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PURPOSES of SAFS

- 1. Maintaining freedom in teaching, research and scholarship;**
- 2. Maintaining standards of excellence in decisions about students and faculty.**

Researching The Equity Industry Part One:

Disinformation And "Double Disadvantage"

Martin Loney

Canada boasts an extensive employment equity industry ostensibly dedicated to ensuring bias-free hiring and promotion policies. At the federal level, a range of departments and agencies, including Heritage Canada, Statistics Canada, the Public Service Commission, Human Resources Development, Treasury Board and the Canadian Human Rights Commission have an employment equity function. The repeal of Ontario's legislation attracted considerable attention but the passage of *new federal legislation* at the beginning of this year, extending the number of employees covered and increasing the powers of the Human Rights Commission, attracted little notice.

The controversy surrounding the Office of the Employment Equity Commissioner highlighted one aspect of the Ontario government's activities. The Office has been abolished, but, within the Ontario Public Service, employment equity is well entrenched. When the Harris government came to power the Management Board had no less than 130 employees with responsibility for employment equity in the OPS; plans were under way for a further

significant expansion in staff. Individual ministries each had a smaller employment equity section.

The employment equity industry embraces a range of further players. These include sections in the larger municipalities and school boards, companies whose business depends on the existence of employment equity legislation requiring private and public sector compliance, human resources officers with an in-house employment equity function, tax-funded groups which claim to speak for particular identity group constituencies, and tax-funded issue groups such as the Alliance for Employment Equity and the Urban Alliance on Race Relations. In addition to government and government-funded advocacy groups, a significant number of academics are at work documenting the supposed discrimination experienced by various identity groups, while the growing anti-harassment bureaucracy in the universities and colleges provides work for equity advocates.

The result is a level of disinformation similar to that reported in Fekete's study of the violence-against-women industry, in which researchers and advocacy groups seek to outdo one another in the production of ever more inflated claims of discrimination. Contradictory evidence is ignored.

The Myth Of "Double Disadvantage"

One of the more prominent claims is that some groups face double disadvantage and, in consequence, merit particularly privileged compensatory treatment. The favourite beneficiaries are visible minority women. Much of the research supporting these claims is characterised by a failure to compare similar groups.

The Ontario Women's Directorate, with all the authority of the provincial government behind it,

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reports, in a widely circulated 1993 publication, that the data "show a pattern of low earnings, high unemployment and occupational segregation for racial minority women." The most remarkable aspect of this claim is that it is made in the face of counter evidence offered in the tables produced in the same report. Thus the unemployment level for racial minority women in Ontario, cited from 1986 census data, is 6.9 percent, that for other women 7.1 percent. In contrast to alleged occupational segregation, 13.4 percent of visible minority women are in professional positions, compared to 14.2 percent for other women, in the supervisory and forewomen categories the proportions for both groups are the same. The most marked divergence is in the larger proportion of visible minority women found in manual occupations and the smaller proportion found in middle and upper management, where seniority is a major predictor of entry. Overall, racial minority women earned, on average, 6.6 percent less than their white counterparts.

The Women's Directorate, offers as an example of "systemic discrimination" the fact that 14 percent of racial minority clerical workers have university degrees compared with four percent of other Ontario women clerical workers. There is no suggestion that the figure merits critical examination, it is simply offered as proof. The figure cannot be used to demonstrate discrimination or its absence since it fails to take into account such important variables as age, labour market experience, language proficiency, and degree equivalence. Statistics Canada's analysis of the 1992 National Graduates Survey reveals no evidence of contemporary discrimination against female, visible minority graduates of Canadian universities.

Visible minority women, as a group, are younger, disproportionately comprised of recent immigrants and have less Canadian labour market experience than their counterparts. The conclusion supported by the data is that the Canadian labour market has exhibited a high degree of openness.

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Sociologist Monica Boyd, an enthusiastic promoter of preferential hiring policies, analyzed the 1986 census data in search of evidence of discrimination. Visible minority Canadian-born women, aged 25-64, actually had a mean employment income some 13 per cent higher, in 1985, than their Canadian-born counterparts. After adjusting for age, region of residence, CMA residence, marital status, education, occupation, full-time/part-time status and weeks worked, visible minority women still enjoyed a slight income advantage. Canadian-born visible minority men in contrast earned a mean income some two per cent less than their counterparts or four per cent less, on an adjusted basis. The finding that visible minority women earn more than their counterparts is inconsistent with the claim of double disadvantage. The evidence runs counter to the hypothesis that employers discriminate on the basis of race. The findings regarding Canadian-born visible minority males are equally inconsistent with claims of pervasive labour market discrimination.

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Boyd did not address the implications of her failure to find evidence of extensive discrimination against Canadian born visible minorities. Instead Boyd turns her attention to the alleged evidence of discrimination found in her analysis of the earnings of visible minority immigrants. She provides evidence of significant income disparities between Canadian and foreign-born non-visible minorities and foreign-born visible minorities and concludes that this is evidence of a pattern of disadvantage, consistent with employment equity objectives. The problem with this is that it is extremely difficult to establish that similar groups are being compared. Boyd's analysis fails to incorporate such central predictors of labour market success as fluency in one of Canada's official languages, immigrant class (sponsored or independent) and length of Canadian labour market experience. Comparisons of individuals with similar education are problematic when the educational qualifications have been gained in a different jurisdictions. Is a B.A. from an Indian university to be treated as equivalent to a B.A. from a West European or North American university? The assumption here is that it is. Most universities do not

automatically accept this equivalence for all Indian universities. Employers too may not treat all degrees equally. But in Boyd's analysis this will be taken as evidence of race-based discrimination.

