)
22-7-11	4-40	Kadatz suggests meeting with "volunteer" DuPont.	"I would like to organize a meeting after summer for you and I and Leonard to meet with Bonnie DuPont, our volunteer who was critical in obtaining the commitment from Enbridge. She has agreed to help us with fundraising for the remainder of the budget." (KK)
27-7-11	4-48	Agreement is signed and finalized. DuPont congratulates Kadatz on deal.	"This is great news Kim... I also had a note from Dan O'Grady at Enbridge letting me know the deal was done... very good work on the part of the team... not always an easy task, is it?" (BD)

August 2011

Key Events

- Harrie Vredenburg writes Waverman to express concerns.

Date	Item #	Event/document	Relevant quotes
26-8-11	5-14	Vredenburg writes Waverman with concerns about Centre, which "smacks of us being apologists for the fossil fuel industry."	"It sounds to me like a classic case of 'he who pays the piper calls the tunes'... Enbridge is doing too much tune calling, in my view, to the point that the Centre's usefulness to HSB academics is being sacrificed to Enbridge's PR objectives. The most brazen of this approach is the altering of the IRIS name itself... The Enbridge Centre of Corporate Sustainability ... does not reflect the Calgary/western Canadian economy. But most damningly it smacks of us being apologists for the fossil fuel industry rather than independent scholars and teachers doing work in a broadly defined area. We built ISIS over 17 years now with strong industry support but without being seen as industry apologists. I'm concerned we may have stepped over the line..." (HV)

September 2011

Key Events

- Due to his appointment to a U.S. Environmental Protection Agency Science Advisory body, Arvai offers to step away or stay on as an adviser and hire an Executive Director for the Centre. Waverman strongly encourages him not to step down.
- Waverman seems to agree to an Executive Director position.
- Arvai, Kadatz, and Waverman work on terms of reference for Executive Director position.
- November 10 set as new launch date for Centre.

Date	Item #	Event/document	Relevant quotes
9-9/10-11	6-12/11/10	Arvai expresses concerns re: his affiliation with EPA and Enbridge, wants to step down. Offers option of hiring an Executive Director and remaining on the EPA Advisory Board. Waverman does not allow Arvai to step down.	<p>"Because of my rapidly emerging research work on developing a national energy policy, I have concerns about serving as the Director of an Enbridge-named centre. My credibility as an honest broker would be jeopardized...." (JA)</p> <p>"There is no one else – cant see how this hurts!" (LW)</p> <p>"The more I think about it, the more difficult it is for me to accept the terms that Enbridge has put before us. It'll strip away my credibility when it comes to the kind of research and policy work I do best." (JA)</p> <p>"You cant just walk away as Enbridge has been told you are Director and you negotiated the name..." (LW)</p>
20-9-11	6-42	EVENT MEMO – ENBRIDGE ANNOUNCEMENT	<p>Under "Key Messages/Details of Gifts" #2:</p> <p>"It is expected that the initiatives supported by the Enbridge Centre will advance the research and development of new business practices and decision support processes required to develop natural resources in a responsible and sustainable manner."</p>
19-9-11	6-53	ENRIDGE CENTRE EXECUTIVE DIRECTOR TERMS OF REFERENCE	<p>Under Responsibilities:</p> <p>"Disseminating the results of the Centre research in a format useful to the corporate energy sector and in keeping with what has been committed to the Sponsor in the Sponsorship Agreements"</p>

October 2011

Key Events

- Launch event planning continues. Soft launch at U of C planned for November 10. Official Enbridge event set for end of January. Enbridge takes control of planning, outlines four key deliverables.
- Enbridge extremely concerned about Arvai's appointment to EPA. Waverman tries to mollify Enbridge by offering DuPont as eventual director of the Centre.
- As Enbridge reacts to EPA issue, Arvai seems to assume he is stepping down and then agrees to stay on as Academic Director of the Centre.
- Arvai continues to express serious doubts about working with Enbridge.
- Enbridge cancels launch event for November 10.
- Enbridge wants more control over description of Executive Director role.

Date	Item #	Event/document	Relevant quotes
30-9-11	7-2	O'Grady weighs in with Kadatz on launch planning.	"FYI – Glenn [Herchak], Beth [Diamond] and I met briefly yesterday via telephone to review a few modifications/ clarifications to the communications/ media plan which will be forwarded to you soon as a revised copy. As well Kim, we discussed what measures will be required in order to ensure success for the second event... we've decided to stage a luncheon at the U of C downtown campus on Beth's assurances that the facility can be enhanced to our needs... Going forward then we see success as being predicated on the following four key deliverables over the next 3 months...." (DO)
11-10-11	7-11	Attempting to assuage concerns about conflicts re. his position on EPA Science Advisory body, Arvai pushes for new Executive Director and offers to stay on as "Faculty/ Liaison Advisor".	"Knowing that I am still guiding the Centre behind the scenes may alleviate some of the unease that Enbridge feels. Likewise it would keep me free of conflicts of interest as it relates to my Federal Government appointment in the US." (JA)
20-10-11	7-13	Voicemail from Waverman to Arvai re. his concerns about Arvai leaving.	"We have a concern that Enbridge are going to pull the grant... I really need you to reconsider this because if it goes belly up my ass is on the line and I won't feel happy with you either on this so do get back to me." (LW)
20-10-11	7-12	Arvai agrees to stay on.	"I'm willing to go ahead as the academic director of the centre to help the school, but we need to talk about the pain I'm feeling at the moment." (JA)
20-10-11	7-14	Emails between Waverman and DuPont, concerned that Enbridge will pull funding following news of Arvai's EPA position. Waverman proposes DuPont take over the Directorship.	"They are upset, pulled the big announcement with Pat and Elizabeth for Nov. 10! I am concerned that the \$\$ are at risk. They want a spokesperson. What about Bonnie DuPont Adjunct Prof and Director... no work for you and gives you a platform to raise \$\$\$." (LW) "Len, I would take this on as you describe if I was not on the Board of Governors... but I still have a year plus a few months left in my term so I simply cannot do it... who do they want in the role?" (BD)
20-10-11	7-15	Waverman tells Kadatz re. Enbridge sentiments about Arvai and EPA. Kadatz attempts to salvage things.	"the tone of the letter should be reassuring and confident... It would be best for all involved if we were able to salvage this...." (KK)
20-10-11	7-17	Waverman writes to Steve Wouri at Enbridge, stating that Arvai will stay and EPA will allow	"Bonnie DuPont would be delighted to be Director when she comes off U of C Board of Governors in 14 months." (LW)

		it. Waverman offers DuPont as eventual Director.	
25-10-11	7-27	Waverman and U of C Senior Admin want to separate news of Arvai's EPA appointment from Haskayne so as not to upset Enbridge. Kim Lawrence complies.	"I've asked them if they would consider combining the EPA announcement in there so that it can still be timely and yet not come from Haskayne... This way, the news is shared in a timely fashion... but it's not associating Haskayne with it directly, which could be an affront to Enbridge." (KL)
25-10-11	7-29	Arvai writes to Lawrence to ask why announcement about EPA has been delayed by Admin.	"Len (and others) need to know that I will leave HSB and U of C if I am held back from doing the science and outreach that I came to Calgary to do. The line of universities asking for me to move is long and distinguished. Making Enbridge happy isn't on my radar in any shape or form. That said, there's a way to make this work; we simply need to have more open lines of communication..." (JA)
25-10-11	7-31	Launch event cancelled by Enbridge. Arvai weighs in.	"I find this rather silly and beyond that, I am growing quite concerned about the psyche of Enbridge. I'm having a hard time imagining what actually working with them, after all these negotiations, would look (and feel) like." (JA)
28-10-11	7-35	Kadatz notes Waverman meeting with Enbridge re. their demands for Director's role.	"Please make suggested changes to it based on your meeting with D'Arcy Levesque to address specific parameters around the Director role." (KK)

November 2011

Key Events

- Arvai responds to Enbridge's demands about Director role. Enbridge continues to press on this.
- Enbridge expresses concerns about Joe Arvai's wife being associated with Centre – demands a response from U of C.

Date	Item #	Event/document	Relevant quotes
1-11-11	8-1	Waverman conveys Enbridge demands to Arvai re: Director role.	"The Director will not have any relationships or activities which impinge on his or her role as Academic Lead or on his or her ability to speak on any issue involving the Center." (LW citing EN's demands)
2-11-11	8-2	Arvai reacts to Enbridge's demands re. directorship. Continues to point out problems with compromise of academic mission.	"we need to be clear with them on what the 'job' is. We must be independent. I cant do it any other way. If they want a think tank/ pr group, they'll need to come up with way more than 2.5\$M." (JA) "We cannot maintain our credibility as serious scholars/ researchers if the sponsors can dictate Centre's agenda... I cannot serve as the Centre's Academic Director if any of its sponsors are allowed to meddle in its academic activities." (JA)

15-11-11	8-9	Levesque writes to Waverman to clarify Enbridge's demands re. the Directorship and concerns.	"We believe it would be helpful to ensure the agreement clearly states that if the Director is unable to fulfill his duties in keeping with our agreed upon expectations, that the University would begin a search for suitable replacement. We would like your assurance that there are no unexpected or unknown affiliations that would prevent Joe from fulfilling his role as Director? ... We continue to believe that the optics associated with Joe's spouse serving on the Centre's faculty could be challenging and would like to understand your position on this?" (DO)
27-11-11	8-21	Waverman wants the Centre's Terms of Reference to be amended to include Enbridge's demands.	"I've been going over the TOR for Enbridge Centre. They don't address the Enbridge issues – Director won't have conflicts...Can we redo these together in the am?" (LW)
30-11-12	8-24	O'Grady writes to Kadatz to reassert the need to address concerns re. Joe Arvai's spouse and finalizing members of Advisory Board for January launch.	"I did learn that Steve [Wuori] is not supportive of Joe's wife being associated with the Centre." (DO) "External advisory members... (will) need to be installed by the launch date." (DO)

December 2011

Key Events

- Kadatz and Waverman try to reassure Enbridge about Joe Arvai's wife, Victoria Arvai.
- Enbridge continues to make demands prior to launch date of February 8, including a new one re. Banff Summit lecture series.
- Arvai, Waverman, and Kadatz all express concern about Enbridge using the Centre as a public relations tool.

Date	Item #	Event/document	Relevant quotes	Observations
7-12-11	9-1	Kadatz writes to O'Grady re. Joe Arvai's wife	"Leonard has discussed this with the University's Provost and VP Academic, Dru Marshall, and she is confident that we can manage this appointment within the reporting structure. She assured Leonard that this type of conflict has occurred within her experience at universities and is typically addressed by the individual reporting to the dean or associate dean and not to their spouse." (KK)	
19-12-11	9-13/12/11	Enbridge continues to make requests to Kadatz and Waverman (including a	"We would like Joe to advise further External Board candidates in readiness for the planned Feb 8 th event. As discussed, perhaps Joe can consult with Paul Hunt in this regard... We would like to see the announcement of the annual	

		<p>seminar series) prior to new February 8 launch date. Kadatz expresses concerns re. date and Centre being public relations tool for Enbridge. Arvai responds to the demands re. Advisory Board members.</p>	<p>Enbridge Sustainability Summit in Banff... referenced in the Term of Reference." (DO) <i>"We need to be careful so as not to position the Centre as a vehicle for public relations for Enbridge."</i> (KK) [emphasis added] "I also heard a comment that Enbridge questioned why we had so many (currently 2 out of 5 members) "academics" on the Advisory Board. The answer is simple: Because we're an academic centre." (JA) "I am becoming increasingly uneasy again about how Enbridge is viewing the centre, namely (as Kim mentions) as a PR vehicle for the company... I cannot and will not be able to run the centre that way... There's a widely held perception that the U of C is in the pocket of industry. We have a chance to correct that with this centre...." (JA)</p>	
20-12-11	9-14	<p>Arvai continues to worry. Waverman seems to agree with his concerns.</p>	<p>"I am also concerned – I will speak to D'Arcy [Levesque] this week." (LW) "This kept me up last night. They are giving us a tiny amount of money and are asking for way, way too much. Their expectations don't match their donation. We're currently on the road to a disappointing relationship with them." (JA)</p>	

January 2012

Key Events

- Arvai continues to balk, pleads for more administrative help.
- Launch date moved to March 27.
- National Public Relations draws up event plan.
- Arvai meets with Enbridge – they are "getting happy."

Date	Item #	Event/document	Relevant quotes
3-1-12	10-1/2/3	<p>Discussion between Kadatz, O'Grady, and DuPont re. moving launch date to March.</p>	
3-1-12	10-4/5	<p>Arvai still unhappy and expresses this to Kadatz and Waverman. Waverman starts to</p>	<p>"I have pressed pause on the centre pending the outcome of a conversation with Enbridge. We all have to be comfortable with where we are heading with the centre and I have a strong sense that Enbridge is not yet comfortable with our arrangement. Neither am I, frankly, as I am not</p>

		lose patience.	yet sure what we are signing up for. I have the impression that Enbridge sees the centre as a PR machine for themselves..." (JA) "This is getting out of hand. I'm doing my best to be a team player with an open mind in the centre. But I have no help, and worse, have no clue what we are trying to do anymore. And, honestly, I no longer have a good feeling about Enbridge... We need to get things straightened out." (JA) "I don't understand your concerns any more at all. What are you raising here?" (LW)
10-1-12	10-17	Kadatz communicates new launch date – March 27.	
25-1-12	10-70	Arvai reports on his meeting with Enbridge – reports that they are happy with his plans for Advisory Board.	"Glad they are getting happy." (LW)

February 2011

Key Events

- Preparations for launch event continue, with discussion about signage etc.
- Wrangling over terms of reference for Advisory Board and Academic Advisory Board and budget
- Enbridge still pushing for MOU for CMU and for mention of CMU in Pat Daniel's remarks at launch, contra Arvai's wishes

Date	Item #	Event/document	Relevant quotes
4-2-12	11-19	Waverman berates Joe Arvai and Victoria Arvai for re-writing terms of reference and reworking Centre's budget.	"Joseph, Let me be clear – you two do not have the authority to unilaterally rewrite the TOR or redo the budget." (LW)
14-2-12	11-105	Arvai comments on revised terms of reference for External Advisory Board members and awards.	Under Enbridge Sustainability Awards: "As an academic center, I don't think we should be in the business of community awards. I would prefer to hand out two student awards." (JA)

29-2-12	11-266	O'Grady writes Kadatz and others re. mention of CMU in Pat Daniel's planned remarks at launch.	"On reflection, it does make sense that we include mention in Pat's remarks given the connection to CMU during the Michigan incident. In brief, 'the collaboration with CMU and other potential organizations to ensure international interests are taken into account in the work of the Enbridge Centre' enhances the importance of the story to include North American and international outreach." (DO)
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March 2012

Key Events

- Arvai threatens to quit. Waverman replies with hostility and fear.
- Arvai asks Enbridge to deal directly with him. Enbridge balks, wants to deal with Kadatz.
- Arvai again expresses exasperation, no longer wants to deal with Enbridge or the Centre.
- Plans for launch continue in spite of Arvai's frustration.
- Arvai meets with Beth Diamond at National Public Relations around March 15 to discuss his remarks at launch.
- Waverman notifies Enbridge that Arvai is no longer Director on March 19.
- Loren Falkenberg brought on temporarily.
- Arvai wants to sit on external advisory board. Enbridge balks.

Date	Item #	Event/document	Relevant quotes
7-3-12	12-3	Arvai resists more involvement for CMU and wants to change language of MOU re. inclusion of someone from CMU on Advisory Board.	"As you know, I am not in favour of a MOU with CMU. Nevertheless, I am moving forward in good faith... Enbridge is allowed to select one person for the Advisory Board, that is Paul Hunt... I am striking the language from the draft MOU with CMU." (JA) "I cant accept that - you need to speak to Enbridge. We are about 'transparency' at the centre - Wuori will be upset." (LW) "I've made it clear from the beginning, I'm living up to the letter of the law in the sponsorship agreement with respect to CMU. But no further... Also know that this is non-negotiable for me..." (JA)
7-3-12	12-104	Waverman forwards exchange to Kadatz.	Re. JA - "Amazing ego and royal pain." (LW)
8-3-12	12-6	Waverman responds to Arvai's email to O'Grady re. position on CMU and plan for Pat Daniel to mention it in his launch remarks. O'Grady writes directly to Kadatz to express concern. Kadatz pleads to Arvai and Waverman that they need to be a	"I'm a bit concerned with Joe's email below where he has not copied your team at the U of C. As you know, CMU is in the agreement with a strong internal expectation that this will happen...." (DO) " Joe, You need to go along with Enbridge - the monies we give CMU are tiny - it won't be viewed as a payoff, your constant pushing is unsettling to me - I feel I am undermined with this email. Putting these issues in writing like this jeopardizes our relationship with Enbridge. I thought you were going to meet with them. I am tired of dealing with this - Elizabeth [Cannon] will have a fit if she sees this." (LW)

		"united front." Waverman less diplomatic to Arvai.	
8-3-12	12-9	Arvai wants to quit Centre. Waverman threatens that Centre will close if he does.	"Len, can we talk? I feel I can no longer continue as the Director of the Centre..." (JA) "Joseph, If you pull out now – weeks before the public launch – my head is taken off my shoulders – the Centre is likely closed." (LW)
8-3-12	12-14	Kadatz lets Victoria Arvai know that Enbridge wants reps from CMU at launch.	"Enbridge would like a few folks invited to the March 27 th event from CMU – do you have any names there?"
9-3-12	12-24/25	Joe Arvai concerned that Enbridge always prefers to work with Kadatz. Waverman agrees, writes to Kadatz. Kadatz agrees to back off.	"I've noticed a pattern that is troubling and I'd like your opinion. Specifically, I am growing concerned that, when it comes to sensitive issues, Enbridge prefers to work with Kim [Kadatz]. I'd like to put a stop to this. When it comes to decisions that will affect the centre, they need to work with me as the Director." (JA) "Kim, At this point, you and I need to step out of the discussions with Enbridge and leave those to Joe and Victoria." (LW)
9-3-12	12-30/32	Arvai writes to O'Grady and asks him to deal directly with him since Centre is now up and running. O'Grady writes to Kadatz for clarification of Arvai's request. Arvai loses patience and no longer wants to be associated with Enbridge.	"Hi Kim, So we'll need clarification from you as you have always been my point of contact on this file." (DO) "I will of course continue to be your contact on the investment, announcement, and launch event, and sponsorship benefits, and ongoing stewardship aspects. It's the core function of the Centre, research, academic direction and content that Joe is referring to. Hope this makes sense." (KK) "I've built a solid academic reputation and career on being a credible, defensible and impartial policy advisor. Aspects of the CMU arrangement, and this centre more generally, could paint me and us in a bad light. It seems I am one of only a small few who sees it this way. As I noted when we met 2 weeks ago, I've discussed my concerns with the directors of other similar centres and other people who work in this space share my views. I've also raised my concerns many times internally. Kim, I know you'll tell me 'its in the gift agreement' ... But frankly, the arrangement with this centre has been evolving since we started and I am, once again, growing less and less comfortable... I no longer wish to be the Director of this Centre and will no longer have my name associated with Enbridge. Working on this centre has cut deeply into my productivity, and more than that, it is creating major stress that is spilling over into my private life. It's not worth it for me." (JA)
12-3-12	12-46	Arvai wants more control over promotional videos and material being	"Finally, <u>and this is critical</u> , as Director I will need to approve any video that will be used to publicly represent the centre on <u>any</u> website. Please ensure that this is clear internally and at National PR [Public Relations]. I don't

		asked for by Enbridge	want any surprises vis-à-vis what gets said publicly about this centre prior to the launch." (JA)
15-3-12	12-95	Arvai still negotiating with Enbridge around awards and launch event, stresses desire for independence again to O'Grady.	"I'd also appreciate an opportunity to see what others plan to say at the launch. As you know, I'm very conscious of the fact that we'll need to launch from a strong and independent footing in order to gain the credibility we'll need to be effective in the sustainability space." (JA)
16-2-12	12-89	Arvai no longer Director of Centre in context of pressure from Enbridge, frustration from the HSB Dean , and misgivings from Arvai about what his directorship of ECCS has cost him academically and personally and may cost him in future.	
16-3-12	12-222	Kadatz suggests DuPont as replacement for Elizabeth Cannon at launch	"Bonnie DuPont is lined up to be Elizabeth Cannon's back up. It was felt that as Board of Governor's Vice-Chair and her connection to this investment that she would be a better fit for back up...." (KK)
17/18-3-12	12-124/125	Exchange between Arvai, Waverman and Kadatz about mention of CMU at launch. Waverman instructs Kadatz not reply to Arvai.	"We (HSB) are in agreement that we need to balance the positioning of the CMU partnership with other partnerships that are anticipated in the future... Each time we raise concerns about CMU with Enbridge, it raises for them a concern that we are not committed to our partnership with Enbridge. We are not in a position where we can tell Pat Daniel what he can or cannot say about CMU... The fact that Enbridge had a spill in Michigan and now wants to use this investment as a way to make amends and possibly receive some positive PR is acceptable." (KK) "Kim, Please do not reply to Joseph. This from me. I appreciate what you are trying." (LW)
19-3-12	12-129	Waverman writes to O'Grady, D'Arcy Levesque, and Glenn Herchak at Enbridge to let them know that Arvai has been removed as Director.	"Joe Arvai is no longer Director of the Centre, there are too many conflicts and demands! In the short term, we will have an academic Advisory Board, with Professor Loren Falkenberg, Associate Dean of Research at HSB... We are recruiting to replace Frances Bowen, that person will be earmarked to take over as Director/ Chair. Loren and I will represent the Centre at the launch and we will move ahead on all the exciting outreach and research...." (LW)
20-3-12	12-153	Kadatz reminds Loren Falkenberg and Waverman that	"as Glenn Herchak raised today, under the sponsorship agreement, 'HSB will provide the opportunity for CMU to have a representative sit on the Advisory Board... I do

		Enbridge would still like someone from CMU on Advisory Board.	not think that anyone from CMU has been asked to sit on the advisory at this point." (KK)
20/22-3-12	12-155/157	Arvai becomes Advisory Board member. Enbridge has reservations.	"Len, my team advised me today that Joe will now be sitting on the external advisory board. I understand he would be part of the academic steering committee, but we have reservations about the external council?" (DL)

May-August 2012

Key Events

- Arvai, along with others, raises concerns about operations of the Centre and role of external Advisory Board.
- Arvai quits Advisory Board
- Cannon and Dru Marshall come down on Waverman for state of the Centre.

