

A CAUT Ad Hoc Investigatory Committee Report into the Tenure Review of Dr. Eileen Hogan at Acadia University

1. Introduction

In August 2002, Dr. Eileen Hogan, an associate professor in the School of Nutrition and Dietetics at Acadia University in Wolfville, NS, applied for tenure. Her application was denied by the departmental and university-wide review committees and her final appeal was denied by the University Appeals Committee in March 2003. Dr. Hogan received a letter dated March 31, 2003 from Kelvin Ogilvie, [then] president of Acadia University, stipulating that her appointment at the university would end on June 30, 2004.

The Acadia University Faculty Association (AUFA) contacted CAUT for assistance. In accordance with the *CAUT Procedures in Academic Freedom Cases*, a preliminary inquiry was undertaken to gather necessary background and factual information. CAUT then attempted to provide assistance in arriving at a satisfactory resolution of the situation. When it became clear that satisfactory resolution was not possible through informal negotiation, an ad hoc investigatory committee was appointed in spring 2005 by CAUT's executive director in consultation with the president of CAUT and the chair of CAUT's Academic Freedom and Tenure Committee.

The members of the investigatory committee were Patricia Baker, associate professor of sociology and anthropology at Mount Saint Vincent University in Halifax, NS, and Gayle MacDonald, professor of sociology at St. Thomas University in Fredericton, NB.

The committee was asked to determine if Dr. Hogan's application for tenure and her appeals were handled in a fair and appropriate manner and to make any suitable recommendations.

This is their final report.

2. The Tenure Process at Acadia University

Tenure-track appointments at Acadia are initially for a three-year probationary period. Before the end of the initial three-year term, the academic staff member is considered for a second probationary appointment of up to three years. Consideration for tenure occurs in the penultimate year of the second probationary appointment. Each of the considerations is first done by a Departmental Review Committee (DRC) that submits a recommendation to the University Review Committee (URC). Negative decisions by the URC may be appealed to the University Appeals Committee (UAC).

A DRC has six members: the dean, who is the chair, the department head, three additional members from the department and one tenured member from a cognate department. If there are insufficient eligible members in the department, a sufficient additional number is selected from among eligible members of a cognate department. To be eligible for committee membership, a department member must be tenured or have been at Acadia for a minimum of three consecutive years and must not be an applicant for renewal, tenure or promotion, or be a member of the URC.

The URC is made up of the vice-president (academic) and six tenured professors, two from each faculty in the university. The committee selects its own chair. If the committee does not decide in favour of the candidate's application, or if the DRC rejected the application, the URC must meet with the candidate, to provide the candidate an opportunity to present the case for tenure. During this meeting, the candidate has an opportunity to update any changes in the status of material initially included in the application. Before the URC renders its final decision, it must complete its review of all recommendations within a given year, to ensure consistency.

The UAC hears all appeals against decisions of the URC. The UAC has four members: one tenured professor, jointly appointed by the faculty association and the board who is a non-

voting chair, two tenured professors, jointly appointed by the association and the board, and one tenured professor jointly appointed by the association and the board from a cognate department.

Appeals to the UAC are based only on procedural grounds and may occur only when the URC decision has the effect of terminating employment, or the URC decision conflicts with that of the DRC. If the UAC decides that the procedural grounds for the appeal are substantive, it must hold a hearing and invite the following to be present throughout the hearing and provide to each of them the opportunity to address the grounds for appeal: the candidate and an advocate chosen by the candidate and two representatives of each of the DRC and the URC. At the conclusion of the hearing, the UAC considers its decision in camera.

At the end of the hearing, the UAC either upholds the URC decision or determines that the grounds for appeal have been substantiated. If the UAC makes the latter determination, it must follow one of two courses: either refer the matter back to the URC, or conduct a full review of the application, following the procedures set down for the URC. If the UAC chooses to do a full review of the application, it must do an overall assessment of the candidate, and not base its decision solely on the grounds for appeal. The collective agreement states that decisions of the UAC are binding. The collective agreement is silent on whether a UAC decision is subject to grievance and arbitration.

When a recommendation is in favour of the candidate, the president transmits the recommendation to the board of governors. A recommendation that is not in favour of the candidate constitutes a decision of the board.

When tenure is denied and the candidate is in the last year of the probationary term, the candidate is offered a one-year terminal term appointment.