Boyd extends the purview of equity legislation to those whose "disadvantage" is to have been born abroad. The endorsement of the idea that those who immigrate to Canada acquire, in contrast with previous generations, a right to an immediate "fair share" is not as far fetched as it might seem. Supreme Court Justice Bertha Wilson, who has made a singular contribution to redefining Canada through imaginative interpretations of the Charter, gave judicial endorsement to the concept of immigrant disadvantage in a case involving the British Columbia Law Society's claim that citizenship was a requirement for practising the profession. The judge argued that immigrants should be treated as disadvantaged-- "an analogous category to those enumerated (in the Charter)." In the particular case, the face of disadvantage was an Oxford educated, American lawyer (Gwyn 1995).

Fun With Numbers In The Canadian Parliament

The willingness to produce whatever numbers are required to substantiate allegations of discrimination was evident in the debates leading up to the new federal legislation. Ethel Blondin-Andrew, Secretary of State for Training and Youth at Human Resources, informed the House of Commons that recent reports on the operation of the 1986 equity legislation "painted a depressing picture." In fact the latest report indicated that while the work force of federally regulated industries had declined, the representation of members of the designated groups "actually increased." The groups also gained a disproportionate share of promotions. Visible minorities are consistently hired in greater numbers than their proportion in the wider labour force and have disproportionately low termination rates. The group has significantly less seniority in the industries covered by the Act, nonetheless earnings are 96.5 percent of the average.

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More astonishing was Blondin-Andrew's claim that university-educated young aboriginals faced levels of unemployment twice as high as their white male counterparts. The minister's office advised me that these were Statistics Canada figures. Statistics Canada, in contrast, reported that, according to 1991 census data, the unemployment rate for aboriginal male university graduates was 6 per cent, the rate for their non-aboriginal counterparts 4.9 per cent.

Maurizio Bevilacqua, parliamentary secretary to the Human Resources minister, managed to turn women's success into further evidence of discrimination, advising his colleagues in the House that in spite of the fact that, in 1990, women obtained 55 per cent of undergraduate degrees, "many women continue to be ghettoized in low paying and part-time work." There is no evidence from the Statistics Canada National Graduates Survey to support either claim.

Parliamentary secretary to the Minister of Citizenship and Immigration, Mary Clancy, advised the House that white males get 60 per cent of all jobs and 90 per cent of all promotions. Two months and many phone calls later Ms. Clancy's office neither retracted the claim nor cited any evidence in favour of it. The 60 per cent figure may come from the data on federally regulated industries which have disproportionate male representation, in comparison to the wider Canadian economy. Nationally male unemployment rates, particularly for the young, are significantly higher than for women. The figure on promotions is so plainly absurd any comment would be redundant.

The cavalier way in which statistics are deployed, recalls Lewis Carroll's advice to those who would inspire confidence to use plenty of statistics: "it does not matter that they should be accurate, or even intelligible, so long as there is (sic) enough of them."

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[Part Two will appear in next newsletter]

WHO EXACTLY IS HURT BY "HURTFUL SPEECH" or WHATEVER HAPPENED TO STICKS AND STONES...?

Terry Heinrichs, York University

In the Keegstra case, the Canadian Supreme Court upheld section 319(2) of the Criminal Code which makes it a crime wilfully to promote hatred against identifiable groups, that is, "any section of the public distinguished by colour, race, religion or ethnic origin." In a similar vein, Justice Minister Alan Rock recently introduced legislation (Bill C41) permitting judges to impose stiffer penalties for crimes "motivated by bias, prejudice, or hate based on the

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race, nationality, colour, religion, sex, age, mental or physical disability, or sexual orientation of the victim." An important part of the argument underlying both the Court's ruling and Bill C41 concerns the specific harms that such expression is believed to cause its victims.

I examine here the idea that these harms warrant a special form of legal sanction. My contention is that, out of commendable concern for the well-being of members of identifiable groups, the reasoning limits concern to the harm caused only to members of such groups. Shifting our focus from the harms to the groups is, I argue further, especially problematic in the context of a political process which increasingly has come to recognize the legitimacy of treating people less as individuals than as members of identifiable groups. I conclude that such a restricted focus turns out to be both anti-egalitarian and inconsistent with our democratic commitments to honesty and openness in public discourse.

Words That "Hurt"

In recent years, a number of influential commentators have eloquently argued the case for legal sanctions on racist or sexist speech on the basis of the particular harms such speech is said to work on its particular targets.(1) Focusing on racist speech, Richard Delgado has suggested that "such language injures the dignity and self-regard of the person to whom it is addressed," since it can breed "feelings of humiliation, isolation, and self-hatred," leading to doubts about "self-worth and identity." Racist expression may even result "in mental illness and psychosomatic disease.... The stresses of racial abuse may have physical consequences. There is evidence that high blood pressure is associated with inhibited, constrained, or restricted anger...and that insults produce elevation in blood pressure."(2)...

According to Matsuda:

Victims of vicious hate propaganda have experienced physiological symptoms and

emotional distress ranging from fear in the gut, rapid pulse rate and difficulty in breathing, nightmares, post-traumatic stress disorder, hypertension, psychosis, and suicide.... In order to avoid receiving hate messages, victims have had to quit jobs, forgo education, leave their homes, avoid certain public places, curtail their own exercise of speech rights, and otherwise modify their behavior and demeanor. (3)

And in what must be the most specific--and perhaps the most eccentric--diagnosis yet on record not only of the harms expression can cause but also of their supposed cause, Sheila McIntyre has alleged that "anti-feminism plays a significant role in triggering or aggravating" diseases such as "rheumatoid arthritis...lupus, Epstein-Barr, serious insomnia, cancer, clinical nervous disorders, candida and cluster migraines."(4) McIntyre is not explicit as to the response required; the others insist that the harm caused by hostile utterances necessitates some type of legal response, ranging from a separate tort for racial insults to outright criminalization. But are they correct in so thinking?