Observations	Item #	Event/document	Relevant quotes
5-6-12	13-6/5/4	Arvai and others raise concerns about Advisory Board moving too fast and rushing research outputs. Falkenberg responds.	"I sense a bit of disagreement between the centre's goals and those of the sponsor, especially if we adopt this notion – which we discussed – that we won't be able to do everything in centre's mandate at full speed in its first year. I also sense a mismatch between the interests of the sponsor in terms of the timing of certain outputs, mainly around research..." (JA) "All this means we had a good first meeting but there is more to do before the Centre enters the public arena as an entity taking action: despite Paul's (PH) desire for quick action, the Centre's Advisory Board will for sure lose me as a participant if we move before we collectively know what we're doing." (RG) "Apart from the split on the Board [between JA and others and PH, BD and others), I see some real governance issues." (LF)
27-7-12	13-11	Arvai resigns from Advisory Board.	
30-7-12	13-13	Robin Gregory resigns from Advisory Board.	
21/22/23-8-12	13-17/16	Cannon writes to Waverman to express concern about centre directorship. Dru Marshall responds. Waverman points to Arvai.	"The recruitment of a Director needs to be a very high priority and you need to lead this. Please send Dru [Marshall] and myself the detailed information for this (posting, process for recruitment, budget, timelines etc) so we know where this is and how it will managed and concluded successfully." (EC) "The main issue is that at 225,000\$ a year from Enbridge there is no money to hire a director... it was Joe Arvai whose interests and agenda don't fit the Enbridge Centre..." (LW) "let's chat about what needs to be done in order to make things work. We are at a critical point here – one that could result in reputational damage if we do not

			<p>manage this situation.” (DM)</p> <p>“This has been a problem from day 2 especially with Joe Arvai who has pi..ed off Enbridge big time...” (LW)</p>
23-8-12	13-21/22	<p>Cannon writes to Waverman again with a stern warning re. his failure and the potential damage done to relationship with Enbridge. Cannon states that she wants to have a “good relationship with” Enbridge and that she is on one of their Boards. Waverman points to Enbridge’s desire for public relations and their public relations firm.</p>	<p>“Enbridge is not very happy... We need content and strategic leadership and that is what Enbridge is looking for... They have traditionally been strong supporters of U of A and this is the first major gift to U of C. This is also a legacy gift for Pat Daniel. They are looking for success and are not seeing it. I will be frank and add that they are not seeing your leadership on this file and are feeling that once the funding was committed, the interest from you was lost. This is not good for you or the university. I want to have a good relationship with Enbridge given that Al Monaco is incoming CEO and our grad (and I am on one of their Boards!). Our interest is well beyond HSB.” (EC)</p> <p>“It has been a set of unseen circumstances, but that is not an excuse, it is a reason for a leader to step up and take charge, I will, late but I will.” (LW)</p> <p>“Enbridge has been difficult – especially their PR firm who were trying to use events to buttress Enbridge’s name with little insight into the academic needs to be distant and to run the Centre as we see fit, that helped to drive Victoria Campbell Arvai away. I thought Enbridge was happy with Loren as interim?” (LW)</p>

Appendix C

Policy Statement on Academic Freedom

1

Post-secondary educational institutions serve the common good of society through searching for, and disseminating, knowledge and understanding and through fostering independent thinking and expression in academic staff and students. Robust democracies require no less. These ends cannot be achieved without academic freedom.

2

Academic freedom includes the right, without restriction by prescribed doctrine, to freedom to teach and discuss; freedom to carry out research and disseminate and publish the results thereof; freedom to produce and perform creative works; freedom to engage in service to the institution and the community; freedom to express one's opinion about the institution, its administration, and the system in which one works; freedom to acquire, preserve, and provide access to documentary material in all formats; and freedom to participate in professional and representative academic bodies. Academic freedom always entails freedom from institutional censorship.

3

Academic freedom does not require neutrality on the part of the individual. Academic freedom makes intellectual discourse, critique, and commitment possible. All academic staff must have the right to fulfil their functions without reprisal or repression by the institution, the state, or any other source. Contracts which are silent on the matter of academic freedom do not entitle the employer to breach or threaten in any way the academic freedom of academic staff employed under such collective agreements or other employment contracts.

4

All academic staff have the right to freedom of thought, conscience, religion, expression, assembly, and association and the right to liberty and security of the person and freedom of movement. Academic staff must not be hindered or impeded in exercising their civil rights as individuals including the right to contribute to social change through free expression of opinion on matters of public interest. Academic staff must not suffer any institutional penalties because of the exercise of such rights.

5

Academic freedom requires that academic staff play a major role in the governance of the institution. Academic staff members shall constitute at least a majority on committees or collegial governing bodies responsible for academic matters including but not limited to curriculum, assessment procedures and standards, appointment, tenure and promotion.

6

Academic freedom must not be confused with institutional autonomy. Post-secondary institutions are autonomous to the extent that they can set policies independent of outside influence. That very autonomy can protect academic freedom from a hostile external environment, but it can also facilitate an internal assault on academic freedom. Academic freedom is a right of members of the academic staff, not of the institution. The employer shall not abridge academic freedom on any grounds, including claims of institutional autonomy.

Approved by the CAUT Council, November 2011.

Appendix D



Canadian Association of University Teachers
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Open Letter to the Association of Universities and Colleges of Canada

November 4, 2011

Professor Stephen Toope Chair
Association of Universities and Colleges of Canada
600-350 Albert Street
Ottawa, Ontario K1R
1B1

Mr. Paul Davidson President
Association of Universities and Colleges of Canada
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Dear Prof. Toope and Mr. Davidson:

We are writing on behalf of the Canadian Association of University Teachers to express our surprise and dismay with AUCC's recently released "Statement on Academic Freedom." There is a certain perverse irony that AUCC chose its 100th Anniversary to attempt to undo many of the advances that have been achieved in the understanding of academic freedom over the past 100 years.

In 1915, the American Association of University Professors adopted its influential "Declaration of Principles on Academic Freedom and Academic Tenure" – the first and arguably most important statement on academic freedom in North America. One of its key contributions was recognition that academic freedom includes "freedom of extramural utterance and action". This has been a key component of academic freedom since that time. But it finds no place in AUCC's new 2011 Statement on Academic Freedom.

Perhaps the majority of the famous academic freedom cases involve extramural speech, such as Bertrand Russell's firing at Trinity College Cambridge and at City College of New York or the foundation academic freedom case in Canada – the firing of Harry Crowe at United College (now the University of Winnipeg).

Apparently, according to AUCC in 2011, extramural speech rights have no place in statements on academic freedom.

Another significant omission is that your 2011 statement makes no mention of academic freedom including the right to criticize the institution where one works – perhaps a not surprising omission from the organization representing the executive heads of Canada's universities – but a troubling omission nonetheless. CAUT has long defined academic freedom as including the right "to express freely one's opinion about the institution, its administration, or the system in which one works." This is a central aspect of academic freedom as it has been understood in Canada, and internationally as expressed in the 1997 *UNESCO Recommendation Concerning the Status of Higher Education Teaching Personnel*. It is also part of the great majority of academic freedom clauses in Canadian university collective agreements at the institutions whose presidents voted unanimously for a statement that does not mention this right.

AUCC's new statement also fails to recognize that all three of academic staff responsibilities – teaching, research and service – come under the protection of academic freedom. Your statement fails to make reference to service, even though, most collective agreements have long recognized that academic freedom includes freedom to engage in service to the institution and the community.

Equally of concern is your statement's conflation of academic freedom with institutional autonomy. It is absolutely true that academic institutions must not restrict the freedom of academic staff because of outside pressure – be it political, special interest group, religious – and institutions need to be autonomous in that sense. But to pretend that building a moat around the university protects academic freedom is disingenuous and ignores the reality of internal threats to academic freedom. The 1915 AAUP statement arose partially in recognition of internal threats – from boards, administration, colleagues and students. As the CAUT policy statement on academic freedom says, "Academic freedom must not be confused with institutional autonomy. Post-secondary institutions are autonomous to the extent that they can set policies independent of outside influence. That very autonomy can protect academic freedom from a hostile external environment, but it can also facilitate an internal assault on academic freedom. To undermine or suppress academic freedom is a serious abuse of institutional autonomy."

We are troubled that your 2011 statement introduces qualifications for academic freedom that open the door to its abuse:

"Academic freedom is constrained by the professional standards of the relevant discipline and the responsibility of the institution to organize its academic mission. The insistence on professional standards speaks to the rigor of the enquiry and not to its outcome.

The constraint of institutional requirements recognizes simply that the academic mission, like other work, has to be organized according to institutional needs. This includes the institution's responsibility to select and appoint faculty and staff, to admit and discipline students, to establish and control curriculum, to make organizational arrangements for the conduct of academic work, to certify completion of a program and to grant degrees."

AUCC is correct that academic freedom is a professional right but your statement fails to acknowledge any of the nuance that is now commonplace. "Profession" is both the basis for academic freedom but can be a source of its abuse. Hence the need to understand "professional standards" as heuristic devices that themselves are always contested. None of this subtlety appears in the AUCC statement, leaving a rigid notion of "professional standards of the relevant discipline" that could countenance repression of academic freedom for ideas at the margin or ideas that are critical of the mainstream.

As well this section gives incredible power to the "constraint of institutional requirements" without once affirming them as collegially determined rather than administratively handed down. This is especially disturbing as your 1988 statement is careful to note that any parameters that guide the exercise of academic freedom must be developed internally, and collectively. It also acknowledges that institutional decisions rely upon a collective engagement with the intellectual enterprise by the practitioners of that enterprise. This nuance is lost in the 2011 statement, which omits reference to the collective project.

In light of the above, we are concerned about the AUCC claim in the 2011 [not present in your 1988 statement] that "The university must also defend academic freedom against interpretations that are excessive or too loose." By whose definition of "excessive" or "too loose?"

Your 2011 statement's qualification of academic freedom continues: "Universities must also ensure that the rights and freedoms of others are respected, and that academic freedom is exercised in a reasonable and responsible manner." The administration's notion of "reasonable and responsible" exercise of academic freedom has been at the base of some very serious violations of academic freedom for decades upon decades. The examples are numerous.

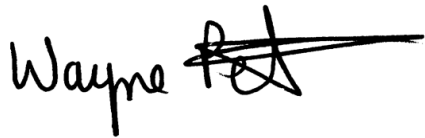
We also see danger in what might be intended as innocuous language in your statement: "Faculty have an equal responsibility to submit their knowledge and claims to rigorous and public review by peers who are experts in the subject matter under consideration and to ground their arguments in the best available evidence." However innocuous the intention, the effect can be chilling. Do you mean that if peers view one's work negatively, one no longer has the academic freedom to pursue the idea? Some ideas are beyond the bound of any serious scientific basis – that the world is flat or that humans were created 6,000 years ago. But many other scientific ideas were broadly panned but proven right (e.g. the bacterial basis of ulcers). And what of Harvard's president, during the cold war years, saying that no communist could teach at Harvard because they could not, by definition, be independent thinkers? We could go on and on with examples. There is a grain of truth to the importance of peer review and the professional basis of academic freedom, but your statement's crude description opens the door widely to the kind of abuse we have seen for a hundred years.

On the positive side, we are pleased with the statement's affirmation: "Academic freedom does not exist for its own sake, but rather for important social purposes. Academic freedom is essential to the role of universities in a democratic society. Universities are committed to the pursuit of truth and its communication to others, including students and the broader community. To do this, faculty must be free to take intellectual risks and tackle controversial subjects in their teaching, research and scholarship." We also welcome the statement's reference to the importance of academic integrity.

Overall, though, the statement, as we said at the outset, would reverse 100 years of advancement in the understanding of academic freedom. With the growing pressures on universities to compromise their defense of academic freedom in the quest for financial support, we need a more expansive notion of academic freedom, not a more restrictive one. A major problem in Canadian universities is not that too many people are asserting their academic freedom, but that too few are. AUCC's rendition of academic freedom will only worsen this problem.

We would be pleased to discuss this matter further with you, should you wish.

Yours truly,

Handwritten signature of Wayne D. Peters in black ink, featuring a stylized 'W' and a long horizontal stroke.

Wayne D. Peters
President

Handwritten signature of James L. Turk in black ink, featuring a stylized 'J' and 'T'.

James L. Turk
Executive Director

/mmp

Appendix E

Message of March 18, 2016, from U of C Provost Dru Marshall to U of C staff

A message from Dru Marshall, Provost and Vice-President (Academic) to all academic staff and senior leadership team members

As you may be aware, the (CAUT) has established an Ad-Hoc Investigatory Committee to look into alleged violations of academic freedom and conflict of interest surrounding the former Enbridge Centre for Corporate Sustainability, and to consider other issues related to conflict of interest, governance, academic freedom and the management of donations at the University of Calgary.

We have been informed that Committee members are planning to visit the university on April 18 and 19. As some members of our academic staff will likely be contacted by the Committee for information and interviews, I am writing to provide some information on this matter.

CAUT is an external body that has no official standing on our campus, and is not bound by our policies, including those that protect privacy and confidentiality. In particular, CAUT does not have standing to investigate the matters set out in the Ad-Hoc Investigatory Committee's terms of reference. The Committee's terms of reference can be found here:

<http://www.caut.ca/issues-and-campaigns/academic-freedom/current-caut-ad-hoc-investigatory-committees-of-inquiry/university-of-calgary---enbridge-centre-for-corporate-sustainability>.

If you are contacted by members of the CAUT Committee, you are under no obligation to participate in their investigation. Those of you who choose to participate have the right to express your opinions, and your freedom to do so will be respected. You are reminded that your privacy may not be protected by CAUT, and if you provide sensitive or confidential information to CAUT, that confidentiality may not be protected.

Last fall the university's Board of Governors initiated a comprehensive and independent review of matters relating to the creation and operation of the former Enbridge Centre for Corporate Sustainability. The review was conducted by the eminently qualified Retired Justice Terrence McMahon, Q.C. McMahon's report was released publicly on December 18, 2015 and found that there were no breaches of university policies or procedures, no conflict of interest relating to President Cannon, and no improper conduct by anyone involved in the creation and operation of the Centre. The report also unequivocally concluded that President Cannon's actions were proper, responsible, and required of her as president. Following the release of the report, Gordon Ritchie, Vice-Chair of the Board of Governors, speaking on behalf of the Board, said: "President Cannon is a person of character, with the highest standards of ethics and integrity, and enjoys the full support and confidence of the governors of the University of Calgary." To read the report go to: www.ucalgary.ca/secretariat/home/findings-independent-review

If you have questions or concerns about privacy and confidentiality, please contact foip@ucalgary.ca.

Best,
Dru Marshall
Provost and Vice-President (Academic)

Appendix F

Response of the Investigatory Committee to the Message of March 18, 2016, from Provost Dru Marshall to U of C staff

We are the members of the Canadian Association of University Teachers (CAUT) ad hoc investigatory committee of inquiry into the Enbridge Centre for Corporate Sustainability. Our committee is visiting the University on April 18 to 19 to afford an opportunity for colleagues, students, and other members of the University of Calgary community to meet with us.

We write to clarify some information about our inquiry following a recent email to the University community from Provost Dr. Dru Marshall.

Origins of the inquiry

Our committee was established by the CAUT, a national organization representing about 68,000 members of academic staff associations in Canada. Our mandate in general is to investigate alleged conflicts of interest, violations of academic freedom, and external interference surrounding the establishment of the Enbridge Centre for Corporate Sustainability at the University and to make appropriate recommendations. The full mandate is available here: (<http://www.caut.ca/issues-and-campaigns/academic-freedom/current-caut-ad-hoc-investigatory-committees-of-inquiry/university-of-calgary---enbridge-centre-for-corporate-sustainability>)

Our role in the inquiry

We are independent academics from other Canadian universities who have relevant experience and expertise and we serve voluntarily on the committee as part of our academic service. Through this service, we hope to contribute to the academic health of publicly funded universities and to the corresponding rights of faculty, students, and staff. As CAUT investigators, we are governed by seven publicly available policies of the CAUT and will refer to those policies to determine whether an institution's policies are acceptable and whether they are being adhered to in ways consistent with academic freedom and academic integrity. You can read them here: (www.caut.ca/about-us/caut-policy)

Privacy and confidentiality

In carrying out our work, we will be diligent in protecting the privacy and confidentiality of those who communicate with us, as they prefer, in accordance with the customary practice at the CAUT. The CAUT has conducted numerous investigations into alleged breaches of academic freedom and adheres to stringent procedures regarding the privacy and confidentiality of those who chose to speak with us alone or accompanied by a colleague or advisor. These procedures will be followed in any information gathering we do at the University of Calgary. You can read the current policy here: (CAUT Procedures in Academic Freedom Cases))

The report by Retired Justice Terrence McMahon

In her email to the University community about our visit, Dr. Marshall referred to the report of Retired Justice Terrence McMahon. We do not wish to comment on that report at this time, other than to say that we will be pursuing our investigation as mandated by the CAUT and that the origin and content of our mandate differs significantly from that of Retired Justice McMahon.

Our invitation to President Elizabeth Cannon

We have written previously to President Elizabeth Cannon, requesting to meet with University officials and staff in order to achieve a full and fair determination of the facts. We hope that the President will respond in a positive manner and welcome the opportunity that our committee offers for the University to demonstrate its commitment to the highest standards for its faculty, staff and administrators.

Our openness to meet with members of the University community

As our schedule allows, our committee will meet with interested parties on campus or elsewhere in Calgary, by telephone or other means, and on or off the record, as requested. We are committed to carrying out a fair and thorough investigation with careful attention to relevant facts, to the academic integrity of a public university, and to the academic values and interests of faculty, students, and staff.

Please contact me via email at len.findlay@usask.ca or by phone at 306-934-1040 if you wish to speak with the members of our committee.

Len Findlay, Chair, CAUT Ad-Hoc Investigative Committee, for:

L. M. Findlay, Distinguished University Professor, University of Saskatchewan
Alison Hearn, Associate Professor, Western University
Gus Van Harten, Associate Professor, Osgoode Hall Law School, York University

Appendix G



**UNIVERSITY OF
CALGARY**

April 18, 2017

Canadian Association of University Teachers
2705 Queensview Drive
Ottawa, Ontario, K2B 8K2

Attention: David Robinson, Executive Director

Dear Sir:

Re: CAUT Ad Hoc Investigatory Committee

The University of Calgary has been made aware of a number of March 20, 2017 letters from you concerning an investigation being conducted on your organization's behalf by Professors Len Findlay, Alison Hearn and Gus Van Harten (the "Ad Hoc Investigatory Committee").

This letter will serve as the response of the University and of President and Vice-Chancellor Elizabeth Cannon, Past Board of Governors Chair Bonnie DuPont, and Associate Vice-President Development Kim Kadatz to the letters they have received.

As you are aware, the subject matter of your investigation has already been addressed by an independent and comprehensive review initiated by the Board of Governors and conducted by Terrence McMahon, Q.C., a respected former Justice of the Alberta Court of Queen's Bench. Mr. McMahon found "no improper conduct by the university or any of its employees" in its relationship with Enbridge, and concluded that "none of the involvement by Enbridge ... resulted in any encroachment upon or compromise of the academic freedom of the University or its staff."

