SAFS Newsletter
Society for Academic Freedom and Scholarship
Maintaining freedom in teaching, research and scholarship
Maintaining standards of excellence in academic decisions about students and faculty
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SAFS LETTER TO MINISTER OF JUSTICE NICHOLSON REGARDING THE CANADIAN HUMAN RIGHTS COMMISSIONS AND TRUBNALS

July 22, 2008

The Honourable Robert D. Nicholson
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, ON
K1A 0H8

Dear Mr. Nicholson:

Re: Canadian Human Rights Commission and Tribunals

I am writing to you on behalf of the Board of Directors of the *Society for Academic Freedom and Scholarship* (SAFS: www.safs.ca). We are a national organization of scholars and interested others dedicated to academic freedom. A close concern necessarily is the related maintenance of a free press and free speech outside academia.

We have already voiced our strong opposition to Human Rights Commissions being used as vehicles to obstruct discussion on controversial issues, as has happened recently regarding Maclean's magazine, see our statement on our website at: http://www.safs.ca/issuescases/statementoncicmacleans.html. The Maclean's case, unfortunately, is not an aberration, as indicated by human rights commission cases involving the Western Standard and its publisher Ezra Levant, Catholic Insight Magazine, a letter to the editor of a local newspaper written by a pastor, and a response by a comedian in Vancouver to hecklers of his performance.

We applaud any measures brought by anyone to rid us of the dangers inherent in the current workings of the CHRC (and of equivalent provincial commissions and tribunals). We therefore fully support a searching review of the CHRC in all its operations. Our society would like to make the following submission to the Commons Standing Committee on Justice and Human Rights. We would also ask that our society be permitted to appear before the committee, as convenient.

Problems with Existing Human Rights Commissions and Tribunals

1) Recognizing that human rights legislation was in part intended to protect persons or groups from discrimination in access to housing, jobs, etc., the extension of such protection to areas such as speech and writing has had iniquitous effects.

continued on page… 2

IN THIS ISSUE

SAFS letter…continued from page 1

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Simply feeling offended by something that is said or written should never have been allowed as a basis for a charge under the Canadian Human Rights Act. It is impossible to maintain a free society where any utterance at which someone takes offence can be a basis for litigation.

2) People appearing before, or attending HRC's extra-legal tribunals, have repeatedly commented that the procedures violate traditional rules of a court of law, and of what constitutes acceptable evidence. Some tribunals seem to have insufficient legal background to do their jobs. Some members of HRC commissions and tribunals have shown themselves to be embarrassingly ignorant and biased. Can anyone take seriously a system in which a member, Dean Stacey, publically claims "Free speech is an American concept, so I don't give it any value."?

3) HRCs appear to accept complaints that are without merit. They can and do entertain charges that are often trivial and should be laughable. Yet, however unworthy such charges are, HRCs can mandate the appearance of the person or persons charged before a tribunal. This can involve expenditure of huge amounts of money for legal fees, even if the charges are ultimately dismissed. Moreover, such commissions can and do prolong the proceedings to the point of harassment. No constraint is apparently placed on complaints which go forward at taxpayers' expense, yet the victim of a charge could go bankrupt in the course of defending himself. The tribunals have thus become serious instruments of oppression, surely not what the perhaps naïve constructors of human rights legislation had envisaged.

4) We are especially concerned that the application of current HRC practice is a danger to the academic freedom of both faculty and students. The essential function of a university is the search for truth through the conflict of ideas, which is possible only in a free society. Both students and professors must feel free to present ideas or conduct research on topics that are not popular. Consistent with this view, The handbook of the *Canadian Association of University Teachers* states "Academic members of the community are entitled, regardless of prescribed doctrine, to freedom in carrying out research and in publishing the results thereof, freedom of teaching and of discussion, freedom to criticize the university, and freedom from institutional censorship."

Proposed Remedies

1) We believe, therefore, that all Human Rights Commissions and tribunals, federal and provincial, need to be thoroughly reviewed in terms of qualifications and appropriate behaviours. Until such review, work done by these bodies should be in abeyance.

2) 'Giving offence' should not in itself be an acceptable basis for any Commission action. A feeling of being offended cannot in itself be evidence of significant harm, since such feelings can be claimed by anyone for trivial or mischievous reasons. Moreover, generating feelings of offence may be a natural outcome of criticism, but it is an outcome that must be tolerated if we are to have the open debate that is essential to arriving at rational conclusions and decisions.

3) Truth must be an absolute defence of a charge brought under Section 13(1). In fact, evidence-based truths should never be accepted as the basis of a complaint. As Alan Borovoy, of the CCLA, commented recently, a historian writing truthfully about Nazi Germany could be charged and might be convicted under the current HRA for possibly exposing Germans to contempt or hatred.

4) Thus subsection 13(1) of the CHRA which states that it is discriminatory to say or write anything that is "likely to expose a person or persons to hatred or contempt" should be rescinded. This section provides an unacceptable muzzle on free speech. In a free society there are alternative means to combat offensive

claims and untruths. Actual threats, vandalism or violence can be dealt with under criminal law.

5) An explicit defence of freedom of speech in a broad sense must be included in the Canadian Human Rights Act.

Thank you for your consideration of these remarks. We look forward to hearing from you.

Sincerely,
Clive Seligman, President

Cc: Art Hanger, M.P.
Rick Dykstra, M.P.
Professor Richard Moon

MARK MERCER TAKES THE FIGHT FOR FREE SPEECH TO THE NEW YORK REVIEW OF BOOKS

To the editor:

Jeremy Waldron (New York Review, July 17) is wrong to think that "the experience of hate speech laws" in Canada "has not disclosed any disturbing pattern of censorship or any chilling effect beyond the specifically vicious and hateful phenomena that the laws are directed against." In fact, our 29-year experience of such laws has been a disaster.

Section 13 of the Canadian Human Rights Act, the section under which the Canadian Human Rights Commission (CHRC) derives its mandate to censor, suppress, and punish peaceful expressions of opinion and emotion, makes it a discriminatory practice to communicate "any matter that is likely to expose a person or persons to hatred or contempt" in virtue of race, sex, religion, or other ground specified in the Act. Similar words can be found in at least three provincial acts governing provincial human rights agencies. In 1990, section 13 was found constitutional by our supreme court, though by a mere four-to-three margin.

In early days, the CHRC went after only the vile racist utterances Waldron thinks should be prohibited. About fifteen years ago, though, the CHRC began to widen its net, and the provincial commissions have followed its lead. Here are some examples of recent decisions by the CHRC and provincial commissions: Stephen Boissoin was fined and, incredibly, ordered never again to speak his actual opinions on homosexuality or policy matters having to do with homosexuals. The Red Deer Advocate, which published Biossoin's letter to the editor, the object of the complaint against Boissoin, was also fined and ordered to apologize. The internet site Peace, Earth and Justice News agreed to delete from its website all articles on Israel and Palestine. Hugh Owens has been ordered not to distribute chapter and verse references to Bible passages denouncing homosexuality.

Complaints presently before Canadian human rights agencies include ones directed at *Maclean's* magazine, The Western Standard magazine, twice-elected former Member of Parliament Jim Pankiw (because his 2002 campaign literature criticized special privileges for First Nation Canadians), and the Halifax Chronicle Herald, a daily newspaper. Nothing in any of these cases counts as other than good-faith comment on sensitive issues. Recently, a complaint against Catholic Insight magazine was dismissed by the CHRC, after costing the small magazine $20,000 in legal fees.

