

Report of the CAUT Ad Hoc Investigatory Committee

Into the **Enbridge Centre for Corporate Sustainability** At the University of Calgary

October 2017

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1| Introduction & Summary of Findings

Post-secondary institutions serve the common good by pursuing, fostering, and disseminating understanding and knowledge. To do so, they must embrace and defend academic freedom as a foundational principle. Academic freedom includes the right to teach, research, engage in public debate, and express opinions freely without fear of intimidation or reprisal. The failure to protect and promote academic freedom imperils a university's autonomy and *raison d'être* by undermining the ability of its faculty to do their work as researchers and teachers. Simply put, a university that does not protect and promote academic freedom is not truly a university.

As the Supreme Court of Canada has stated, academic staff are expected to meet their responsibilities to their students, their disciplines, and the public in a "free and fearless" way.¹ If their ability to act in this way is threatened or abridged, it is a serious matter warranting robust investigation and effective remedies.

In the present case, the Canadian Association of University Teachers (CAUT) established an Investigatory Committee as a result of an ongoing media investigation of the circumstances surrounding the establishment of the Enbridge Centre for Corporate Sustainability (ECCS) at the Haskayne School of Business (HSB) of the University of Calgary (U of C). This step by CAUT was informed by evidence uncovered by journalists based largely on information disclosed through freedom of information requests. The story first

attracted national attention in November 2015.

Between March 2011 and July 2012, the U of C worked to secure a sponsorship from Enbridge, a major oil and gas pipelines company based in Calgary, to establish a research institute at the Haskayne School of Business. Dr. Joe Arvai, a recently-appointed Haskayne faculty member, was asked to be the director of the institute that eventually became the ECCS. In this context, Arvai came into conflict with the sponsor and his Dean over a number of important decisions about the ECCS, including the naming of the centre, the choice of its partner institutions, and the role of the director. Arvai informed us that he was eventually removed from his position as director a week after he informed Enbridge's public relations firm of his opposition on scientific grounds to the Northern Gateway pipeline. Arvai later left the U of C entirely.

While Dr. Arvai was director of the ECCS, senior administrators at the U of C took steps that in our view compromised his academic freedom. The compromises are especially troubling due to a clear appearance of a conflict of interest on the part of U of C President Elizabeth Cannon. At the relevant time, Cannon held a seat on an Enbridge board² and was highly remunerated

1. "...[Faculty members] must have a great measure of security of employment if they are to have the freedom necessary to the maintenance of academic excellence which is or should be the hallmark of a university. Tenure provides the necessary academic freedom to allow free and fearless search for knowledge and the propagation of ideas." *McKinney v. University of Guelph*, [1990] 3 SCR 229, 1990 CanLII 60 (SCC).

2. In a submission to the McMahon review, President Cannon drew a distinction between this board – the Enbridge Income Fund Holdings Board – and Enbridge Inc., while noting that the board was affiliated with and 70% owned by Enbridge Inc. (Statement of Elizabeth Cannon to the *McMahon review*, December 2, 2015). For present purposes, these circumstances of majority ownership establish clearly that the board and Enbridge Inc. were part of the same business and reasonably understood by University staff and the public to have a shared interest in Enbridge's corporate reputation. Cannon herself acknowledged as much when she told the HSB Dean in August 2012 that she was "on one of their [Enbridge's] boards!"

in that role. The U of C Board of Governors evidently approved this conflicting role without requiring Cannon to disclose the conflict publicly and recuse herself from Enbridge-related activities at the university. Moreover, senior administrators at the U of C, including Cannon, intervened directly in the operations of the ECCS. While the clearest intervention by Cannon came after Arvai's departure, before his departure the HSB Dean invoked the President's name and the Dean's understanding of her views in the course of putting pressure on Arvai.

In carrying out our mandate, we examined evidence in emails provided in response to a freedom of information application by the Canadian Broadcasting Corporation (CBC) about the ECCS. Our review of these documents was supplemented by communications with a small number of current and former faculty at the U of C, one or more student representatives at the U of C, and the former Dean of HSB. The Committee conducted in-person interviews on the University campus and at a Calgary hotel, and via teleconferences with former U of C faculty Dr. David Keith (now at Harvard) and Dr. Arvai (now at the University of Michigan). We also considered U of C Board policy documents, Board Agendas and Minutes posted online, and the report produced at the Board's request by The Honourable Terrence F. McMahon, Q.C., a practicing lawyer and former Justice of the Court of Queen's Bench, in December 2015.

