

Academic Freedom and the Law: Quebec and the Maritimes

Joël Michaud, Q.C., & John MacCormick
Pink Larkin (Fredericton)

2022 Harry Crowe Foundation Conference
Academic Freedom and the Law

Three recent reports on academic freedom

- *Les libertés universitaires dans une université inclusive* [Academic freedoms in an inclusive university]
 - Jean-François Gaudreault-Desbiens in collaboration with Léa Boutrouille
 - Université de Montréal, March 2020
- *Report of the Committee on Academic Freedom*
 - Michel Bastarache, Chair
 - University of Ottawa, November 2021
- *Reconnaître, protéger et promouvoir la liberté universitaire* [Recognizing, protecting and promoting academic freedom]: Report of the *Commission scientifique et technique indépendante sur la reconnaissance de la liberté académique dans le milieu universitaire*
 - Alexandre Cloutier, Chair
 - Ministère de l'Enseignement supérieur [Ministry of Higher Education] (Quebec), December 2021

Syndicat des professeures et professeurs de l'Université du Québec en Outaouais (SPUQO) and Université du Québec en Outaouais, [2015 CanLII 84394](#)

- **Context:** Student movement of spring 2012
 - In response to a student boycott, UQO decided to suspend classes.
 - At the request of a group of dissenting students, the Superior Court issued an injunction ordering classes to resume.
 - The University objected to the injunction and attempted to have it lifted or varied, but it **did not file an appeal against it**.
 - In order to comply with the injunction, **the University issued a directive to the faculty to resume classes**. In addition, it **unilaterally extended the academic year and adopted a pass/fail assessment system**.
 - As the demonstrations prevented classes from being held, UQO called for police assistance.

[254] The union relies on the book authored by Professors Andrée Lajoie and Michelle Gamache, *Droit de l'enseignement supérieur*, in **arguing that the same value should be attributed to university autonomy and academic freedom as to the fundamental rights recognized in the *Canadian Charter of Rights and Freedoms* (the Canadian Charter) and the *Quebec Charter of Human Rights and Freedoms* (the Quebec Charter), as [university autonomy and academic freedom] are implicitly entrenched therein.** Consequently, they would benefit from the same protection, meaning that the latter could be limited only pursuant to section 1 of the Canadian Charter and to section 9.1 of the Quebec Charter. **They would therefore also have precedence over the duties owed by employees to their employer, with respect to loyalty in particular, as well as the management rights of the employer.**

[255] **This is a vision that I do not share.** The union has not provided any authority issued by a decision-maker or a court of justice in the 25 years that have elapsed since this publication giving university autonomy and academic freedom the constitutional or quasi-constitutional protection afforded by the Charters. [...]

[258] **This leaves us with the collective agreement.** [...]

Syndicat des professeures et professeurs de l'Université du Québec en Outaouais (SPUQO) and Université du Québec en Outaouais, [2015 CanLII 84394](#)

Partial success for the union

Upheld grievance

- Directive to teach courses even if only one registered student is in attendance and to continue with the subject that was already planned
- Unilateral change to the university calendar

Dismissed grievance

- Directive to resume classes
- The fact that the University complied with the injunction without filing an appeal
- Change to the assessment policies

Other recent decisions

- Notwithstanding academic freedom, the university retains the right to...
 - ... oversee the allocation of tasks by a departmental meeting.
 - *Syndicat des professeures et professeurs de l'Université du Québec en Outaouais v Université du Québec en Outaouais*, [2019 CanLII 20860](#)
 - ... require that grade delivery timelines be met.
 - *École de technologie supérieure v Syndicat des chargés-es de cours de l'École de technologie supérieure – services des enseignements supérieurs (Fédération nationale des enseignantes et enseignants du Québec)*, [2021 CanLII 114764](#)
 - ... investigate allegations of inequity in student assessment.
 - *Bishop's University Faculty Association v Bishop's University*, [2021 CanLII 92567](#)
 - ... refuse to promote a research study on the home page of the university's website.
 - *Syndicat des professeures et professeurs de l'université du Québec en Outaouais v Université du Québec en Outaouais*, [2018 CanLII 28752](#)

Discharge Grievance

The interpretation of literary works and the essential foundation of educational freedom

A conflict of rights in the #MeToo era

Some theatre plays at issue

- *Sans fil*
Sergi Belbel, 2007
- *How the Other Half Loves*
Alan Ayckbourn, 1969
- *A Tragedian in Spite of Himself*
Anton Chekhov, 1890

Dalkir Grievance

Promotion grievance involving academic freedom in research and publication

- An economics professor had published a relatively small number of articles, but they were in the very best journals. The articles were extremely technical, and external reviewers considered them to be of a very high quality.
- The Vice-Presidents of the University refused promotion to full professor, mainly on the grounds of an insufficient **quantity** of publications.
- The Association argued that this violated the professor's academic freedom, here the freedom to focus his efforts on creating a few high-quality works instead of aiming for the highest possible quantity.

The Board concludes, on the basis of the evidence and submissions of the parties, that AUNBT has not demonstrated that UNB breached Dr. Dalkir's academic freedom under Article 14 of the Collective Agreement in its evaluation of Dr. Dalkir's application for promotion. **The Board agrees with the submissions of UNB that neither the Dean nor the Vice-Presidents restricted Dr. Dalkir's choice as to where he wanted to publish his work. That they drew certain conclusions negative to Dr. Dalkir's application for promotion to Full Professor based on Dr. Dalkir's publication rate, which they considered to be particularly low, falls into a different arena of consideration, an arena that is not captured by Article 14, Academic Freedom.** The appropriate place for the evaluation of the Dean's and Vice-Presidents' conclusion to deny Dr. Dalkir's promotion largely on the basis of their conclusion that his publication rate was unduly low is in the Board's consideration of the Dean's and Vice-Presidents' interpretation and application of the assessment criteria for promotion as set out in Articles 25D.05(a)(i) and 26D.06(b), discussed below in the Board's consideration of **AUNBT's allegation that the negative recommendations of the UNB administration, the Dean of the Faculty of Arts and the Vice-Presidents, were unreasonable.**

UNB and AUNBT (Dalkir), unreported decision dated October 8, 2021 (P. Picher, Chair) at page 89 of 401.

Moreover, with respect to the third assertion of the Vice-Presidents that the level or quantity of Dr. Dalkir's research and scholarly activity was at an unacceptably low level, **the Board [...] was equally concerned by the failure of the Vice-Presidents to take the following essential steps** in the assessment of Dr. Dalkir's research: (1) **to evaluate the quality** of Dr. Dalkir's scholarship, (2) **to evaluate the quantity of Dr. Dalkir's research in compliance with the requirements contained in the parties' assessment process** to take into account Dr. Dalkir's "overall record" and his "area of expertise" as a macro theoretical economist, (3) because quantity was a concern, **to then balance Dr. Dalkir's quantity of research against its quality**, as well as (4) to take each of these steps within **the further obligation to give deference to those in the chain of prior assessments with the expertise to make these assessments** relating to the quality and quantity of Dr. Dalkir's research who/which were the three external assessors and the Department of Economics Level 1 Assessment Committee.

UNB and AUNBT (Dalkir), unreported decision dated October 8, 2021 (P. Picher, Chair) at page 89 of 401.