Nowadays in Canada, anyone who speaks on such topics as Islam or Muslims, aboriginals, abortion, homosexuality or same-sex marriage, race, Israeli policies or practices toward the Palestinians, the nature of the sexes, or the place of women in society is at risk of being hauled before a commission. Our commissions have had a profoundly chilling effect on expression and discussion in Canada, extending from individual bloggers to newspapers and even to universities. The disdain our commissions have for expression has also been a great encouragement both to identity politics and to the cult of victimization, two of the worst toxins affecting contemporary social and political life in this country.

Of course, more than a few supporters of hate speech laws think the chilling effects are really the whole point of the thing. The actual hate mongers, we all agree, are few in number and entirely without influence. The real damage done to members of marginalized and vulnerable minorities, say hate speech law supporters, comes from negative characterizations in the respectable media, and, they note, hate laws do a good job of deterring newspapers from publishing such characterizations. This argument can be found in a book by Richard Moon, the

University of Windsor law professor the CHRC has asked to prepare a report on its practices.

Waldron might well respond that these abuses are the result of poorly written laws, unfair procedures, and the zeal of ideologues, and he would be at least a little right. But Waldron is naïve to think a system such as the one he describes in his letter isn't at great risk of quickly degenerating into the sort responsible for the censorship and chilly climate for expression that marks Canada today. After all, if you hire a censor, he's going to look for business, and anyone seeking to gain a bit of advantage will be tempted to bring him some.

Whatever social harms freedom of expression might cause, and whatever social harm it might cause that cannot be compensated for or repaired without censorship and punishment (I think we've just brought the harm down to nil), Canada today provides the world with an excellent example of the grave harm hate speech laws can do to a society.

Mark Mercer is in the Department of Philosophy at Saint Mary's University.

July 15, 2008.

ACADEMICS FEAR SPEAKING FREELY IN CANADA
Political Scientists Worried About 'Legal Jeopardy'

Kevin Libin

A group of U. S. professors launched a campaign this week protesting plans by a prominent political science organization to hold its annual conference in Toronto next year, claiming that Canada's restrictions on certain forms of speech puts controversial academics at risk of being prosecuted.

Bradley Watson, professor of American and Western political thought at Pennsylvania's St. Vincent College, said he will present a petition calling for the American Political Science Association (APSA) to re-evaluate its selection of Toronto for its 2009 conference at this year's annual meeting, taking place over the Labour Day weekend in Boston.

His protest has garnered support from dozens of professors across the United States, including prominent scholars such as Princeton University legal philosopher Robert P. George and Harvard University's Harvey Mansfield.

"Our belief is that the APSA should choose its sites carefully, with particular regard for questions of freedom of speech and conscience," Mr. Watson told the National Post by e-mail. "We therefore believe Canada to be a problematic destination."

Mr. Watson said that professors signing the petition are concerned that recent human rights commission investigations into Maclean's and Western Standard magazines over articles concerning Islam, and the conviction of pastor Stephen Boisson, who was ordered by Alberta's human rights tribunal in May to cease publicizing criticisms of homosexuality, suggest that professors risk being chilled from discussing important academic subjects, or ending up in legal trouble. Mr. Watson said he plans to distribute hundreds of buttons to attendees at the Boston conference reading "Toronto 2009, Non!"

Several professors in the working group behind the protest "have written in areas that seem particularly disfavoured by the Canadian legal establishment," Mr. Watson said. "We are uncertain of the extent of the legal jeopardy that APSA members might place themselves in should they make public arguments in Canada, or post those arguments online, concerning hot-button issues like homosexuality, same-sex marriage, or the nature of the Islamist threat to Western civilization."

The American Political Science Association, whose members include both American and Canadian academics, is the oldest and largest organization of political science professors. Next month's annual meeting, expected to draw roughly 7,000 political scientists, will be its 104th. The program includes such discussions as Terrorism and Human Rights; Varying Perspectives on Same-Sex Marriage; and Missing Alliances and (Un)expected Transformations in the Politics of Islam.

In a statement issued on Thursday, the working group behind the protest said: "The nature of radical Islamism and the relationship of public morality and homosexual conduct are issues of vital public

importance" and that "all political scientists have a professional interest in a full and open scholarly debate" on these topics. The group called it "unseemly" for APSA to "turn a blind eye to [Canadian] attacks on freedom of speech" and "unacceptable to risk exposing its own members to them."

APSA standards for selecting meeting sites include "protection of academic freedom, equitable access to opportunity, and a commitment to non-discrimination," but Mr. Watson said Canada does not satisfy that test. "Our belief is that most Americans--even APSA members--have no idea how precarious the rights of freedom of speech and conscience are in Canada," Mr. Watson said. Earlier this year, APSA reevaluated a decision to hold its 2012 meeting in New Orleans in light of complaints by some members that same-sex marriage is not legally recognized in Louisiana. The organization's council voted in June not to overturn the decision.

The Toronto petition states that: "Whereas members of the Association ought to be able at the 2009 annual meeting to present research and argument on controversial topics, such as public policy concerning homosexuality or the character of and proper response to terrorist elements acting in the name of Islam, without fear of legal repercussions of any kind we petition the Council and staff of the APSA to take all steps necessary to ensure that academic freedom and free speech, even on controversial topics such as these, are not threatened at the 2009 annual meeting, including soliciting legal advice and seeking the assurance of the Government of Canada and local authorities that the civil rights and liberties of members to free speech and academic freedom will be secure."

National Post, August 23, 2008.

CANADA DOES NOT PROTECT ACADEMIC FREEDOM? WHAT A LOAD OF BUPKES

Clifford Orwin

Canadians rarely concern themselves with the internal quarrels of American scholarly associations, nor should we. Such disputes are always tempests in teapots, and why care about turbulence in teapots not even our own?

But here's a case where we are at least nominally the subject of such a quarrel. The American Political Science Association, one of the largest of the academic professional associations, is scheduled to hold its 2009 annual meeting in Toronto. This would be its first meeting in Canada, indeed its first outside the United States. There are many Canadian members of APSA (this writer included), and the decision to meet in Toronto was a tribute to Canada's contributions to the political science profession.

Almost certainly, the meeting will proceed as scheduled, if only because it's too late for APSA to move it. Be this as it may, the site is now under challenge. Tomorrow, on the eve of this year's annual meeting in Boston, the council of APSA will consider a petition alleging that Canada does not protect academic freedom.

As the petitioners present Canada, it is subject to a reign of terror due to the excesses of human-rights commissions. What fun would a scholarly meeting be if you couldn't impugn gay rights or Islamic extremism, and the human-rights commissions are alleged to have rendered this intolerably risky. No sooner will you deliver your paper than you'll be dragged off to the commission hoosegow. The petition would require the APSA leadership to seek assurances from the Canadian government that academic freedom will be protected.

How thoughtful of the Americans to be committed to democracy promotion even in Canada. When I first heard of this petition, my eyes misted over - until I reflected that it was all a load of bupkes.

I loathe human-rights commissions as much as anyone. They are an excrescence on our body politic, and they make Canada a less free society, not a freer one. Their procedures are grossly unfair, placing intolerable pressures, financial and otherwise, on defendants to settle their cases even where they are innocent. They represent a malign bureaucracy run wild. There are other legal avenues for pursuing issues of discrimination, and any federal government with guts would at the very least rein in these commissions.

But this is for Canadians to worry about. Americans should stick to their own worries. The petitioners' claim that human-rights commissions pose a threat to them is bogus. How many international scholarly

conferences are held in Canada each year and no repercussions whatsoever? How many controversial guest speakers have I myself sponsored, many on the supposedly taboo issue of Islamic extremism?

When promoters of this petition approached me, apparently expecting me to sign it, I asked them whether they could adduce a single instance of the abridgment of academic freedom in Canada. They could not. Canada's record on academic freedom is exemplary. In political science, empirical evidence is supposed to matter; it has made no impression on the signers of this gasbag of a petition.