The report also addressed the serious allegations that had been made publicly and through the media about the conduct of President Elizabeth Cannon. Mr. McMahon was thorough in his review of the allegations, including conflict of interest concerns, and stated: "I conclude unequivocally that Dr. Cannon's involvement in matters arising from the operation of the Enbridge Centre was proper, responsible, and required of her as President to protect the reputation of the University of Calgary as an institution that honours its commitment to donors."

**Gordon M. Ritchie
Chair, Board of Governors**

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Given the CAUT Ad Hoc Investigatory Committee's obligation of independence, and its mandate to conduct a full and fair review, it would be expected that the Committee would have regard to Mr. McMahon's findings as responsive to the matters raised in your various letters.

The University and those individuals referenced above to whom you have sent letters are very concerned that the Investigatory Committee has not conducted itself with the independence and fairness mandated by your CAUT Procedures in Academic Freedom Cases, and as a result any report the Committee issues will lack legitimacy.

For example, the following statements appear in a presentation made by the Committee's Chair to a National Conference on University Governance in the 21st Century hosted by the Confederation of University Faculty Associations of BC ("CUFA BC") on March 4, 2017:

Institutional Autonomy and Academic Freedom [Slide 4]

...

- ▶ Which will it be? CAUT or UC?

Contingencies of Progress [Slide 18]

...

- ▶ Here, I would simply reference CAUT's invaluable but disregarded Open for Business On what terms? (2013), and also my experience investigating (with two colleagues), for the past year and a half, the Enbridge Centre for Corporate Sustainability at the University of Calgary
- ▶ My personal view (without precedent or prejudice!) of the PUBLIC record in the Calgary case is DAMNING

My takeaways from the ECCS at the University of Calgary [Slide 19]

- ▶ It is worse than we thought
- ▶ Institutional leadership can be fraudulent and imperious
- ▶ The collegium can be both spineless and merely careerist
- ▶ CAUT's fight with heteronomy means it is reviled and feared by pseudo-autonomists

The presentation was not merely made in a public forum, but the slides have continued to be publicly available on the CUFA BC website. In addition, the University has been advised that Slide 19 "My takeaways" in particular has been circulated through social media.

The statements in the presentation clearly give rise to a reasonable apprehension of bias and pre-judging, made as they were even before you sent your letters asking for responses to findings that the Investigatory Committee had under consideration. Such a flawed process is unacceptable for any credible investigation. It certainly does not conform to a process which would be expected of an investigation conducted by any university.

A body with a mandate to conduct an investigation that is "independent" and is to review matters "fully and fairly" does not characterize the situation as some sort of contest with the subject of the investigation. It does not feign fairness by asking for responses from those against whom it proposes to make adverse findings only after publicly condemning the circumstances as "DAMNING", and characterizing the individuals as "fraudulent and imperious".

That the CAUT Ad Hoc Investigatory Committee has seen fit to do so confirms the University's view that it is the McMahon Report which stands as the proper and legitimate review of these matters.

Yours truly,

A handwritten signature in black ink, appearing to read "Gordon M. Ritchie". The signature is stylized with a large, sweeping initial "G" and "R".

GORDON M. RITCHIE,
Chair, Board of Governors

cc. Professors Len Findlay, Alison Hearn and Gus Van Harten



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May 1, 2017

Gordon M. Ritchie
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By email: miranda.dallalba@ucalgary.ca
(Board Governance Coordinator Miranda Dallalba)

Gus Van Harten
Professor
gvanharten@osgoode.yorku.ca
416 650 8419

Dear Mr. Ritchie,

Thank you for your letter of April 18, 2017, on behalf of the University of Calgary, Elizabeth Cannon, Bonnie DuPont, and Kim Kadatz, in reply to letters sent by the Canadian Association of University Teachers (CAUT) outlining the preliminary findings of the draft report of the CAUT investigatory committee into the Enbridge Centre for Corporate Sustainability and asking for a response. The present letter reflects the views of Associate Professor Alison Hearn and myself in our academic capacity as members of the investigatory committee and not those of Osgoode Hall Law School, York University, or the University of Western Ontario. We understand that the CAUT letters to which you replied were sent on or about March 20, 2017.

In your letter, you raise concerns about apprehended bias and pre-judgment on the part of Professor Len Findlay in his role as investigatory committee chair. You refer to a publicly available presentation given by Professor Findlay on March 4, 2017, dealing with matters relating to the committee's mandate. The presentation and any associated public statements by Professor Findlay were given without our knowledge and do not reflect our views or those of the committee. Language used by Professor Findlay in his presentation and reproduced in your letter does not reflect the language in the committee's draft report or the preliminary findings provided to you and to others on whose behalf you have written. Professor Findlay stated in his presentation that he was speaking in a personal capacity and we think it reasonable to expect that an objective observer would understand the presentation in that light.

Nonetheless, it was an unfortunate lapse of judgment for Professor Findlay to have expressed his views on the subject matter of the investigation before the process was fully completed. Our view, reflected by our practice, is that committee members must remain objective and not reach their conclusions until the process is complete. Further, committee members must not speak publicly about the committee's findings and conclusions until the process is



complete, if at all. While we take no position on whether Professor Findlay's statements give rise to a reasonable apprehension of bias or pre-judging, we accept that they have created a basis for doubt on your part about his role on the committee. Out of respect for this concern and out of an abundance of caution, we have asked Professor Findlay to step down from the committee and he has agreed to do so.

As an aside and for your information, our understanding of Professor Findlay's presentation is that the acronym "UC" refers to Universities Canada not to the University of Calgary.

As the committee's remaining members are serving now as its co-chairs, we have, independently from Professor Findlay, reviewed the committee's preliminary findings that were communicated to you and others by the CAUT and confirmed that they reflect our unanimous preliminary view. We also offer you in fairness a further opportunity to reply to the substance of the committee's preliminary findings and/ or provide us with additional information within 15 days of this letter. We give our assurance that we will consider any further reply with care and in good faith and, in any event, we commit to re-reviewing the committee's draft report in its entirety and independently from Professor Findlay to confirm that its content reflects our unanimous view.

In your letter of April 18, you also raise issues relating to the McMahon review and state that it would be expected that our committee would have regard to that review. We wish to inform you that we have had regard to and deal with the McMahon review in our draft report.

To reiterate, we welcome any further reply from you or anyone else on whose behalf you have addressed the committee within 15 days. We are committed to considering your position fairly and with an open mind before we finalize our report for submission to the Academic Freedom and Tenure Committee of the Canadian Association of University Teachers.

Yours truly,



Alison Hearn,
Associate Professor, Faculty of Information and Media Studies,
University of Western Ontario



Gus Van Harten,
Professor, Osgoode Hall Law School of York University

cc: Elizabeth Cannon, Bonnie DuPont, Kim Kadatz, and David Robinson



**UNIVERSITY OF
CALGARY**

**Gordon M. Ritchie
Chair, Board of Governors**

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May 23, 2017

VIA EMAILS to: gvanharten@osgoode.yorku.ca / ahearn2@uwo.ca

Canadian Association of University Teachers
2705 Queensview Drive
Ottawa, Ontario, K2B 8K2

Attention: Professor Gus Van Harten and Professor Alison Hearn

Dear Professors Van Harten and Hearn:

Re: CAUT Ad Hoc Investigatory Committee

Thank you for your letter of May 1, 2017, advising of the removal of Professor Len Findlay from your Ad Hoc Investigatory Committee, and inviting any further response to the CAUT letters of March 20, 2017.

You indicate that you respect the concerns which result from Professor Findlay's March 4, 2017 slide presentation, and that as a result you asked Professor Findlay to step down from the Investigatory Committee.

However, removing one member of the three-person Investigatory Committee for demonstrated pre-judgment and apprehended bias does little to allay our concerns about the investigation, especially when your letter confirms that the remaining Committee members continue to hold preliminary views which were reached in consultation with Professor Findlay when he was the Chair of the Committee. For the same reason, the University does not accept the suggestion in your letter that Professor Findlay's presentation can be disregarded as reflecting only his personal views. The presentation made by Professor Findlay about the investigation while he was the Chair of the Investigatory Committee would be seen by objective observers as reflecting the views of the Committee.

Consequently, the University does not believe that the process outlined in your letter remedies the failure of the Committee to comply with the independence and fairness mandated by the CAUT Procedures in Academic Freedom Cases. The University continues to believe that any report issued by the remaining members of the Committee will lack legitimacy.

The University observes as well that senior leadership from CAUT and Faculty Associations from across the country participated in the conference and had access to the Findlay presentation. They would be fully aware of the CAUT Procedures in Academic Freedom Cases as well as normal

university procedures for fair and independent investigations. However, it was not until my letter of April 18, 2017 to CAUT that any action was taken, and even that action falls far short of remedying the process. CAUT allowed this flawed process to continue and must be seen as complicit therein.

It remains the University's view that the proper and legitimate review of the Enbridge Centre for Corporate Sustainability is the McMahon Report, which concluded that there was "no improper conduct by the university or any of its employees", that "none of the involvement by Enbridge ... resulted in any encroachment upon or compromise of the academic freedom of the University or its staff", and that Dr. Cannon's conduct in connection with the Enbridge Centre "was proper, responsible, and required of her as President to protect the reputation of the University of Calgary as an institution that honours its commitment to donors."

Yours truly,

A handwritten signature in black ink, appearing to read "Gordon M. Ritchie", enclosed within a large, loopy oval scribble.

GORDON M. RITCHIE,
Chair, Board of Governors

cc. David Robinson, Executive Director VIA FAX 1-613-820-7244



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August 1, 2017

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(Board Governance Coordinator Miranda Dallalba)

Gus Van Harten
Professor
gvanharten@osgoode.yorku.ca
416 650 8419

Dear Mr. Ritchie,

Thank you for your letter of May 23, 2017. We considered the issues you raised before finalizing our report to the CAUT's Academic Freedom and Tenure Committee, and offer you a detailed reply below.

Additional process-related concerns about the investigation

Your additional concerns about the process of our inquiry are essentially that we are tainted as members of the Investigatory Committee because we consulted with Professor Findlay, we were in agreement on preliminary findings previously conveyed in confidence to senior U of C administrators, and Professor Findlay's statements about the inquiry are objectively attributable to us.

On the first point, over the course of the inquiry we spoke to many individuals and sought to hear all relevant perspectives including those of senior administrators. Like any objectively minded academic, we remained conscious throughout of our duty to make findings and reach conclusions based on the evidence before us and not any preconceptions of what may have taken place in relation to the Enbridge Centre for Corporate Sustainability. One of our highest responsibilities as academics is to form and state our own views independently of other academics, University administrators, governments, the courts, and so on, and to keep an open mind. This responsibility was always at the forefront of our discussions with Professor Findlay or anyone else.

In light of Professor Findlay's public statements in particular, over the last month we took concrete steps to ensure our independence by conducting a thorough re-review of all of the evidence and of our draft report in its entirety, making several modifications as a result.

On your second point, the notices of preliminary findings that were conveyed to senior U of C administrators were "preliminary", meaning they were always open to reconsideration based on responses, if any, from the individuals in question. Also, our preliminary views of potential findings were formed with a view to being overly inclusive in order to provide a generous scope of notice to affected individuals. We suggest



that the provision of the notices, in confidence, was itself a marker of our and the CAUT's commitment to fairness and thoroughness in the investigation.

On your third point, Professor Findlay communicated at the time he made his public statements that he was speaking in a personal capacity. We clarified at a very early opportunity that we were unaware of his intent to make the statements and that they did not reflect our views or those of the committee. We have done the same in our report. In the circumstances, we find it hard to see how an objective observer, apprised of the relevant information, would find any reasonable basis to attribute Professor Findlay's public statements to us. We take guidance in these respects from the relevant tests for reasonably apprehended bias of administrative decision-makers as laid out in Supreme Court of Canada decisions such as *National Energy Board*, [1978] 1 SCR 369, and *Newfoundland Telephone*, [1992] 1 SCR 623. With that reference point, we think that your claim that Professor Findlay's public statements gave rise to a reasonable apprehension of bias on his part is arguable, but that your evident attempt to extend the claim to ourselves, in circumstances where we did not make, authorize, or otherwise identify ourselves with the statements, is far-fetched.

We note that you have not expressly alleged any actual or apparent bias on our part, asserting instead that our report will "lack legitimacy". We suggest that the question of legitimacy of our report should be left to those who read it.

Erroneous statement about Professor Findlay

You state erroneously in your letter that Professor Findlay was removed from our committee. On the contrary, Professor Findlay accepted our concern that it was a lapse of judgment for him to have made public statements about the inquiry before the process was completed and without our knowledge, and resigned voluntarily and with grace. In this respect, he provides a good example of how one can take responsibility for a mistake, out of a sense of fairness to others.

In light of your mischaracterization of Professor Findlay's resignation, we highlight that he has shown more accountability for his mistake than members of your Board and senior U of C administrators have shown for their own more serious mistakes, including the failure to address a clear appearance of conflict of interest, as we discuss further in our report.

Unwillingness to participate constructively in the investigation

We undertook this inquiry in good faith as an academic service, with a view to examining what happened at the Enbridge Centre and to making constructive recommendations to assist the University of Calgary, other universities, our fellow academics, and the public. From the start, we sought to hear and learn from the perspectives of senior U of C administrators. They declined to meet with us or to communicate with

us on any matter of substance related to what took place at the Enbridge Centre. Their participation has instead been limited to raising process- related concerns and taking active steps, in effect, to frustrate or discredit the inquiry.

In particular, the U of C senior leadership took these steps with respect to the present independent inquiry.

- After the U of C Administration was informed of our visit to the University campus and interest to meet with senior administrators, Provost Dru Marshall wrote to all U of C academic staff with misleading information about CAUT policies on privacy and confidentiality. We think it reasonable for U of C staff to have interpreted that communication as an implied warning not to communicate with the inquiry.
- After senior U of C administrators were given notice, in fairness, of potentially negative findings against them, you raised allegations of bias against Professor Findlay. Before we had an opportunity to consider and respond to your concerns, you made your letter public in an apparent effort to discredit the inquiry.
- After we informed you of our response to your concerns about the inquiry's process, including significant steps to address your concerns, you raised more process-related concerns directed at ourselves. Once again, before giving us an opportunity to respond, you made public both our response to your earlier concerns and your letter laying out additional concerns, in an apparent effort to discredit the inquiry.

Thus, the senior U of C leadership took active steps to frustrate the only formal investigation of the Enbridge Centre that was not established by the University itself. We suggest that this approach contradicts your professed commitment to undergo a transparent and independent review of the Enbridge Centre.

Your reliance on the McMahon review

Former Justice Terrence McMahon was hired by the U of C Board to investigate the conduct of U of C administrators in relation to the Enbridge Centre. We respect Mr. McMahon's work and think it appropriate to have more than one review of these matters. Among other things, the two reviews will allow for a comparison of approaches taken by academic investigators, on the one hand, and a former judge and practising lawyer, on the other.

As you have relied repeatedly on the McMahon review to excuse conduct of senior U of C administrators, however, we think it pertinent to highlight findings from our own review of the McMahon report based on the record before us.

They are as follows:

1. It was misleading for the Board that you chair to characterize the McMahon review as “independent” of the University of Calgary, considering that the McMahon review was established, mandated, and staffed by the Board, a Board committee, or the Board’s counsel.
2. The McMahon review and resulting report did not include an acknowledgment and discussion of the central role of academic freedom at universities, at the University of Calgary, or in relation to concerns expressed about the Enbridge Centre. The evident lack of appreciation of the central role of academic freedom appears to us to have affected and limited in a significant way the findings and conclusions of the McMahon review.
3. Conclusions reached in the McMahon report, in light of the available factual information, appear repeatedly to have given the benefit of the doubt to senior University officials. In contrast, two named individuals, Professors Joe Arvai and Leonard Waverman, appear not to have received a similar benefit of the doubt but were instead the subject of damaging criticism in the report.
4. The McMahon review process was premised on non-disclosure of sources of information that was potentially adverse to individuals who had raised concerns about or were otherwise involved in the Enbridge Centre. Yet former Justice McMahon went on to identify and draw negative conclusions about such individuals. We think that this process, especially its selective approach to confidentiality, was inconsistent with principles of fairness and thoroughness. Based on our review of the available information and the McMahon report, we think that the negative conclusions or comments by former Justice McMahon – about Joe Arvai, Leonard Waverman, and unnamed but identifiable organizations and individuals who had criticized the University – should be disregarded.


We wish to emphasize one additional point.

Between us, we have extensive experience dealing with University administrations on matters related to academic freedom and, more broadly, working on public inquiries into scandalous or tragic events. Neither of us can recall ever having encountered a University administration, or indeed any party, that took such an array of steps as the University of Calgary has done in order to avoid engaging with, while also actively frustrating or discrediting, an independent investigation into its past conduct.

We suggest that the present inquiry was a missed opportunity for you to engage with an outside body and allow for an independent academic assessment of your Administration's decision-making with respect to the Enbridge sponsorship. We regret that this opportunity was missed and hope that you will nonetheless read our report with an open mind. We express our support for all of the faculty, staff, and students who are doing good academic work in what appear to be challenging circumstances at the U of C.

In light of your past practice, we request that you publish this letter on your website, alongside the other letters between us that you published in this way, so that the letter is accessible to members of the University of Calgary community and the public.

Yours truly,

A handwritten signature in black ink, appearing to be 'Alison Hearn', with a long horizontal line extending to the right.

Alison Hearn,
Associate Professor, Faculty of Information and Media Studies,
University of Western Ontario

A handwritten signature in black ink, appearing to be 'Gus Van Harten', with a long horizontal line extending to the right.

Gus Van Harten,
Professor, Osgoode Hall Law School of York University

cc: David Robinson, Executive Director, CAUT



**Gordon M. Ritchie
Chair, Board of Governors**

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August 15, 2017

VIA EMAILS to: gvanharten@osgoode.yorku.ca / ahearn2@uwo.ca

Canadian Association of University Teachers
2705 Queensview Drive
Ottawa, Ontario, K2B 8K2

Attention: Professor Gus Van Harten and Professor Alison Hearn

Dear Professors Van Harten and Hearn:

Re: CAUT Ad Hoc Investigatory Committee

Thank you for your August 1 letter responding to our concerns arising from Professor Findlay's public statements in a March 4, 2017 presentation while he was chair of your Ad Hoc Investigatory Committee.

We do not agree with many aspects of your letter.

We disagree with your suggestion that our concern about Professor Findlay's statements giving rise to a reasonable apprehension of bias was merely an arguable one. We think that objective observers would consider our concern to be obvious, not merely arguable. You then suggest that it is far-fetched for anyone to be concerned about the impact Professor Findlay's views could have upon you as the remaining members of the Committee. Yet you acknowledge that in light of his statements you have decided to modify the draft report with which you initially concurred, presumably in an attempt to eradicate the impact of his involvement.

You characterize our concerns about a reasonable apprehension of bias as "limited to process-related concerns". We are concerned about process because a proper process is the foundation of fairness in any investigation and is certainly expected of an investigation conducted by any university. In addition, concerns about a reasonable apprehension of bias go beyond process to the legitimacy of the outcome.

You criticize my May 23, 2017 letter as containing the erroneous statement that Professor Findlay was removed from your Committee. My letter simply noted what was stated in your own letter of May 1 - that you had "asked Professor Findlay to step down from the Committee and he has agreed to do so." Our reference to his removal from the Committee was plainly in that context.

Your letter goes on to criticize the University's response to your inquiry and the report of former Justice Terrence McMahon.

You refer to the University "taking active steps, in effect, to frustrate or discredit the inquiry." You cite three things in support of this charge – an email from Provost Dru Marshall about your Committee's visit to the University, my initial letter in response to your request for comments on adverse findings in your draft report, and my further letter explaining that Professor Findlay's removal from the Committee did not resolve our concerns about a reasonable apprehension of bias.

We do not accept your interpretation and criticism of Dr. Marshall's email and the posting of our responses to your March 20 and May 1 letters on our website before you could respond to them. It was important to keep the University community informed in a timely manner of developments with respect to the investigation, having regard to the fact that CAUT made a public announcement concerning the investigation in November 2015, and in light of Professor Findlay's public statements in his March 4, 2017 presentation while he was chair of the Investigatory Committee.

We note that Dr. Marshall's email expressly advised faculty members that while they were under no obligation to participate in the investigation, "Those of you who choose to participate have the right to express your opinions, and your freedom to do so will be respected." If anyone interpreted the email as some sort of warning against communicating with your Committee, that was clearly not intended.