Among those who spoke to us directly, only Professors Keith and Arvai were willing to discuss their views about the ECCS for attribution. Interviewees who spoke to us off the record expressed concern about possible reprisal, the impact on their career prospects, or other negative consequences. A story in the *National Observer*, following from the Ad Hoc Investigatory Committee's visit to the U of C campus in April 2016, ascribes similar concerns

to U of C faculty members (Christopher Adams, "Teachers investigate whether University of Calgary is in bed with Big Oil," *National Observer*, 10 August 2016).

In response to a request to discuss our investigation, former HSB Dean Leonard (Len) Waverman stated in an email to us on April 20, 2016, that, over his 50-year academic career, he has had "an unwavering commitment to academic freedom and academic integrity." He also highlighted several provisions in the ECCS terms of reference: the ECCS would "provide a neutral ground for thoughtful and relevant research, analysis and education;" the ECCS academic advisory group would include a range of academics, with one non-voting spot available for an Enbridge designate; and the ECCS external advisory board would include representatives of various communities alongside academics and an HSB student, with Enbridge selecting one member and able to communicate non-binding recommendations to the ECCS Director for other members. Dr. Waverman also stated that the ECCS terms of reference conveyed "what was always the intention for the Centre as a neutral, scholarly forum with academic freedom firmly in place."

Members of the senior administration at U of C and the U of C Board of Governors declined to meet or interact with our Investigatory Committee despite invitations to do so. Dr. Dru Marshall, Vice-President Academic and Provost, took the step of alerting U of C faculty and senior leadership about our Committee's planned visit to the university campus in April 2016, after we informed U of C administrators of the planned visit and requested to meet with them. Marshall's email of March 18, 2016, to U of C faculty stated that former Justice McMahon's report had found no wrongdoing in relation to the ECCS and that the CAUT Investigatory Committee could not compel anyone to talk with its members. In the

same message, Marshall also mischaracterized CAUT's position on maintaining the confidentiality of participants in its investigations. This intervention was an early indication of the U of C administration's unwillingness to discuss issues of substance with the Investigatory Committee and of its apparent strategy to frustrate or discredit our inquiry. Thus, the U of C did not participate constructively in the only formal investigation of the ECCS that has been initiated by any entity other than the U of C itself.

On the basis of the evidence before the Investigatory Committee, we find:

Conflict of interest

a) There was a clear appearance of a conflict of interest in U of C President Elizabeth Cannon's serving on the Enbridge Income Fund Holdings Board for significant remuneration while she was president of the U of C. The appearance of a conflict should have been readily apparent to anyone who knew of the circumstances, despite the fact that contracts governing her first term as President and her renewal for a second term, as approved by the U of C Board of Governors, explicitly entitled Dr. Cannon to sit on external corporate boards and be paid for that activity.

b) The best way for Dr. Cannon to have avoided this clearly apparent conflict was for her not to occupy a position, especially a paid one, on an external corporate board during her tenure as U of C President. At the very least, Dr. Cannon should have recused herself publicly from all Enbridge-related discussions and decisions at the U of C in order to alleviate concerns about her ability to influence U of C decision-making in ways that would benefit Enbridge. Even if the U of C Board of Governors felt that there was some reasonable basis for approving

Dr. Cannon's dual role, its members should have insisted that Dr. Cannon withdraw from any university activities that were of an apparent interest to the external boards on which she sat or the corporations that paid her in that role.

c) In the case of the ECCS, Dr. Cannon evidently did not recuse herself publicly from such activities. On the contrary, she intervened directly and in writing with the Dean of the HBS, stating that Enbridge was not happy with the progress of the ECCS and that she wanted to have a good relationship with Enbridge, emphasizing that she was on one of Enbridge's boards. It is reasonable to assume that Dr. Cannon viewed Enbridge's level of happiness as linked to its reputational goals and, tangentially, to its capacity to remunerate those serving on its boards, including herself.

d) Dr. Cannon's statement to the McMahon review that, during her term as president, "absolutely no business related to Enbridge came before the Board of Governors" such that "conflict of interest declarations were not required" is hard to square with the fact that the Board of Governors was itself a party to the sponsorship agreement. If this Enbridge-related matter did not come before the Board, therefore, it was due to a serious governance failure – downplayed by Cannon as an "administrative lapse" – of an administration led by Cannon herself. Cannon's reliance on this failure by her own administration in order to deny her duty to disclose her conflicting role at Enbridge constitutes an unacceptable evasion of responsibility.

