

The King's University College Investigative Subcommittee Findings on the Katz-Haxell Report: As Endorsed Unanimously by the General Membership of the King's University College Faculty Association on December 16, 2013.

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An ad hoc committee was established by James Turk of the CAUT, with a mandate to investigate and report on the actions of the administration of King's University College in relation to the decision by the Principal of King's to ban Professor Ken Luckhardt from King's. The two members of the committee charged with this responsibility were Professor Albert Katz and Jonathan Haxell. Their report was released on October 3, 2013 at the CAUT website.

The King's University College Faculty Association first became involved when we discovered that the committee charged with reviewing the relevant documents had no plans to interview the affected King's faculty. We became concerned when it became apparent that the CAUT did not have all the relevant documents and that the documents that they had would not provide sufficient information to properly fulfill their mandate. We requested that a fuller investigation be made so that faculty at King's could have a voice and so that all relevant documents would be considered in their report. Professors Katz and Haxell graciously agreed to expand the investigation to interview faculty and consider other documents.

The Katz-Haxell report that followed in September of 2013 summarizes their evidence, provides findings of fact, and makes four recommendations. A careful review of the Katz-Haxell report by the KUCFA Executive revealed serious errors in the reported findings of fact. These errors significantly undermine their four recommendations. The King's University College Faculty Association responded at a meeting of the general membership by passing a motion to form an ad hoc subcommittee of the KUCFA Executive. The responsibility of this subcommittee was to report to the membership at the next general meeting with a more accurate accounting of the events and to provide an informed review of the Katz-Haxell recommendations. The ad hoc subcommittee was to consist of members of the Executive who were not part of the Executive at the time of the events outlined in the Katz-Haxell report. The members of the subcommittee were Peter Ibbott (KUCFA Chair), Graham Broad (KUCFA Secretary), and Stephanie Bangarth (KUCFA Vice-Chair). In what follows, we identify the factual errors in the Katz-Haxell report and go on to examine how implementing the recommendations is likely to undermine academic freedom at King's.

1. The chief error in the Katz-Haxell report is the claim that the grievance was released by the King's Administration. No evidence is provided for this finding. Instead, a theory is proposed in the Katz-Haxell report and on the CAUT website that a confidential grievance was strategically leaked by Administration in order to manipulate members of our association into shutting it down. This did not happen. The truth is much simpler and much less diabolical. The grievance was never released. Rather, the Grievance Committee made a request to the Administration for the findings of the external investigator in the harassment complaint in support of its grievance

against the Administration. The Administration indicated that it was willing to release this information if permission was granted by the complainant in the harassment case. This is how the grievance became known to one of the women mentioned in the Luckhardt letter. At no time did the women ever receive a copy of the grievance.

2. The second major error in the report is the claim that Mr. Luckhardt's letters were publicly released. This did not happen. Instead, the Dean gave the letters to the Chair of the Department who was responsible for coordinating the program review on which Mr. Luckhardt was commenting on. The Chair at no time publicly released Mr. Luckhardt's letters. Only the two women slandered by Mr. Luckhardt were informed.
3. A third error in the findings of fact is the claim that "there is ... little evidence that it is the gender of his (Luckhardt's) colleagues that is of concern to Professor Luckhardt" (p.15). This is absurd. The Women's Caucus of KUCFA has released a detailed report which provides a thorough examination of the publicly available documents and concludes that gender is central to this case and that Mr. Luckhardt has used gendered discourse in order to discredit the two women. We have nothing much to add to their findings except that it would be difficult to see how the Katz-Haxell report fails to see that describing colleagues as "two female opportunists" is not gendered.
4. A fourth error in the report is the claim that the complaint of harassment was without merit. To prove this claim, the authors attempt to discredit the independent external examiner used by King's to evaluate claims of harassment. Furthermore they claim that the letters merely "include strongly-worded comments about some of his colleagues" (p.9). In fact, Mr. Luckhardt, derided their professional competency, made unfounded claims about their motives, and requested that they be denied promotion to positions of responsibility within their program. The Katz-Haxell report also tries to argue that the two letters are not part of a pattern of harassment, which requires them to ignore the escalation in language used by Mr. Luckhardt in his second letter, in which he compares the two women to notorious war criminals. Also of concern to us is that Luckhardt chose to characterize the two women's exercise of their academic freedom as "Disruptive, interruptive, and distractive" [conduct] that "can only be understood as their effort to undermine and take it (the program) over." He goes on to say that "I never understood their petty carpings over the most trivial minutia imaginable." He then clearly seeks that a sanction be brought by urging "administrators not to support in any way this undermining of the SJPS by promoting the conspirators to positions of decision-making authority." It is our view that this is not simply strongly-worded commentary. We agree with the external investigator that this is harassment. It is highly unusual that the Katz-Haxell report fails to provide a clear and complete report of these critical details of the case. It is our view that secret attacks on the reputations of colleagues are not privileged and protected by academic freedom, and that Administrators have a duty to report such behaviour.