In fact, the signers neither know much about Canada nor care about it. They made no serious attempt to consult their Canadian colleagues. Many of them seem to think human-rights commissions are criminal courts in which the government brings charges against defendants. They haven't even looked into the question of whether any human-rights commission has ever claimed jurisdiction over visiting foreigners.

So what's really going on? Internal APSA politics. In recent years, the question of location has become politicized, first by the left and now, in revenge, by the right. Presumably, the petition will fail. The signers have warned that, if it does, they will boycott next year's meeting. They will remain safely where they are - the few, the proud, the cowering. If they make good on this fearsome threat, I will look forward to not seeing them. Yankee stay home.

Free expression, my signatory friends, free expression. Surely I have as much right to defend Canada as you to traduce it.

Clifford Orwin is professor of political science at the University of Toronto and distinguished visiting fellow at Stanford University's Hoover Institution

Globe and Mail, August 26, 2008.

MACLEAN'S RESPONDS TO RECENT DECISION FROM THE CANADIAN HUMAN RIGHTS COMMISSION

Maclean's magazine is pleased that the Canadian Human Rights Commission has dismissed the complaint brought against it by the Canadian Islamic Congress. The decision is in keeping with our long-standing position that the article in question, "The Future Belongs to Islam," an excerpt from Mark Steyn's best-selling book America Alone, was a worthy piece of commentary on important geopolitical issues, entirely within the bounds of normal journalistic practice.

Though gratified by the decision, Maclean's continues to assert that no human rights commission, whether at the federal or provincial level, has the mandate or the expertise to monitor, inquire into, or assess the editorial decisions of the nation's media. And we continue to have grave concerns about a system of complaint and adjudication that allows a media outlet to be pursued in multiple jurisdictions on the same complaint, brought by the same complainants, subjecting it to costs of hundreds of thousands of dollars, to say nothing of the inconvenience. We enthusiastically support those parliamentarians who are calling for legislative review of the commissions with regard to speech issues.

Maclean's Magazine, June 26, 2008.

VICTORY FOR FREE SPEECH AS THIRD CIRCUIT ISSUES RULING AGAINST TEMPLE UNIVERSITY

PHILADELPHIA, August 4, 2008—Today, the United States Court of Appeals for the Third Circuit issued an opinion in *DeJohn v. Temple University* upholding a decision by a federal district court that Temple University's former speech code is unconstitutional. Temple's code prohibited, among other things, "generalized sexist remarks and behavior." In September 2007, the *Foundation for Individual Rights in Education* (FIRE) filed a friend-of-the-court brief urging the Third Circuit to uphold the lower court's ruling.

"The Third Circuit's ruling today is a clear and crucial victory for freedom of speech at our nation's public colleges and universities," FIRE President Greg Lukianoff said. "The court's decision serves as unequivocal notice to university administrators across the country that the First Amendment still applies on campus. Today's victory demonstrates, yet again, that public universities maintain unconstitutional speech codes at their peril."

The lawsuit against Temple University was filed in the U.S. District Court for the Eastern District of Pennsylvania in February 2006 by attorneys from the Alliance Defense Fund (ADF) on behalf of Temple student Christian DeJohn. DeJohn's complaint alleged both that Temple had engaged in actions that violated his rights and that Temple was violating the free speech rights of all of its students by maintaining an unconstitutional speech code.

Temple finally revised its speech code more than a year into the lawsuit, but had argued on appeal to the Third Circuit that its original policy was constitutional despite the District Court's holding to the contrary. In today's ruling, the Third Circuit held that Temple's speech code was unconstitutional because it restricted speech protected by the First Amendment.

In *DeJohn v. Temple University*, the District Court had declared Temple University's former speech code unconstitutional. On appeal, Temple argued that the Supreme Court's 2007 ruling in *Morse v. Frederick*—a decision upholding the narrow right of *high school* administrators to regulate student speech "reasonably regarded as encouraging illegal drug use"—permitted Temple to place broad and onerous restrictions on the free speech rights of *college students*. In response, FIRE's brief argued that Temple's policy contradicts both decades of legal precedent and the guidance of the federal Department of Education's Office for Civil Rights, which is responsible for enforcing harassment laws on campus.

Today's ruling, authored by Judge D. Brooks Smith, unequivocally states that "[d]iscussion by adult students in a college classroom should not be restricted." In holding that Temple's former speech code "provides no shelter for core protected speech," Judge Smith found the policy to be facially overbroad.

"As adults, college students are entitled to the full protection of the First Amendment on campus," William Creeley, FIRE's Director of Legal and Public Advocacy, said. "Today's opinion makes clear that attempts to equate the rights of high school students with those of college students are without merit. Thankfully, the Third Circuit has dealt a devastating defeat to those seeking to infantilize our nation's college students."

FIRE's *amicus* brief was joined by a remarkable coalition of organizations including the ACLU of Pennsylvania, the Christian Legal Society, Collegefreedom.org, Feminists for Free Expression, the Individual Rights Foundation, Students for Academic Freedom, and the Student Press Law Center. The coalition was represented in the filing by attorney L. Theodore Hoppe, Jr.

CONTACT:
William Creeley, Director of Legal and Public Advocacy, FIRE.

FIRE Press Release, August 4, 2008.

In Saudi Arabia, Fatwa Bans Caps At Academic Commencement Ceremonies

Saudi mufti Dr. Muhammad bin Abd Allah Al-Habdan, who oversees the Saudi website islamlight.net, has issued a fatwa banning Muslims from wearing the traditional caps customary in the West when receiving diplomas at academic commencement ceremonies, so that they will not be like infidels.

Source*: Islamlight.net*, July 13, 2008

KWANTLEN SHUTS DOWN CONTROVERSIAL RESEARCH

Carson Jerema

School remains quiet after CAUT steps in on professors' behalf.

Violations of academic freedom have become something of a cliché. Everything that comes out of the mouth (or pen) of an academic, no matter what the venue, is presumed by some to be protected. Indeed, the concept might appear to a casual observer to be a meaningless convention designed to entrench the scholar as political activist. But, this is not so. Academic freedom provides a very narrow, yet useful function.

The only relevant factor when evaluating scholarly research is whether it contributes to a field in some way, whether it has scientific worth. Academic freedom is simply protection for scholars to do their jobs. It protects the advancement of academic and scientific knowledge, and not the expression of political ideas. The right to political expression is something all in a free society enjoy, and there is nothing special about the professoriate in this matter. Some may disagree, but that is a topic for another day.

Last week, the Canadian Association of University Teachers (CAUT) announced that it would be investigating allegations that Kwantlen Polytechnic University violated academic freedom of the kind I am referring to. The charge seems justified, as Kwantlen's behaviour is rather peculiar.

Despite the blessing of the school's Research Ethics Board, the administration has prevented sociology professor Russel Odgen from pursuing a project whereby he would witness assisted suicides.

It is no doubt a controversial proposal, but nearly every social, political and cultural issue is a valid area of academic inquiry. To contribute to the understanding of human behaviour, sociologists and criminologists are increasingly observing illicit and illegal activity, such as the activities of biker gangs and prostitutes.

Three years ago, Odgen assured the ethics board that he would take appropriate precautions to ensure that research subjects would not be unduly influenced by his presence and that they would be respected. In addition to being approved by the ethics board, Kwantlen's associate vice-president research also signed off on the project.

Still, the administration reversed its approval in December 2006. In response, the faculty association attempted to appeal the decision, and when that failed to resolve the matter, the CAUT became involved. Their report is expected in the fall.

