

December 4, 2013

Women's Caucus  
King's University College  
Faculty Association  
266 Epworth Ave  
London, Ontario, N6A 2M3

Attn: Dr. James Turk  
Executive Director  
Canadian Association of University Teachers  
2705 Queensview Drive  
Ottawa, Ontario, K2B 8K2

Re: Report of the CAUT Ad Hoc Investigatory Committee on King's University College and  
Professor Ken Luckhardt

Dear Dr. Turk,

In the interests of "spirited exchange" that is accessible to members of the broader academic community, the Women's Caucus has elected to respond to the October 3, 2013 CAUT report by Profs. Katz and Haxell (hereafter "Report") and your comments on CTV News on December 3, 2013 through an analysis of publicly available documents. These documents include the CAUT report itself and relevant KUC policy alongside provincial workplace safety legislation and interpretation. Unless otherwise indicated, page numbers refer to the CAUT report.

It is appropriate to note that King's University College Faculty Association (KUCFA) did not request CAUT to investigate a potential breach of academic freedom, nor did the Association release confidential documents to CAUT. It is also relevant that, in a situation of gender-based harassment, women, other than the Complainant herself, are entirely absent from CAUT's investigation and analysis.

We are concerned and deeply disappointed that CAUT has invoked academic freedom as a means to undermine an independent, external investigation which found Mr. Ken Luckhardt to have breached KUC Harassment and Discrimination Policy (2011).

At its crux, the Report finds that the Administration at King's University College created discipline by proxy and violated Mr. Luckhardt's academic freedom. Having received a letter from Mr. Luckhardt that spoke to the direction of the Social Justice and Peace Studies (SJPS) program and criticized two faculty members in the program, the administration forwarded the letter to the Chair of the Department in which the SJPS program is housed, who, in turn, forwarded the letter to the members of the Social Justice and Peace Studies program (Program).

The Report finds that this action by administration ensured that a harassment proceeding would follow and prevented Mr. Luckhardt's legitimate considerations from being debated. However, if the information contained within the letters was, as they indicate, "an expression in good faith of concern for the quality of academic decisions" (p.10), the appropriate environment to review that "concern" was at the Program level. Indeed, the CAUT report finds that Mr. Luckhardt was expressing "his extreme dismay at the Administrative stance over the *future* direction of the program" (p.11, original emphasis). The response to the External Review and future planning for the Program, including planning for its fieldwork component, takes place within a given department or program. As such, it is reasonable to expect that, in order for Mr. Luckhardt's programmatic concerns to be taken seriously, they would have to be circulated amongst the members of the Program.

In response to the suggestion that the Administration should have invited Mr. Luckhardt to resubmit his letters without the "aggressive and arguably unnecessary" (p.12) comments, this action would itself have represented a form of censorship and thus violated Mr. Luckhardt's academic freedom. Indeed, according to CAUT's Policy Statement on Academic Freedom "Academic freedom always entails freedom from institutional censorship" (para 2).

Moreover, this censorship would serve to confine harassing and sexist discourse within the upper level of Administration at the institution, rather than eliminate it, as would the Report's suggestion that the Administration could have dealt with the incident in an even more passive way: "Indeed, [the Administration] could have taken no action at all" (p.13). The suggestion that the Administration hide, avoid or excuse the sexism and harassment in Mr. Luckhardt's letters would have made the administration complicit in the harassment. This is clearly articulated by Ontario's Ministry of Labour:

Employers, supervisors and workers may be held liable under Ontario's human rights system if harassment occurs in the workplace or at work-related functions. They may also be liable for failing to take proper steps to address and prevent that harassment. (2010, p.29)

CAUT may disagree with the administration's decision to apprise the individuals in SJPS of the comments made about them, but to suggest that the administration **not** take some action to guarantee safety and a workplace free of harassment is to recommend the violation of provincial legislation.

The 3 Oct 2013 CAUT report indicates that although the colleagues identified in Mr. Luckhardt's letters are women, "there is ... little evidence that it is the gender of his colleagues that is of concern to Professor Luckhardt" (p.15). Indeed, the Report reframes the issue, suggesting that rather than sexism operating as a vector of exclusion and harassment, Mr. Luckhardt himself is the vulnerable party given his position as a sessional instructor at KUC:

[H]e was a contract faculty member at King's. It is this group that is traditionally most vulnerable within the academic community. Sessional faculty have little power in the academy or protection from administrative abuse in comparison with full-time tenure stream, and especially tenured,

faculty. Contract faculty ... are reluctant to express critical observations about programs or administrative decisions. (p.15-6)

However, by the authors' own acknowledgement, Mr. Luckhardt was not a sessional instructor at King's at the time that he wrote the two letters criticizing members of the SJPS program. He was, in fact, retired (p.4 & p.11). As a retiree, Mr. Luckhardt could hardly be said to be vulnerable to the "depend[ency] upon colleagues and Administration for [his] work" (p. 15), given that he would not be seeking further work. In this way, Mr. Luckhardt had virtually nothing to lose in his "aggressive and arguably unnecessary" (p.12) comments about two SJPS faculty members, in relation to the future of the SJPS program. Even while he was a sessional instructor – and we agree that sessional instructors are often highly vulnerable – Mr. Luckhardt's vulnerability, as with other forms of vulnerability, was mediated by forms of privilege such as his esteemed career in labour organizing (as indicated on p.15 of the Report).