3. Events preceding Dr. Hogan's Tenure Application

Eileen Hogan left a tenured position at St. Francis Xavier University to take up a tenure-track appointment in the School of Nutrition and Dietetics at Acadia University in fall 1998.

During Dr. Hogan's first couple of years at Acadia, Elizabeth Johnston, the director of the school, stated in her annual evaluations of Dr. Hogan's performance that her teaching could stand improvement in some areas. This appeared to be based largely on student evaluations. Dr. Hogan also published four articles from her starting date until her application for tenure in August 2002.

Dr. Johnston's annual assessments also contained positive comments about Dr. Hogan's contribution to the school. They did not indicate in any way that there might be problems looming of sufficient concern to deny her tenure. For example, in her annual assessment letter dated May 26, 2000, Dr. Johnston stated that the school "appreciates the contribution you make to our program" and that she trusted Dr. Hogan would "continue to enjoy your position at Acadia."

3.1 Renewal of Dr. Hogan's Appointment, November 2000

In October 2000, the DRC of the School of Nutrition and Dietetics recommended renewal of Dr. Hogan's appointment. In its Oct. 30, 2000 letter of recommendation to Dr. Michael Leiter, academic vice-president and chair of the URC, the DRC noted that Dr. Hogan's teaching was "adequate" for renewal. The DRC also noted that Dr. Hogan "shows evidence of scholarly activity as required for renewal, including publications recently submitted and in press, involvement in funding applications and supervision of honours student research projects." Dr. Hogan's service contributions were also assessed as adequate for renewal.

The DRC noted improvements in Dr. Hogan's teaching evaluations over the preceding two years, and stated that further improvements were required to meet the level of "good performance as a teacher" required for a successful tenure application. For evaluation of performance as a teacher, the collective agreement lists 14 activities. The committee referred

only to teaching evaluations, with no comment on other aspects of Dr. Hogan's teaching.

The committee stated its concerns about research as follows: "The committee does have concerns about the sustainability of future research and development of an independent research program, as recent publications are based on data collected prior to arrival at Acadia. The committee recommends that a more proactive approach in developing research activities be taken in the future. Specifically, the committee would encourage Dr. Hogan to actively seek external funding in support of research activities at Acadia University."¹

This statement of concerns about research contains expectations that are not required in the collective agreement. The agreement requires "evidence that the candidate has established the foundation of an enduring and productive involvement in scholarly activity." There is no mention, either of timing or of the sustainability of future research. Use of data collected prior to arrival at Acadia could be appropriate. If the research was sound, then use of these data would demonstrate that Dr. Hogan was capable of making good use of her existing data. Also, the agreement has no requirement to seek external funding. Article 12, Appendix I (b) provides examples of scholarly activities that a candidate may present for evaluation for renewal, tenure or promotion. There are 22 activities, one of which is "obtained research grants and funding."

The URC confirmed Dr. Hogan's renewal of appointment in November 2000.

3.2 Annual Career Development Meeting, May 29, 2001

At the end of the academic year following the renewal, Dr. Johnston met with Dr. Hogan on May 29, 2001 to discuss Dr. Hogan's career development. In her June 5, 2001 letter Dr. Johnston stated, "[y]our course evaluations indicate that there is still some difficulty with clarity of communication and pace of instruction." The letter also noted that Dr. Hogan's success in obtaining a grant for \$10,000 from the Canadian Foundation for Dietetic Research would allow her to start on collaborative research.

Dr. Hogan wrote back on June 17, 2001. She listed the quantitative ratings for each of the five courses she taught during the preceding academic year. Mean ratings for the instructor ranged from 3.5 to 4.2 out of 5.0 — well above an average rating of 3.0. The average was 4.1 for the three courses taught in the first term and 3.5 for the two courses taught in the second term.

Dr. Hogan provided further information in response to Dr. Johnston's concerns about student responses to questions on the course evaluation concerning clarity of communication and pace of instruction. Of the 324 students in the five courses for 2000–2001, 66% rated Dr. Hogan's performance on these two factors as good or very good, 24.1% as average, 9.0% as poor and 0.9% as very poor.²

Ratings for three courses were higher than the averages, with 78.6% of students rating Dr. Hogan's performance as good or very good, 15.2% as average and 6.4% as poor. The overall averages are lower because of ratings on courses 4533 and 4523 — advanced courses that are acknowledged

as two of the most challenging courses in the school's curriculum. Ratings for these two courses are at 38% for good or very good, 44% average and 18% as poor or very poor. It is worth noting that in the following year, 2002, students nominated her course Nutrition 4523: Advanced Nutrition as their favourite course during their senior year and Nutrition 4533: Nutrition and Disease as their second most enjoyed course.

