

Gender Bias in CAUT decisions to intervene

I was off in the hinterlands during the recent interchange about CAUT's approach to harassment and discrimination complaints, but because these issues strike close to my own research interests, there are a couple of things I would like add to the discussion after the fact.

The first thing I would like to address is the idea that members who have been unable to get meaningful assistance from their faculty associations in pursuing complaints against colleagues have satisfactory alternate recourse under human rights law. The fact is, the human rights system in Canada, for all its good intentions, is seriously broken. Part of the problem is public backlash against "political correctness" that has become increasingly blatant over the last decade. Part is the low priority placed on anti-discrimination initiatives by conservative governments. Whatever the underlying factors, however, the most immediate cause is inadequate funding. With the possible exception of the federal tribunal, human rights regimes across the country do not have a fraction of the resources necessary to deal adequately with their caseloads. The consequences of this deficiency are huge backlogs, processing time that stretches into years, poor case management, poorly trained staff, a lack of support for applicants, and a tendency for difficult or complicated cases to fall through the cracks. Unfortunately, virtually all instances of indirect or systemic discrimination – which is the kind of discrimination most likely to arise in academic institutions – fall into this category. So, no – women who are forced to fall back on the human rights system to adjudicate discrimination complaints are unlikely to get timely or proportionate resolutions, if indeed they get any.

This brings me to my second point – where does CAUT fit into this picture? I may just be cynical, but I get a sense from the recent conversation that the main interest CAUT has in this parallel system is that it gives them an extra excuse not to do anything to help members marooned by their unions. Certainly I have never heard of them providing either tangible or moral support in cases like Adele Mercie's or Jennifer Chan's. Their excuse? It would not be proper. Richard Sullivan sums it up nicely: "I don't think we ought to comment on any matter presently before a human rights tribunal or other process elected by a complainant or their membership organization." There's no legal basis whatsoever for such a stance. There is also no institutional reason. Indeed, as Agnes Whitfield points out, it is part of CAUT's self-proclaimed mandate to "monitor legislative initiatives and intervene in court cases of significance for academic staff." What could be more significant than protecting universally accepted principles by taking actions that individual faculty associations, for practical and political reasons, are unable to take? Last but certainly not least, the statement is demonstrably untrue. The fact is, CAUT has "commented" – and more – on a wide variety of active cases over the last couple of decades, just not the kind that recent posters have been complaining about. Affronted by this apparent hypocrisy, I was moved to look a little more closely at the situation. A cursory investigation turned up a number of troubling discrepancies.

First, there's a question of who gets the benefit of the aforementioned mandate to intervene in "significant" legal proceedings. A browse of the CanLII (Canadian Legal Information Institute) website reveals that the only court or tribunal cases over the last decade that CAUT has been involved with are cases where they intervened in support of faculty associations, sometimes in opposition to individual members. I did not turn up one instance of a case where they supported an individual member against his/her faculty association, or even a case where they supported an individual member independent of a faculty association. The response to this, no doubt, would be

that this is where the Association's duty lies. As Jennifer Bankier puts it in her email of 4/26, "CAUT is an association of academic unions, not an association of individual academics." This interpretation is clearly consistent with the Bylaw.

Notwithstanding the technicalities, on the other hand, one may question whether the alignment is made clear to the general membership who ultimately pay the freight. The organization bills itself as an "Association of University Teachers," not an "Association of Faculty Associations." The website section on "Membership" is addressed to individuals, not their unions, and lists a number of membership categories for people who are not represented by associations. Indeed, the whole website interpellates an individual "you." Under the circumstances, one could argue that individual academics are not just allowed but encouraged to believe that CAUT advocates for them personally, not just their official representatives.