e) We think it likely that President Cannon, and clear that Board Vice-Chair Bonnie DuPont, had news of the Enbridge sponsorship well before the ECCS' eventual launch in March 2012. In any event, as of March 2012 at the latest, both Cannon and DuPont should have informed the Board of the sponsorship and Cannon should have recused herself from any involvement.

f) The accumulation of the President's dual role and appearance of a conflict of interest, her failure to recuse herself publicly, and the Board's evident approval or acquiescence in this conflict and non-recusal amount, in our view, led to a significant failure of leadership that very likely has harmed the U of C's reputation for academic independence and objectivity.

g) In the case of the ECCS, these concerns were amplified by the presence of one or more current or former Enbridge officials on the U of C Board of Governors, Dr. Cannon's high level of remuneration as an Enbridge board member, and Enbridge's sponsorship of and involvement in the ECCS. Worse, the President's clear, apparent conflict of interest impinged directly on decision-making about the ECCS.

Academic freedom and external influence

h) In the culmination of a series of events, Dr. Arvai's academic freedom was compromised as a result of the U of C's mishandling of the Enbridge Centre. This mishandling appears to have been due to a desire on the part of senior U of C leadership to please a significant donor. On repeated occasions, one or more University officials who should have been affirming and defending Arvai's academic freedom instead undermined it.

i) Enbridge sought to influence the establishment and public launching of the ECCS. On the record before us, senior administrators in the HSB and U of C should have but did not convey to Enbridge that its attempted influence over the Centre was inappropriate. These administrators also should have but did not take firm and consistent steps to ensure that Enbridge respected the authority and obligation of academic staff to determine the academic direction of the Centre. These

failures by senior administrators appear to have been motivated by a desire to avoid offending the donor.

j) We found Dr. Arvai's explanation for his departure as ECCS director to be credible and very troubling. Dr. Arvai informed us that the then-HSB Dean, Len Waverman, phoned him to discuss his removal as director one week after Arvai told Enbridge's public relations firm of his opposition on scientific grounds to the Northern Gateway pipeline. Arvai told us that the public relations firm asked him about the pipeline at a meeting in advance of the ECCS's launch and that the question arose because, although "canned" media (which we understand to mean media not expected to ask awkward or probing questions) would attend the launch, other media might also attend and ask about the Northern Gateway pipeline.

k) Even if we put aside the issue of Arvai's departure completely, we think that his academic freedom was infringed over the course of his tenure as ECCS director. Enbridge was able to make suggestions about the Centre's name and the Centre's director was pressed to accept those suggestions over his academic judgment. Enbridge was given special access to the University's academic and other staff to discuss or determine academic priorities. Enbridge was allowed to recommend partners for the Centre, with pressure brought to bear on the Centre's director to accept them. Enbridge was given extensive influence over the planning and design of the Centre's public launch. In each of these respects, it should have been apparent to University officials that Enbridge had a related public relations interest that was in conflict with the Centre's academic mission. Viewed in isolation, some of the actions of U of C administrators would not rise to the level of an encroachment on academic freedom, but as an accumulation, in our view they do.

Management of donations

l) The Enbridge sponsorship was skewed in Enbridge's favour from the start. The university made unfunded promises to Enbridge, including commitments to enhance Enbridge's reputation, at the university's risk and expense. The ECCS's planned activities were based on an annual budget of \$500,000, which was more than double Enbridge's financial outlay under the sponsorship agreement. Even this originally proposed \$500,000 budget did not cover the cost of a salary for a full director of the ECCS, implying that time committed by Dr. Arvai or other full-time academic directors would, at least in part, be voluntary or dependent on other University resources.

m) The funding shortfall was supposed to be made up by more fundraising. Specific companies were identified, all with operations in the oil and gas industry. As far as we can tell from the record, these fundraising efforts were unsuccessful, leading eventually to requests that Enbridge revisit the ECCS's mission and design, including its name. When the ECCS's funding constraints became untenable, it was the Centre's directors who were held accountable, instead of the administrators who negotiated the skewed sponsorship agreement, the Board members who were party to it, and the senior U of C leadership who failed to exercise proper oversight.

n) The Enbridge sponsorship reveals how easily a university can make itself dependent on corporate money. To carry out its plan to meet its commitments to Enbridge, the U of C had to raise more money than it received from Enbridge in the first place. This liability in turn created inherent pressures to compromise academic objectivity where it came into conflict with donor priorities. Whether intentionally or not, the design of the ECCS subordinated the university's responsibilities as an academic body to the priorities of prospective donors in the oil and gas industry.