3.3 Annual Career Development Meeting, May 10, 2002

Dr. Hogan's May 10, 2002 career development meeting with Dr. Johnston was held three months before Dr. Hogan's application for tenure in August 2002.

In a letter following the meeting Dr. Johnston referred to Dr. Hogan's statement that her student evaluations in Nutrition 1503 were "not as high as you had hoped," and noted that it was a first year course that also had enrolment of third and fourth year science students. "Consequently, it is a challenge to have the course meet the needs of both groups. You indicated that you will try a self-paced web assignment for nutrition students while picking up the pace in class." We provide these quotes because they indicate positive responses by the director to Dr. Hogan's attempts to meet the needs of her students. There was no negative comment on Dr. Hogan's teaching. In her reply, Dr. Hogan noted that Dr. Johnston did not mention the high mean student ratings of 4.01/5.0 in her other courses.

On Dr. Hogan's service, Dr. Johnston stated the following: "Your record of service to the university through your committee work on the search for a new registrar and the sabbatical leave committee is most appreciated. You continue to serve and now chair Dietitians of Canada's undergraduate and graduate awards committee and our school is very appreciative of your continued involvement in this important organization."³

Dr. Hogan's response noted that she was also responsible for planning, organizing and implementing the accreditation of the school by Dietitians of Canada. Dr. Johnston did not mention this in her letter to Dr. Hogan.

Dr. Hogan's letter listed other accomplishments during the past year that were not mentioned by Dr. Johnston, including:

- A correction about a statement by Dr. Johnston that she would not be submitting any new grants. Dr. Hogan mentioned that during their discussion she spoke about her interest in a new collaborative study that had prospects of a grant.
- A correction that a paper Dr. Hogan published was not a topic covered in her 1992 PhD thesis but consisted of secondary data analysis collected at the centre where the PhD research was conducted.
- A correction that a third published paper was a study and not a review paper.
- Reference to positive student course evaluations that were not mentioned in Dr. Johnston's letter.

The remainder of Dr. Hogan's letter concerned clarification of the timing of Dr. Hogan's research and publications and the appropriate listing of a co-author of a published article. The co-author was appropriately listed in the publication, but was inadvertently omitted in Dr. Hogan's annual report. Dr. Hogan apologized for this oversight.

Article 15.63(a) of the 10th collective agreement sets out the objectives of the career development meeting, namely, "To recognize and reinforce the positive contributions made by the faculty member and to obtain an accurate written record of such contributions for inclusion in the President's Annual Report and, unless the faculty member makes written instructions to the contrary, the eventual announcements of them to the public by the administration."

Dr. Johnston's letter did not show that she obtained an accurate written record in areas of teaching, research and service.

4. Application for Tenure

Dr. Hogan applied for tenure on Aug. 30, 2002. We list below highlights of her dossier in the areas of teaching and scholarly work. Her dossier is also strong in the area of service. We have not provided a list in this area because her service was deemed adequate.

4.1 Dr. Hogan's Teaching

Highlights of Dr. Hogan's dossier in the area of teaching:

- Student evaluations of her teaching were good.
- In discussions with the director of her school Dr. Hogan demonstrated that she worked at adapting her teaching materials and process to the needs of her students.
- She taught mostly senior-level courses, some of them the most challenging in the school.
- She demonstrated a keen interest in developing new courses. In her May 10, 2002 meeting with the director of the school Dr. Hogan expressed an interest in developing a new third course in clinical nutrition to complement the two she already taught.
- She developed and taught new laboratory sections to supplement her clinical courses on nutrition.
- She developed a laboratory manual for Nutrition 4553 in 1999 and revised it each year.
- Since September 1999, she served as graduate dietetic internship coordinator for the school.
- In 2002, students nominated her course Nutrition 4523: Advanced Nutrition as their favourite course during their senior year, and Nutrition 4533: Nutrition and Disease as their second most enjoyed course.