Surprisingly, the view that the Luckhardt letters might be considered harassment is advanced by Katz and Haxell themselves. They argue that 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). How is it possible that there is no merit in the claim of harassment if it could be reasonably be expected that these letters would be likely to generate a complaint of harassment if the women named became aware of the letters? If they are sincere that there was no harassment but that the two women might perceive it as harassment, then Katz and Haxell seem to be suggesting that women can be expected to have a poor understanding of what real harassment is. Even more bizarrely, Katz and Haxell argue that there would have been no harassment if administrators had never told the women that their reputation was being secretly attacked. We find that administrators cannot make harassment go away by leaving victims uninformed.

5. A fifth error in the report is that it suggests that Mr. Luckhardt’s academic freedom was systematically trampled by the King’s Administration who are supposed to have implemented a complicated plot to manipulate a number of women in our Faculty Association. As previously explained, there is absolutely no substance to this theory. The truth is that Mr. Luckhardt was invited back to King’s to participate in the Program Review. The administration paid the travel expenses of a part-time instructor who had worked for four years at King’s. This was not done to harm his academic freedom, but to allow him to participate fully. Nowhere in either of the letters does he suggest that he was prevented from participating fully in the Program Review. Our terms and conditions of employment document make very clear that Mr. Luckhardt has the right to exercise his academic freedom and that this includes his right to object to the recommendations of the external reviewer (who also happens to be a woman) and to object to the conclusions of the Program Review. We find that no actions were taken to prevent Mr. Luckhardt’s from participating in the program review nor were actions taken to limit his right to contest vigorously the conclusions of the Program Review. Instead, we find that Mr. Luckhardt’s unwillingness to accept the findings of the program review led him to write secret emails in which he attacked the character and the professional integrity of two female colleagues with whom he disagreed. More seriously, he sought to get the University administration to impose serious sanctions that would damage their career and reputation, simply because he disagreed with their views. These actions are not part of academic discourse.

Given these substantial errors, the four recommendations of the report need to be reconsidered.

1. The recommendation that Mr. Luckhardt be allowed to re-submit his comments to the Dean, the Principal and the Provost is peculiar because there is nothing preventing him from doing this. In fact, at any point, if he had chosen, he could have done precisely this. Such an action would show that Mr. Luckhardt is willing to deal constructively with the harassment complaint in a manner that would move towards finding a resolution. The recommendation to provide such a remedy is peculiar as the Katz-Haxell report claims that no harassment took place and Mr. Luckhardt has never shown any interest in addressing the complaint in this or any way.
2. The recommendation that the Faculty Association and Administration work together to revisit the King's University College Harassment and Discrimination Policy is peculiar for a number of reasons. The first source of peculiarity is that it is based on the claim by Katz and Haxell that that Mr. Luckhardt's two letters constitute a single event. This claim is made in order to support a conclusion that no pattern of repeated harassment has occurred, and that as such, no harassment occurred according to the CAUT harassment policy. The second source of peculiarity is that the Katz-Haxell report seem to be unaware of Ontario's Occupational Health and Safety Act, 2009 (Section 1(1)). Nowhere in the Act is the word "repeated" used in their definition of harassment. It is the CAUT harassment policy that seems inconsistent with Ontario law. Moreover, it is the view of our Association that the requirements of the law make it mandatory for the Dean and Department Chair to act as they did, or else they could be held liable under Ontario's human rights code. The Katz-Haxell report does not seem to be aware of the responsibilities of employers.
3. The recommendation that "the academic community at King's work to develop a set of policies and guidelines that reflect appropriate professional conduct and best practices with respect to the release of private and privileged information by the Administration" is based on a complicated false theory that is completely at odds with the facts. The grievance was not made public. The only people who knew about the grievance were two staff of the CAUT, who encouraged our Grievance Committee to pursue a grievance, the Grievance Committee itself and the faculty member who launched the Harassment complaint against Mr. Luckhardt. She was informed because the Grievance Committee approached her to request permission to view the confidential Harassment complaint and the findings of the external report. What is peculiar is that we have received reports that the CAUT violated all normal rules of confidentiality with regard to this harassment complaint by selectively reading parts of the complaint at an "in camera" session of the CAUT Council. The Executive Director of the CAUT has denied the allegation. We have been unable to determine what was said during the "in camera" session. If the allegation is true, we would view this action on the part of the CAUT as a violation of privacy, and understand why two of our members feel humiliated by the reported actions of the CAUT.
4. The recommendation that the ban on Ken Luckhardt be removed is perhaps the least peculiar of the recommendations. The request for its removal fails to take into account the reason for the