When I contacted Kwantlen, I was told that the administration would not be taking questions on the issue. Media relations officer Peter Chevrier cited the CAUT investigation as reason for not commenting on the case — a position that makes absolutely no sense.

The Canadian Association of University Teachers is not launching a criminal investigation and has no power to enforce policy beyond making recommendations. There is nothing about a CAUT investigation that makes it necessary for Kwantlen to reserve comment, especially since CAUT executive director James Turk has been speaking freely on the issue.

Kwantlen did release a brief, cryptic statement in which they explained that they had consulted two criminal lawyers and cited potential "legal risks" as the reason for halting Ogden's research. Although they do not go into any more detail than that, the university is presumably concerned that Ogden could be participating in illegal activity. Again a position that makes little sense.

According to John Lowman, a Simon Fraser University criminologist who is familiar with Ogden's research and to whom Ogden directed media inquiries, the university did not seek a legal opinion until five months after removing approval for the project.

It is not entirely clear why the criminal lawyer Kwantlen consulted advised that there could be liability issues, especially since the university will not answer any questions. But it is not a crime to bear witness to illegal activity. According to Bernard Dickens, a University of Toronto law professor who specializes in health law, unless one is "actively encouraging" illegal activity, the observer has committed no crime.

This would seem to be supported by the case of Sue Rodriguez, who underwent an assisted suicide in 1994. Rodriguez gained notoriety because she made a charter challenge to the Supreme Court for the legalization of assisted suicide but the court ruled against her. While the doctor who aided her in her death remains anonymous, former NDP MP Svend Robinson was present — yet the police opted not to open an investigation into the matter.

In any event, in order for an observer to escape culpability, no encouragement must be given for the act. Ogden demonstrated to the ethics board that he would take such precautions. In other words, the regulations approved by the ethics board would have ensured that Ogden did not commit a crime. Not to mention that Ogden has also sought a legal opinion that reinforces this point.

Ultimately, universities have the authority to stop research even if it has been approved by an ethics board. A legitimate reason might be that the research would tax the university's resources beyond the institution's means. However, this does not appear to be the case.

Unlike at most universities, Kwantlen's faculty association does not have an academic freedom clause, which theoretically would mean that such matters should be discussed at the university's Senate. Is the administration planning to amend and/or clarify their research policy? Would they discuss it with relevant university constituencies?

More to the point, does Kwantlen even care to be involved in social-science research?

Maclean's On Campus, July 7, 2008.

SUBMISSIONS TO THE SAFS NEWSLETTER

The acting editor welcomes articles, case studies, news items, comments, readings, local chapter news, etc. Please send your submission by e-mail attachment.

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SAFS LETTER TO PRESIDENT ATKINSON, KWANTLEN POLYTECHNIC UNIVERSITY, REGARDING PROFESSOR RUSSEL OGDEN: ACADEMIC FREEDOM

July 21, 2008

Dr. David Atkinson
President and CEO
Kwantlen Polytechnic University
Office of the President
Surrey, BC
V3W 2M8

Dear President Atkinson:

Re: Professor Russel Ogden

I am writing as president of the Society for Academic Freedom and Scholarship (SAFS). We are a national organization of scholars and interested others whose main goals are the protection of academic freedom and the merit principle in higher education. You can learn more about us and our activities at our website: www.safs.ca.

We are writing to express our concern regarding your administration's decision to halt the research of Professor Ogden on the topic of assisted suicide. We readily accept that we are not in a position to comment on the substantive ethical and legal issues involved, because we were not privy to the relevant discussions and have not seen all the pertinent information and documents. We stress that our concern, at this time, is solely with whether your administration's final decision was reached in an appropriate manner, consistent with Kwantlen's own procedures, and from an informed evaluation of all the material. Based on what we have learned, our initial assessment is that the process by which your administration reached the decision to stop his research may have been flawed and that his academic freedom to conduct research appears to have been violated.

From stories in the media and from communications with Professor Ogden, our understanding is that: a) the research was approved by a duly constituted research ethics board (REB) of the university, b) that the REB sought a legal opinion before making its final decision, c) that subsequent to the university's signed permission for the research to proceed, your administration

independently sought legal advice that led to the edict to Professor Ogden to stop his research and "… not to engage in any illegal activity, including attending at an assisted death or participating in the planning of such an event.", d) that Professor Ogden denies that he is involved either in illegal activities or that his research, in any way, participated in plans for such events, e) that Professor Ogden contends that there were serious omissions in what documents the university's lawyers were shown concerning his research, including the original research protocol, and f) Professor Ogden alleges, in his letter of February 21, 2008 to then President Leslie (Skip) Triplett, that the administration either did not follow its own policies or applied them inconsistently.

Because an essential role of a university is to discover new knowledge, it is a serious matter to stop research. Accordingly the university has a responsibility to clearly and fully explain its decision, not only to the individual researcher involved but also to the wider academic community.

Thus we respectfully ask you to respond to our letter and elaborate the rationale for your decision to end the research of Professor Ogden, and to answer his charges that the process that led to your decision was flawed. We will post your unedited response along with our letter to you on our website.

Thank you very much for your cooperation.

Sincerely,
Clive Seligman
President

cc: Professor R. Ogden

Bequest to SAFS

Please consider remembering the Society in your will. Even small bequests can help us greatly in carrying on SAFS' work. In most cases, a bequest does not require rewriting your entire will, but can be done simply by adding a codicil. So please do give this some thought.

Thank you.

Clive Seligman, President

PERILS OF PROVOCATIVE SCHOLARSHIP

Elizabeth F. Loftus

In 2003, Nicole Taus filed a civil suit against me regarding an investigation that I conducted with Melvin Guyer, University of Michigan, into the accuracy of a published report by a court-appointed psychiatrist that Taus had recovered a memory of childhood sexual molestation by her mother. Over the ensuing years of litigation, a trio of California courts threw out 20 of the 21 allegations. The lone remaining claim was that I had misrepresented myself to Taus' onetime foster mother as a colleague and supervisor of the psychiatrist and thereby had been given information by her about Taus that otherwise would not have been disclosed. At one point in the litigation Taus asked for $1.3 million in damages.

In my brief to the California Supreme Court, I categorically denied the allegation of misrepresentation and suggested that the foster mother might have come to regret what she had voluntarily told me because it had alienated her from the plaintiff. Journalists have a label for this phenomenon: "source remorse." I also noted that after my interview with her, the foster mother had posed for pictures with me and an investigator who had arranged the interview.

A majority of the California Supreme Court justices deemed the single remaining claim of invasion of privacy, which as a matter of law the court had to regard as possibly accurate, serious enough to be returned to a trial court for adjudication. On the other hand, the dissenting judges maintained that even if the claim were true, neither the information that had been obtained nor the alleged tactics were of sufficient significance to interfere with the right of scholars to gather information on an important topic and with the public's right to have the results of their investigation.

Not long afterward, Taus offered to withdraw her case against me in return for a payment of $7,500. I would have preferred to have a jury weigh the evidence so that there would (I believe) be complete vindication, but the insurance company decided that the cost of a trial would far outweigh the amount of the settlement offer. Insurance companies have a label for this: "Nuisance settlement."

The trial court, under an order by the state Supreme

Court, then determined the exact amount that Taus herself would have to pay for attorney fees and court costs incurred by other defendants before the claims against them were dismissed. The co-defendants included, among others, Mel Guyer, my co-author; the *Skeptical Inquirer* where we published our essay; and Carol Tavris, whom we had thanked in a footnote for her help with the essay. Last November, Judge Scott Kays awarded them $241,872 in attorneys' fees, and an additional $4,354 in costs.