Few among us would deny that most of the conditions described are serious enough to warrant concern. If people feel humiliated, isolated, emotionally scarred; if they experience mental disorder or high blood pressure; if they feel like they have just been "slapped in the face"; if they contract serious diseases; if they feel forced to quit a job, forgo education, or move from their homes--most of us would think that they have suffered serious injury.... The harms are serious, to be avoided if possible, and where not, to be attended to.

But even while agreeing that these harms are serious, we would not necessarily agree that attending to them requires legal restrictions on expression. Our concern would be directed toward the speech only to the extent that we were convinced it was the cause of the distress. It would be the individual harm that preoccupied us, with the particular form of expression

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and the particular groups targeted occupying secondary status. The same order of priorities does not, however, seem to be evidenced by any of the above-cited commentators.

The distinction is far more than semantic. If the commentators, judges and legislators focused on the actual harm caused, they could be concerned with expression only to the extent they thought it responsible for the harm, and only with those actually harmed by it. Their actual reasoning, however, suggests that every member of an offended group always and inevitably reacts to offensive expression in exactly the same way. Yet certainly they do not. As with most other things in life, the reactions might be expected to vary according to individual differences in such things as temperament, family background, educational attainment and socio-economic status.

At the same time, if our concern is for the well-being of the individuals harmed, we should be concerned with any individual harmed, from whatever grouping, and not just members of protected groups. And we should be concerned with any putative cause of the harm, not simply expression, and certainly not with but one form of expression. While commentators differ on which groups should be included under their protective umbrellas, or on how inclusive to make offers of protected status, none is prepared to listen to complaints of damage from whatever quarter they might come.

But how is one to draw the line in today's "culture of complaint?" Compared to the not-so-distant past, almost everyone these days seems to have a grievance against someone else for an insensitive or offensive remark. But even accepting the validity of many of the complaints, and even assuming for sake of argument the legitimacy of using state power as a means of redress, who is to say that the pain of a person is not real or worthy of concern unless he or she falls into one or other of the protected categories? Why should the pain of members of protected groups

be of more concern to state officials than the pain of members of unprotected groups?

If it is true, as the Court majority in "Keegstra" has it, that "promoting equality is an undertaking essential to any free and democratic society," and if it is also true, as the Court also says, that to promote equality is to promote "a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration," (5) then it is not only unjust to codify in law that the sufferings of one segment of "the people" are more worthy of concern than those of another, it is inegalitarian and anti-democratic as well.

Is Selectivity Justified?

If our focus is on the harm itself, rather than on the particular group addressed, then the pain of a white male called "hokey" or "white devil" (or even "racist", "sexist", or "fascist pig") should be no less a matter of concern as the pain of a woman called "bitch", a black called "nigger", or a gay called "fag".... If the hurt is our focus, then all of these should be actionable, not just some. For the pain of harassment is the same, regardless of who is doing the harassing, who is being harassed, and the reasons for the harassment. Protecting one but not the other by means of selective controls on expression, as some commentators would have it, is a form of discrimination that is as unfair and inegalitarian as it is undemocratic.

Granting a cause of action every time anyone is "wounded" by words is no solution. If we prosecute every time someone says or writes something that denies the "personhood" of another, that proclaims his or her inferiority, or is persecutorial, hateful, degrading, or dehumanizing, our court dockets would be flooded and our prisons jammed.

Worse still, widening the protection against hurtful speech this way could undermine the vigorous debate that historically has proven essential for the public discourse that makes a democratic society. If they feared being penalized for using "words that wound," citizens would be walking as if on eggshells around one another, avoiding any statement that could

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possibly give offence to someone somewhere. Far from being open and engaging, such discourse would be crabbed and closed, with speakers cautiously choosing every word, expressing opinions on only the most anodyne of subjects. Controversial issues would be, at least publicly, avoided, conventions embraced rather than flouted. Rather than seeking truth, people would try to avoid giving the offence that truth might bring; rather than speaking their minds, they would disguise their meaning through carefully coded vocabularies. We would imperceptibly begin to live "what almost everyone in East Germany and Czechoslovakia was living--a double life: systematically saying one thing in public and another in private." (6)

Insulating Groups From Public Scrutiny

We already see these same tendencies in our public discourse about subjects touching on the position of the "protected groups" such as immigration or AIDS, where we are prone to conceal what we think unless it happens to conform to the prevailing political orthodoxy. For example, if a university, as mine has, institutes a sexual or racial harassment policy which makes it an offence to say "derogatory" or "degrading" things about someone's gender, sexual orientation, or race, then comments such as "welfare recipients are lazy," "the proper place for women is at home with the kids," or "homosexuality is unnatural" might all run afoul of the policy. Rather than being expressed and criticized in open debate, such views are repressed and left unexamined.

Most important of all, such measures insulate protected groups from public comment just when some of them have emerged as central players on the political stage. Injustice is the inevitable result....

It is unacceptable that some groups, which are the direct beneficiaries of public policies and programmes, should be exempt from the rough and tumble of political criticism, especially when other not-so-favoured groups are not. If a group--any group--is an active political agent, on what legitimate

democratic argument can its members be insulated from the kind of hostile public comment that members of other groups are forced to bear?