4.2 Dr. Hogan's Scholarly Work

Highlights of Dr. Hogan's dossier in the area of scholarly work done while at Acadia:

- An article published in the *Journal of the American College of Nutrition* based on analysis of data that were not analyzed for her doctoral dissertation
- Two articles published in refereed journals as sole author on research conducted while Dr. Hogan was at Acadia University, one in *Topics in Clinical Nutrition* (2001) and the other in the *Canadian Journal of Public Health* (2001)
- One article published collaboratively in a refereed journal, *Proceedings of the 6th National Health Promotion Conference* (2002)
- Three articles submitted to refereed journals for publication, to the *Canadian Journal of Public Health*, the *Canadian*

Another objective of the career development meeting is set out in article 15.63(d): "to plan and discuss the suitability of the employee's application to the DRC for tenure and/or promotion, including time of application, criteria for such evaluations and her/his performance relative to the criteria."

Dr. Johnston's letter did not meet the requirements of article 15.63(d). It failed to mention anything regarding suitability for application for tenure. There were neither positive comments nor any indications that Dr. Hogan's imminent application for tenure might be incomplete, premature or problematic.

Journal of Dietetic Practice and Research, and the *Journal of Human Lactation*

- One manuscript in preparation to submit for publication to a refereed journal, *Topics in Clinical Nutrition*
- Principal investigator for a study of Energy Requirements of Children with Severe Neuromuscular Disease funded with a \$10,000 grant from the Canadian Foundation for Dietetic Research
- Principal investigator for a study of children with progressive spinal muscular atrophy. At the time of her application, the study was awaiting approval by Acadia's research ethics board. The study was to be funded by Canadian Foundation for Dietetic Research.
- Member of a collaborative research group of the Nova Scotia Nutrition Council studying nutritional assessment of low-income individuals in Nova Scotia. The research had funding from Health Canada's Population Health Fund (\$24,992) and the Canadian Diabetes Strategy (\$70,000). The group had applied for an additional \$210,000 grant to continue the research and analyze the results.
- Member of a collaborative research group on nutritional assessment of low-income high-risk pregnant women, funded in 2000 by a \$65,482 grant from the Danone Institute
- Acadia University internal research awards in 1999, 2000 and 2001 for a total of \$7,200
- Presentations at four scholarly conferences (two oral and two poster)
- Joint investigator on three projects that received Acadia University internal research awards in 1999 and 2000 for a total of \$15,000

4.3 The Departmental Review Committee (DRC)

4.3.1 Composition of the DRC — At their Sept. 16, 2002 meeting, faculty in the School of Nutrition and Dietetics prepared to appoint a DRC to hear applications for tenure, renewal, or promotion from Dr. Hogan and two other faculty members. (Under the collective agreement a school is classified as a department.) With these three applicants ineligible to sit on the DRC, the department members prepared a list of eligible members from three possible cognate departments. Article 12.10(d)(vi) of the collective agreement designates the department to choose a cognate department in consultation with the dean. Then the faculty council nominating committee appoints members of the cognate department to the DRC.

4.3.2 Comments on the Composition of the DRC—Procedural errors were made in appointing the DRC:

- According to the minutes of the Sept. 16, 2002 meeting Dr. Shanthi Johnson, a faculty member of the school, was deemed ineligible for the DRC because she was on the URC. Yet according to the collective agreement, Dr. Johnson was not eligible to sit on the URC because she was “a member of the academic unit concerned” (article 12.33) and she did not have tenure (article 12.32(b)). Dr. Johnson was indeed eligible to sit on the DRC.

- Minutes of the meeting indicate that for cognate departments the school recommended two faculty from chemistry, one from environmental science and two from biology. Ultimately only one of the departments recommended by the school, biology, was chosen as a cognate department for the DRC. The DRC membership was as follows: Dr. Peter McLeod (psychology), Dr. Tom Herman (biology), Dr. Marlene Snyder (biology), Dr. Dan Toews (biology), and Professor Judy Lowe (nutrition and dietetics). We received no evidence that explains the choice of psychology as a cognate department even though it was not recommended by the school. Every effort should have been made to acquire a committee member from the cognate departments selected by the school.

- The psychology faculty member on the DRC was Dr. Peter McLeod who, at the time, was on the URC.⁴ This violates article 12.55(b) of the collective agreement, which states that “No individual may serve on a DRC and the URC during the same academic year.”

4.3.3 Decision of the DRC—The DRC rejected Dr. Hogan’s application for tenure on the following grounds:⁵

- The committee’s “primary concern” was that the work presented in Dr. Hogan’s dossier “does not clearly indicate a foundation of enduring scholarly productivity as stated in Article 12.93c) [sic].”⁶

- Most of her published works predated her arrival at Acadia.
- Published work since her arrival at Acadia was based in part on work done before 1998.