Your letter goes on to state that you respect the work of former Justice Terrence McMahon, but then level a number of significant criticisms of it with which we take issue:

- You accuse the University of being misleading in characterizing Mr. McMahon's review as independent, because it was "established, mandated and staffed by the Board, a Board committee or the Board's counsel." We do not understand the basis for your suggestion that Mr. McMahon's investigation was staffed by anyone other than himself, and we do not think any objective observer would consider that he lacked independence. Boards of Directors regularly establish independent committees and investigatory bodies, and their findings are not disregarded as lacking independence on this account. The terms of reference granted Mr. McMahon "unfettered discretion to gather information through documents or personal interviews." As Mr. McMahon stated in his report: "... I interviewed twelve (12) persons (listed in Appendix B) who, from the documents, appeared likely to have relevant information. One additional contact was made by me with a person who had made public comments on the issues, but no interview resulted."
- We do not think it reasonable to presume, as you have done, that Mr. McMahon did not appreciate the central role of academic freedom in a university setting, and that this affected his findings and conclusions in some significant way. His terms of reference asked specifically whether Enbridge's involvement "did ... in any fashion attempt to or did it compromise the academic freedom of University staff members involved in the Centre". He made a very clear finding on that question, that, "None of the involvement by Enbridge as described above resulted in any encroachment upon or compromise of the academic freedom of the University or its staff."
- We do not understand your suggestion that Mr. McMahon repeatedly gave the "benefit of the doubt" to senior University officials and not to Professor Arvai and Dean Waverman.

He considered and specifically rejected any suggestion that various aspects of their conduct was improper in any way. In any event, investigators must inevitably decide which evidence they find most persuasive and on which evidence they comment. They can scarcely be criticized merely on that account.

- Your suggestion that Mr. McMahon's findings with respect to Professor Arvai and Dean Waverman should be disregarded appears to be based on a flawed understanding of his terms of reference. Professor Arvai's concerns, including with respect to Dean Waverman, were at the centre of the inquiry. It was obviously necessary for Mr. McMahon to make findings with respect to them, and the terms of reference make it clear that names are to be included in the report "where it is necessary and critical to the findings of the independent reviewer that the names of such individuals be referred to in the reviewer's report."

You conclude your letter with a suggestion that the University's conduct in dealing with your inquiry is something you have never encountered. We cannot comment on what you may or may not have encountered, but we categorically reject the implication that the University's response to your inquiry consists of conduct that is unbecoming of any university.

A number of other universities have also declined to participate in CAUT investigations in light of their concerns about them, and my two letters were in response to invitations from your Committee to provide our comments, and precipitated by the unprecedented public comments made by the former chair of your Committee. These unfortunate circumstances were not something which the University invited, and we do not think objective observers would characterize our response to them as inappropriate in the way you have done.

We continue to believe that our concerns about the implications of Professor Findlay's public statements in his March 4, 2017 presentation are serious and legitimate ones.

Your August 1 letter will be posted on the University website as you have requested, along with this response, as consistent with the open and transparent process the University has followed to keep the University community informed about the investigation.

Yours truly,



GORDON M. RITCHIE,
Chair, Board of Governors

cc. David Robinson, Executive Director VIA FAX 1-613-820-7244



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September 6, 2017

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Dear Mr. Ritchie,

Thank you for your letter of August 15, 2017.

We address several of your concerns in detail in our report, which will be published soon. We look forward to your response to the substantive issues raised in the report. We ask that you post the report to your website, alongside this letter and our other correspondence in this matter, following the report's release.

Yours truly,

A handwritten signature in black ink, appearing to be "Alison Hearn".

Alison Hearn,
Associate Professor, Faculty of Information and Media Studies,
University of Western Ontario

A handwritten signature in black ink, appearing to be "Gus Van Harten".

Gus Van Harten,
Professor, Osgoode Hall Law School of York University

cc: David Robinson, Executive Director, CAUT



Appendix H

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

Guiding Principles for University Collaborations

APRIL 2012



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As collaborations between universities¹ and external individuals and organizations (donors, corporations, governmental agencies and bodies, NGOs, and foundations) proliferate, it is vital to have a clear set of principles to protect academic integrity and the public interest. The following principles cover various major donor-institutional and inter-institutional collaborative agreements, ranging from individual donors providing funding for a university institute or centre to broad strategic alliances such as the University of Alberta's \$10-million collaboration with Imperial Oil. After each principle, some specification is offered to clarify the context and provide some parameters to guide policy development and practice in universities.

While there can be real benefits to various donor agreements and collaborative arrangements, some have threatened or compromised core academic principles and the public missions of universities.

This statement is intended to provide guidance and recommendations for: (a) universities in developing policies and procedures governing donor agreements and collaborations; (b) governance review, monitoring, and assessment of such agreements and collaborations; (c) faculty members and other members of the academic workforce in thinking through a range of fundamental professional responsibilities and rights that are implicated and affected by donor agreements and collaborations; and (d) academic staff associations in negotiating collective agreement provisions to protect the academic freedom and other academic rights of their members.

1. Protect academic freedom and institutional autonomy in research, teaching, publication, service, and extramural speech.

Protecting academic freedom and institutional autonomy should be predominant and prevailing considerations in developing, deciding upon, and assessing donor and other collaborations. They are fundamental to the integrity of academic work and of the university itself.

It is fundamental for a democratic society to have an autonomous academy in which academic staff have academic freedom in their teaching, their research, their extramural speech, and their speech about institutional matters. Academic freedom is essential if academic staff are to fulfil their professional and social responsibilities in generating, sharing, and interpreting knowledge that can inform decisions about products and important public policy issues.

Explicit protection of academic freedom must be incorporated into every donor/collaboration agreement. Academic freedom must take priority over the short-term potential of individual faculty, departments, or of the university to realize material benefits from such work. Better not to have the agreements and the monies than to compromise these values and become essentially a research and development outpost of donor, corporate, or other outside organizational interests. As Canadian Nobel laureate John Polanyi warned, "At a certain point...we don't have universities any more, but outlying branches of industry. Then all the things that industry turns to universities for – breadth of knowledge, far time horizons and independent voice – are lost."

1. These guidelines apply equally to the growing variety of university-affiliated bodies, such as university research foundations, centres and institutes, that enter into collaborative university research foundations, centres and institutes, that enter into collaborative relationships.

- a. Clear detail must be provided about how faculty may apply for funding in relation to a donor or other collaborative agreement, and what evaluation and selection criteria will be used. Any grants or research funding related to an agreement should be evaluated and awarded using academic methods of independent impartial peer review. Anyone involved in the peer review and awarding processes should not be in a position to derive any financial benefit from the agreement or its corporate donors/partners. Thus, for any work that is covered by the agreement, proposals should be evaluated by non- participating faculty competent to assess the merit of the proposals. Impartial peer review in the selection of research projects is the best way to protect academic freedom by ensuring that merit is the basis of the evaluation. University academic staff must have effective and clear control of any committee that reviews, selects, and finally approves research conducted as part of the collaboration
- b. The planning, design, data collection, analysis and dissemination of results should be under the control of the researchers, not the donor or organizational partner. In the conduct of the work, researchers will have access to all data and findings being collected in the project. It is not acceptable for researchers to be part of a project in which they are unaware of and/or do not have access to data from the larger project.
- c. Agreements cannot permit the donor or collaborators to have any right to change the content of publications nor permit delays in publication for longer than 60 days, and then only if there is a compelling reason for the delay. This applies to the work of faculty, graduate students, postdocs, academic professionals and undergraduate students.
- d. Any interference with a researcher's right and responsibility to publish results, regardless of effect on the collaborating organization, is unacceptable.
- e. Agreements should explicitly recognize the absolute right of researchers to publicly disclose information about risks to research participants or the general public or threats to the public interest that become known in the course of their research.
- f. Restrictions on relationships between faculty or students and "competitors" of the collaboration partner should be minimized.²

2. Protect academic integrity in the research and educational functions of the university and its faculty, postdocs, students, and professionals.

The protection of academic integrity involves more than protection against direct intrusion on the academic freedom of the researchers and the autonomy of the university. Integrity can also be compromised by indirect distortion of the core academic relationships and functions of

2. (a) The group of "competitors" should be defined in advance at the time of entering into an industry collaboration agreement, should be as limited as possible, and should in any event include only for- profit entities.
 (b) The "when" should be very clear, covering only work done simultaneously for the corporate partner and the competitor.
 (c) The "who" should be very clear, covering only the same faculty member or graduate student.
 (d) The "what" should be very clear, covering only similar work as defined in advance at the time the faculty member's project is funded through the industry collaboration agreement.
 Cornell, 2005, p. 13.

universities and their faculty. It is very important that various aspects of academic relationships within the university not be inappropriately influenced by donor or other collaborative research arrangements. Nor should the overall work of the university and its units be distorted by such agreements.

- a.** In developing agreements, it is necessary to ensure that educational programs at the undergraduate and graduate level will not be unduly influenced or distorted by the arrangements. Corporate funding of departments, for example, should not lead to students doing narrow work in the service of the funders at the expense of the usual degree program requirements, nor should it result in change in the curriculum.
- b.** Relationships between faculty and graduate students should be safeguarded by ensuring a bright line between the involvement or non-involvement of the latter in collaborative agreements and their admission, program choices, and evaluation. Collaborating researchers employed by the donor or collaborating organization should not be involved in the recruitment or evaluation of students.
- c.** The principal supervisor of any student undertaking research as part of the collaborative agreement should not have a direct or indirect financial interest in the collaborating organization.
- d.** The longer term strategic goals of the department, college, and institution should not be diverted or distorted by the shorter term goals of the collaborative agreements and donor arrangements.
- e.** The university must ensure that there is no negative impact on the work of others within the department/faculty/university who choose not to be part of a collaborative agreement.
- f.** In developing agreements, consideration should be given to ways in which the additional resources provided can support ancillary work in the university not directly undertaken through the agreement (e.g., tithing grants to fund non-funded research and indirect costs of the agreement that otherwise would have to be borne by the university). The threat of distortion is in part a function of the proportion of the department/program/college resources devoted to the agreement relative to the overall resources of the unit in question. It is also a function of the proportion of department/program/college faculty expected to receive much or all of their funding through the agreement.
- g.** Serious consideration should be given to the likely effect of the agreement on projects/programs traditionally conducted in the public interest. As in #2.f, where possible, consideration should be given to ways in which the additional resources provided can support that university's work.
- h.** Academic facilities and classrooms should not be used as sites for commercial marketing and promotion for the donor or corporate collaborator, or any affiliated entity. Faculty must ensure that their universities have clear and consistent policies and practices that prohibit companies from distributing meals, gifts, samples, etc., to academic staff and/or students, and that bar non-authorized site visits by marketing representatives.

- i. The donor's, corporation's, or partner organization's power to terminate the agreement prior to the expected term, or to lower the originally committed funding level, must be restricted to avoid covert pressure on faculty research agendas and outcomes. Agreements should contain a provision that the partner will pay the salaries of project personnel for a stated period of time in the event that the partner decides to terminate the agreement before the agreed-upon date or to decrease the originally contemplated funding level.

3. Protect the university's commitment to the free and open exchange of ideas and discoveries.

A central feature of what makes a university a university is that it pursues and advances knowledge in the broader interests of society. That is part of what distinguishes it from being a corporate lab or the job shop of another organization. That distinction should be evident not only in the freedom of faculty and other academic employees to publish their results freely and openly, but also in the intellectual property policies of the university and the provisions of the collective agreement. Ownership of the scholarly intellectual property by an academic is a vital component of academic freedom.³³ As well, at its core a university produces knowledge for the general public not for any particular individual, corporate, or organizational interest, including its own material interest. Intellectual property rights should be pursued in the broad public interest.

- a. No agreement should contain any provision that permits or implies that the donor or corporate collaborator has the right to forbid faculty or graduate students from disclosing the agreement's sponsorship of research.
- b. Classified research and/or confidential corporate research that is not intended for publication and/or dissemination are never appropriate within a university research setting, and should never be permitted.
- c. Agreements cannot give donors/partners/collaborating corporations privileged access to or commercial rights to "background" academic research, which by definition was not funded by the industry sponsors but by public and other sources not party to the agreement.
- d. Intellectual property in relation to a donor or corporate collaboration should be consistent with the faculty association collective agreement or, in the absence of collective agreement language, consistent with customary practice for intellectual property created by academic staff in the university.
- e. Licensing of inventions derived from agreement or donor-funded work should always reserve academic use and distribution rights, and should be non-exclusive to the extent reasonably possible.
- f. Even if an exclusive license is granted, all agreements should include a provision protecting the university's right and the right of the researchers to freely use and distribute research methods and results to other researchers in academic settings.

3. See University of British Columbia and University of British Columbia Faculty Association 125 L.A.C. (4th) 1, 2004 CLB 13966,76 confirmed in 2006 CLB 1705 BCLRB No B56/2006, CASE NO: 51071 "Ownership of the copyright in work produced in the course of employment by an academic author, rather than the university employer is important to support, foster and preserve academic freedom..."³

4. Protect against real, potential, or perceived conflicts of interest, which compromise academic integrity.

One of the greatest threats to the freedom, autonomy, and integrity of academic work, and to the public's support of and confidence in that work, is conflicts of interest, in which professionals have a material interest in the outcomes of their work that might affect their professional judgment. Similarly, institutions can experience pressures to attract particular research funding or certain types of research activities that are self-sustaining, which may compromise their independence and public trust. Disclosure is an important mechanism for addressing conflict of interest in the academy. But simply disclosing such conflicts is not enough to instill confidence in the public and to protect the integrity of the academic work in some highly sensitive and egregious situations. There is considerable social science evidence of funding effects on research outcomes in key realms of scientific work such as tobacco research and clinical drug trials. Disclosure relies upon the professional ethics and judgment of the academic to override the material interests of the individual. In general bright lines are required to prohibit even the possibility of professional judgment being compromised by the researchers' material interests.

- a.** Institutional and individual financial conflicts of interest involving any donor or collaborating organization must be declared and disclosed to the university and where appropriate to the public funding agency.
- b.** Researchers and their immediate families should have no direct or indirect financial interest in any organization funding a collaborative agreement (e.g., equity in the company that owns the product, receiving a salary, being a consultant or serving on the scientific advisory committee for the organization).
- c.** Similarly, no member of the university's senior administration (at the level of president or vice-president) should have direct or indirect financial interest in any donor or collaborative partner organization (such as membership on corporate board or owning of stock).

5. Ensure transparency.

Transparency is an important mechanism for protecting the public good. Open access to knowledge can contribute to greater protection of the public interest, and protect the independent role of the faculty and universities in serving the public.

- a.** At a minimum, all agreements over \$250,000 should be public documents.
- b.** There should be assessments of the effectiveness and effects (in light of the guiding principles elaborated in this statement) of each agreement at regular intervals within the term of the agreement and these assessments should be public documents made available to all members of the university community.
- c.** An independent post-agreement evaluation plan must be part of the agreement. The results of the evaluation should be a public document readily available to the academic community.
- d.** A database of concerns/complaints that arise during the term of the agreement should be maintained and should be publicly available.

6. Academic staff shall play the central role in decisions regarding the initiation, development, implementation, monitoring, and assessment of donor and other collaborative agreements.

An important safeguard of the academic freedom, institutional autonomy, and the integrity of academic work conducted in these arrangements is to ensure that academic staff are involved in each stage of the agreement. This helps in foregrounding the public interest and public mission of universities in participating in donor agreements and collaborations.

At the same time, there are occasions in which collegial governance structures can be corrupted. Faculty committees may act in complicity with a culture of prioritizing the market logic over the academic logics of academic freedom and integrity. They may be captured by a sense of what is “realistic” to ask of donors and partners to an agreement. They may be reluctant to oppose administrative initiatives and pressure for fear of retaliation or out of an overly narrow and constrained view of their role in the decision-making process. It may, on occasion be necessary for national bodies to step in and act in defence of academic freedom, autonomy, and integrity of the academic work.

- a. No donor or other collaborative agreement may be allowed to intrude on academic governance or contravene existing academic policies or collective agreements.
- b. In no case, should a funder or a private collaborator or their representatives have any voice in matters related to the academic affairs of the institution or academic aspects of the collaboration.
- c. Donor and other collaborative agreements should be governed by a committee at least 2/3rds of whom are elected academic staff members who do not hold administrative positions. The academic staff component should include both those who are involved in the agreement and those that are not.
- d. The day to day management of the agreement should be conducted predominantly by university faculty not by representatives of the external funder.

7. Ensure that the structure of employment for researchers protects academic freedom and academic autonomy, and that it does not compromise the structure and preponderance of tenured and tenure track faculty employment.

It is in the public interest and the interest of the public missions of the university for members of the academic workforce to have safeguards to ensure substantive and procedural fairness and financial autonomy that are at the core of independent professional work. It does not serve students, the institution, or society well if researchers in donor or other collaborative agreements are essentially professionals for hire, working largely on commission.

- a. Ensure that faculty and researchers involved in donor agreements and/or collaborative arrangements have explicit protection for academic freedom, under a collective agreement.
- b. Ensure that faculty and researchers involved in donor or other collaborative agreements are not dependent for most of their university-related income on work covered by those arrangements.
- c. Donor and other collaborative agreements should protect and support tenure and security

of employment for participating academic staff; agreements should neither be based on nor significantly increase the employment of non- tenure track or soft-money academic employment.

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Article du Bulletin // Septembre 2016

Enquête de l'ACPPU: Qui siège à votre conseil d'administration?

Une enquête de l'ACPPU démontre que le secteur privé prend de plus en plus de place aux conseils d'administration des universités de recherche du Canada.

Le secteur privé étend de plus en plus son contrôle sur la gouvernance des plus grandes universités canadiennes. Banquiers, avocats, cadres de compagnies et autres acteurs du monde des affaires représentent désormais 49,1 % des membres des conseils d'administration des 15 universités de recherche.

L'enquête de l'ACPPU révèle en effet que 194 des 395 membres répertoriés en date du 1er mai 2016 venaient du secteur corporatif. Cela se compare à 165 personnes provenant de la communauté universitaire (administration, personnel académique et de soutien et étudiants), soit 41,8 %. Le reste des membres est composé de 32 personnes venant des services publics (8,1 %) et il y avait également 4 postes vacants (1 %).

« La vraie question est de savoir à quel point la corporatisation de la gouvernance a adapté les priorités des universités et des collèges au modèle du secteur corporatif, en diminuant le rôle et l'influence des étudiants et du personnel au plus haut niveau décisionnel de leur organisation », croit le directeur général de l'ACPPU, David Robinson.

Selon ce dernier, les conséquences de la corporatisation des conseils d'administration se manifestent de plusieurs façons : les institutions deviennent de moins en moins transparentes, accordent de généreux contrats avec des clauses de confidentialité à de hauts dirigeants, imposent des clauses de confidentialité à leurs administrateurs et multiplient le recours au huis clos pour leurs séances.

À l'Université Carleton, par exemple, les administrateurs ont livré un véritable bras de fer au professeur de biologie Root Gorelick, qui était alors le représentant du personnel académique au conseil d'administration et qui bloquait sur les discussions qui avaient lieu lors des séances publiques.

On a essayé de faire taire le professeur Gorelick en imposant un code de conduite interdisant à tous les administrateurs de discuter publiquement de tout ce qui était abordé au conseil. M. Gorelick a refusé de se laisser intimider, il a également refusé de signer tout document qui l'aurait bâillonné, ce qui a finalement amené au rejet du renouvellement par l'administration de son poste au conseil.

« Le problème est que l'on gère maintenant l'université comme une entreprise privée, raconte Root Gorelick. En ce sens, je trouve assez révélateur que le nouveau code de conduite utilise le mot PDG en référence à notre rectrice. C'est écrit en tout petit, mais c'est quand même là et c'est inquiétant. »

En analysant le profil professionnel des administrateurs venant du secteur privé, on s'aperçoit que le monde des finances et de l'assurance, des professionnels et de la haute direction de compagnies publiques et privées occupe une place importante aux conseils d'administration des 15 universités de recherche. Au total, ces sous-secteurs représentent les deux tiers des membres du secteur privé.

À titre d'exemple, le conseil d'administration de l'Université McGill compte 15 personnes du secteur privé sur un total de 26 membres. De ces 15, sept sont des avocats de formation, en plus du fait que le chancelier (membre d'office) est, lui aussi, avocat dans un grand cabinet de Montréal.

Dans la même veine, le conseil d'administration de l'Université McMaster compte 19 membres du privé sur 37 sièges dont six banquiers. Quant à elle, l'Université de Calgary compte 12 personnes du privé sur un total de 20 et sept d'entre elles sont liées au secteur de l'énergie. Enfin, à l'Université de la Colombie-Britannique, on compte 10 membres du privé sur un total de 20 et trois de ces personnes, dont le président du conseil, sont des joueurs importants du secteur immobilier.