Defenders of such insulation will respond that the speech of the "subordinated" or "victimized" is less powerful or effective than that of their subordinators and victimizers. At one level this is true. That the speech of the "subordinated", those on the bottom--assuming the groups so named in fact to be there--is less effective than the speech of those on the top should surprise no one. Nor should it surprise us to find those who champion their cause looking for new ways to enhance the opportunities of those on the bottom to get their message out. What is surprising is that commentators pressing this case for "equality" should hit upon legal sanctions as a mechanism to effect it. In the long run, freedom of expression is the ally, not the enemy, of the "subordinated".(7)

Most surprising of all, those who advance such an argument, almost as a group, place themselves on the left wing of the political spectrum. As such, it is indeed odd that they would want to grant the repressive apparatus of an assumedly hostile state greater powers to regulate expression. They must assume that state officials will use that power to prohibit only those utterances made by people from dominant social groupings. But if this is what informs their efforts, then to borrow a phrase from Alan Borovoy, "they probably also believe in the tooth fairy."(8)

NOTES

1. While most of the commentators cited here are responding to concerns about racist expression raised in an American context, the particular arguments advanced have played--and continue to play--a prominent role in debates about such expression in Canada.
2. Delgado, "Words the Wound: A Tort Remedy for Racial Insults, Epithets, and Name-Calling", *Harvard Civil Rights - Civil Liberties Law Review*. Vol 17, No. 133: 135-139, (1982).
3. Matsuda, "Public Response to Racist Speech: Considering the Victim's Story", *Michigan Law Review*. Vol, 87, No. 2320: 2336-37, (1989).

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4. McIntyre, "Reflections from Sheila McIntyre", *Canadian Association of Teachers Bulletin: CAUT Status of Women Supplement* (CAUT/Status of Women Committee), March 1989, at 3.

5. R.V. Keegstra, (1990) 3 S.C.R. 697, 756. The majority opinion was in fact peppered with a great deal of equivocation. After asserting that hate propaganda causes "very real harm", Dickson C.J. says that "words and writings that wilfully promote hatred can constitute a serious attack....This impact may cause target group members to take drastic measures in reaction, perhaps avoiding activities....There is...the possibility that prejudiced messages will gain some credence with the attendant result of discrimination, and perhaps even violence..." (746-748).

6. Timothy Garton Ash, "Eastern Europe: The Year of Truth" *New York Review of Books*, February 15, 1991, 17-18.

7. See, for example, Alan Borovoy, *When Freedoms Collide: The Case for our Civil Liberties*, Toronto, 1988, p. 20. See also Kenneth Karst, "Boundaries and Reasons: Freedom of Expression and the Subordination of Groups," *University of Illinois Law Review*, 95 (1990).

8. In 1993, the American Supreme Court upheld the constitutionality of a Wisconsin statute that increased the penalties for crimes motivated by race, etc. The defendant? A young black accused of beating a young white after watching the film "Mississippi Burning". *Wisconsin v. Mitchell* 113 S. Ct. 2194 (1993).

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RESEARCH AND POLITICS

From the convocation address of *Professor Norman Endler*, Dept. of Psychology, York University, to the Fall 1995 Convocation for the Faculty of Graduate Studies, York University:

It is important to remember that the time frames of governments and universities are quite different. Governments (and politicians) live from one election to the next. The frame of reference for researchers (and universities) is timeless. Therefore, it is necessary to take a long time perspective when conducting research. What is politically incorrect today may not be politically incorrect tomorrow. Galileo was politically incorrect in his time. Dorothea Dix was politically incorrect in her time. Darwin and Freud were politically incorrect in their

time. Mary Calkins and Margaret Sanger were politically incorrect in their time. All their viewpoints are acceptable by most people now. Science must not be hijacked by politics

Professor Daphne Patai of the University of Massachusetts and co-author of "Professing Feminism: Cautionary Tales from the Strange World of Women's Studies" (reviewed in Newsletter no. 12) will be the featured speaker at a talk -with-discussion at the University of Toronto, from 3.00 to 5.00 pm, on Friday, May 10, U.C. Room 161.

The title of Prof. Patai's presentation is "**Varieties of Feminism: Implications for Universities.**" The presentation will be followed by a formal period of audience-generated discussion, and then by an informal coffee-with-talk session.

This is the second of a series of SAFS-arranged debates on academic issues, debates which are partly funded by a grant from the Donner Canadian Foundation. The first was a formal debate on "Current Equity Faculty Hiring practices in Canadian Universities," held at the University of Toronto on February 2, 1996.

The present event is assisted by funds from the National Association of Scholars, and by the Provost's Office of the University of Toronto. The event is open to all interested members of the public and press as well as, the academic community. SAFS' Office phone: 978-7062.

Guidelines for manuscript preparation: questioning the approach of the Social Science Federation of Canada

When *Professor J. F. Boshier* (F.R.S.C; F.R.H.S.) of the Department of History, York University, was sent a set of guidelines to "avoid biases in manuscript preparation and evaluation" by the Social Science Federation of Canada recently, he wrote the following in response:

I must add that the Guidelines to Avoid Biases...enclosed with the MS is offensive and even insulting, and has a slightly insane tone, as though it had been written by a group of fanatics. Let me explain what I mean. First, neither I nor anyone I know needs such advice. Secondly, we wonder who it is who feels they can offer such patronizing, moralizing stuff to university professors who are probably just as aware of the problems of bias as the writers of it? Perhaps future editions of your Guidelines...might include other advice, such as "You are requested not to use obscenity in your report, not to kick small children, not to beat your wife..." and so on.

Recently, Professor Boshier wrote again to the SSFC when he received a patronizing letter on the subject of grant reviews. He urges SAFS' members to critically assess and to comment on guidelines that demean scholarship or scholars.