ban, which the authors carefully avoid. When the harassment complaint was made, Mr. Luckhardt declined to participate in our harassment procedures, claiming that they did not apply to him. The procedures are intended to protect academic freedom by defending the rights of faculty to argue without fear that their opinions will be brought before their superiors for sanction. Mr. Luckhardt secretly attempted to have strong sanctions placed on two of our members because he disagreed with them. By not participating in the process, Mr. Luckhardt indicated that he had no interest in finding a resolution. If Mr. Luckhardt is interested in a resolution, the ban would be lifted if he speaks with the Principal about academic freedom. He has not attempted to seek a resolution in this way.

It is our view that the CAUT has a considerable distance to travel in terms of eliminating systemic weaknesses in their procedures around investigations of purported violations of academic freedom. In particular, the CAUT needs to:

1. develop procedures to protect against the appearance of conflict of interest. The person setting the terms of the investigation, hiring the investigative team, and receiving the report should not have a relationship with the complainant at the heart of the investigation, as was the case here;
2. improve communications with its member Associations. Our past chair, who also happens to be a woman, received several angry emails from a staff member at the CAUT. One of these emails even said that she would “regret” the decision to drop a grievance that we had launched on behalf of Mr. Luckhardt;
3. appoint at least one woman with an expertise in gender and equity issues to any committee charged with investigating academic freedom where gender is an issue. Pretending gender is not an issue, as was done by Katz and Haxell, is very worrying. We want the CAUT to defend academic freedom, including the academic freedom of women.

The most glaring problem with the investigation procedure is how Katz and Haxell chose to reconcile the very different reports they received about the events. We find that in almost every instance they seem to have chosen to believe the men that they interviewed and to have discounted completely the contrary narratives provided by the women they interviewed. This is particularly strange as the women were eyewitnesses to the events, while many of the men interviewed were able only to speculate about what happened based on what they heard or believed. By advancing the unfounded theory that the Administration strategically released a confidential Grievance, the authors of the report are implicitly suggesting that the past Chair of our Association (a woman), and the two members of our association (also both women) who were the object of Mr. Luckhardt’s complaint are exceedingly naïve. We are led to believe that they allowed themselves to be used and manipulated by (male) administrators into damaging academic freedom at King’s. Perhaps if there had been one woman with an expertise in gender and equity issues on the investigative committee, this fantastical theory could have been avoided.

The result of this flawed process is a report that provides a bizarre mix of false theories with absurdly complicated plots. We fail to see how this flawed report advances academic freedom. A more useful approach would be for the CAUT to take the existence of systemic sexism in Academia seriously and

consider how harassment policies can be an important part of the foundation of academic freedom. We do not dispute the argument that poorly designed harassment policies can be used to harm academic freedom, but the Katz-Haxell report fails to provide any examination of how the policies and procedures of the King's Harassment Policy fail to protect academic freedom at King's. In fact, OCUFA is currently reviewing harassment policies at Ontario Universities, and their survey shows that the policies and procedures followed by King's are in line with standard practice at other Universities in Ontario. As the CAUT is making requests for change to policies developed under our system of Collegial Governance, it should be clear what is being requested.