- The letter also states, “Although her dossier outlines a lengthy record of past scholarly accomplishments, Dr. Hogan’s current scholarly activity was determined to be below that expected at the level of Associate Professor.”

- The committee had a secondary concern about Dr. Hogan’s performance as a teacher. Even though she met the minimum requirements and her course evaluations showed evidence of improvement, her evaluations in some courses pointed to a “persistent problem with clarity of communication and organization.” The letter also states that “Admittedly, Dr. Hogan teaches some of the most rigorous and demanding courses in the curriculum; however, improvement in this area is required.”

- The committee deemed Dr. Hogan’s academic qualifications and service to Acadia University and wider community to be acceptable.

- The letter from the secretary of the DRC further states that, “The letters of support from colleagues indicate that Dr. Hogan has a good sense of humour, is a hard worker, helpful

to others and provides assistance when asked. She has a strong background in the courses she teaches, particularly, Clinical Dietetics and Nutrition and Disease.”

- The letter closes as follows: “In light of all discussed above, and based on the dossier presented by Dr. Hogan, the Departmental Review Committee is unable to support her application for tenure.”

4.3.4 Comments on the Decision of the DRC—The DRC’s rejection is not supported by the facts of Dr. Hogan’s dossier. We have the following concerns about the DRC decision:

- During her four years at Acadia Dr. Hogan published four articles, submitted three others for publication and was working on another for submission, all with refereed journals. She received three internal research grants, was a participant in three others, received an external grant and was participant in two other projects with external grants. She gave four presentations at scholarly conferences.

- The DRC concluded that material published while at Acadia was based in part on work done before 1998. This was true for just one of the seven articles she wrote, and even that article was based on data previously collected but not yet analyzed.

- Dr. Hogan’s scholarly activity was judged as below the expectation for an associate professor. This point is repeated at other levels of the review. Yet, performance at the level of associate professor is not required to attain tenure. The collective agreement even states that if someone applies simultaneously for tenure and promotion to associate professor, tenure can still be awarded even if the promotion is denied (article 12.86).

- The criticism of teaching mentions only clarity of communication and organization. Dr. Hogan’s application stated that the critical comments were coming from a small number of students and that the majority were quite positive.

- The DRC’s letter to Dr. Leiter is silent on the comments in the letters of reference about Dr. Hogan’s contributions to scholarship and teaching. The letters, from Dr. Shanthi Johnson, and Dr. Julia Green-Johnson, acting director of the School of Nutrition and Dietetics, had the following comments about Dr. Hogan’s work:

- a) active involvement in several research projects,
- b) collaboration on research with IWK Health Centre, a regional Maritime centre,
- c) research collaboration with Nova Scotia Nutrition Council,
- d) publications in several respected nutrition journals,
- e) recent involvement in several successful funding proposals,
- f) regular presentation of research findings at scientific conferences,
- g) intense involvement in teaching senior level courses in Clinical and Advanced Nutrition and Nutrition and Disease,
- h) commendable attention to detail in curriculum content,
- i) commitment to fully preparing students for the dietetic profession,

j) active participation in student supervision in the senior seminar course.

- The DRC's consideration of Dr. Hogan's teaching appears to be based on a few questions in the student evaluations. Yet Appendix I to article 12 of the collective agreement lists 14 activities that can be used to demonstrate competence in teaching. The committee gave no indication that it examined any other aspect of Dr. Hogan's teaching.

The DRC letter seriously understates Dr. Hogan's accomplishments. It provides an inaccurate and narrow basis for assessing her eligibility for tenure.

4.4 The University Review Committee (URC)

4.4.1 Decision of the URC — In her meeting with the URC, Dr. Hogan raised a concern that four of the five members of the DRC were from cognate departments outside the school, mostly from departments with people who were unfamiliar with her discipline. As far as we can tell, this concern was not formally addressed by the URC.

Dr. Hogan also reminded the committee about her publication record.⁷

The URC rejected Dr. Hogan's arguments and recommended against her application for tenure. The grounds are stated by the chair of the URC in a letter to Dr. Hogan dated Dec. 20, 2002:

- "[E]vidence for good teaching was marginal in the dossier. The dossier indicated persistent problems with clarity of communication and with organizing the material within the limits of the academic term or within the constraints of the weekly class schedule. Students described your courses and lecturing as disorganized in various points throughout the dossier. The URC was concerned that there was little evidence to suggest that your approach to organizing the courses and delivering classes has changed in light of consistent evidence of problems over the years."