LETTERS TO THE EDITOR

The Left And Employment Equity

9 I take strong exception to Councillor Chong's unfounded assertion that employment equity is a Machiavellian left-wing conspiracy (see "The Terrible Twins: EE and AA" in *SAFS Newsletter*, January 1996). Such divisive remarks should not go unchallenged. Accordingly, I challenge Councillor Chong to demonstrate that employment equity was the work of "socialists and closet Marxists". Surely Councillor Chong would not go so far as to call John F. Kennedy (the only person named in his article) a socialist or Marxist. Kennedy was not a member of a communist party or of any socialist group, nor did he advocate the overthrow of capitalism.

So, can Councillor Chong demonstrate conclusively that the policy-makers who drafted employment equity legislation or the bureaucrats who implemented it fall under this rubric? If he cannot, I think he should retract his statement.

As most people know, Marx was highly critical of the liberal ideology of freedom and equality. For Marx, equality could not be realized under capitalism; the appeal to equality and equal treatment under the law simply masked particular (class) interests. Taking up these ideas, Western Marxists in the first half of this century have been critical of vaguely-worded and deformed social policies targeting specific groups (as is the case with employment equity) which give broad discretionary powers to judges and administrators. In the second half of this century, what was once called Marxism splintered; recognisably left-wing groups, policies and practices have become increasingly difficult to identify. Those who call themselves left-wing are not only often *not* Left but serve as apologists for the status quo accepting bribes (like employment equity) in exchange for the political support of their largely white, middle-class, interest groups and lobbies.

By implying that the fight against employment equity is an exclusively right-wing concern, Councillor Chong

misrepresents those of us who fight against the discrimination inherent in employment equity policies while continuing to identify with the Left. Even if Chong can show that some people on the Left do support quotas, this no more makes employment equity a left-wing conspiracy, than my (left-wing) support for some version of Milton Friedman's guaranteed income makes Friedman a left-winger

SAFS' non-partisan stance allows people of all political stripes to band together to combat discrimination within the university. Councillor Chong would be well advised not to divide a university community that is besieged on all sides and needs more than ever to work together in harmony.

Deborah Cook
University of Windsor

9 It is regrettable that Dr. Deborah Cook views my article as "divisive" because it is certainly not my intent to divide an already beleaguered academic community.

I strongly support SAFS' goals, as a non-academic member of SAFS. I joined initially because I was alarmed at the threat to academic freedom posed by policies like employment equity.

It is my view, and this has been well-documented in the USA, that while the spirit of the civil rights movement was the genesis of affirmative action, the latter subsequently became distorted. This distortion (and bastardization) of both affirmative action and employment equity was promoted by individuals with leftist political leanings. My experience in Canada also supports this interpretation. Of course, there is a variety of views among Leftists, but the main thrust for employment equity came from the Left.

Whatever the case, those who eschew political labels or those with complex political allegiances should not be deterred from energetically and tenaciously fighting to maintain "freedom in teaching, research and scholarship, and standards of excellence in academic decisions about students and faculty."

Gordon Chong

The SAFS Newsletter

The editor welcomes short articles, case studies, news items, comments, readings, local chapter news, etc. Longer items are preferred on disk 3.5" (MS-DOS) in Word Perfect, or by e-mail. Address: **Chris Furedy**, c/o J. Furedy, Psychology, 4024 Sidney Smith Hall, Univ. Toronto, Toronto, Ont. M52 1A1. Fax: (416) 962-4253. E-Mail: **SAFSN@PSYCH.UTORONTO.CA**

ACADEMIC AUTONOMY AND ACADEMIC FREEDOM

[This letter was submitted to the CAUT Bulletin in December 1995, but its publication was rejected.]

In universities, issues often arise that require academic expertise for resolution. It is an important principle of academic autonomy that these should not be left to individuals or organizations which are either ignorant of, or choose to disregard, academic considerations.

During the last decade, this principle has been abandoned on many Canadian campuses, with the result that the academic freedom not only of faculty, but also of students, has been compromised, and the intellectual autonomy of institutions of higher education has been eroded.

Provincial human rights commissions have played a role in this trend. Perhaps the most salient example is provided by the Ontario Human Rights Commission (OHRC) with respect to the University of Western Ontario. In the fall of 1991, 18 students made a submission to the OHRC charging that a professor was "poisoning the academic learning environment" through his allegedly "racist" views. Soon after receiving this submission, the OHRC summoned the professor, the University's president, and a vice-president, and required them to show cause why the professor should not be fired. In addition, the OHRC also required the university to "examine its curriculum so as to eliminate academic racism and provide a curriculum reflective of this province's ethnic diversity".

The OHRC's action began what appears to have been a campaign of some four years, during which time the reputation of the professor, and the good name of the University of Western Ontario, have been brought into question. The OHRC has recently ceased its investigation on the grounds that it is unable to contact even one of the eighteen original complainants. The Commission made no apology, either to the professor or the University, for subjecting them to these drawn-out and damaging procedures.

As a board we take no position on this particular professor's research, or on his scholarly interpretations of that research. What we do strongly support, as anyone familiar with the nature of higher education must do, is his right and responsibility to argue for his scholarly views, no matter how "uncomfortable" or even "offensive" some individuals and organizations may find these. We emphatically condemn racism. Academic racism implies not only that the instructor harbours an ugly prejudice (which, still, is a personal matter), but also that s/he has broken a sacred academic trust by allowing that prejudice to bias the evaluation of students.