« En théorie, le fait qu'un administrateur soit indépendant de fortune et qu'il ne dépende pas de l'université financièrement est une bonne chose. Mais l'absence de processus pour sélectionner ces gens et pour s'assurer qu'ils sont réellement représentatifs de la société a fait en sorte qu'il y a eu une homogénéisation du profil de ces administrateurs », souligne Alex-andre Beaupré-Lavallée, professeur adjoint en administration de l'éducation à l'Université de Montréal.

Le chercheur constate que l'importation aveugle des modèles de gestion du secteur privé nuit aux universités. « Il y a une raison pour laquelle la plupart des universités ont une gestion bicamérale et c'est parce que l'université a besoin de ces deux points de vue pour remplir adéquatement sa mission d'enseignement, de recherche et de service public », tranche le professeur Beaupré-Lavallée.

Son collègue Abdoulaye Anne, professeur adjoint à la Faculté des sciences de l'éducation, abonde dans le même sens. Il identifie trois phénomènes qui ont contribué à la corporatisation de la gouvernance : la baisse des subventions gouvernementales qui a forcé les universités à diversifier leurs revenus; l'arrivée nombreuse de nouveaux administrateurs du privé qui ont une mentalité différente et ne comprennent pas les concepts de liberté académique et de collégialité; et la vague de néo-libéralisme qui frappe la société dans son ensemble.

« Si rien n'est fait, on aura une université plus orientée et qui répondra à des besoins précis dictés par la main invisible du marché, insiste le professeur Anne. On va se retrouver avec des domaines qui vont payer le prix. On voit déjà que les disciplines des sciences humaines, les sciences sociales et la philosophie sont les premières perdantes quand on veut aller vers l'efficacité et qu'on veut balancer les finances. »

Mais la présence du secteur privé en grand nombre n'est pas la seule coupable. Des voix s'élèvent également pour dénoncer le fait que les représentants de la communauté universitaire aux conseils d'administration ne soient pas tous indépendants et libres.

Selon la compilation menée par l'ACPPU, les membres de l'administration comptent pour 17 % des 165 postes d'administrateurs provenant de la communauté universitaire. Dans la quasi-totalité des institutions le recteur et le chancelier sont membre d'office du conseil d'administration. Il est également fréquent qu'un autre membre de la haute direction siège au conseil, c'est le cas notamment à l'Université Laval où le vice-recteur exécutif est, lui aussi, membre d'office.

« Les dirigeants des conseils d'administration des universités font en sorte qu'on nomme des gens qui adhèrent à des modèles reconnus dans le milieu des affaires, ajoute le professeur Anne. On forme des techniciens en gestion qui ne sont pas là pour poser des questions, mais pour s'assurer que la machine roule bien. On ne cherche pas des gens qui ont un esprit critique et qui vont susciter des débats. »

C'est en effet ce qu'a constaté Root Gorelick comme administrateur. « Si on a une gouvernance collégiale, si le conseil d'administration est véritablement collégial, alors tous les membres devraient être des collègues et être considérés comme égaux. À notre conseil d'administration, le président, le vice-président et tous les présidents de comité sont des membres du comité de direction. Il n'y a pourtant pas de règle qui oblige ça, mais les deux tiers des membres du conseil viennent de l'extérieur et c'est ce qui arrive. Les dés sont pipés », croit le biologiste.

« La culture du secret est de plus en plus présente au sein de l'administration de nos universités et c'est dû au fait que nos universités sont de plus en plus administrées selon les modèles des entreprises privées. L'administration veut décider seule et elle ne veut pas savoir ce que les étudiants ou le personnel académique en pensent », signale Jamie Brownlee, auteur du livre *Academia, Inc.: How Corporatization is Transforming Canadian Universities* et chargé de cours à l'Université Carleton.

Selon ce spécialiste de la gouvernance, il est donc peu important de se pencher sur qui siège ou non à ces conseils. « Si on regarde ce qui se passe au conseil d'administration d'une entreprise privée, on se rend vite compte que ce n'est pas si différent. Les administrateurs vont la majeure partie du temps endosser les décisions des hauts dirigeants de l'entreprise, sinon ils vont perdre leur siège. »

Ce spécialiste de la gouvernance croit qu'il faut dénoncer le véritable problème, qui est le nouveau mode de gouvernance opaque qui permet à un petit nombre de gens de prendre des décisions en vase clos qui auront une influence sur la vie académique sans égard au principe de la collégialité. « L'administration est de plus en plus isolée du reste de la communauté universitaire et c'est ce qui est dangereux », ajoute M. Brownlee.

« Les problèmes ne sont pas nouveaux. On les observe depuis des décennies, signale David Robinson. Mais il y a un nouveau mouvement de résistance de la part du personnel académique et des étudiants qui exigent une plus grande transparence, une plus grande ouverture et qui veulent défendre la mission éducative de nos institutions. »

M. Robinson souligne que le travail de mobilisation sur le campus de Western a permis de lever le voile l'an dernier sur la double rémunération de un million de dollars accordée au recteur Amit Chakma. Ce montant faisait partie intégrante d'un contrat qui avait été accordé par le conseil d'administration et qui avait même été renouvelé. Le scandale qui a suivi a galvanisé les forces de la communauté universitaire et le président du conseil d'administration Chirag Shah, un gestionnaire de la firme PricewaterhouseCoopers LLP, a choisi de quitter ses fonctions avant la fin de son mandat.

Le professeur Beaupré-Lavallée croit que les gouvernements provinciaux doivent réaliser l'urgence et comprendre qu'ils ont tout intérêt à mieux encadrer la nomination des administrateurs de nos grandes universités publiques. « Le processus de sélection devrait être garant de la diversité. C'est l'absence de processus qui a fait en sorte que le privé est aujourd'hui surreprésenté par rapport aux autres secteurs de notre communauté. »

La marche vers la
**déclaration de
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PAR
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Qu'est-ce que l'UNESCO?

L'Organisation des Nations Unies pour l'éducation, la science et la culture (UNESCO) traite spécifiquement, comme son nom le dit, de questions internationales en matière d'éducation, de science et de culture, dans le respect de la règle de droit et des droits de la personne. Créée en 1945, son siège social est situé à Paris. L'UNESCO compte 195 États membres et 10 membres associés. Le Canada en fait partie et y est représenté par la Commission canadienne pour l'UNESCO, qui relève de la compétence du Conseil des arts du Canada. L'Internationale de l'Éducation, à laquelle l'ACPPU est affiliée, est un membre associé.



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Le 11 novembre 1997, la Conférence générale de l'UNESCO adoptait la *Recommandation concernant la condition du personnel enseignant de l'enseignement supérieur*, qui traitait des droits des travailleurs traditionnels et de la liberté académique¹. Il s'agissait de la première déclaration internationale officielle d'une organisation des Nations Unies sur les droits et les responsabilités du personnel enseignant dans les universités et les collèges. La Recommandation est toujours en vigueur, même si des recteurs et des politiciens d'obédience thatcheriste la contestent à l'occasion.

En 1993, la Conférence générale de l'UNESCO avait décidé que la condition du personnel enseignant de l'enseignement supérieur devrait faire l'objet d'une recommandation normative internationale. Un document sur la condition du personnel enseignant de niveau préuniversitaire, préparé par l'UNESCO en coopération avec l'Organisation internationale du Travail (OIT), avait déjà été adopté en 1966. L'UNESCO était d'avis que ce document avait « eu un impact significatif sur le statut et les conditions de travail des enseignants² ».

Au départ, la question de la compétence de l'UNESCO ou de l'OIT s'est posée dans ce dossier : la condition des professeurs d'université relevait-elle du domaine du travail, de celui de l'éducation ou des deux? La dernière option l'a emporté et les deux organisations ont coopéré à l'élaboration du document final.

Après d'intenses discussions, le Conseil exécutif de l'UNESCO a arrêté que ses travaux dans le domaine de l'éducation devraient englober les professeurs de l'enseignement supérieur et être menés en collaboration avec l'OIT. Il a décidé qu'un instrument « pouvait inclure des sujets relevant des domaines de compétence de l'OIT aussi bien que de l'UNESCO ». Cette décision s'est avérée cruciale, parce qu'elle a eu pour effet de court-circuiter deux débats de fond : les professeurs d'université sont-ils des travailleurs? Peut-on inclure une définition de la liberté académique dans un tel document? Elle signifiait également que l'OIT aurait une place importante dans toute la démarche.

Il incombait maintenant au Secrétariat de l'UNESCO de traduire ces décisions dans la réalité. Celui-ci s'est tourné vers la Commission canadienne pour l'UNESCO. La Commission, avec l'appui de l'Association canadienne des professeures et professeurs d'université (ACPPU), a accepté de mettre gracieusement à la disposition de l'UNESCO les services d'un expert, Donald Savage, alors directeur général de l'ACPPU (1973-1997). Patricia Finn, directrice générale de l'association du personnel académique de l'Université Carleton (CUASA) de 1976 à 2009, a joué un rôle clé dans la relation entre l'ACPPU et la Commission canadienne.

Pourquoi se tourner vers le Canada? Le choix d'un pays fondateur s'explique en partie par le retrait des États-Unis de l'UNESCO en 1984 sous la présidence de Ronald Reagan. Ce départ a laissé un grand vide dans le contingent nord-américain, même si les États-Unis ont continué d'être représentés par des observateurs actifs.

1. Voir aussi Donald C. Savage and Patricia A. Finn, « UNESCO and the Universities », *Academe* vol. 85 n° 4, juillet/août 1999, p.40-43; correspondance Savage/Justin Thorens, président de l'IAU, mars/avril, 2000; William Bruneau, « CAUT Thanked for UNESCO Recommendation », *Bulletin de l'ACPPU* vol. 54 n°10, décembre 2007; Donald C. Savage, « UNESCO and Academic Freedom », rapport pour l'Association of University Teachers UK, Ottawa, 14 février 2002.

2. Conférence générale de l'UNESCO, vingt-neuvième session, Paris, 1997, 29 C.

Et pourquoi l'ACPPU? Même avant la création officielle de l'ACPPU, les associations fondatrices avaient été confrontées à de graves cas d'atteinte à la liberté académique dans les universités canadiennes³. Dès le début, l'ACPPU s'est efforcée d'améliorer la condition économique du corps professoral par différentes formes de négociation. Au fil des ans, et non sans de longues discussions internes, elle a progressivement défini une vision de la liberté académique. Est-ce que la définition d'un droit restreint ou étend sa portée? La liberté académique est-elle simplement la liberté d'expression? Ou englobe-t-elle des questions comme la gouvernance académique et la liberté d'expression en dehors des enceintes universitaires? Est-elle compatible avec la négociation collective? Les idées de John Stuart Mill, au Royaume-Uni, sur la liberté d'expression et la définition de la permanence dans la déclaration sur la liberté académique présentée en 1940 par l'American Association of University Professors (AAUP) avaient fortement influencé l'évolution de sa pensée. Plus tard, l'ACPPU a décidé de recommander à ses associations membres d'inclure sa définition de la liberté académique dans leurs conventions collectives.

Dans les années soixante-dix et quatre-vingt, l'ACPPU a pris conscience du fait qu'elle ne pouvait rester en retrait du monde dans le cas d'enjeux comme la liberté académique ou le droit du corps professoral à la négociation collective. Elle a alors resserré ses liens avec des associations de professeurs de même tendance en Europe occidentale (France, Suède, Allemagne et Irlande), dans les pays du Commonwealth et en Amérique du Nord. Aux États-Unis, l'ACPPU a entretenu de relations étroites avec l'AAUP et la National Education Association (NEA). Elle a fourni son assistance à des syndicats de professeurs en Nouvelle-Zélande et en Afrique du Sud après l'apartheid.

L'ACPPU a encouragé la formation graduelle d'une alliance informelle d'organisations nationales, l'International Conference of University Teachers Organizations (ICUTO)⁴. Par leur lobbying auprès de leurs gouvernements respectifs, les membres de l'ICUTO seraient appelés à jouer un rôle important dans l'adoption de la version définitive de la Recommandation de 1997. L'ICUTO s'est lancée énergiquement dans ce vaste chantier au début des années 1980⁵, le Canada et la France assumant la direction des travaux. En 1991, l'ACPPU a chargé Patricia Finn de rédiger en langue juridique un projet d'instrument international. Pendant son congé sabbatique, celle-ci a rencontré des dirigeants de l'UNESCO et de l'OIT, puis est devenue consultante de l'UNESCO à Paris pendant qu'elle peaufinait le projet de recommandation.

À une première réunion à Washington en 1992 suivie d'une autre à Berlin en septembre 1993, l'ICUTO a donné son appui à une proposition, parrainée par l'ACPPU et la SNEssup (France), exhortant l'UNESCO à publier une déclaration sur la condition, les droits et les responsabilités des enseignants de l'enseignement supérieur⁶. À l'UNESCO, les choses ont été facilitées par l'arrivée du professeur canadien Ramzi Salamé, ex-président de l'association des professeurs de l'Université Laval venu mener une étude de faisabilité pour le compte de l'UNESCO, avant que Patricia Finn rentre chez elle. Celle-ci a donc pu lui remettre une copie du projet de recommandation.

L'adoption par l'UNESCO d'une norme internationale est le fruit d'une procédure longue et compliquée. Entre mai et août 1994, Donald Savage a rédigé un avant-projet révisé qui serait ensuite soumis pour discussion à l'OIT et à diverses ONG internationales. Cet automne-là, de plus amples discussions avec l'OIT ont mené à un remaniement de ses champs de compétence. Ce remaniement

3. Voir l'affaire Underhill à l'Université de Toronto et l'affaire Crowe au Collège United, au Manitoba; pour l'affaire Crowe, voir V.C. Fowke and Bora Laskin. « Open letter to the Association of Universities and Colleges of Canada, » *Report of the Investigation [...] into the Dismissal of Professor H.S. Crowe by United College, Winnipeg, Manitoba, CAUT, 1959*, [<https://www.caut.ca/docs/default-source/af-ad-hoc-investigatory-committees/report-on-the-investigation-into-the-dismissal-of-professor-h-s-crowe-by-united-college-winnipeg-manitoba-%281958%29.pdf>]; pour les deux affaires, voir Michiel Horn. *Academic Freedom in Canada: A History*, University of Toronto Press, Canada, 1999.

4. L'ICUTO serait ultérieurement intégrée à l'Internationale de l'Éducation (IE).

5. Voir « International Meeting in Ottawa », Bulletin de l'ACPPU, vol. 36 n° 2, février 1989, p.1.

6. Donald Savage au personnel de l'ACPPU, septembre 1993.

s'est fait en douceur grâce aux relations personnelles que Donald Savage avait déjà établies au sein de l'OIT et de la Confédération internationale des syndicats libres (CISL) alors qu'il effectuait des recherches sur la politique du travail au Kenya.

Plusieurs séries de discussions ont suivi avec l'OIT et diverses ONG, de même qu'avec les parties ayant contribué à l'élaboration de la recommandation de 1966 sur les enseignants de niveau préuniversitaire, pour s'assurer que les textes ne se chevauchent pas et ne se contredisaient pas. Donald Savage a remis un document complet au Secrétariat de l'UNESCO en septembre 1994. En 1995, le Secrétariat a adopté un projet de proposition, qui a été envoyé aux États membres le 27 janvier 1996. Trente États membres ont répondu. Vingt d'entre eux ont envoyé des représentants à une réunion d'experts qui s'est tenue en octobre 1996, à laquelle avaient aussi été invités des observateurs de pays non membres et des ONG. En tant que présidente de la réunion, la professeure Rasha al-Sabah, du Koweït, a servi de modératrice des échanges pour assurer un débat équitable qui aboutirait à un résultat dans les délais. Donald Savage a participé au débat.

L'OIT a été un acteur clé à cette réunion, où l'on a entendu une diversité étonnante d'opinions politiques, autant de régimes dictatoriaux que de démocraties libérales. Le Nigéria s'est opposé à l'inclusion des droits civils dans le document. La Corée du Sud a soutenu que l'accent mis sur les droits individuels était incompatible avec les valeurs d'autorité propres à l'Asie. L'Arabie saoudite s'est plainte du fait que l'instrument n'accordait pas une place centrale à la tradition. Le représentant du Vatican s'est prononcé en faveur de la recommandation, disant qu'elle reposait sur un bon équilibre des droits et des responsabilités. Les politiciens thatchéristes du Royaume-Uni, de l'Australie et de la Nouvelle-Zélande souhaitaient que les droits de la direction soient plus en évidence. Les organismes représentant les administrations d'université se montraient réservés à l'égard de la recommandation, quand ils ne s'y opposaient pas. Il y avait aussi inévitablement ceux qui souhaitaient que l'on améliore le style et la ponctuation du document⁷. La direction de la réunion a néanmoins réussi à persuader les participants de soutenir le texte qui est devenu la recommandation étudiée et adoptée par la Conférence générale de l'UNESCO le 11 novembre 1997, sans aucune voix dissidente. Le Japon, un membre important de l'UNESCO, a joué un rôle déterminant dans ce résultat, comme le Canada⁸.

Dans les discussions de questions sur l'éducation à l'UNESCO, le Canada est habituellement représenté par un ministre provincial choisi par le CMEC. En 1993, l'ACPPU a commencé à faire du lobbying auprès du CMEC au sujet de la recommandation proposée. En juin 1997, Paul Cappon, directeur général du Conseil écrivait ceci au président de l'ACPPU : [traduction] « Comme vous le soulignez dans votre lettre, nous avons clairement exprimé que le Canada appuyait la recommandation, par la voix de notre représentant avant la réunion d'experts l'automne dernier... Je n'hésite pas un instant à affirmer que le Canada appuiera avec force cette recommandation et, comme vous l'avez mentionné, fera valoir ses avantages indéniables aux autres États membres de l'UNESCO, de manière à en assurer l'adoption. De mon point de vue, il est important d'adopter cette recommandation, non seulement pour protéger les droits et responsabilités des travailleurs du secteur de l'éducation, mais aussi parce qu'elle constitue un engagement plus général, de la part de la communauté internationale, à l'égard du respect des droits universels de la personne. Le Canada a l'obligation, par conviction et par tradition, d'être un chef de file dans ces domaines⁹. » À la Conférence générale de l'UNESCO en 1997, le Canada a été représenté par Robert S. Harrison, ministre de l'Éducation et de la Culture de la Nouvelle-Écosse.

7. « Rapport final de la réunion d'experts gouvernementaux chargés d'examiner le projet de recommandation concernant la condition du personnel enseignant du supérieur, » Organisation des Nations Unies pour l'éducation, la science et la culture, Paris, 1996, [<http://unesdoc.unesco.org/images/0011/001134/113460fo.pdf>].

8. Quatre pays (Australie, Nouvelle-Zélande, Espagne et Royaume-Uni) se sont opposés à la section sur les droits économiques et les droits syndicaux.

9. Paul Cappon à William Bruneau, dans le Bulletin de l'ACPPU vol. 44 n° 7, septembre 1997 (en anglais seulement).

Ce dernier a déclaré : [traduction] « Le Canada a participé activement aux travaux qui ont abouti au projet de recommandation... Nous appuyons fortement cet instrument normatif. Cela fait trente ans que l'UNESCO est saisie de cette question, sous une forme ou une autre. Le Canada pense qu'il est temps d'adopter la recommandation à cette Conférence générale¹⁰. »

Pendant toute la démarche, une plus grande importance a été accordée aux articles sur les droits civiques, la liberté académique, la gouvernance des universités, l'autonomie des établissements d'enseignement et la négociation collective.

L'article 26 dispose que : « ... Les enseignants devraient pouvoir exercer sans obstacle ni entrave les droits civils qui sont les leurs en tant que citoyens, y compris celui de contribuer au changement social par la libre expression de leur opinion sur les politiques de l'État et les orientations concernant l'enseignement supérieur. Ils ne devraient subir aucune sanction du seul fait de l'exercice de ces droits. »

L'article 27 dispose que : « L'exercice des libertés académiques doit être garanti aux enseignants de l'enseignement supérieur, ce qui englobe la liberté d'enseignement et de discussion en dehors de toute contrainte doctrinale, la liberté d'effectuer des recherches et d'en diffuser et publier les résultats, le droit d'exprimer librement leur opinion sur l'établissement ou le système au sein duquel ils travaillent, le droit de ne pas être soumis à la censure institutionnelle et celui de participer librement aux activités d'organisations professionnelles ou d'organisations académiques représentatives. »

Aux articles 45 et 46, la permanence est reconnue comme « ... l'un des principaux instruments de préservation des libertés académiques et de protection contre les décisions arbitraires ».