- The URC "did not find evidence of a foundation of productive research ... The number of publications was modest, especially for someone ten years past receiving a doctoral degree and who had attained the rank of Associate Professor at another university."

4.4.2 Comments on the Decision of the URC — The URC must conduct a thorough review of the candidate's application. Article 12.42(a) states "[t]he URC shall study the candidate's dossier and the recommendation of the DRC." We find it difficult to understand how the URC could do a full study of Dr. Hogan's dossier and still reject her application, for the following reasons:

- The URC was silent on the serious matter raised by Dr. Hogan concerning inappropriate composition of the DRC.

- The URC criticism of Dr. Hogan's teaching was much stronger than the DRC criticism, and than the earlier concerns expressed by the school's director. The URC did not provide reasons or evidence for this stronger criticism. Neither did the URC appear to acknowledge the statement by the DRC that Dr. Hogan taught some of the most rigorous and demanding courses in the curriculum.

- There is no evidence that the URC questioned why the DRC did not consider the more extensive list of teaching activities in Appendix I of article 12. There is also no evidence that the URC considered any of these activities that were documented in Dr. Hogan's dossier.

- The URC stated there was no evidence of Dr. Hogan changing her approach to organizing courses and delivering classes, despite evidence in the dossier of how Dr. Hogan changed her approaches.

- The URC introduced an inappropriate expectation related to rank attained at another university and an unwarranted expectation that the quantity of publications should be related to the number of years since receiving a doctoral degree.

- The letter from the URC provides no evidence that they considered Dr. Hogan's refutation of the DRC criticism that most of her published works predated her arrival at Acadia.

- The URC failed to comment on the inadequate summary by the DRC of Dr. Hogan's letters of reference. The URC did not appear to consider the content of the letters of reference.

- Dr. Hogan indicated to the URC that since submitting her application for tenure one of the articles she submitted for publication had been published. The URC gave no indication that they considered this information.

5. Appeal to the University Appeals Committee

5.1 Decision of the University Appeals Committee (UAC)

Dr. Hogan appealed the URC decision in a letter to the chair of the UAC, dated Jan. 8, 2003. Appeals may be only on procedural grounds or on the URC inconsistently applying criteria to all applicants in a given year (article 12.43(b)). Dr. Hogan maintained that assessing her application at the level of associate professor was inconsistent with the level applied to the cohort of tenure applications in that year.

On Jan. 15 the UAC decided that Dr. Hogan raised a substantial procedural issue and scheduled a hearing for Jan. 22. Dr. Hogan submitted a written review of the substantive aspects of her case.

If the UAC upholds an appeal it has two options: referral back to the URC, or evaluation of the application by the UAC, following the procedures used by the URC (article 12.61(f)(i)).

The UAC agreed with Dr. Hogan and referred the matter back to the URC, with instruction to revisit Dr. Hogan's application "without regard to her current rank." The referral letter from the UAC chair was not made available to us or to Dr. Hogan.

5.2 Comments on the Decision of the UAC

The UAC is Acadia's committee of last resort for internal appeals of tenure, renewal and promotion decisions. If the UAC upholds an appeal, it bears a significant responsibility to review the entire file. This is because, under article 12.61(f)(i), the UAC must decide either to refer the decision back to the URC, or to render its own decision on the merits by following the procedures set down for the URC. In order to make an informed decision on whether to refer to the URC

or to conduct its own review, the UAC should examine the entire file. If the UAC decides to make its own ruling, article 12.61(f)(i) stipulates that it must do a full assessment of the candidate.

However, before reversing a recommendation of the URC, the UAC must follow the procedures set down for the URC. "The UAC must not base its decision on the grounds for appeal alone but rather on an overall assessment of the candidate and the criteria for renewal, tenure or promotion. It may not recommend that renewal, tenure or promotion be granted solely on the basis of a procedural error," (article 12.61 (f)(i)).