In fact, during the four years of OHRC's investigation, not one iota of evidence was produced to suggest that the professor being investigated had been guilty of racial discrimination. Instead a "culture-of-comfort" criterion based on the opinions of individuals ignorant of the academic enterprise has been implicitly embraced by non-academic organizations like the OHRC and applied to Canadian campuses. These campuses, in turn, have appeared to be remarkably reluctant to assert their academic autonomy.

That OHRC has now given up its investigation is a relief for the professor who has been the target. This relief cannot be shared by the academic community, however, given that the OHRC has not apologized for the way in which this case was handled and has not revised its understanding of academic freedom. Nor can non-academic taxpayers be happy to see Canadian institutions of higher learning transformed into adult day-care centres where "comfort" rather than academic considerations determines what ideas can and cannot be explored.

Board of SAFS

REVIEW

Edwina Taborsky, Bishop's University

"Crash-test Dummies? Canada's Experiments with Free Speech," by Paul Trout. *The Montana Professor*, Vol. 5, No. 2, Spring 1995, p. 3-16.

In his article "Crash-test Dummies? Canada's Experiments with Free Speech," Paul Trout outlines a number of areas where free speech has been limited by various levels of Canadian government under the headings of: Limited Information about Trials; Apprehending the Obscene at the Border; Preventing Pornography; Restricting Hate Speech; Condemning "Harassment" and "Discrimination". He provides us with multiple referenced examples of each type, including: publication bans about various trials, bans about even mentioning bans; bans on publicizing big business secret contracts; border apprehensions of material considered as obscene by the Prohibited Importations Directorate and Ottawa bureaucrats; seizures and shredding of various books, films and videos destined for bookstores, galleries and even university libraries; court cases in which it was argued that definitions of various materials were pornographic simply because they made someone feel "uncomfortable"; and the increasingly slippery definitions of "discrimination" and "harassment". One example of this last is the 1994 Ontario government's condemnation of "harassment," which it understood as "anything that is known or 'might reasonably be known' to be offensive, hostile, inappropriate including gestures, remarks, jokes, taunting, innuendo, display of offensive materials, academic penalty, hazing, stalking, shunning."

In discussing the Rae government's "zero tolerance framework," Trout notes that while almost all academic organizations in Canada condemned it, SAFS has been the only one to "attack the 'comfort-at-any-cost' principle underlying the Framework."

Trout warns us that free speech "is being jeopardized by judges, Canadian Customs' officials, anti-

pornography zealots, human-rights activists, (and) provincial governments." I think we should take his insightful and well-written paper very seriously.

BOOKNOTE

Judy Wubnig, University of Waterloo

"Multiculturalism and Objectivity," Susan Haack, *Partisan Review*, No. 3, 1995.

Professor Haack examines the different meanings of "multiculturalism"--social multiculturalism, pluralistic educational multiculturalism, particularist educational multiculturalism, and philosophical multiculturalism--and of the word "culture" itself. She argues that however elastic the term "culture"--e.g. contrast C. P. Snow's "two cultures" (the scientific and literary) with "British culture" as referring to soccer, fish and chips, warm beer, etc.--the view that "cultures" are identified by race or sex, biological traits, rejects the usual contrast of culture to nature. There is a shift in the arguments from multiculturalism to counterculturalism, so from the initial four meanings of "multiculturalism" there are now eight. Professor Haack's acute account of, and criticism of, the confusions of this fashionable attack on the cultivation of reason will be of interest to anyone concerned with what is happening in universities.

The Association Of Literary Scholars And Critics is a new organization, inspired by the National Association of Scholars. The address is: Crown College, University of California, Santa Cruz, Ca 95064.

**THE RYERSON CASE:
AN INTERCHANGE**

Following the Board's letter of November 30, 1995, regarding Ryerson Polytechnic University's abuse of the academic freedom of Prof. Gerald Hannon and his students, Ryerson's and SAFS's president exchanged some correspondence, which is reproduced below.

January 29, 1996

Dear Professor Furedy:

In response to your letter concerning part-time Ryerson instructor Gerald Hannon, I wanted to write to you personally to convey the following statement, issued by vice president, faculty and staff affairs, Dr. Michael Dewson, concerning the findings of Ryerson's investigations into Mr. Hannon's conduct:

"The first investigation was in response to allegations that Mr. Hannon may have espoused his views on paedophilia in the classroom. The investigation was restricted to whether Mr. Hannon had breached the limits of academic freedom.

The results of this first investigation clearly indicate that Mr. Hannon did not breach the limits of academic freedom within the classroom, as defined in the collective agreement between the university and its part-time instructors.

During the course of the first investigation, Mr. Hannon revealed to the media his practices as a prostitute. At that time, Ryerson made the decision to undertake a second investigation and to suspend Mr. Hannon, with pay, during the investigation. Ryerson determined that Mr. Hannon's decision to raise this issue at this crucial juncture called into question whether this action constituted 'conduct unbefitting the status of a member of the teaching community of an academic institution.'

The second investigation has determined that Mr. Hannon violated the collective agreement. As a

result, Mr. Hannon is in receipt of a letter of discipline and will resume his teaching activities for the remainder of his contract, which expires in May 1996."

For many of us in the Ryerson community, this issue has provided a direct challenge to our most deeply held beliefs regarding academic freedom and the private vs. public conduct of a university instructor. As abhorrent as we find Mr. Hannon's views, we have acted in accordance with the terms of our collective agreement.

Ryerson completely dissociates itself from any views or behaviours that could be interpreted as supporting or condoning the physical and emotional abuse of children. While this isolated incident is regrettable, we can take great pride in the more than 1,000 faculty who dedicate their lives to contributing to the development of scholarly knowledge and academic excellence.