During this process, I learned a number of lessons that bear upon how scholarship can become entangled in the vagaries of Institutional Review Boards (IRBs), the legal system, and a university bureaucracy. A researcher might prevail in the end, but the pathway to that end can be very long and arduous, and involves great anxiety and, in some instances, considerable expense and possible damage to a person's professional standing.

Authorities at the University of Washington, where I was employed when I first began to investigate the circumstances of the repressed memory attribution, held up our work for more than two years. Responding to a complaint from Taus, UW administrators warned me that we could not publish our work in any forum, even information gathered from public domain sources. At Michigan, Guyer's application for IRB approval seesawed between a ruling that it was a historical journalism endeavor exempt from IRB review to a subsequent disapproval and a recommendation that he be reprimanded. These recommendations were rejected by the Michigan University Research Office.

Taus' complaint set in motion a two-year investigation that involved seizure of my office files and included the discovery by my attorney of a critical review of the proposal that had been sent to the University of Washington by a Michigan faculty member. The faculty member was a clinician, and our proposed research sought to determine whether, in the case of Nicole Taus, a clinician had failed to attend adequately to clues that suggested that his report of a recovered memory was in error. Guyer had never been given access to the committee member's communication despite having filed an official request to obtain the records bearing on his IRB proposal.

The three-member investigative committee at the University of Washington ultimately decided that I was not guilty of scholarly misconduct and that our work did not require human subjects review. Nonetheless, two clinicians on the committee recommended a reprimand and a remedial course in professional ethics. They also maintained that I should not contact participants in the Taus case without their permission. If it were up to them, I would not even have been able to thank the falsely accused mother for the wonderful birthday cards she sent me each year. These recommendations were rejected by the University Dean who fully exonerated me. I could now freely thank the accused mother without fear of further retribution.

I believe that the actions taken against me and Guyer and numerous similar actions nationwide violate the First Amendment constitutional right of free speech by imposing prior restraint on the quest for information by academic investigators. In my court case, a brief on my behalf was filed with the California Supreme Court by 21 organizations known collectively as "Amicus Media," representing powerhouse news organizations such as the Copley Newspapers, *Time*, Gannett, the American Society of Newspaper Editors, CBS Broadcasting and Radio, and the *New York Times.* The brief argued that were the Court to uphold Taus' claims, its decision would have a palpable effect on the ability "to report on matters of significant public concern without the threat of tort liability" and would "chill freedom of expression on many of the important issues of the day." The media forces believed that failure by the courts to reject outright actions filed against scholars in cases such as mine could jeopardize media freedom as well. The amicus brief insisted that to permit a subject about whom unflattering information had been obtained from a third party to sue for invasion of privacy would produce a dampening effect on gathering and publishing significant material.

Law professor Philip Hamburger has pointed out that the creation of IRBs to pass judgment on proposed media investigative reporting obviously would be unconstitutional. Hamburger observes that this is so despite the fact that journalists at times employ deceit, engage in trespass and receipt of unlawfully obtained property, and that their investigations risk causing harm, including personal and financial ruin, suicide, divorce, imprisonment, and violence. Nonetheless, American courts have been sensitive about the right of television and news reporters to do things that never

would be tolerated by academic IRBs. The courts are wary of tangling with the power of the press.

IRBs often subordinate the pursuit of knowledge to the financial stakes, real or imagined, of the institution in which they operate. In my case, they handed the file to the administration which harassed me and delayed a scholarly endeavor that the courts would declare to be protected by law. I believe that the legal system should take a very hard look at the powers and predilections of IRBs and Human Subjects committees and other authorities to interdict the pursuit of information by scholars. Psychologist Carol Tavris (a former co-defendant with me in this case) has written that professors increasingly back off work on important issues because they are wary of being harassed and harangued by IRBs. She notes that because of IRBs, scholarly work often is compromised: an offending paragraph is deleted, funny but sarcastic remarks are toned down, safer topics chosen, and proof of a person's malfeasance excised.

In the 1975 case of *Garrett v. Louisiana*, the United States Supreme Court declared that "speech concerning matters of public interest is more than self-expression; it is an exercise of self-government." Such a stirring pronouncement ought to be translated into arrangements that no longer impose prior restraint on the freedom of scholars to do their work. My experience convinced me that we require better ways to judge allegations of scientific misconduct. We need review boards (if they are to exist at all) that have no conflict of interest between the scholar and the institution, and are made up of members who are thoroughly conversant with First Amendment law. We need legislation and court decisions that erect strong barriers against frivolous lawsuits, and we need university administrators who are fiercely committed to the doctrine that scholars should be afforded the full protection of First Amendment guarantees.

Professor Gilbert Geis, a colleague of mine, greatly assisted in the preparation of this commentary.

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Observer, Volume 21, Number 5, May 2008.

THE ABA'S 'DIVERSITY' DIKTAT

Gail Heriot

If you have ever wondered why colleges and universities seem to march in lockstep on controversial issues like affirmative action, here is one reason: Overly politicized accrediting agencies often demand it.

Given that federal funding hinges on accreditation, schools are not in a position to argue. That is precisely why the U.S. Department of Education, which gives accreditors their authority, must sometimes take corrective action. George Mason University's law school in northern Virginia is an example of why corrective action is needed now.

GMU's problems began in early 2000, when the American Bar Association visited the law school, which has a somewhat conservative reputation, for its routine reaccreditation inspection. The site evaluation team was unhappy that only 6.5% of entering students were minorities.

Outreach was not the problem; even the site evaluation report (obtained as a result of Freedom of Information Act requests) conceded that GMU had a "very active effort to recruit minorities." But the school, the report noted, had been "unwilling to engage in any significant preferential affirmative action admissions program." Since most law schools were willing to admit minority students with dramatically lower entering academic credentials, GMU was at a recruitment disadvantage. The site evaluation report noted its "serious concerns" with the school's policy.

Over the next few years, the ABA repeatedly refused to renew GMU's accreditation, citing its lack of a "significant preferential affirmative action program" and supposed lack of diversity. The school stepped up its already-extensive recruitment efforts, but was forced to back away from its opposition to significant preferential treatment. It was thus able to raise the proportion of minorities in its entering class to 10.98% in 2001 and 16.16% in 2002.

Not good enough. In 2003, the ABA summoned the university's president and law school dean to appear before it personally, threatening to revoke the institution's accreditation.

GMU responded by further lowering minority admissions standards. It also increased spending on outreach, appointed an assistant dean to serve as minority coordinator, and established an outside "Minority Recruitment Council." As a result, 17.3% of its entering students were minority members in 2003 and 19% in 2004.

Not good enough. "Of the 99 minority students in 2003," the ABA complained, "only 23 were African American; of 111 minority students in 2004, the number of African Americans held at 23." It didn't seem to matter that 63 African Americans had been offered admission, or that many students admitted with lower academic credentials would end up incurring heavy debt but never graduate and pass the bar.

GMU's case is not unique. In a study conducted several years ago, 31% of law school respondents admitted to political scientists Susan Welch and John Gruhl that they "felt pressure" "to take race into account in making admissions decisions" from "accreditation agencies." Several schools, like GMU, have been put through the diversity wringer.

The GMU law school was finally notified of its reaccreditation in 2006, after six long and unnecessary years of abuse – just in time for the next round in the seven-year reaccreditation process. Even then, the ABA could not resist an ominous warning that it would pay "particular attention" to GMU's diversity efforts in the upcoming cycle.

Perhaps the ABA believes that the Supreme Court's 2003 decision in *Grutter v. Bollinger* allows it to force law schools into affirmative action orthodoxy. If so, it is mistaken. In *Grutter*, a razor-thin majority held that the Constitution permitted the University of Michigan Law School to discriminate against whites and Asians to obtain a racially diverse class.