Mr. Luckhardt is also privileged by his gender, in this particular situation and within the academic context more broadly. The Caucus would draw CAUT's attention to the January 2013 report by OCUFA's Status of Women Committee in which OCUFA's research aligns with that of the Council of Canadian Academies to find that "gendered inequalities persist in a chilly climate for women academics that is characterized by 'gendering stereotyping, devaluation, and social and professional exclusion'" (OCUFA Status of Women Committee, 2013, p. 2). OCUFA's Report speaks to women's experiences of silencing, incivility and harassment within academic settings.

Within this broader setting of exclusion, silencing and incivility, Mr. Luckhardt's "aggressive" comments undermined the two faculty members' "good names" (p.13). In so doing, he capitalized upon sexist social discourses that exist within academic institutions - and more broadly - such that women, including those who have tenure, "struggle just to be heard, let alone to be taken seriously and valued" (p. 3). The comments by Mr. Luckhardt, even in their euphemistically "aggressive" form (CAUT's reworking of the independent investigator's findings) seek to undermine the credibility of the two female faculty members. This is evident in McNair's summary of the letters:

Luckhardt's communications were directed to those who exercised potential authority over...their respective career prospects within the College; and, [t]he said communications were clearly intended to block or negatively affect their prospects of advancement to positions of decision-making authority.  
(cited p. 9)

Evidence of further gendered discourse appears in the suggestion that Mr. Luckhardt is concerned that "the colleagues in question ... were being used by the Administration of King's in order to help facilitate a change to the nature of the program..." (p.10). The very idea that these women were "being used" casts them as unwitting pawns, a characterization that again undermines their credibility and capabilities within an academic setting and that turns on a broader sexist discourse of women as weak or naïve and thus susceptible to being manipulated by those (men) in positions of authority.

In this context, the Women's Caucus is deeply troubled by the great efforts taken to 'dis-prove' an independent third-party's finding that Mr. Luckhardt did indeed engage in harassing behaviour. CAUT's investigation states that Mr. Luckhardt's letters "include strongly-worded comments about some of his colleagues. In this sense, it is entirely understandable that those referenced in the letters would feel distraught upon receiving them" (p.9). In contrast, John McNair, the lawyer charged with making a determination as to whether King's Harassment and Discrimination Policy and Workplace Violence Policy had been breached, found that Mr. Luckhardt's comments were "expressed in a vitriolic tone" and "couched in insulting language that attacked the personal reputations and integrity of the two individuals" (p.8). Given this, Mr. McNair concludes that Mr. Luckhardt's comments were "vexatious and objectionable on any reasonable analysis" (p.9).

In disputing Mr. McNair's finding of harassment, CAUT has actively sought to discredit an independent and external process of investigation. In their account, Katz and Haxell replace the very strong language used by Mr. McNair to characterize the qualitative substantive of Mr. Luckhardt's letters with a far more benign designation of "aggressive." Yet, by the authors' own account, given the language and tone used by Mr. Luckhardt, the "release of the Luckhardt letters could reasonably have been expected to produce the effect that it did, namely the initiation of a formal complaint by at least one of the parties referenced in the Luckhardt letters" (p.14). It is unclear how language that is, by the authors' finding, non-harassing could "reasonably [be] expected to produce" a formal complaint. That the authors find that a formal complaint could be "reasonably ... expected" suggests that the content of Mr. Luckhardt's letters aligns more closely with the findings of Mr. McNair.

Further, we would direct CAUT to King's Harassment and Discrimination Policy in which it clearly indicates that: "Behaviour giving rise to a complaint of harassment does not need to be intentional in order to be considered harassment. The key factor is how the recipient reasonably perceives the behaviour" (4.b.para 5). In this way, regardless of Mr. Luckhardt's intentions, the perception of harassment was adequate to launch a formal complaint. It is noteworthy that King's Harassment and Discrimination Policy does not require the pursuance of informal measures prior to initiating a formal complaint (see section 5.b.v.).

In order to find that Mr. Luckhardt's behaviour should not be considered harassing, CAUT applied its own definition of harassment: "We are furthermore not limited to considering academic freedom or harassment within the confines of the King's University College policies. Rather we base our observations on CAUT policy statements. These include the Freedom from Harassment policy statement, as ratified by the member Associations of the CAUT" (p.9). CAUT defines harassment as "repeated and hostile or unwanted conduct, verbal comments, actions or gestures" (p.22). Notably, neither the definition of harassment in the KUC Harassment and Discrimination Policy (2011) nor Ontario's Occupational Health and Safety Act, 2009, Section 1(1) include the word "repeated" in their definitions of harassment.