As we commence a new year, may I take this opportunity to thank you for expressing your views and to extend our best wishes for 1996.

Sincerely,
Claude Lajeunesse

February 20, 1996

Dear Dr. Lajeunesse,

Thanks for your letter dated January 29 which I received on February 20.

While I appreciate that your administration faced a difficult problem, I don't think that the account of it given by Dr. Dewson or you is accurate on a number of important grounds, which include the following:

1. The suspension abused not only the academic freedom of Mr. Hannon, but also that of the students he was teaching. It therefore reflected poorly on what you described as your institution's "deeply held belief in academic freedom," because this belief is apparently not "deep" enough to include the students in your institution.

2. As the SAFS' open letters indicated, the phrase "conduct unbecoming the status of a member of the teaching community of an academic institution" is dangerously vague for anyone who is truly concerned about academic freedom, and while the "violation" of this "principle" may justify a letter of reprimand, it can in no way justify suspension (which abuses the academic freedom of both the instructor and her or his students) in any institution that is serious about its status as a university.

3. Even the justification of the reprimand letter is, to say the least, highly dubious. It is my understanding the Mr. Hannon was contacted one night by a newspaper reporter from the *Toronto Sun*, who told him that they would be coming out with a story the next day about his activities as a male prostitute, whether or not he made any comment. It seems to me at least arguable that, under these circumstances, Mr. Hannon served his institution best by stating the truth about his activities, rather than letting the story go with a "no comment" line. A "no comment" would have allowed the presumably false and more damaging claim, for example, that Mr. Hannon engaged in those activities with members of his class, which would have brought far more disrepute to Ryerson. In any case, the characterization that Mr. Hannon made a "decision to raise the issue" of his private activities does not square with the fact that the media were conducting a campaign against him, or with the fact that the relevant academic department had known about these activities when they hired Mr. Hannon.

I appreciate that the points I have made in #3 are relatively complex and probably controversial. However, the points in #2 and #1 are relatively straightforward for an institution that is truly concerned about the academic freedom not only of its faculty but also of its students.

I am sorry if the tone of this letter is undiplomatic, but I do believe that we have a common goal: that of maintaining the excellence of Canadian institutions of higher education. In reaching that goal, there will be disagreements about what are the best means. I hope

some of the points I have made will be considered by you and your administration in the future and reciprocate your best wishes for dealing with problems that continue to be very challenging ones.

Yours sincerely,
John J. Furedy
President, SAFS

February 28, 1996

Dear Dr. Furedy

Thank you for your letter of February 20th. I do appreciate the interest you are showing in Ryerson.

Regrettably, as this issue is under litigation at the present time, I am not in a position to offer any comment on the content of your letter whether I disagree or not with the facts as stated.

Sincerely,
Claude Lajeunesse

March 12, 1996

Dear Dr. Lajeunesse,

Thank you for your February 28 letter. Once the litigation that you mention has been terminated, I look forward to hearing from you on the facts and general issues that I have been raising.

Sincerely,
John J. Furedy
President, SAFS

It is, of course, debatable whether a discussion of general principles should really have to wait for "litigation" to be completed, but I have chosen not to debate this issue with President Lajeunesse. Instead, once I have learned that the litigation is over, I shall contact him again to continue our discussion.

SAFS' SESSION AT LEARNEDS
BROCK UNIVERSITY
FRIDAY, MAY 31, 1996, Room MC A241

THE FUTURE OF LIBERAL LEARNING: FREEDOM OF SPEECH ON CAMPUS

9:00 A.M. - 10:30 A.M. PAPERS

"Illiberal Education: Threats to University Education in Canada"

Speakers: Prof. Graeme Hunter, Philosophy, Ottawa University
Prof. Thomas Lennon, Philosophy, University of Western Ontario

11:00 A.M. - 12:30 P.M. PANEL DISCUSSION

"Discrimination, Censorship, and Harassment: Issues at Ontario Universities"

Speakers: Prof. Rhoda Howard, Sociology, McMaster University
Prof. Ian Hunter, Law, University of Western Ontario
Prof. David Parnas, Software Eng., McMaster University
Prof. John Wright, Philosophy, University of Windsor

12:45 P.M. KEYNOTE ADDRESS (Location will be posted at MC A241)

"Universities and Scholarship in the Modern Democracy"

Speaker: Prof. Philip Sullivan, Institute of Aerospace Studies, University of Toronto

2:30 P.M. - 4:00 P.M. PANEL DISCUSSION

"Discrimination, Censorship, and Harassment: Concepts and Case Studies"

Speakers: Prof. Murray Miles, Philosophy, Brock University
Prof. F. C. Drake, History, Brock University
Prof. J. Preston, Psychology, Brock University
Prof. M. Husain, Philosophy, Brock University

4:30 P.M. - 6:00 P.M. DEBATE

"Equity Hiring and the Merit Principle"

Speakers: Prof. Grant Brown, Management, University of Lethbridge
Prof. Lynda Lange, Philosophy, University of Toronto
Prof. Jan Narveson, Philosophy, University of Waterloo
Prof. Peter Nicholls, Biology, Brock University

Murray Miles, Associate Professor, Dept of Philosophy, Brock University, St. Catharines, ON L2S 3A1
Tel.: (905)688-5550 (x 4116) Fax: 688-5550(pause)(pause)4103, Email: MMILES@SPARTAN.AC.BROCKU.CA
Home Tel/Fax: (905)682-3457 (answering machine attached)

1996 DUES

Membership fees (\$20 regular; \$10 students and retired) are due at the beginning of the calendar year. SAFS dues cover a calendar year (January-December) so to gain the maximum benefit, early payment of dues is advised. Paid up membership is necessary to vote at the AGM, to receive newsletters, mailings and email messages from the SAFS office. For those on email, we are developing an electronic discussion group which also requires members to be paid up.