That decision, however, was rooted in the notion that "universities occupy a special niche in our constitutional tradition." In the majority's view, universities are not subject to the same equal-protection standards as other governmental entities; they are instead entitled to deference in their academic judgments. As Justice Sandra Day O'Connor put it, "[t]he freedom of a university to make its own judgments . . . includes the selection of its student body."

Whatever the merit of this reasoning, the ABA is not a university, and its Council of the Section of Legal Education and Admissions to the Bar is not entitled to academic deference.

As the Education Department's designated law school accreditor, the council decides whether a law school's students will be eligible for federal loans. As state accreditor, it decides which schools' graduates may sit for the bar examination. It is thus part of the governing bureaucracy – the kind of institution academic freedom is supposed to protect universities from.

That's why the U.S. Commission on Civil Rights recommended that the ABA leave issues of diversity to individual law schools. If academic freedom confers upon law schools the right to discriminate, it must also confer a right not to discriminate. Unfortunately, the ABA has instead put into effect more stringent diversity standards.

So now it is up to the Education Department to bring the ABA to heel. In 2006, when the ABA's status as accreditor was itself up for renewal, opposition came from many quarters on many grounds. Surprised, the Education Department put the ABA on a short leash, giving it only 18 months before its next renewal, and requiring it to submit its official correspondence for inspection.

It is now time to find permanent solutions to the problems of ABA abuse. Foremost on the Education Department's list should be to get the ABA out of the diversity business. It is one thing for a law school to adopt its own discriminatory admissions policies; it is quite another to force it to do so on pain of losing federal funding.

Ms. Heriot is a member of the U.S. Commission on Civil Rights and a law professor at the University of San Diego. In the 1990s, she was employed at GMU for one year, but had no involvement with the issues in this commentary.

The Wall Street Journal, April 28, 2008, Page A19.

AMERICA'S UNIVERSITIES ARE LIVING A DIVERSITY LIE

Peter Schmidt

Thirty years ago this past week, Supreme Court Justice Lewis F. Powell Jr. condemned our nation's selective colleges and universities to live a lie. Writing the deciding opinion in the case Regents of the University of California v. Bakke, he prompted these institutions to justify their use of racial preferences in admissions with a rationale most had never considered and still do not believe – a desire to offer a better education to all students.

To this day, few colleges have even tried to establish that their race-conscious admissions policies yield broad educational benefits. The research is so fuzzy and methodologically weak that some strident proponents of affirmative action admit that social science is not on their side.

In reality, colleges profess a deep belief in the educational benefits of their affirmative-action policies mainly to save their necks. They know that, if the truth came out, courts could find them guilty of illegal discrimination against white and Asian Americans.

Selective colleges began lowering the bar for minority applicants back in the late 1960s to promote social justice and help keep the peace. They felt an obligation to help remedy society's racial discrimination, even if they generally weren't willing to acknowledge their own. And with riots devastating the nation's big cities, they saw a need to send black America a clear signal that the establishment it was rebelling against was in fact open to it – and that getting a good college education, not violence, represented the best path to wealth and power.

In the mid 1970s, when colleges talked about the educational benefits of race-conscious admissions, what they had in mind were the benefits reaped by minority students. And tellingly, the University of California had said nothing about the educational benefits of diversity in defending the UC-Davis medical school's strict racial quotas against the lawsuit brought by Allan P. Bakke, a rejected white applicant.

When the U.S. Supreme Court took up that decision on appeal, however, the educational diversity argument was tucked into a few of the many friend-of-the-court briefs submitted in the case.

Justice Powell would come to rely heavily on one of those briefs, in which Columbia, Harvard, Stanford and the University of Pennsylvania joined in arguing, without any empirical evidence, that diversity "makes the university a better learning environment." Like the four other conservatives on the court, Powell rejected the social-justice rationale for such policies, arguing that the government should not be in the business of deciding which segments of American society owed what to whom for past misdeeds. Nevertheless, he did not want the court to be radically changing how colleges did business. Looking for a way out, he ended up saying the four elite colleges had convinced him of the educational benefits of treating some applicants' minority status as a "plus factor."

Most selective colleges interpreted Justice Powell's controlling opinion in the case as a green light to keep doing what they had been as far as racial and ethnic-group admissions preferences were concerned. At the same time, they fretted little about how their campuses were actually becoming less diverse in socioeconomic terms as they jacked up tuitions and increasingly favored applicants from families wealthy enough to fatten endowments and pay their children's full fare. And despite a professed concern with viewpoint diversity, some colleges adopted rigid speech codes aimed at squelching statements that made minority students uncomfortable.

Academe got a rude awakening in 1996. Californians passed a ballot measure in that year barring public colleges from considering race and ethnicity in admissions. And a federal appeals court rejected Justice Powell's diversity rationale in a lawsuit, Hopwood v. Texas, involving the University of Texas law school. In his book, "Diversity Challenged," Gary Orfield, a staunch advocate of affirmative action, says people in higher education looked around and suddenly realized "no consensus existed on the benefits of diversity" and "the research had not been done to prove the academic benefits."

Over the next several years, education researchers scrambled to find such proof and repeatedly met with college leaders to discuss their progress. Their work took on a sense of urgency, on the expectation the Supreme Court would soon be revisiting Bakke. Yet

again and again, their studies were shown to have gaping holes and deemed too weak to hold up in the courts.

Fortunately for affirmative-action advocates, the Center for Individual Rights, which coordinated the legal assault on race-conscious admissions, made a tactical decision not to seriously challenge such research – out of a belief it could win on legal principle. When the Supreme Court waded back into the controversy, it reaffirmed Justice Powell's diversity rationale in a 2003 decision, Grutter v. Bollinger, involving the University of Michigan law school. The opinions revealed that the majority of justices had been swayed by a barrage of friend-of-the-court briefs spinning and exaggerating what the research said about the alleged educational benefits of diversity.

Proponents of race-conscious admissions policies have yet to produce a study of their educational benefits without some limitation or flaw. Many focus only on benefits to minority students. Others define benefits in nakedly ideological terms, declaring the policies successful if they seem correlated with the adoption of liberal views. A large share relies on survey data that substitute subjective opinions for an objective measurement of learning. The University of Michigan's star witness, Patricia Gurin, a professor of psychology and women's studies, presented studies showing the educational benefits of classes and campus programs that promote interracial understanding. Those may exist at colleges that don't consider an applicant's race.

Affirmative action advocates argue that it is unreasonable to expect more of the research, because no education policy has incontrovertible proof of effectiveness. But affirmative-action preferences are not just any education policy; they require some students to suffer racial discrimination for the sake of a perceived common good. In grounding his definition of that good in the shifting sands of social science, Justice Powell may have left colleges legally vulnerable for decades to come. The courts, after all, are known for diverse opinions.

Mr. Schmidt is a senior writer at The Chronicle of Higher Education and the author of "Color and Money: How Rich White Kids Are Winning the War over College Affirmative Action" (Palgrave Macmillan, 2007).

Wall Street Journal, June 28, 2008, Page A11.

THE GENDER-EQUITY HAMMER COMES OUT TITLE IX AT THE DOOR

Christina Hoff Sommers

At a recent House hearing on “Women in Academic Science and Engineering” Congressman Brian Baird, a Democrat from Washington State, asked a room full of activist women how best to bring American scientists into line: “What kind of hammer should we use?” The weapon of choice is the well-known federal anti-discrimination law “Title IX,” which prohibits sex discrimination in “any education program or activity receiving Federal financial assistance.” Title IX has never been rigorously applied to academic science. That is now about to change. In the past few months both the Department of Education and National Aeronautics and Space Administration (NASA) have begun looking at candidates for Title IX-enforcement positions.