Mr. McNair was given the directive of determining whether Mr. Luckhardt had breached King's Harassment and Discrimination Policy. He was not tasked with determining whether Mr. Luckhardt breached CAUT's Harassment policy. The absurdity of applying CAUT's definition in lieu of King's definition is evident if one imagines that the complainant initiated a formal complaint on the grounds that Mr. Luckhardt had violated the harassment policy of another

institution. The use of CAUT's, and not King's, policy also challenges institutional self-governance procedures at King's: The Harassment and Discrimination Policy was ratified by College Council, a body of collegial governance in which faculty constitute a notable majority. The inference that King's Harassment and Discrimination Policy is inferior to that of CAUT is paternalistic and violates the principle of faculty self-governance indicated in Section 5 of CAUT's Policy Statement on Academic Freedom.

Finally, to further dispute Mr. McNair's finding of discrimination, the authors had to impose a subjective interpretation upon Mr. Luckhardt's behaviour in order to dismiss consistency with CAUT's own definition of harassment. While Mr. Luckhardt submitted two letters to members of King's Administration, the second in response to a reply from the Academic Dean, the authors explicitly understand these two events as constituting a single event: "the two letters followed in quick succession. Since the second letter has the clear character of a rejoinder to the Dean's response to the first, we consider them to be part of the same single event" (p.10). The corollary of this recalibration is to find that Mr. Luckhardt has not satisfied CAUT's definition of harassment.

This rhetorical move is telling: while the authors are willing to engage in subjective analysis of Mr. Luckhardt's actions, they are unwilling to do so on behalf of the complainants, constructing instead an ostensibly objective refutation of the allegations of harassment. While the KUCFA Women's Caucus is deeply invested in the protection of academic freedom, we do not tolerate the implication of the CAUT's report: that academic freedom trumps harassment. Moreover, considering vexatious sexist commentary aimed at preventing the promotion of individuals to be an academic form of expression is an affront to the value of academic freedom.

While we agree with CAUT's argument that academic freedom must be balanced with freedom from discrimination and harassment, the application of both of these policies is subjective and interpretive. Moreover, these policies are not diametrically opposed, as is implied throughout the CAUT report. Indeed, that Luckhardt's harassment evidently included statements intended to silence the junior faculty members in relation to their programmatic input and prevent their promotion (McNair, cited p.9) illustrates that, in this case, harassment could have served to limit the academic freedom of two member of the King's Faculty Association. Exposing and rejecting such harassment in this situation can thus be interpreted as an effort to protect the academic freedom of the women faculty members.

On balance, there is no reasonable justification for CAUT's finding against the findings of the external investigator, nor is there reasonable justification for the application of its own policy in lieu of King's policy. CAUT advocates the position that the Administration is ultimately responsible for the harassment complaint against Mr. Luckhardt because of its disclosure of Mr. Luckhardt's letters to those whom he criticized. The appropriate alternatives, CAUT proposes, were that Mr. Luckhardt be "invited" (p.19) to resubmit his concerns without the derogatory comments about his colleagues – a patronizing action and certainly one that impinges upon academic freedom – or that the Administration essentially ignore his letters by taking no action in response to them. The KUCFA Women's Caucus is strongly opposed to these actions – an invitation to resubmit or taking no action – that serve to protect those who participate in sexist behaviour and discourse from the possibility of being held accountable for their actions.

We are deeply disappointed in CAUT, an organization that claims to be the “national voice for 68,000 academic and general staff” (CAUT, 2013), for failing to recognize the challenges confronted by women and other faculty who are marginalized and for failing to consider academic freedom in a thoughtful and nuanced manner such that academic freedom and freedom from harassment are not cast as oppositional principles, but rather as principles – sometimes mutually reinforcing and sometimes in tension with one another – that are both essential to the healthy and productive functioning of academic institutions for all who work therein.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Lozanski', written in a cursive style.

Dr. Kristin Lozanski  
Chair, on behalf of the Women’s Caucus  
King’s University College Faculty Association

cc: Dr. Peter Ibbott, Chair, King’s University College Faculty Association  
King’s University College Faculty Association, General Membership  
Dr. David Sylvester, Principal, King’s University College  
Dr. Sauro Camiletti, Academic Dean, King’s University College  
Dr. Renée Soulodre-La France, Associate Academic Dean, King’s University College  
Ms. Jen Carter, President, King’s University College Students Council  
Dr. Doreen Fumia & Dr. Audrey Kobayashi, Chairs, CAUT Equity and Diversity Council  
Dr. Helene Cummins, Chair, OCUFA Status of Women Committee  
CTV News, London