L'article 20 énonce un engagement à l'égard de l'autonomie des établissements d'enseignement supérieur et renferme une mise en garde : l'autonomie ne doit pas être utilisée pour porter atteinte aux droits du personnel enseignant de l'enseignement supérieur. Une autre mise en garde est servie à la toute fin du texte, à l'article 77 : « Lorsque le personnel enseignant de l'enseignement supérieur jouit dans certains domaines d'une condition plus favorable que celle qui résulte des dispositions de la présente Recommandation, ces dispositions ne devraient en aucun cas être invoquées pour revenir sur les avantages déjà accordés. »

Comme il est indiqué aux articles 33 et 34, l'exercice de ces droits individuels impose des responsabilités et des obligations au personnel enseignant, celles de respecter les libertés académiques des autres membres de la communauté universitaire et d'accepter la confrontation loyale des différents points de vue, de fonder son travail sur la quête sincère de la vérité, de se conformer à des normes éthiques et professionnelles, d'éviter les conflits d'intérêts et de gérer honnêtement les finances.

Par ailleurs, un enseignant ne devrait être congédié que pour des motifs justes et suffisants liés au comportement professionnel, tels que : manquement persistant à ses devoirs, incompétence flagrante, invention ou fabrication des résultats de recherches, irrégularités financières graves, perversion du processus académique par la falsification de notes contre de l'argent ou des faveurs sexuelles ou sollicitation de faveurs sexuelles auprès d'employés ou de collègues de rang inférieur en échange de leur maintien dans leur poste¹¹.

10. Intervention du Canada, 3 novembre 1997, 29e session de la Conférence générale de l'UNESCO, Notes en vue d'une déclaration devant la Commission II, 3 novembre 1997.

11. Voir l'article 50 de la « Recommandation concernant la condition du personnel enseignant de l'enseignement supérieur » à la page 16 de cette publication.

Au sujet de la nécessité financière, la Recommandation prévoit ce qui suit à l'article 46 :

«... [l]es enseignants peuvent également être congédiés pour des motifs financiers légitimes, à condition que tous les comptes financiers puissent faire l'objet d'un contrôle public, que l'établissement ait pris par ailleurs toutes les mesures raisonnables susceptibles d'éviter le licenciement et qu'il existe une protection juridique contre une procédure de licenciement qui serait entachée de parti pris. »

Le droit des professeurs d'université à la négociation collective a également fait l'objet de longs débats. L'article 52 dispose que : « Le personnel enseignant de l'enseignement supérieur devrait jouir du droit à la liberté syndicale et l'exercice de ce droit devrait être activement encouragé. La négociation collective ou toute procédure équivalente devrait être encouragée conformément aux normes établies par l'Organisation internationale du travail.. ». La négociation devrait porter sur les salaires et les conditions de travail. Voyons ce que dit l'article 56 : « Les enseignants de l'enseignement supérieur devraient avoir accès à une procédure équitable de recours et d'arbitrage ou son équivalent pour le règlement des litiges avec leurs employeurs portant sur leurs conditions d'emploi. »

Le droit de grève est garanti par l'article 55. La Recommandation établit aussi des liens et des renvois avec des conventions et des recommandations clés de l'OIT, notamment celles qui traitent de la liberté d'association et de la négociation collective.

Des événements survenus en Colombie-Britannique témoignent de la pertinence de ces articles au Canada. Dès son élection en 1991, le NPD a abrogé une loi que le gouvernement du Crédit social dirigé par Bill Vander Zalm (dont le ministre de l'Éducation supérieure était Patrick McGeer) avait promulguée. Cette loi interdisait aux professeurs d'université de se syndiquer. Avec l'aide de l'ACPPU, le mouvement syndical en Colombie-Britannique avait décidé d'interjeter appel de cette loi auprès de l'OIT pour jeter les gouvernements fédéral et britanno-colombien dans l'embarras. Malheureusement, il n'existait à l'époque aucune norme internationale régissant la condition du personnel enseignant de l'enseignement supérieur qui abordait spécifiquement la question de la liberté académique ou du droit de se syndiquer. De 1986 à 1991, pas mal de temps, d'énergie et d'argent ont été consacrés à l'annulation de cette loi – des efforts qui ont été gênés par l'absence d'une norme internationale qu'aurait pu invoquer l'ACPPU. Cette expérience explique notamment que l'ACPPU a accueilli avec bonheur la Recommandation de l'UNESCO de 1997.

Un troisième enjeu important était le droit de participer à la l'autogestion collégiale. À cet égard, l'article 32 prévoit que : « La collégialité s'appuie notamment sur les principes suivants : libertés académiques, partage des responsabilités, droit de tous les intéressés de participer aux structures et modalités pratiques de décision au sein de l'établissement et mise en place de mécanismes consultatifs. Toutes les questions concernant l'administration et la définition des politiques de l'enseignement supérieur, les programmes d'enseignement, la recherche, les activités périuniversitaires, l'allocation des ressources et les autres activités connexes devraient faire l'objet de décisions collégiales... ». Ce droit, jumelé au droit de critiquer dont il a été question plus haut, tenait de l'hérésie aux yeux des recteurs et des politiciens plus partisans de l'autorité.

N'étant pas un traité, la Recommandation de l'UNESCO n'avait pas force contraignante. Elle visait à établir une norme et non pas à être un texte de loi officiel. Pour la première fois, la communauté internationale tentait d'exposer clairement les droits et les responsabilités des professeurs de niveau postsecondaire dans un seul instrument international majeur des NU. Par la voix du ministre Harrison, le Canada a appuyé la Recommandation sans aucune réserve officielle. On devrait donc considérer que la Recommandation établit que les principes généraux qui y sont exposés pourraient, et devraient, être applicables au Canada. La Recommandation peut être invoquée dans des causes d'arbitrage et des affaires judiciaires quand on doit se référer à une définition de la liberté académique.

La Recommandation devrait aussi être vue comme une condamnation des régimes dictatoriaux au pouvoir qui sapent les fondements de la négociation collective et emprisonnent et torturent des professeurs d'université sans procès juste et équitable. La Recommandation fait maintenant autorité pour dénoncer de telles violations dans le cadre de diverses manifestations internationales. Elle impose à l'UNESCO et à l'OIT l'obligation de collaborer à sa mise en œuvre. Les deux organisations ont convenu de nommer un organisme conjoint, le Comité d'experts sur l'application des Recommandations concernant le personnel enseignant (CEART), chargé de suivre la mise en œuvre des recommandations. Le CEART a commandé la réalisation de diverses études sur la liberté académique. De plus, l'idée était que cet instrument pourrait être un moyen de mettre en place des mesures de protection pour les professeurs et les chercheurs à temps partiel ou engagés pour une durée limitée. Il pourrait servir, espérait-on, de base à un mécanisme international d'appel appelé à se pencher sur les violations graves de la liberté académique.

Au fil des ans, les recteurs et les administrations d'université au Canada et dans le monde sont revenus à la charge dans l'espoir de diluer les protections accordées en matière de liberté académique, de droits civils, d'autogestion collégiale et de négociation collective. Cette contre-attaque a été menée par l'Association internationale des universités (AIU), qui représente les administrateurs et les recteurs à l'échelle mondiale. En 1998, lors de la Conférence mondiale sur l'enseignement supérieur, l'AIU a présenté un document rival qui, s'il avait été accepté par l'UNESCO, aurait placé l'Organisation dans la position absurde d'avoir deux politiques opposées et contradictoires sur la liberté académique. L'AIU s'est inscrite en faux contre l'idée que la liberté académique est un droit, soutenant qu'elle devait plutôt être vue comme un privilège restreint accordé par des gouvernements pour certaines recherches spécialisées. Contrairement à un droit, un privilège peut être retiré facilement. Le document de l'AIU proposait également de donner aux gouvernements centraux et locaux un rôle accru dans l'établissement des normes régissant le travail académique et les conditions de travail à l'université, ce qui aurait pour effet de limiter la portée de la liberté académique et de l'autonomie des établissements d'enseignement¹². L'AIU ne faisait pas mention du droit de critiquer son université et le système d'éducation en général. Elle rejetait explicitement toute insistance mise sur les droits de la personne ou la liberté d'expression. Elle minimisait aussi le droit de négociation collective et d'autres droits des travailleurs. L'AIU souhaitait circonscrire le champ d'application de la Recommandation et, de là, exclure les collèges communautaires et d'autres établissements d'enseignement postsecondaire. En d'autres mots, elle voulait que soit adoptée une charte des droits exclusifs de la direction. Heureusement, la Conférence de 1998 a refusé de s'engager dans cette voie.

Pendant les deux décennies suivantes, l'AIU a continué d'exercer des pressions pour que des modifications soient apportées à la Recommandation de 1997. À ce jour, l'Internationale de l'Éducation a, avec l'appui de l'ACPPU, résisté avec succès aux tentatives de faire rouvrir et modifier la Recommandation suivant l'orientation préconisée par l'AIU. Les organisations internationales de professeurs devront rester vigilantes.

De 1992 à 1997, trois présidents ont guidé l'ACPPU dans les complexités des arrangements avec l'UNESCO, la Commission canadienne pour l'UNESCO et l'OIT, à savoir Alan Andrews (Dalhousie) de 1992 à 1994; Joyce Lorimer (Wilfrid-Laurier) de 1994 à 1996; et William Bruneau (UBC) de 1996 à 1998.

12. Donald C. Savage et Patricia A. Finn, « UNESCO and the Universities », *Academe* vol. 85 n° 4, juillet/août 1999, p.40-43.

Recommandation de l'UNESCO concernant la condition du personnel enseignant de l'enseignement supérieur¹

La conférence générale,

Ayant examiné le document 29 C/12 contenant le Projet de recommandation concernant la condition du personnel enseignant du supérieur,

Approuve ladite recommandation conformément aux articles 11 et 12 du « Règlement relatif aux recommandations aux États membres et aux conventions internationales prévues par l'article IV, paragraphe 4, de l'Acte constitutif ».

Annexe *Recommandation concernant la condition du personnel enseignant de l'enseignement supérieur*

Préambule

La Conférence générale de l'Organisation des Nations Unies pour l'éducation, la science et la culture (UNESCO), réunie à Paris du 21 octobre au 12 novembre 1997 en sa 29^e session,

Consciente de la responsabilité qui incombe aux États d'assurer l'éducation pour tous conformément à l'article 26 de la Déclaration universelle des droits de l'homme (1948),

Rappelant en particulier la responsabilité qui incombe aux États en ce qui concerne l'accès à l'enseignement supérieur conformément à l'article 13, paragraphe 1 (c), du Pacte international relatif aux droits économiques, sociaux et culturels (1966),

Consciente que l'enseignement supérieur et la recherche contribuent à promouvoir l'acquisition, le progrès et le transfert du savoir et constituent une richesse culturelle et scientifique exceptionnelle,

Également consciente que les services et les prestations de l'enseignement supérieur sont d'une utilité et d'un intérêt essentiels pour les gouvernements et les grands groupes sociaux tels que les étudiants, les entreprises et les travailleurs,

Reconnaissant le rôle décisif du personnel enseignant de l'enseignement supérieur dans le progrès de ce secteur de l'enseignement et l'importance de sa contribution au développement de l'humanité et de la société moderne,

Convaincue qu'il incombe aux enseignants de l'enseignement supérieur, comme à tous les autres citoyens, de s'efforcer de promouvoir au sein de la société le respect des droits culturels, économiques, sociaux, civils et politiques de tous les peuples,

Consciente qu'il est nécessaire que l'enseignement supérieur soit réformé pour s'adapter aux mutations sociales et économiques et que le personnel enseignant du supérieur participe à ce processus,

Se déclarant préoccupée par la vulnérabilité de la communauté universitaire à l'égard des pressions politiques indésirables qui pourraient porter atteinte aux libertés académiques,

Considérant que le droit à l'éducation, à l'enseignement et à la recherche ne peut s'exercer pleinement que dans le respect des libertés académiques et de l'autonomie des établissements d'enseignement supérieur et que la libre communication des résultats, des hypothèses et des opinions se trouve au cœur même de l'enseignement supérieur et constitue la garantie la plus solide de l'exactitude et de l'objectivité du développement du savoir et de la recherche,

1. Résolution adoptée sur le rapport de la Commission II à la 26^e séance plénière, le 11 novembre 1997.

Soucieuse d'assurer au personnel enseignant de l'enseignement supérieur une condition qui soit à la mesure de son rôle,

Reconnaissant la diversité des cultures du monde,

Tenant compte de la grande diversité des législations, des réglementations, des pratiques et des traditions qui, dans les différents pays, déterminent les structures et l'organisation de l'enseignement supérieur,

Considérant la diversité des régimes qui s'appliquent dans les différents pays au personnel enseignant de l'enseignement supérieur, en particulier selon que ce personnel est ou non régi par l'ensemble des règles relatives à la fonction publique,

Convaincue cependant que la condition du personnel enseignant de l'enseignement supérieur pose, dans tous les pays, des problèmes de même ordre qui devraient être abordés dans le même esprit et qui appellent, dans la mesure du possible, l'application de normes communes, que la présente Recommandation a pour objet de définir,

Ayant présents à l'esprit, entre autres instruments, la Convention de l'UNESCO concernant la lutte contre la discrimination

dans le domaine de l'enseignement (1960), qui reconnaît qu'il incombe à l'UNESCO non seulement de proscrire toute discrimination en matière d'enseignement mais également de promouvoir l'égalité de chances et de traitement pour toutes personnes à tous les niveaux de l'enseignement, en ce qui concerne notamment les conditions dans lesquelles celui-ci est dispensé, de même que la Recommandation concernant la condition du personnel enseignant (1966) et la Recommandation de l'UNESCO concernant la condition des chercheurs scientifiques (1974), ainsi que les instruments de l'Organisation internationale du travail relatifs à la liberté syndicale, au droit d'organisation et de négociation collective et à l'égalité des chances et de traitement,

Souhaitant compléter les normes internationales énoncées dans les conventions, pactes et recommandations énumérés à l'appendice par des dispositions ayant trait aux problèmes qui intéressent particulièrement les établissements d'enseignement supérieur ainsi que les enseignants et chercheurs qui leur sont attachés,

Adopte la présente Recommandation, ce 11 novembre 1997.

I. Définitions

1. Aux fins de la présente Recommandation :

(a) « Enseignement supérieur » désigne les programmes d'études, de formation ou de formation à la recherche assurés au niveau postsecondaire par des établissements universitaires ou d'autres établissements d'enseignement agréés comme établissements d'enseignement supérieur par les autorités compétentes de l'État et/ou en vertu de systèmes reconnus d'homologation.

(b) « Recherche » s'entend, dans le contexte de l'enseignement supérieur, des recherches originales dans le domaine des sciences, de la technologie et l'ingénierie, de la médecine, de la culture, des sciences sociales et humaines ou de l'éducation qui impliquent un travail

d'investigation approfondi, critique et rigoureux dont les techniques et les méthodes varient en fonction de la nature et des conditions des problèmes identifiés, qui vise à clarifier et/ou résoudre ces problèmes et qui, lorsqu'il est mené dans un cadre institutionnel, s'appuie sur une infrastructure appropriée.

(c) « Étude » (*scholarship*) désigne l'ensemble des processus qui permettent à chaque enseignant de l'enseignement supérieur de se tenir informé du progrès des connaissances dans sa spécialité, d'entreprendre et de publier des travaux d'érudition, de développer ses aptitudes pédagogiques pour l'enseignement de sa discipline et d'améliorer ses titres académiques.

(d) « Activités périuniversitaires » désigne les activités par lesquelles les ressources d'un établissement d'enseignement sont utilisées hors de son cadre propre pour desservir une communauté largement diversifiée au sein de l'unité territoriale (État ou région) qui constitue le rayon d'action de cet établissement, pourvu que ces activités demeurent conformes à la mission de l'établissement. Dans le domaine de l'enseignement, ce terme peut recouvrir une large gamme d'activités telles que l'éducation extramuros, l'éducation permanente et l'éducation à distance et prendre la forme de cours du soir, de cours intensifs, de séminaires ou de réunions d'études. Dans le domaine de la recherche, il peut s'agir d'une fonction de conseil auprès du secteur public, du secteur privé ou d'organismes à but non lucratif, de divers types de services consultatifs, ou d'une participation à des recherches appliquées et à l'exploitation des résultats de la recherche.

(e) « Établissements d'enseignement supérieur » désigne les établissements universitaires et les autres établissements éducatifs, centres et structures d'enseignement supérieur et centres de recherche et de culture associés à l'un quelconque de ces établissements, de caractère public ou privé, qui sont agréés comme tels en vertu d'un système d'homologation reconnu ou par les autorités compétentes de l'État.

(f) « Personnel enseignant de l'enseignement supérieur » désigne l'ensemble des personnes attachées à des établissements ou programmes d'enseignement supérieur qui sont engagées dans des activités d'enseignement et/ou d'étude et/ou de recherche et/ou de prestation de services éducatifs aux étudiants ou à l'ensemble de la communauté.

II. Champ d'application

2. La présente Recommandation s'applique à l'ensemble du personnel enseignant de l'enseignement supérieur.

III. Principes directeurs

3. La réalisation des objectifs globaux de paix, de compréhension et de coopération internationales et de développement durable, qui sont ceux de chaque État membre et des Nations Unies, est subordonnée à l'existence d'un certain nombre de facteurs, notamment une éducation pour la paix et une culture de la paix telle que la définit l'UNESCO, des diplômés de l'enseignement supérieur qualifiés et cultivés, capables de servir la communauté en tant que citoyens responsables et de mener des activités d'étude et de recherche avancées, et par conséquent un corps d'enseignants de l'enseignement supérieur compétent et hautement qualifié.

4. Les établissements d'enseignement supérieur et plus particulièrement les universités sont des communautés d'érudits qui ont pour mission de préserver et diffuser le savoir traditionnel et la culture, d'exprimer librement leur opinion à ce sujet et de poursuivre leur quête de la connaissance sans être entravés par des impératifs doctrinaux. L'exploration et l'application des nouvelles connaissances se situent au cœur du mandat des établissements d'enseignement supérieur. Dans les établissements d'enseignement supérieur qui n'exigent pas de recherches originales, les enseignants du supérieur devraient entretenir et développer la connaissance de leur discipline par l'étude et par l'amélioration de leurs aptitudes pédagogiques.

5. Les progrès de l'enseignement supérieur, de la connaissance et de la recherche dépendent dans une large mesure des infrastructures et des ressources tant humaines que matérielles disponibles; ils dépendent aussi des qualifications et des compétences du personnel enseignant de l'enseignement supérieur ainsi que de ses qualités humaines, pédagogiques et professionnelles, et sont favorisés en outre par les libertés académiques et les principes de la responsabilité professionnelle, de la collégialité et de l'autonomie des établissements.

6. Enseigner dans l'enseignement supérieur est une profession dont les membres assurent un service public; cette profession exige des enseignants non seulement des connaissances approfondies et des compétences particulières,

acquises et entretenues au prix d'études et de recherches rigoureuses et continues, mais aussi un sens des responsabilités personnelles et collectives qu'ils assument pour l'éducation et le bien-être des étudiants et de la communauté dans son ensemble, ainsi que le respect de normes professionnelles rigoureuses dans l'étude et la recherche.

7. Les conditions de travail du personnel enseignant de l'enseignement supérieur devraient être de nature à favoriser au maximum l'efficacité de l'enseignement, de l'étude, de la recherche et des activités périuniversitaires, et permettre à ce personnel de s'acquitter de ses tâches professionnelles.

8. Il convient de reconnaître que les organisations qui représentent le personnel enseignant de l'enseignement supérieur constituent une force qui peut contribuer grandement au progrès de l'éducation et qu'en conséquence elles devraient être associées, avec les autres partenaires et parties intéressées, à l'élaboration de la politique de l'enseignement supérieur.

9. Il convient de respecter la diversité des systèmes institutionnels d'enseignement supérieur dans chaque État membre conformément aux lois et pratiques de l'État ainsi qu'aux normes internationales.

IV. Objectifs et politiques de l'enseignement supérieur

10. À tous les échelons appropriés de la planification nationale en général, et de la planification de l'enseignement supérieur en particulier, les États membres devraient prendre toutes les mesures nécessaires pour faire en sorte que :

(a) l'enseignement supérieur soit axé sur le développement de l'individu et le progrès de la société ;

(b) l'enseignement supérieur contribue à la réalisation des objectifs de l'éducation permanente et au développement des autres formes et niveaux d'éducation ;

(c) lorsque des fonds publics sont alloués à des établissements d'enseignement supérieur, ces fonds soient considérés comme un investissement public, soumis à un contrôle public effectif ;

(d) le financement de l'enseignement supérieur soit considéré comme une forme d'investissement public qui, par la force des choses, n'est pour l'essentiel profitable qu'à long terme et qui est fonction des priorités gouvernementales et publiques ;

(e) l'opinion publique soit constamment tenue informée de la justification de ce financement public.