The feminist reformers acknowledge that few science departments are guilty of overt discrimination. They claim, however, that subtle, invisible “unconscious bias” is discouraging talented aspiring women. Therefore, the major focus of the equity movement is to transform the academic culture itself — to make it more attractive to women by rendering science less stressful, less competitive, and less time consuming. Debra Rolison, a senior research chemist at the Pentagon’s Naval Research Laboratory and a leader of the equity campaign, describes the typical university chemistry department as “brutal to people who want to do something besides chemistry around-the-clock.”

MIT biologist and equity-activist Nancy Hopkins says that contemporary science “is a system where winning is everything, and women find it repulsive.” Kathie Olsen, deputy director of the National Science Foundation, draws the revolutionary conclusion, “Our goal is to transform, institution by institution, the entire culture of science and engineering in America, and to be inclusive of all — for the good of all.” To this end, the National Science Foundation has launched a multi-million dollar grant program, called ADVANCE, devoted to “institutional transformation” through gender-sensitivity workshops, interactive theater and the like. ADVANCE is well named: it is the advance guard, softening up the hard sciences for the coming of Title IX enforcement.

Although Title IX has contributed to the progress of women's athletics, it has done serious harm to men's sports. Over the years, judges, federal officials, and college administrators have interpreted it to mean that women are entitled to "statistical proportionality." That is to say, if a college's student body is 60 percent female, then 60 percent of the athletes should be female — even if far fewer women than men are interested in playing sports at that college. But many athletic directors have been unable to attract the same proportions of women as men. So, to avoid government harassment, loss of funding, and lawsuits, educational institutions have eliminated men's teams — in effect, reducing men's participation to the level of women's interest. That kind of regulatory calibration — call it *reductio ad feminem* — would wreak havoc in fields that drive the economy such as math, physics, and computer science.

It is important to keep in mind that today's academy is hardly inhospitable to women. Harvard, Princeton, Brown, MIT, and other top schools have women presidents. Women earn 57 percent of bachelor's degrees, 59 percent of master's degrees, and half the doctorates. If men were as gender-organized as women, they might lobby for Title IX reviews of the many departments — such as psychology, education, sociology, literature, art history, and the life sciences — where they are woefully "underrepresented." And women now represent 77 percent of students in veterinary schools, so they can obviously manage hard technical science where it interests them.

The lower proportions of women in physics, mathematics, and engineering may be due in part to subtle factors of culture and "unconscious bias," but facts point to simpler explanation. In a recent study by Neil Gross of Harvard and Solon Simmons of George Mason University, 1,417 professors were asked to explain the relative scarcity of female professors in these fields. Nearly three out of four respondents, 74 percent, attributed it to differences in the subjects that characteristically interest women, while 24 percent put it down to sexist discrimination and 1 percent to women's lack of ability.

National Review Online, April 24, 2008.

"The only valid censorship of ideas is the right of people not to listen" *Tommy Smothers*

MATH *IS* HARDER FOR GIRLS

. . . and also, it seems, for the New York Times

Heather MacDonald

The *New York Times* is determined to show that women are discriminated against in the sciences; too bad the facts say otherwise. A new study has "found that girls perform as well as boys on standardized math tests," claims a July 25 article by Tamar Lewin—thus, the underrepresentation of women on science faculties must result from bias. Actually, the study, summarized in the July 25 issue of Science, shows something quite different: while boys' and girls' *average* scores are similar, boys outnumber girls among students in both the highest and the lowest score ranges. Either the Times is deliberately concealing the results of the study or its reporter cannot understand the most basic science reporting.

Lewin begins her piece with the mandatory mocking reference to former Harvard president Lawrence Summers' suicidal speculations about why women are underrepresented on science and math faculties. She also manages to squeeze in a classic feminist trope for how our sexist society destroys girls' innate abilities, invoking the infamous "talking Barbie doll [who] proclaimed that 'math class is tough.'" Lewin implies that the new study blows Summers' wide-ranging speculations on gender and math out of the water; all that holds women back from equal representation in MIT's theoretical physics labs, it seems, is Mattel and other patriarchal marketers of gender myths.

On the contrary, **Science's** analysis of math test scores only confirms the hypothesis that cost Summers his Harvard post: that boys are found more often than girls at the outer reaches of the bell curve of abstract reasoning ability. If you're hoping to land a job in Harvard's math department, you'd better not show up with average math scores; in fact, you'd better present scores at the absolute top of the range. And as studies have shown for decades, there are many more boys than girls in that empyrean realm. Unless science and math faculties start practicing the most grotesque and counterproductive gender discrimination, a skew in the sex of their professors will be inevitable, given the distribution of top-level cognitive skills. Likewise, boys will be and are overrepresented among math

dunces—though the feminists never complain about the male math failure rate.

Lewin claims that the "researchers looked at the average of the test scores of all students, the performance of the most gifted children and the ability to solve complex math problems. They found, in every category, that girls did as well as boys." This statement is simply wrong. Among white 11th-graders, there were twice as many boys as girls above the 99th percentile—that is, at the very top of the curve. (Asians, however, showed a very slight skew toward females above the 99th percentile, while there were too few Hispanics and blacks scoring above even the 95th percentile to compute their gender ratios.)

The *Science* researchers themselves try to downplay the significance of the two-to-one ratio for whites—the vast majority of students—on the grounds that it should produce a 67 percent to 33 percent disparity in male-to-female representation in math-dependent fields. Yet Ph.D. programs for engineering, they say, contain only about 15 percent women. Therefore, the authors conclude, "gender differences in math performance, even among high scorers, are insufficient to explain lopsided gender patterns in participation in some [science and math] fields."

This reasoning is flawed, however, because the tests used in their study are pathetically easy compared with what would be required of engineering or other rigorous math-based Ph.D.s. The researchers got their data from math tests devised by individual states to fulfill their annual testing obligations under the federal No Child Left Behind act. NCLB has produced a mad rush to the bottom, as many states crafted easier and easier reading and math tests to show their federal overseers how well their schools are doing. The *Science* researchers analyzed the difficulty of those tests and found that virtually none required remotely complicated problem-solving abilities. That a gender difference at the highest percentiles shows up on tests pitched to such an elementary level of knowledge and skill suggests that on truly challenging tests, the gender difference at the top end of the distribution will be even greater. Indeed, between five and ten times as many boys as girls have been found to receive near-perfect scores on the math SATs among mathematically gifted adolescents, for example. Far from raising the presumption of gender bias among schools and colleges, the *Science* study strengthens a competing hypothesis: that the main drivers of success in scientific fields are aptitude and knowledge, in conjunction with personal choices about career and family that feminists refuse to acknowledge.

The same reality-denying feminists are itching to subject college science and math departments to gender quotas. They have already persuaded Congress to require university scientists to perform Title IX compliance reviews—a nightmare of bean-counting paperwork—covering everything from faculty composition to lab space. Misleading reporting like Lewin's will only strengthen the movement to select cancer researchers and atomic engineers on the basis of their sex, not their abilities.

The *Wall Street Journal*, it should be noted, had no difficulty grasping the two main findings of the *Science* study: that "girls and boys have roughly the same average scores on state math tests," as Keith J. Winstein reported on July 25, but that "boys more often excelled or failed." That the *New York Times*, in an article over twice as long as the *Journal*'s, couldn't manage to squeeze in a reference to the fact that boys outperformed girls at the top end of the curve should put its readers on notice: trust nothing you read here.

Heather Mac Donald is a contributing editor of City Journal *and the John M. Olin Fellow at the Manhattan Institute. Her latest book, coauthored with Victor Davis Hanson and Steven Malanga, is* The Immigration Solution.