The UAC had all the information necessary to discover the violations of procedure by the DRC and the URC that we have noted earlier in this report. Even though Dr. Hogan did not mention all the violations in her appeal, the UAC was obliged to consider them in its hearing. This requirement is spelled out in article 12.61(b) of the collective agreement: "In considering the appeal the UAC shall consider only the evidence which was presented to the URC, and shall take into account recom-

mendations of the URC which have occurred within the time frame of the current collective agreement."

After it upheld the appeal, the UAC appeared to narrowly limit its review to the ground identified by Dr. Hogan in her appeal to the UAC. Dr. Patrick O'Neill, chair of the UAC, made this clear in his March 11, 2003 letter to Dr. Hogan refusing her final appeal. He stated, "You raise three potentially substantive issues. Two of these could have been raised in your initial appeal, but were not. We believe that you cannot raise these two issues now since nothing has changed with regard to them in the URC's re-assessment." Information about these other two issues was available to the UAC because it was included in the evidence presented to the URC.

Our examination of the DRC and URC decisions reveals errors of process and inaccuracies of such a substantial nature to raise serious questions about returning the file to the URC. The evidence was strong enough to warrant the UAC exercising its authority to review the entire case and make its own decision on tenure.

6. Final Review by the University Review Committee

After reviewing Dr. Hogan's case, as directed by the UAC, the Feb. 4, 2003 letter from the URC chair to Dr. Hogan was virtually identical to the original Dec. 20, 2002 letter. The February letter deleted reference to attaining the rank of associate professor and removed the word "distinct" with respect to Dr. Hogan's scholarly contributions to research collaborations.

6.1 Comments on the Final Review by the URC

The referral from the UAC gave the URC an opportunity for one more careful examination of Dr. Hogan's file. We were not given any information about the instructions the UAC sent to the URC, or about the URC discussion.

7. Final Appeal to the University Appeals Committee

In a Feb. 24, 2003 letter Dr. Hogan appealed to the UAC on the following points:

- Because her application for tenure was being reconsidered by the URC, she believed she was entitled to meet with the URC;
- The URC continued to apply a higher standard to her application for tenure than was provided in the collective agreement;
- The DRC composition reflected a lack of qualified faculty from the School of Nutrition and Dietetics.

In his March 11, 2003 letter, Dr O'Neill, chair of the UAC, denied all three points of Dr. Hogan's appeal. On the first point, he noted that the UAC asked the URC to do a reassessment without regard to rank and the UAC felt that a hearing from Dr. Hogan was not required. He said the UAC "did not instruct the URC to follow all the original procedures, but rather to 'reconsider [your] application without regard to [your] current rank.'"

On the second and third points, Dr. O'Neill's letter stated that they concerned matters Dr. Hogan was aware of when she made her first appeal, and she should have appealed them at that time.

7.1 Comments on the Final Appeal to the UAC

We think Dr. Hogan was correct in asserting that she was entitled to meet with the URC. Once a matter is referred back to it, the URC is obliged to follow procedures in the collective agreement. Article 12.42 requires the URC to meet with the candidate if the URC decision is not in the affirmative.

Dr. O'Neill's response regarding composition of the DRC is especially puzzling, since he had raised the issue during the UAC hearing on Jan. 22, 2003. According to Dr. Hogan's notes from that meeting, Dr. O'Neill asked Dr. MacLatchy, dean of science and chair of the DRC, if he saw anything wrong with the fact there was no scholar from the School of Nutrition and Dietetics on the DRC. Dr. MacLatchy answered that it was unfortunate.⁸ As far as we know the UAC had no further discussion of the issue.

We identified three violations of the collective agreement during the selection process for members of the DRC: using a cognate department that was not designated by the School of Nutrition and Dietetics; incorrectly disqualifying Dr. Shanthi Johnson from sitting on the DRC; and allowing Dr. Peter McLeod on the DRC. The UAC had the information available to spot these violations.

8. Role of the Faculty Association

Dr. Hogan first contacted the faculty association in July 1999, when five students complained to the dean of science about her teaching. According to Dr. Hogan, she revised her course, on the advice of Beert Verstraete, the faculty association president.

Dr. Hogan contacted Dr. Diane Looker, faculty association president, in September 2000 following a discussion about her application for renewal. Dr. Hogan claimed Dr. Johnston, the school director, said she was not going to support Dr. Hogan's renewal. Dr. Looker advised Dr. Hogan to approach the dean of science for support. According to Dr. Hogan, the dean told her he could not provide support since he held an ex officio position on the DRC.