11. Le personnel enseignant de l'enseignement supérieur devrait avoir accès à des bibliothèques possédant une documentation à jour qui reflète les divers aspects de chaque question et qui soit libre de toute censure ou autre forme d'entrave de caractère intellectuel. Les enseignants de l'enseignement supérieur devraient également avoir accès sans aucune censure aux réseaux informatiques internationaux, aux programmes transmis par satellite et aux bases de données nécessaires à leur enseignement, à leur formation ou à leurs recherches.

12. La publication et la diffusion des résultats des recherches effectuées par le personnel enseignant de l'enseignement supérieur devraient être encouragées et facilitées, à la fois pour aider les intéressés à être reconnus comme ils le méritent et pour promouvoir le progrès de la science, de la technologie, de l'éducation et de la culture en général. À cette fin, les enseignants de l'enseignement supérieur devraient être libres de publier les résultats de leurs recherches et de leurs études dans les livres, revues et bases de données de leur choix et sous leur nom, pourvu qu'ils en soient les auteurs ou coauteurs. La propriété intellectuelle du personnel enseignant de l'enseignement supérieur devrait bénéficier d'une protection juridique appropriée, et en particulier de la protection assurée par la législation nationale et internationale sur le droit d'auteur.

13. L'échange d'idées et d'informations entre enseignants de l'enseignement supérieur du monde entier est indispensable au développement harmonieux de l'enseignement supérieur et de la recherche et devrait être de ce fait activement encouragé. À cette fin, les enseignants du supérieur devraient avoir la possibilité, tout au long de leur carrière, de participer à des rencontres internationales sur l'enseignement supérieur ou la recherche, de voyager à l'étranger sans restrictions politiques,

d'utiliser le réseau Internet ou de participer à des téléconférences.

14. Il convient de développer et d'encourager les programmes permettant les plus larges échanges d'enseignants de l'enseignement supérieur entre établissements, tant à l'échelle nationale qu'internationale, notamment sous forme de colloques, séminaires et projets en collaboration ainsi que d'échanges d'informations touchant à la pédagogie et aux différentes branches du savoir. Le développement des communications et des contacts directs entre universités, instituts de recherche et associations ainsi qu'entre scientifiques et chercheurs devrait être facilité, tout comme l'accès du personnel enseignant de l'enseignement supérieur d'autres États aux informations à caractère non confidentiel des archives publiques, bibliothèques, instituts de recherche et établissements similaires.

15. Les États membres et les établissements d'enseignement supérieur devraient, en même temps, être conscients de l'exode de personnel enseignant du supérieur qui affecte les pays en développement et en particulier les pays les moins avancés. Ils devraient, en conséquence, encourager les programmes d'aide aux pays en développement afin de contribuer à maintenir un environnement universitaire offrant aux enseignants de ces pays des conditions de travail suffisamment attrayantes pour freiner et, à terme, enrayer cet exode.

16. Il convient, en conformité avec la Recommandation de l'UNESCO sur la reconnaissance des études et des titres de l'enseignement supérieur (1993), d'adopter des politiques et des pratiques nationales équitables, justes et raisonnables aux fins de la reconnaissance, pour l'exercice de la profession d'enseignant du supérieur, des diplômes et titres délivrés dans d'autres États.

V. Devoirs et responsabilités des établissements

A. Autonomie des établissements

17. Le plein exercice des libertés académiques et l'accomplissement des devoirs et responsabilités énoncés ci-après supposent l'autonomie des établissements d'enseignement supérieur, c'est-à-dire la latitude nécessaire pour que ces établissements puissent prendre des décisions efficaces concernant leurs activités académiques, leurs règles de fonctionnement, leur gestion et autres activités connexes, dans la mesure où elles sont conformes aux systèmes de contrôle public, s'agissant en particulier des fonds fournis par l'État, et respectent les libertés académiques et les droits de la personne. Cependant, la nature de l'autonomie peut varier suivant les types d'établissement.

18. L'autonomie est l'expression institutionnelle des libertés académiques et une condition nécessaire pour que les enseignants et les établissements de l'enseignement supérieur puissent s'acquitter des fonctions qui leur incombent.

19. Il est du devoir des États membres de protéger l'autonomie des établissements d'enseignement supérieur contre toute menace, d'où qu'elle vienne.

20. L'autonomie ne saurait être invoquée par les établissements d'enseignement supérieur pour porter atteinte aux droits du personnel enseignant de l'enseignement supérieur énoncés dans la présente Recommandation ou dans les autres instruments internationaux énumérés à l'appendice.

21. L'autogestion, la collégialité et une direction académique appropriée sont des éléments essentiels d'une véritable autonomie des établissements d'enseignement supérieur.

B. Obligation faite aux établissements de rendre des comptes

22. Vu l'importance des investissements financiers en jeu, un équilibre approprié devrait être assuré par les États membres et les établissements d'enseignement supérieur entre le niveau d'autonomie dont jouissent ces derniers et les systèmes qui régissent leur obligation de rendre des comptes. A cet égard,

les établissements d'enseignement supérieur devraient s'efforcer d'assurer la transparence dans la façon dont ils sont dirigés. Les établissements devraient être comptables de la bonne application des principes suivants :

- (a) veiller à bien informer le public sur la nature de leur mission éducative ;
- (b) poursuivre des objectifs de qualité et d'excellence dans leurs fonctions d'enseignement, d'étude et de recherche et en défendre l'intégrité contre toute ingérence incompatible avec leur vocation académique ;
- (c) défendre activement les libertés académiques et les droits fondamentaux de la personne ;
- (d) dispenser une éducation de haut niveau au plus grand nombre possible de personnes possédant les qualifications scolaires requises, dans la limite des ressources mises à leur disposition ;
- (e) s'efforcer d'offrir des programmes d'éducation permanente en fonction de la mission de l'établissement et des ressources dont il dispose ;
- (f) garantir un traitement équitable et juste à tous les étudiants sans aucune discrimination ;
- (g) adopter des politiques et des procédures visant à garantir un traitement équitable aux femmes et aux minorités et à éliminer le harcèlement sexuel ou les brimades raciales ;
- (h) faire en sorte que le personnel enseignant de l'enseignement supérieur puisse exercer ses activités d'enseignement ou de recherche à l'abri de toute forme de violence, d'intimidation ou de harcèlement ;
- (i) garantir l'honnêteté et la transparence de la gestion comptable ;
- (j) assurer l'utilisation efficace des ressources ;
- (k) élaborer, selon un processus collégial et/ou par la voie de négociations avec les organisations représentant le personnel enseignant de l'enseignement supérieur, et dans le respect des libertés académiques et de la liberté de parole, des déclarations de principes ou des codes de déontologie pour guider les enseignants du supérieur dans leurs

activités d'enseignement, d'étude, de recherche et autres activités périuniversitaires ;

- (l) contribuer à l'exercice des droits économiques, sociaux, culturels et politiques, en veillant à empêcher toute utilisation du savoir, de la science et de la technologie sous une forme préjudiciable à ces droits ou à des fins contraires à l'éthique académique généralement reconnue, aux droits de l'homme et à la paix ;
- (m) veiller à traiter des problèmes du moment se posant à la société et, à cette fin, s'assurer que les programmes d'enseignement et activités des établissements répondent comme il convient aux besoins présents et futurs de la communauté locale et de la société dans son ensemble, et contribuer activement à améliorer les perspectives d'emploi des étudiants diplômés ;
- (n) encourager, lorsque cela est possible et approprié, la coopération universitaire internationale au-delà des barrières nationales, régionales, politiques, ethniques ou autres, s'efforcer d'empêcher l'exploitation scientifique et technologique d'un État par un autre et favoriser le partenariat sur un pied d'égalité entre les communautés universitaires du monde entier en vue de diffuser et de mettre à profit la connaissance et de préserver le patrimoine culturel ;
- (o) s'appuyer sur des bibliothèques possédant une documentation à jour et assurer l'accès sans aucune censure aux moyens modernes d'enseignement, de recherche et d'information, de façon à fournir aux enseignants du supérieur et aux étudiants l'information nécessaire à l'enseignement, à l'étude ou à la recherche ;
- (p) mettre en place les installations et l'équipement nécessaires à la mission de l'établissement, et en assurer l'entretien comme il convient ;
- (q) veiller à ce que, si un établissement entreprend des recherches de caractère secret, celles-ci ne soient pas contraires à sa mission éducative et à ses objectifs et ne fassent pas obstacle à la réalisation des objectifs généraux suivants : paix, droits de l'homme, développement durable et protection de l'environnement.

23. Les systèmes par lesquels les établissements d'enseignement supérieur rendent des comptes devraient reposer sur des méthodes scientifiques et être clairs, réalistes, simples et d'un bon rapport coût-efficacité. Leur fonctionnement devrait s'inspirer des principes d'équité, de justice et d'impartialité et obéir à une exigence de transparence au niveau des méthodes comme des résultats.

24. Les établissements d'enseignement supérieur devraient, individuellement ou collectivement, concevoir et mettre en œuvre des systèmes appropriés de reddition de comptes, comportant notamment des mécanismes de garantie de la qualité, en vue de réaliser les objectifs ci-dessus, sans porter atteinte à l'autonomie des établissements et aux libertés académiques. Les organisations représentant le personnel enseignant de l'enseignement supérieur devraient être associées, dans la mesure du possible, à l'élaboration de ces systèmes. Si des mécanismes de contrôle prescrits par l'État sont mis en place, leurs modalités devraient être négociées, s'il y a lieu, avec les établissements d'enseignement supérieur concernés et les organisations représentant le personnel enseignant de l'enseignement supérieur.

VI. Droits et libertés des enseignants de l'enseignement supérieur

A. Droits et libertés individuels : droits civils, libertés académiques, droits de publication et échange d'information au niveau international

25. L'accès à la profession académique dans l'enseignement supérieur devrait être fondé exclusivement sur les qualifications académiques, la compétence et l'expérience voulues ; il devrait être ouvert à tous les citoyens sans discrimination aucune.

26. Comme tous les autres groupes et individus, le personnel enseignant de l'enseignement supérieur devrait jouir des droits civils, politiques, sociaux et culturels internationalement reconnus applicables à tous les citoyens. En conséquence, tout enseignant de l'enseignement supérieur a droit à la liberté de pensée, de conscience, de religion, d'expression, de réunion et d'association, ainsi qu'à la liberté et à la sécurité de sa personne, et à la liberté de circulation.

Les enseignants devraient pouvoir exercer sans obstacle ni entrave les droits civils qui sont les leurs en tant que citoyens, y compris celui de contribuer au changement social par la libre expression de leur opinion sur les politiques de l'État et les orientations concernant l'enseignement supérieur. Ils ne devraient subir aucune sanction du seul fait de l'exercice de ces droits. Aucun enseignant du supérieur ne devrait faire l'objet d'une arrestation ou d'une détention arbitraires ni être soumis à la torture ou à des traitements cruels, inhumains ou dégradants. En cas de violation flagrante de leurs droits, les enseignants de l'enseignement supérieur devraient pouvoir saisir les instances nationales, régionales ou internationales compétentes telles que les organisations du système des Nations Unies, et les organisations représentant le personnel enseignant de l'enseignement supérieur devraient les appuyer pleinement dans de telles circonstances.

27. Il convient de favoriser, tant au niveau international qu'au niveau national, l'application des normes internationales susmentionnées au bénéfice de l'enseignement supérieur. A cette fin, le principe des libertés académiques devrait être scrupuleusement respecté. L'exercice des libertés académiques doit être garanti aux enseignants de l'enseignement supérieur, ce qui englobe la liberté d'enseignement et de discussion en dehors de toute contrainte doctrinale, la liberté d'effectuer des recherches et d'en diffuser et publier les résultats, le droit d'exprimer librement leur opinion sur l'établissement ou le système au sein duquel ils travaillent, le droit de ne pas être soumis à la censure institutionnelle et celui de participer librement aux activités d'organisations professionnelles ou d'organisations académiques représentatives. Tous les enseignants de l'enseignement supérieur devraient pouvoir exercer leurs fonctions sans subir de discrimination d'aucune sorte ni avoir à craindre de mesures restrictives ou répressives de la part de l'État ou de toute autre source. Les enseignants du supérieur ne pourront effectivement se prévaloir de ce principe que si le milieu dans lequel ils évoluent s'y prête. Cette condition ne peut elle-même être satisfaite que dans un climat démocratique; c'est pourquoi il incombe à

tous de contribuer à l'établissement d'une société démocratique.

28. Les enseignants de l'enseignement supérieur ont le droit d'enseigner à l'abri de toute ingérence dès lors qu'ils respectent les principes professionnels reconnus, notamment ceux de la responsabilité professionnelle et de la rigueur intellectuelle à l'égard des normes et des méthodes d'enseignement. Aucun enseignant du supérieur ne devrait être contraint de dispenser un enseignement qui soit en contradiction avec le meilleur de ses connaissances ou qui heurte sa conscience ni d'utiliser des programmes ou des méthodes d'enseignement contraires aux normes nationales et internationales en matière de droits de l'homme. Le personnel enseignant de l'enseignement supérieur devrait jouer un rôle important dans l'élaboration des programmes d'enseignement.

29. Les enseignants de l'enseignement supérieur ont le droit d'effectuer des recherches à l'abri de toute ingérence ou de toute restriction, dès lors que cette activité s'exerce dans le respect de la responsabilité professionnelle et des principes professionnels nationalement et internationalement reconnus de rigueur intellectuelle, scientifique et morale s'appliquant à la recherche. Les enseignants devraient avoir également le droit de publier et de communiquer les conclusions des travaux dont ils sont les auteurs ou les coauteurs, ainsi qu'il est stipulé au paragraphe 12 de la présente Recommandation.

30. Les enseignants de l'enseignement supérieur ont le droit d'exercer des activités professionnelles extra-universitaires, notamment si ces activités leur permettent d'améliorer leurs compétences professionnelles ou d'appliquer leurs connaissances aux problèmes de la communauté, à condition toutefois qu'elles n'empiètent pas sur leurs obligations premières envers l'établissement auquel ils sont attachés, telles qu'elles découlent de la politique et de la réglementation de l'établissement ou, le cas échéant, de la loi et de la pratique nationales.

B. Autogestion et collégialité

31. Les enseignants de l'enseignement supérieur devraient avoir le droit et la possibilité de participer, sans discrimination d'aucune sorte et selon leurs compétences, aux travaux des organes directeurs des établissements d'enseignement supérieur, y compris le leur, et de critiquer le fonctionnement de ces établissements, tout en respectant le droit de participation des autres secteurs de la communauté universitaire ; les enseignants devraient également avoir le droit d'élire la majorité des représentants au sein des instances académiques de l'établissement.

32. La collégialité s'appuie notamment sur les principes suivants : libertés académiques, partage des responsabilités, droit de tous les intéressés de participer aux structures et modalités pratiques de décision au sein de l'établissement et mise en place de mécanismes consultatifs. Toutes les questions concernant l'administration et la définition des politiques de l'enseignement supérieur, les programmes d'enseignement, la recherche, les activités périuniversitaires, l'allocation des ressources et les autres activités connexes devraient faire l'objet de décisions collégiales, aux fins d'améliorer le niveau d'excellence et de qualité académiques, dans l'intérêt de la société tout entière.

VII. Devoirs et responsabilités du personnel enseignant de l'enseignement supérieur

33. Le personnel enseignant de l'enseignement supérieur devrait reconnaître que l'exercice de ses droits s'accompagne de devoirs et responsabilités spécifiques, y compris l'obligation de respecter les libertés académiques des autres membres de la communauté universitaire et d'accepter la confrontation loyale des différents points de vue. Les libertés académiques ont pour corollaire le devoir de faire usage de ces libertés en respectant l'obligation faite à tout chercheur de fonder son travail sur la quête sincère de la vérité. L'enseignement, l'étude et la recherche doivent être menés en pleine conformité avec les normes éthiques et professionnelles et doivent viser, en tant que de besoin, à apporter des réponses aux problèmes auxquels est confrontée la société ainsi qu'à préserver le patrimoine historique et culturel de l'humanité.

34. En particulier, l'exercice de ses libertés académiques impose à chaque enseignant de l'enseignement supérieur les obligations suivantes :

- (a) dispenser un enseignement aussi efficace que le permettent les moyens mis à sa disposition par l'établissement et par l'État, dans un esprit de justice et d'équité envers tous les étudiants sans distinction de sexe et sans discrimination fondée sur la race, la religion ou, le cas échéant, une incapacité, en encourageant le libre échange des idées avec les étudiants et en se tenant à leur disposition pour les guider dans leurs études. Il appartient au personnel enseignant de l'enseignement supérieur de veiller, en tant que de besoin, à ce que le contenu minimal défini dans le programme de chaque matière soit effectivement enseigné;
- (b) entreprendre des recherches spécialisées et en diffuser les résultats ou, s'il n'y a pas lieu de mener de telles recherches, entretenir et approfondir ses connaissances dans sa discipline par l'étude et la recherche et en mettant au point des méthodes propres à améliorer ses aptitudes pédagogiques ;
- (c) fonder ses travaux de recherche et d'étude sur une quête sincère du savoir, dans le respect du principe de la preuve, de l'impartialité du raisonnement et de l'honnêteté du compte rendu ;
- (d) respecter l'éthique de la recherche à l'égard des êtres humains, des animaux, du patrimoine et de l'environnement ;
- (e) respecter le travail d'érudition de ses collègues universitaires et des étudiants et en créditer les auteurs, en veillant notamment à faire mention dans les travaux publiés de tous ceux qui y ont matériellement contribué ou qui en partagent la responsabilité ;
- (f) s'interdire d'utiliser, sauf avec l'autorisation expresse de l'auteur, des informations, notions ou données inédites contenues dans des manuscrits confidentiels ou des demandes de financement de recherche ou de formation qu'il aurait eu à examiner dans le cadre de ses fonctions, par exemple à l'occasion d'un travail d'évaluation critique entre pairs ;

(g) s'assurer que la recherche est conduite en accord avec les lois et règlements du pays dans lequel elle est effectuée, qu'elle ne viole pas les dispositions des instruments internationaux relatifs aux droits de l'homme et que ses résultats ainsi que les données sur lesquelles elle s'appuie sont effectivement accessibles aux spécialistes et chercheurs de l'établissement hôte sauf si une telle divulgation fait courir un risque aux informateurs ou si leur anonymat a été garanti ;

(h) éviter les conflits d'intérêts ou les résoudre en divulguant les informations pertinentes et en consultant dûment les responsables de l'établissement qui l'emploie, de façon à obtenir l'aval de cet établissement ;

(i) gérer honnêtement tous les fonds qui lui sont confiés et qui sont destinés à un établissement d'enseignement supérieur, un centre de recherche ou tout autre organisme professionnel ou scientifique ;

(j) faire montre d'équité et d'impartialité dans l'évaluation professionnelle de collègues universitaires ou d'étudiants ;

(k) lorsqu'il intervient oralement ou par écrit dans un contexte extra-universitaire sur des questions qui ne relèvent pas de sa spécialité, veiller à ne pas induire le public en erreur sur la nature de sa compétence professionnelle ;

(l) s'acquitter de toute tâche pouvant lui être confiée dans le cadre de la gestion collégiale des établissements d'enseignement supérieur et des organisations professionnelles.

35. Les enseignants de l'enseignement supérieur devraient s'efforcer de se conformer à des normes aussi élevées que possible dans leur activité professionnelle, leur condition dépendant dans une large mesure de leur comportement et de la qualité de leurs prestations.

36. Les enseignants de l'enseignement supérieur devraient contribuer à assurer la transparence des établissements d'enseignement supérieur vis-à-vis du public, sans renoncer pour autant au degré d'autonomie institutionnelle nécessaire à leur travail, à leur indépendance professionnelle et au progrès de la connaissance.

VIII. Préparation à la profession

37. La politique d'admission aux filières préparant aux carrières de l'enseignement supérieur répond à la nécessité de doter la société d'un nombre suffisant d'enseignants de ce niveau possédant les qualités morales, intellectuelles et pédagogiques requises, ainsi que les connaissances et la compétence voulues.

38. Dans tous ses aspects, la préparation du personnel enseignant de l'enseignement supérieur devrait être exempte de toute forme de discrimination.

39. Parmi les candidats se destinant à une carrière dans l'enseignement supérieur, les femmes et les membres de minorités devraient bénéficier, à qualifications universitaires et expérience égales, d'une égalité de chances et de traitement.

IX. Conditions d'emploi

A. Accès à la profession d'enseignant de l'enseignement supérieur

40. Les employeurs du personnel enseignant de l'enseignement supérieur devraient offrir des conditions d'emploi qui soient les plus propres à assurer l'efficacité de l'enseignement et/ou de la recherche et/ou de l'étude et/ou des activités périuniversitaires et qui soient équitables et exemptes de toute discrimination de quelque nature que ce soit.