City Journal, 28 July 2008. □

CANADIAN UNIVERSITIES HURTING FOR FUNDS

Elizabeth Church

Universities are receiving thousands of dollars less for each student on their campuses than they did two decades ago, a drop that is hurting the quality of higher education and putting Canada at a competitive disadvantage, a report released Wednesday morning by university leaders says.

The report, by the Association of Universities and Colleges of Canada, finds that while the amount of money going to universities is increasing, rising

student numbers and expenses associated with research mean that these dollars are being spread more thinly. The end result is crowded classrooms, less contact with professors, and aging buildings in need of repair – all factors that are contributing to a general decline in the calibre of education.

"To me, this is a wake up call," said Tom Traves, president of Halifax's Dalhousie University and head of the association. "Let's be honest about it, the Canadian situation reflects a serious deterioration over the last 20 years, and it reflects an inability to keep up with our key competitor, the United States, and others as well."

Last year, university funding from all levels of government was approximately $15,000 per student, compared with $21,000 in the early 1980s and $17,000 in the early 1990s, the study finds.

By comparison, it notes that public universities and colleges in the United States have seen their funding levels rise in the past three decades to the point where they receive about $8,000 more per student than their Canadian peers. Major private U.S. institutions have substantially more.

Over this same period, hiring of professors has not kept pace with the increasing number of students that have come to Canadian campuses. The effect of those rising student-faculty ratios can be seen in survey results that show Canadian campuses falling behind U.S. schools on key measures of student engagement, the report finds, and point to a decline in quality.

University leaders may be reluctant to talk about declining quality at their own school, but Mr. Traves said he hopes the new report, which looks at the system as a whole, will allow them to have a more candid conversation about the problem.

"I think if you try to track this back to one institution, you end up getting a lot of defensive talk," he said, declining to give specifics on how Dalhousie University has been affected.

He also hopes the report will sway governments to continue their recent investments in the sector and drive home the point that more needs to be done.

Indeed, the numbers in the report show the situation has improved in recent years. While the gap between Canadian and U.S. funding levels has grown since the early 1980s, the report also finds a slight reversal of this trend since 2002, thanks to major investments by some provinces and the federal government.

Since the early 1990s, Canada's funding for universities also has outpaced that of Britain and Australia, although recent policy changes in those countries have all but eliminated that difference.

Further changes in Britain, such as planned tuition increases, are expected to give schools more money, the report says.

Here in Canada, Mr. Traves said, he worries that there is a sense of complacency about the university system on the part of governments and the public because it continues to produce some top researchers and students.

The recent increase in support in many jurisdictions for higher education also may lead government leaders to feel they have addressed the situation, he said. Other pressing problems such as health care and the environment are top of mind.

But he said unless funding continues to be improved, Canada risks falling badly behind other countries when it comes to training and attracting talent.

"I think this should really worry us for the long haul because the things that we are putting in place now will impact for the next thirty years the quality of our work force," he said. "It is not easy to turn that around."

Globe and Mail, June 25, 2008.

A PROFESSOR SUES HIS STUDENTS

On bad days, there are no doubt plenty of professors who have joked about suing students. But it is pretty rare that somebody actually does so. A law professor at the University of Arkansas at Little Rock has — and the ramifications could extend well beyond his dispute.

Richard J. Peltz is suing two students who are involved in the university's chapter of the Black Law Student

Association, the association itself, and another individual who is affiliated with a black lawyers' group. Peltz charges them with defamation, saying that his comments about affirmative action were used unfairly to accuse him of racism in a way that tarnished his reputation.

Suing students for what they have said about you is rare if not unheard of, but the topic has suddenly come up not only at Little Rock's law school, but at Dartmouth College. There, a former instructor recently sent several former students e-mail indicating that she was planning a suit. http://thedartmouth.com/2008/04/28/news/classactionsuit/ Robert B. Donin, general counsel of the college, issued a statement in which he said: "We have determined that there is no basis for such action, and we have advised the students and faculty members of this."

Since the suit that has been filed in Arkansas has been reported by *The Arkansas Democrat Gazette*, students and faculty there have considered the ramifications — but mostly among themselves. There is considerable concern at the university — and some elsewhere — about what it means to open exchange of ideas to have a professor sue his students.

The dispute over Peltz concerns his opposition to affirmative action — and how he expressed it. Complicating matters is that no one who was present when the statements were actually made is discussing them. Those Peltz sued did not respond to messages, and he was willing to e-mail only a very general discussion of what happened. In examples of the defamatory material that were submitted with his suit, however, the view of the black student organization about his actions becomes clear.

In a memo sent to Charles Goldner, dean of the law school, the students accuse Peltz of engaging in a "rant" about affirmative action, of saying that affirmative action helps "unqualified black people," of displaying a satirical article from *The Onion* about the death of Rosa Parks, of allowing a student to give "incorrect facts" about a key affirmative action case, of passing out a form on which he asked for students' name and race and linking this form to grades, and of denigrating black students in a debate about affirmative action, among other charges.

The student memo said that the organization had "no problem with the difference of opinion about affirmative action," but that Peltz's actions were "hateful and inciting speech" and were used "to attack and demean the black students in class."

The black student group demanded that Peltz be "openly reprimanded," that he be barred from teaching constitutional law "or any other required course where black students would be forced to have him as a professor," that the university mention in his personnel file that he is unable "to deal fairly with black students," and that he be required to attend diversity training.

While Peltz in an e-mail said he could not discuss the case in detail, he suggested — as have his supporters — that the accusations that he was unfair to black students were a misrepresentation of his criticism of affirmative action. For example, he said that he was invited by the Black Law Students Association to debate affirmative action and to take the anti- position.

And while not relating this action directly to what is described in the suit, he wrote the following by e-mail about what may be the form asking for students' race. "Unrelated to the debate and in the ordinary course of my Constitutional Law class in the fall of 2005, I taught the usual and scheduled material on affirmative action. To stimulate discussion, I presented students with an exercise by handing out a adapted version of the form that the Arkansas state government uses to hire personnel. All students were offered credit to participate. Responding to skeptical student questions, I argued *in favor* of affirmative action. My teaching method spurred a productive class discussion."

After Peltz filed the suit, he was removed from teaching all required courses — a fact that the university confirmed but declined to explain, saying that it related both to personnel issues and litigation. Goldner, the dean, sent students and professors an e-mail in which he said that "we recognize that an individual is within his or her rights to file claims in our courts. We also take seriously our obligation to provide our students the environment they need in order to receive the best possible education. Part of that obligation includes working to be an institution in which all members — faculty, students, and staff — are free to openly voice opinions and concerns."

Goldner pledged to continue to work to create a

"diverse and inclusive community."

Jonathan Knight, who handles academic freedom and governance issues for the American Association of University Professors, said he was concerned about the suit — regardless of whether Peltz was unfairly maligned by his students. "A suit like this, as I'm sure the professor knows, can have troubling implications for academic freedom," Knight said. "When you ask a court to become involved in making judgments about the meats and bones of free expression on campus, it can be dangerous." He noted, for example, that legal standards about the free exchange of ideas — some of them unpleasant — "are not co-equal with the standards of the academic community."

Generally, Knight said that the worries about courts settling such matters are such that professors need to be "thickly armored" when it comes to comments from colleagues or students. If a professor is being unfairly criticized, it is far better for fellow faculty members or a dean to come to his or her defense than for the scholar to go to court, Knight said.

Noting that professors "typically do not restrain themselves" when talking about other professors' research, Knight said that "when one enters the academic community, it's with the understanding that lots of things might well be said which cast one in a very unpleasant light."

Inside Higher Ed, April 30, 2008.

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