Second, there's the question of what issues the organization actually involves itself with. Here I needed look no further than CAUT's own website. The section entitled "Issues and Campaigns" details the actions taken by the Association in a number of areas of interest to its membership. At the top of the list, the page devoted to "Academic Freedom" provides links to the reports of 23 investigations undertaken by CAUT, either directly or by commissioning independent adjudicators. Taking this as a baseline, when I turned to the issue categories pertinent to the recent discussion, "Equity" and "Women," I was amazed to find that there was not a single mention of either investigations OR interventions. True, a few of the cases on the "Academic Freedom" list involved human rights considerations, potentially or peripherally, but with one notable exception (an independent report on the role played by discrimination in the shabby treatment of U. of T. research fellow, Dr. Kin-Yup Chun, by Connie Backhouse and others) these reports ignore the human rights issues almost completely in favour of procedural and/or political problems.

On one level, there is nothing surprising about this bias. Academic freedom is given special prominence in CAUT's description of the services it offers, and there is a standing committee dedicated to actions in this area. As with the question of who exactly the "client" is, however, on another level the situation is not so clearcut. At the very least, the impression conveyed by the website is ambiguous. The statement that the Association "intervene[s] in court cases of significance for academic staff" says nothing about this intervention being reserved for certain issues. Given the claims routinely made about the importance CAUT places on equity – as for instance in this recent email exchange – one may argue, again, that they have raised legitimate expectations among victims of harassment and discrimination that their problems will be given as much attention as complaints about, say, the muzzling of dissent.

The last area where my investigation set off some buzzers was the nature of the complaints that got investigated. One thing that sprang out at me was the fact that every single report ended up vindicating the complainant. If nothing else, this suggests that these particular cases were chosen more for publicity purposes than because they deserved looking into. There's nothing wrong with this per se, but it raises the rather troubling possibility that the reason harassment and discrimination complaints have been getting short shrift is because they are often both ambiguous and contentious. Another thing I noted was the gender bias. Out of 23 investigations, fourteen concerned male complainants, five concerned female complainants, one concerned a male/female team, and three concerned institutional issues. Among the in-house investigations, the male/female ratio was thirteen to three.

It is possible, of course, that this list doesn't represent the full tally of investigations carried out, just the most notable. If so, that still raises the question of what message we should take from the particular selections. If, despite all appearances, the Association actually has been intervening in human rights cases, why don't they give such cases the prominence on their website that they give to academic freedom cases? Why is discrimination condemned so loudly in theory but swept under the rug in practice?

As cursory as my investigation has been, one thing that seems clear is that there are some odd inconsistencies in CAUT's approach to member problems. The question is what should be done about this. Personally, I think that in the present climate, equity issues are just as deserving of attention as academic freedom issues, if not more so. At least academic freedom has been well recognized in the case law, and there are established legal tests for dealing with it. Discrimination, on the other hand, is much better recognized in principle than in practice. I noted earlier, for instance, how poorly equipped the human rights system is to deal with indirect and systemic discrimination. Labour tribunals are for the most part even worse. And that's just discrimination in general. Abuses are particularly difficult to prove when they take place in an academic environment, not just because of the ill-understood (by outsiders) peculiarities of academic culture, but even more because most academics are clever enough not to give themselves away by saying or doing something obvious. This isn't going to change until we get more good decisions on the record to establish the indicia, evidentiary standards, and modes of analysis necessary to deal with such subject matter. Given the difficulties that faculty associations have in handling member-on-member complaints, this isn't like to happen via the grievance system. For people like professors D., M., and A.M. who are forced to go it alone, however, having the support of an organization like CAUT could make a huge difference. That's just my opinion, of course. But if the Association ISN'T prepared to offer such assistance, they should be honest and open about it. I not only second Katherine Side's request for clarification, but call on other members of this listserv to join us in this demand. It's time for CAUT to come clean about what they can and can't, will and won't do for the people – and particularly the women – who look to them for assistance.

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P.S. Just one other thing – as a dues-paying member of a contributing faculty association, I resent Richard's comments about not getting "caught up in an email campaign." For those of us whose unions do not share our views on these issues, this is the only venue we have to get our opinions on the table."