Governance

o) There appears to have been a significant failure of collegial governance, accountability and oversight in the establishment of the ECCS. As far as we can tell, the Enbridge sponsorship was never vetted beyond the HSB Development Office. The Enbridge sponsorship does not appear to have come before the U of C Board of Governors for approval. There was also a lack of notice and discussion of the Enbridge sponsorship in the U of C General Faculties Council. These oversights indicate that the processes of review and accountability for the ECCS were deeply inadequate and constitute a serious breakdown of collegial governance.

p) Based on our review of the ECCS and wider media reports, there are worrying signs of a culture of silencing and reprisal at the U of C.

The McMahon Review

q) The U of C has relied repeatedly on the report of former Justice McMahon to excuse conduct of its senior administrators in relation to the ECCS. Yet McMahon's report and conclusions are undermined by his limited acknowledgement and consideration of the role of academic freedom at universities and in relation to the ECCS in particular. The conclusions he reached also appear to us to have given significant benefit of the doubt to senior U of C officials. In contrast, two named individuals, Joe Arvai and Len Waverman, appear not to have received a similar benefit of the doubt and were the subject of damaging criticism by McMahon.

r) It was also misleading for the U of C Board of Governors, in a press release on November 19, 2015, to have described the McMahon review as "independent" and as reflecting "an open and transparent process."

The McMahon review was not fully independent of the Board and was not open and transparent with respect to the supporting evidence for McMahon's conclusions. Finally, the review process, especially its selective approach to confidentiality, was, in our view, inconsistent with principles of fairness and thoroughness. (See Appendix A for our detailed commentary on the McMahon report).

At the conclusion of this report, we make recommendations based on these findings.

9 | Recommendations

- a)** The governance structure and processes of the University of Calgary Board of Governors should be reviewed. The review should examine the composition of the Board of Governors, how Board appointments are made, how diversity on the Board is understood and achieved, how transparency in the Board's decisions can be improved, and how the Board's decisions can be linked more consistently to the principles and practices of academic freedom, collegial consultation, and collegial governance.
- b)** As part of its conflict of interest policies, the University of Calgary should prohibit its president and other senior officials from serving for remuneration on any external corporate board. Service on external boards should be limited to non-profit, civic, governmental, and academic organizations and should not be remunerated beyond covering expenses incurred in activities related to such service. CAUT should urge this practice be followed at all post-secondary institutions in Canada.
- c)** President Cannon and the Board of Governors should acknowledge publicly that it was wrong for her, as U of C president, not to have recused herself from Enbridge-related matters at the U of C when she was in a clear conflict of interest due to her role as a well paid Enbridge board member.
- d)** President Cannon should confirm whether she or any other university official publicly misrepresented Enbridge's sponsorship as "non-conditional" and a "gift" and, if so, ensure that the public record is corrected. She should also acknowledge that her conduct in relation to the Enbridge Centre, and the conduct of senior U of C officials under her direction, damaged the University of Calgary's academic reputation. She should apologize for the resulting distress caused to Dr. Arvai and his family.
- e)** The University of Calgary should review its relationships with external entities and provide a public report on whether and how those partnerships comply with the principles laid out in the CAUT's report entitled *Open For Business: On What Terms?*
- f)** The University of Calgary should implement a policy governing the creation of externally-sponsored research institutes on campus. The policy should explicitly mandate that any such institutes be bound by and respect academic freedom as a primary value.
- g)** Agreements based on external sponsorships, gifts, or partnerships at the U of C and other universities should be assessed rigorously, and independently of those who negotiate them, prior to being accepted by the University. The assessment should ensure that the university's commitments to a sponsor, donor, or partner do not put the university in a situation of further financial dependency on outside corporate interests in order to avoid pressures for administrators and faculty to compromise on the principles laid out in the CAUT's *Open for Business: On What Terms?* report.
- h)** Processes of collegial governance and shared decision-making involving U of C senior leadership and U of C faculty, staff and students should be reviewed and strengthened, as should the overall accountability of the U of C senior leadership. This review should also focus on bolstering the role of collegial governance bodies in overseeing and vetting corporate sponsorships and donations to the U of C.
- i)** The University of Calgary should release in full and unredacted – to Joe Arvai, Leonard Waverman, and any individual or organization that was subject to negative findings or conclusions in the McMahan report and is

identifiable based on the contents of that report – all documents provided to former Justice McMahon for the purposes of his review. Barring personal privacy concerns, the University should also make public all such documents.