Keeping up our membership strength is vital to achieving our goals. It saves us considerable expense and time if we can avoid having to send out reminder notices for the annual fees. So please show your commitment and pay your dues today!

FURTHER READINGS

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Finnis, John. "'Shameless acts' in Colorado: abuse of scholarship in constitutional cases," *Academic Questions*, Vol. 7, No. 4, Fall 1994: 10-41.

Furedy, John, J. "Ice station academe," *Gravitas*, Autumn, 1994: 18-22.

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Garner, Helen. *The First Stone: Some Questions About Sex and Power*. Chippendale (NSW): Picador, 1995.

Haack, Susan. "Knowledge and propaganda: reflections of an old feminist," *Measure*, No. 124, September/October 1994.

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Horn, Michiel. "The mildew of discretion: freedom and self-censorship." *Dalhousie Review*, Vol. 72, No.

4, Winter 1992-93: 439-466.

Kramer, Hilton. "A sign of the times," column Notes & Comments. *The New Criterion*, February 1996, Vol. 14, No. 6, pp. 1-3. (About the new sexual harassment Guidelines Harvard Law School put into effect in October 1995.)

Milburn, Geoffrey. (ed.). *Ring Some Alarm Bells in Ontario*. London (ON): Althouse Press, Fac. of Education, Univ of Western ON ISBN 0-920354-38-6 (1167 Western Road, London, ON N6G 1G7. For info: please contact Ms Butson at 519-661-2096/ fax: 519-661-3833, e-mail PRESS@EDU.UWO.CA).

Rauch, Jonathan. "In defence of prejudice: why incendiary speech must be protected." *Harper's Magazine*, Vol. 290, No. 1740, May 1995: 37-46.

Shaw, Peter. "Pseudo-reform in the Academy." *Partisan Review*, 1996, vol. LXIII, No. 1: 94-104.

Witherspoon, Abigail. (pseud.). "This pen for hire: on grinding out papers for college students." *Harper's Magazine*, June 1995.

CAUGHT IN THE NET

SAFS now has an e-mail discussion group--**Safs-talk**--which is open to members who are paid up. All those already on e-mail have been sent a message about how to subscribe to the group. New e-mailers should enquire at SAFS@PSYCH.UTORONTO.CA.

Home page for National Association of Scholars: the URL is <http://tigger.jvnc.net/~nas/index.htm>. SAFS is a sister organization and has a link at: <http://tigger.jvnc.net/~nas/affiliates/safs.htm>.

THINK-L is a "self-archiving listserv" for information on critical thinking, and the economic, political and ethical aspects of teaching and learning, maintained at the University of Missouri-St. Louis. To subscribe, send your request to: LISTSERV@YMSLVMA.EDU. Leave the "subject" line blank. In the body of the message type: SUBSCRIBE THINK-L.

SUSPICIONS AND INDICTMENTS: WHEN AND HOW TO REACT

John Furedy

I had an email from a long-time friend in the USA, a professor of psychology in a well-known research university, in response to the information that the newsletter has printed on the Ryerson University action against Gerald Hannon. He recalls a case with some parallels that he had to handle as chair of his department some years ago:

We had hired as an assistant prof. a person who turned out to be inadequate . His performance in class was erratic but we put that down to inexperience. Then we began to hear rumours about drug sales. I took the stand that rumours are rumours, and that the various police agencies should certainly investigate, but neither the Dean nor I felt we were in that business.

The chap was arrested and charged by police. I held that a charge is not a conviction (although I suspected he was guilty). My dean backed me up. The instructor was formally indicted. At this point, fortunately, the quarter ended. After talking with the man's attorney we agreed that he would not be assigned any classes in the next quarter, on the grounds that he could not guarantee his own attendance, due to the need to appear in court. His pay was continued, however, and he was permitted to continue talking to students.

When, as I had expected, he was convicted, he was fired immediately, on grounds that he had committed a felony and the faculty code explicitly lists this as grounds for dismissal. (The code also lists "moral turpitude" which I suspect might be argued to cover Hannon's prostitution....but I'm not sure what turpitude means. It sounds like something you use to remove paint).

I responded that I thought he had handled the situation in a way that was entirely consistent with the principles of academic freedom. It is a pity that

Ryerson's administration took a different route in the Hannon case.

IS ACADEMIC FREEDOM STILL DESERVED?

Steve Balch

Academic freedom is historically part of a bargain between the university and the society at large, and the university is coming dangerously close to repudiating its end of the deal....

Essentially...the society leaves academics to govern themselves--the operative basis of academic freedom...[A]s its side of the bargain, the university must be able to demonstrate that its decisions are made...via standards and procedures that facilitate the discovery and transmission of knowledge...Under leadership that plainly regards political purposes as superior to intellectual ones, our universities have...been travelling towards...a crisis of confidence.

Defending academic freedom and clarifying the distinctions between politics and education...entails a reconstruction of academia, one that restores motive, opportunity, and--yes--romance to the serious quest for truth.

[Steve Balch is president of the National Association of Scholars. The quotation is from his Outlook column in NAS Update, vol. 5, no. 2, Summer 1994, pp. 2 & 5.]

SAFS OFFICE HOURS

Wendy Nolan (formerly Armstrong), our secretary, is in the office Tuesdays and Thursdays 9:00 - 4:00 and Wednesdays 1:00pm - 4:00pm

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Members can contact Wendy by phone or email for extra copies of our new brochure to distribute to those who may be interested in joining SAFS.