41. Les mesures temporaires prises en faveur de membres désavantagés de la communauté universitaire en vue d'aboutir plus rapidement à une égalité de fait ne devraient pas être considérées comme discriminatoires, à conditions qu'elles soient abrogées dès que les objectifs d'égalité de chances et de traitement auront été atteints et que des mécanismes soient mis en place pour faire en sorte que cette égalité soit maintenue.

42. L'imposition d'une période probatoire à quiconque accède à un poste d'enseignement ou de recherche au niveau universitaire doit être considérée comme le moyen d'encourager et d'initier utilement le débutant, d'établir et de préserver des normes professionnelles appropriées et de favoriser le développement des qualités professionnelles du futur enseignant ou chercheur. La durée normale

de la période de probation devrait être connue à l'avance et les conditions de succès devraient dépendre strictement de la compétence professionnelle. Si l'intéressé ne donne pas satisfaction au cours de cette période, il devrait être informé des griefs formulés contre lui suffisamment longtemps avant la fin de ladite période pour pouvoir remédier à ses insuffisances. Il devrait également avoir la possibilité de contester ces griefs.

43. Le personnel enseignant de l'enseignement supérieur devrait bénéficier des conditions suivantes :

(a) un système juste et ouvert d'organisation des carrières comportant des procédures équitables en matière de nomination, de titularisation le cas échéant, de promotion, de congédiement et autres aspects connexes ;

(b) un système efficace, équitable et juste de relations professionnelles au sein de l'établissement, en conformité avec les normes énoncées dans les instruments internationaux figurant à l'appendice.

44. Il conviendrait d'adopter des dispositions afin que puisse s'exercer une solidarité avec d'autres établissements d'enseignement supérieur et leur personnel enseignant s'ils sont en butte à des persécutions. Cette solidarité, matérielle aussi bien que morale, devrait permettre, dans la mesure du possible, l'accueil et l'emploi ou la formation des victimes de ces persécutions.

B. Sécurité de l'emploi

45. Le régime de la permanence lorsqu'il existe, ou le cas échéant son équivalent fonctionnel, constitue l'un des principaux instruments de préservation des libertés académiques et de protection contre les décisions arbitraires. Par ailleurs, il développe le sens de la responsabilité individuelle et permet de retenir le personnel enseignant compétent.

46. La sécurité de l'emploi dans la profession, y compris le régime de la permanence lorsqu'il existe ou le cas échéant son équivalent fonctionnel, devrait être préservée car elle est essentielle tant pour l'enseignement supérieur que pour son personnel enseignant. En vertu de ce système, les enseignants du supérieur qui bénéficient d'un emploi stable à la suite

d'une évaluation rigoureuse ne peuvent être congédiés que pour des motifs d'ordre professionnel et selon une procédure régulière. Cependant, les enseignants peuvent également être congédiés pour des motifs financiers légitimes, à condition que tous les comptes financiers puissent faire l'objet d'un contrôle public, que l'établissement ait pris par ailleurs toutes les mesures raisonnables susceptibles d'éviter le licenciement et qu'il existe une protection juridique contre une procédure de licenciement qui serait entachée de parti pris. Le régime de la permanence, lorsqu'il existe, ou le cas échéant son équivalent fonctionnel, devrait être préservé dans la mesure du possible, même si des changements interviennent dans l'organisation ou au sein de l'établissement d'enseignement supérieur ou du système d'enseignement, et devrait être accordé après une période probatoire d'une durée raisonnable à ceux qui satisfont à des critères objectifs et bien définis en matière d'enseignement et/ou d'étude et/ou de recherche ayant l'agrément d'une instance académique, et/ou d'activités périuniversitaires ayant l'agrément de l'établissement d'enseignement supérieur.

C. *Evaluation*

47. Les établissements d'enseignement supérieur devraient veiller au respect des principes suivants :

(a) l'évaluation et l'appréciation du travail du personnel enseignant de l'enseignement supérieur font partie intégrante du processus d'enseignement, d'apprentissage et de recherche, leur principale fonction étant le développement de chaque individu conformément à ses aspirations et à ses capacités ;

(b) l'évaluation doit porter uniquement sur des critères académiques de compétence en matière de recherche, d'enseignement et autres fonctions universitaires ou professionnelles, selon l'appréciation qui en est faite par les pairs de l'intéressé ;

(c) les procédures d'évaluation doivent tenir dûment compte du fait qu'il est difficile de mesurer la capacité personnelle, qui se manifeste rarement sous une forme continue et invariable ;

(d) si l'évaluation implique une appréciation directe, sous une forme quelconque, du travail d'un enseignant de l'enseignement supérieur par ses étudiants, ses pairs ou le personnel administratif, cette appréciation doit être objective et les critères utilisés, de même que les résultats de cette évaluation, doivent être communiqués aux intéressés ;

(e) les résultats de l'évaluation du personnel enseignant de l'enseignement supérieur devraient également être pris en considération lors de la dotation en effectifs de l'établissement et du renouvellement des contrats d'engagement ;

(f) tout enseignant de l'enseignement supérieur devrait avoir un droit de recours devant un organe impartial contre toute appréciation qui lui paraît injustifiée.

D. *Procédures disciplinaires et congédiement*

48. Aucun membre de la communauté universitaire ne devrait être soumis à des mesures disciplinaires, notamment le congédiement, si ce n'est pour des motifs justes et suffisants dont la preuve soit apportée devant une tierce partie (pairs de l'intéressé réunis en collège indépendant) et/ou une instance impartiale telle qu'un arbitre ou un tribunal.

49. Tout enseignant de l'enseignement supérieur devrait jouir de garanties équitables à chaque étape de toute procédure disciplinaire, notamment de congédiement, conformément aux normes internationales énoncées dans les instruments figurant à l'appendice.

50. Le congédiement en tant que mesure disciplinaire ne devrait être prononcé que pour des motifs justes et suffisants liés au comportement professionnel, tels que : manquement persistant à ses devoirs, incompétence flagrante, invention ou falsification des résultats de recherches, irrégularités financières graves, comportement répréhensible sur le plan sexuel ou autre à l'encontre d'étudiants, de collègues ou d'autres membres de la communauté ou menaces graves d'actes répréhensibles, ou perversion du processus éducatif (par exemple falsification de notes, diplômes ou grades contre de l'argent ou des faveurs sexuelles ou autres, ou sollicitation de faveurs sexuelles ou

d'avantages financiers ou matériels auprès d'employés ou de collègues de rang inférieur en échange de leur maintien dans leur poste).

51. L'intéressé devrait pouvoir former un recours contre une décision de congédiement devant une instance extérieure indépendante (arbitre ou tribunal par exemple) habilitée à rendre une décision définitive et obligatoire.

E. Négociation des conditions d'emploi

52. Le personnel enseignant de l'enseignement supérieur devrait jouir du droit à la liberté syndicale et l'exercice de ce droit devrait être activement encouragé. La négociation collective ou toute procédure équivalente devrait être encouragée conformément aux normes établies par l'Organisation internationale du travail dans les instruments énumérés à l'appendice.

53. Les traitements, conditions de travail et autres questions ayant trait aux conditions d'emploi du personnel enseignant de l'enseignement supérieur devraient être déterminés dans le cadre d'un processus volontaire de négociation entre les organisations représentant le personnel enseignant de l'enseignement supérieur et les employeurs de ce personnel enseignant, sauf lorsqu'il existe d'autres procédures équivalentes conformes aux normes internationales.

54. Des procédures appropriées conformes aux lois nationales et aux normes internationales devraient être établies, par voie de réglementation ou par voie d'accord entre les intéressés, pour garantir aux enseignants de l'enseignement supérieur le droit de négocier avec leurs employeurs publics ou privés, par l'intermédiaire de leurs organisations ; l'exercice de ces droits de caractère contractuel ou statutaire devrait pouvoir être assuré par le moyen d'un processus impartial, sans retard injustifié.

55. En cas d'épuisement des procédures prévues à cet effet ou de rupture des négociations entre les parties, les organisations d'enseignants de l'enseignement supérieur devraient avoir le droit de recourir aux autres moyens d'action dont disposent normalement les autres organisations pour la défense de leurs intérêts légitimes.

56. Les enseignants de l'enseignement supérieur devraient avoir accès à une procédure équitable de recours et d'arbitrage ou son équivalent pour le règlement des litiges avec leurs employeurs portant sur leurs conditions d'emploi.

F. Traitements, charge de travail, avantages sociaux, santé et sécurité

57. Toutes les dispositions voulues devraient être prises, dans la mesure des possibilités financières, afin d'assurer au personnel enseignant de l'enseignement supérieur une rémunération lui permettant de se vouer comme il convient à sa tâche et de consacrer le temps nécessaire à la formation permanente et au recyclage périodique des connaissances et des compétences qui sont indispensables à ce niveau d'enseignement.

58. Les traitements des enseignants de l'enseignement supérieur devraient :

(a) être à la mesure de l'importance que leur fonction et, par conséquent, ceux qui l'exercent revêtent pour la société, aussi bien que des différentes responsabilités qui incombent à l'enseignant du supérieur dès son entrée dans la profession ;

(b) être au moins comparables à ceux d'autres professions qui exigent des qualifications analogues ou équivalentes ;

(c) assurer à ces enseignants un niveau de vie raisonnable pour eux-mêmes et pour leur famille, ainsi que les moyens d'améliorer leurs qualifications professionnelles en développant leurs connaissances et en s'adonnant à des activités culturelles ou scientifiques ;

(d) tenir compte du fait que certains postes exigent plus d'expérience et des qualifications plus élevées que d'autres et comportent des responsabilités plus étendues ;

(e) être versés régulièrement et ponctuellement ;

(f) être révisés périodiquement pour tenir compte de différents facteurs tels que la hausse du coût de la vie, l'amélioration générale du niveau de vie résultant de gains de productivité, ou une hausse générale des salaires et des traitements.

59. Les différences de rémunération devraient être fondées sur des critères objectifs.

60. Les enseignants de l'enseignement supérieur devraient être rétribués sur la base d'échelles de traitements établies en accord avec les organisations représentant le personnel enseignant de l'enseignement supérieur, sauf si d'autres procédures équivalentes conformes aux normes internationales sont prévues. Un enseignant qualifié de l'enseignement supérieur qui est en période probatoire ou employé à titre temporaire ne devrait pas être rétribué à un taux inférieur à celui des enseignants du supérieur titulaires au même niveau.

61. Un système de notation au mérite équitable et impartial pourrait contribuer à favoriser la garantie et le contrôle de la qualité. Si un tel système est instauré et appliqué aux fins de la détermination du traitement, les organisations représentant le personnel enseignant de l'enseignement supérieur devraient être consultées au préalable.

62. La charge de travail du personnel enseignant de l'enseignement supérieur devrait être juste et équitable, être telle qu'elle lui permette de s'acquitter efficacement de ses devoirs et responsabilités envers les étudiants ainsi que de ses obligations en matière d'étude, de recherche et/ou de gestion universitaire, être assortie, pour les enseignants appelés à enseigner au-delà de leur service normal, d'une rétribution calculée en conséquence, et être négociée avec les organisations représentant le personnel enseignant de l'enseignement supérieur sauf s'il existe d'autres procédures équivalentes conformes aux normes internationales.

63. Le personnel enseignant de l'enseignement supérieur devrait bénéficier d'un environnement professionnel qui ne nuise pas à sa santé ni à sa sécurité ; il devrait également bénéficier de mesures de protection sociale, notamment en ce qui concerne les prestations de maladie, d'invalidité et de retraite, ainsi que de mesures de protection relatives à la santé et la sécurité couvrant tous les risques visés par les conventions et recommandations de l'OIT. Les normes appliquées devraient être au moins aussi favorables que celles que prévoient

les instruments pertinents de l'OIT. Les prestations de sécurité sociale devraient être accordées de droit au personnel enseignant de l'enseignement supérieur.

64. Les droits à pension acquis par un enseignant du supérieur devraient être transférables, aux niveaux national et international, sous réserve des législations et conventions fiscales nationales, bilatérales et multilatérales en vigueur, au cas où l'intéressé serait muté dans un autre établissement d'enseignement supérieur.

Les organisations représentant le personnel enseignant de l'enseignement supérieur devraient avoir le droit de désigner des représentants pour participer à la gestion et à l'administration des régimes de pension destinés, le cas échéant, à ce personnel notamment s'il s'agit de régimes privés financés par des cotisations.

G. Congés d'études et de recherche et vacances annuelles

65. Le personnel enseignant de l'enseignement supérieur devrait bénéficier de congés d'études ou de recherche à traitement plein ou partiel, le cas échéant, à intervalles réguliers, sous forme de congé sabbatique par exemple.

66. Les congés d'études ou de recherche devraient être pris en considération pour le calcul de l'ancienneté et de la pension, sous réserve des dispositions du régime des pensions.

67. Le personnel enseignant de l'enseignement supérieur devrait pouvoir, à l'occasion, prendre des congés à traitement plein ou partiel pour participer à des activités professionnelles.

68. Les congés accordés dans le cadre de programmes d'échanges culturels et scientifiques bilatéraux ou multilatéraux ou de programmes d'assistance technique à l'étranger devraient être assimilés à des périodes de service, de sorte que soient préservés les droits d'ancienneté, les possibilités d'avancement et les droits à pension des intéressés dans leur établissement d'origine. En outre, des dispositions particulières devraient être prises pour permettre de faire face aux dépenses supplémentaires occasionnées à ce titre.

69. Le personnel enseignant de l'enseignement supérieur devrait avoir droit à des vacances annuelles à plein traitement d'une durée suffisante.

H. Conditions d'emploi du personnel enseignant féminin de l'enseignement supérieur

70. Toutes les mesures nécessaires devraient être prises pour promouvoir l'égalité de chances et de traitement pour les femmes enseignantes de l'enseignement supérieur de façon à leur garantir, à égalité avec les hommes, les droits énoncés dans les instruments internationaux figurant à l'appendice.

I. Conditions d'emploi des enseignants de l'enseignement supérieur handicapés

71. Toutes les mesures nécessaires devraient être prises pour que les normes concernant les conditions de travail des enseignants du supérieur handicapés soient, à tout le moins, conformes aux dispositions pertinentes des normes internationales énoncées dans les instruments figurant à l'appendice.

J. Conditions d'emploi du personnel enseignant de l'enseignement supérieur à temps partiel

72. La valeur du service à temps partiel assuré par des enseignants qualifiés de l'enseignement supérieur devrait être reconnue. Les enseignants du supérieur qui assurent un service régulier à temps partiel devraient :

(a) recevoir proportionnellement la même rémunération et bénéficier pour l'essentiel des mêmes conditions d'emploi que les enseignants du supérieur engagés à plein temps ;

(b) bénéficier de conditions correspondant à celles des enseignants à plein temps en matière de congés payés, de congés de maladie et de congés de maternité, les émoluments correspondants étant calculés en fonction des heures de travail ou du salaire versé ; bénéficier d'une protection adéquate et appropriée en matière de sécurité sociale, notamment au titre des régimes de pension établis, le cas échéant, par les employeurs.

X. Utilisation et mise en œuvre

73. Les États membres et les établissements d'enseignement supérieur devraient prendre toutes les mesures en leur pouvoir pour élargir et compléter leur propre action relative à la condition du personnel enseignant de l'enseignement supérieur, en encourageant la coopération avec et entre toutes les organisations nationales et internationales, gouvernementales et non gouvernementales, dont les activités sont en rapport avec le champ d'application et les objectifs de la présente Recommandation.

74. Les États membres et les établissements d'enseignement supérieur devraient prendre toutes les mesures en leur pouvoir pour faire appliquer les dispositions énoncées ci-dessus afin de donner effet, dans les limites de leurs juridictions respectives, aux principes contenus dans la présente Recommandation.

75. Le Directeur général établira un rapport détaillé sur la situation mondiale en matière de respect des libertés académiques et des droits individuels du personnel enseignant de l'enseignement supérieur, sur la base des communications des États membres et de toute autre information étayée par des preuves fiables qu'il aura pu recueillir selon les méthodes qui lui sembleront appropriées.

76. Dans le cas où un établissement d'enseignement supérieur situé sur le territoire d'un État ne relève pas de l'autorité directe ou indirecte de cet État mais d'autorités distinctes et indépendantes, les autorités compétentes devraient transmettre le texte de la présente Recommandation à l'établissement intéressé pour que celui-ci puisse en traduire les dispositions dans la pratique.

XI. Clause finale

77. Lorsque le personnel enseignant de l'enseignement supérieur jouit dans certains domaines d'une condition plus favorable que celle qui résulte des dispositions de la présente Recommandation, ces dispositions ne devraient en aucun cas être invoquées pour revenir sur les avantages déjà accordés.

Appendice

Organisation des Nations Unies

- Déclaration universelle des droits de l'homme, 1948
- Déclaration concernant la promotion parmi les jeunes des idéaux de paix, de respect mutuel et de compréhension entre les peuples, 1965
- Convention internationale sur l'élimination de toutes les formes de discrimination raciale, 1965
- Pacte international relatif aux droits économiques, sociaux et culturels, 1966
- Pacte international relatif aux droits civils et politiques, 1966 et Protocole facultatif se rapportant au Pacte international relatif aux droits civils et politiques, 1966
- Déclaration sur la protection de toutes les personnes contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, 1975
- Déclaration des droits des personnes handicapées, 1975
- Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, 1979
- Déclaration sur l'élimination de toutes les formes d'intolérance et de discrimination fondées sur la religion ou la conviction, 1981
- Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, 1984

Organisation des Nations Unies pour l'éducation, la science et la culture

- Convention concernant la lutte contre la discrimination dans le domaine de l'enseignement, 1960 et Protocole annexe, 1962
- Recommandation concernant la lutte contre la discrimination dans le domaine de l'enseignement, 1960
- Recommandation sur l'éducation pour la compréhension, la coopération et la paix internationales et l'éducation relative aux droits de l'homme et aux libertés fondamentales, 1974
- Recommandation concernant la condition des chercheurs scientifiques, 1974

- Recommandation révisée concernant l'enseignement technique et professionnel, 1974
- Déclaration sur la race et les préjugés raciaux, 1978
- Convention sur l'enseignement technique et professionnel, 1989
- Recommandation sur la reconnaissance des études et des titres de l'enseignement supérieur, 1993

Organisation internationale du travail

- Convention n° 87 sur la liberté syndicale et la protection du droit syndical, 1948
- Convention n° 95 sur la protection du salaire, 1949
- Convention n° 98 sur le droit d'organisation et de négociation collective, 1949
- Convention n° 100 sur l'égalité de rémunération, 1951
- Convention n° 102 concernant la sécurité sociale (norme minimale), 1952
- Convention n° 103 sur la protection de la maternité (révisée), 1952
- Recommandation n° 95 sur la protection de la maternité, 1952
- Convention n° 111 concernant la discrimination (emploi et profession), 1958
- Convention n° 118 sur l'égalité de traitement (sécurité sociale), 1962
- Convention n° 121 sur les prestations en cas d'accidents du travail et de maladies professionnelles, 1964 (Projet I amendé en 1980)
- Convention n° 128 concernant les prestations d'in- validité, de vieillesse et de survivants, 1967
- Recommandation n° 131 concernant les prestations d'invalidité, de vieillesse et de survivants, 1967
- Convention n° 130 concernant les soins médicaux et les indemnités de maladie, 1969
- Convention n° 132 sur les congés payés (révisée), 1970
- Convention n° 135 concernant les représentants des travailleurs, 1971

- Recommandation n° 143 concernant les représentants des travailleurs, 1971
- Convention n° 140 sur le congé éducation payé, 1974
- Recommandation n° 148 sur le congé éducation payé, 1974
- Convention n° 151 sur les relations du travail dans la fonction publique, 1978
- Recommandation n° 159 sur les relations du travail dans la fonction publique, 1978
- Recommandation n° 162 sur les travailleurs âgés, 1980
- Convention n° 154 sur la négociation collective, 1981
- Recommandation n° 163 sur la négociation collective, 1981
- Convention n° 156 sur les travailleurs ayant des responsabilités familiales, 1981
- Recommandation n° 165 sur les travailleurs ayant des responsabilités familiales, 1981
- Convention n° 158 sur le licenciement, 1982
- Convention n° 159 sur la réadaptation professionnelle et l'emploi des personnes handicapées, 1983
- Recommandation n° 168 sur la réadaptation professionnelle et l'emploi des personnes handicapées, 1983

Divers

- Recommandation concernant la condition du personnel enseignant, *adoptée par la Conférence intergouvernementale spéciale sur la condition du personnel enseignant (convoquée par l'UNESCO en coopération avec l'OIT), Paris, 5 octobre 1966*
- UNESCO : Convention universelle sur le droit d'auteur, 1952 (révisée en 1971)
- Organisation mondiale de la propriété intellectuelle : Convention de Berne pour la protection des œuvres littéraires et artistiques, Acte de Paris, 1971 (modifié en 1979)



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Célébrant

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