When she was notified about the DRC's rejection of her application for tenure, Dr. Hogan contacted Dr. Janice Best, vice-president of the faculty association, and spoke about her dossier, the letter of rejection and her concerns about the constitution of the DRC. She also sent Dr. Best a copy of the dossier. According to Dr. Hogan, Dr. Best advised her to bring a member of her department with her to the URC, which was her right under the collective agreement.

The association could have filed a grievance after the DRC decision, on grounds that the DRC's composition violated the collective agreement. The grievance could have been abandoned if the URC or the UAC corrected the problem. The grievance could have been on record and pursued after the URC and UAC failed to acknowledge that the DRC composition was a problem.

After receiving her final rejection from the UAC, Dr. Hogan sought assistance from Dr. Vernon Provencal, president of the

faculty association. He referred her to Dr. Greg Pycrz, the association's grievance officer. Dr. Pycrz wrote to Dr. Hogan on April 12, 2003, stating the association was prevented from grieving the decision of the UAC because the decision of the UAC was binding.

Dr. Pycrz's response reflected the association's practice to not file grievances on promotion and tenure appeals because they were done by committees of members and because the decision of the UAC was binding. The association understood this to mean they did not have the right to grieve. We think the association was incorrect to assume decisions of the UAC could not be grieved. Article 12.61(f)(ii) states, "Decisions of the UAC shall be binding." This language is not as strong as the language in article 19.00, Arbitration, which states "The decision of the Arbitration Board shall be *final and binding on all Parties*" (emphasis added). The association might have been able to exercise its legal right to grieve a binding decision of the UAC.

Since a UAC ruling was treated as binding and non-grievable it would have been appropriate for an association representative to be present during the UAC hearing, to ensure Dr. Hogan's collective agreement rights were protected and that the UAC fulfilled the requirements of the collective agreement. The collective agreement stipulates only that the candidate shall be allowed to bring a professor to act as advocate. This does not prevent the member from requesting the association to name a professor to act as advocate. However it does not establish clearly that an association representative should be present.

9. Conclusions

Dr. Eileen Hogan's tenure application provided evidence of accomplishment and promise in each area of her responsibilities: teaching, scholarly work and service. Yet she was denied tenure.

How could this have happened?

The collective agreement at Acadia University provided checks and balances: decisions of the DRC are scrutinized by the URC and decisions of the DRC and URC are open to further inspection by the UAC. The UAC can refer back to the URC or render its own binding decision. Yet a decision that was flawed from the outset managed to survive through every step of committee review.

The system only works if each committee duly fulfills its obligations under the collective agreement. We found the Departmental Review Committee, University Review Committee and University Appeals Committee each failed to meet the requirements of the collective agreement. At every step of the renewal, career development and tenure process, serious violations of the collective agreement were not spotted and substantial errors of judgement were not identified.

Only one error was identified — the DRC and URC using the inappropriate standard of associate professor.

We cannot speculate on why or how these errors occurred, because, with the exception of the chair of the UAC, all of the people who were on the DRC, URC and UAC refused to speak

with members of the ad hoc investigatory committee. Interviews with members of these committees might have been helpful to this inquiry, but they are not necessary for our findings. The evidence for findings of this inquiry is well documented in correspondence and other documents. We list the findings in order of importance, starting with the review process for tenure.

9.1 Tenure Review

9.1.1 Substantive Errors:

- The DRC stated incorrectly that Dr. Hogan had "very few refereed publications based on research during her employment at Acadia University." Three out of four recent publications were based on research conducted at Acadia.
- The DRC referred to "additional publications" that were based on her PhD work, when there was only one, based on data collected but not analyzed during her PhD research.
- The DRC did not acknowledge the substance of positive letters of recommendation that covered at least 10 areas of Dr. Hogan's accomplishments.
- In assessing performance as a teacher, the DRC referred only to a few points from student teaching evaluations, rather than the full range of teaching activities listed in the collective agreement.

- The DRC incorrectly assessed Dr. Hogan’s scholarly work at the level of associate professor.

9.1.2 Procedural Errors:

- Dr. Shanthi Johnson was incorrectly deemed ineligible to sit on the DRC because she sat on the URC. As discussed earlier in this report, Dr. Johnson was not eligible to sit on the URC and therefore was eligible to sit on the DRC. Dr. Johnson was a strong supporter of Dr. Hogan’s work.
- A member of the psychology department was placed on the DRC even though psychology was not listed by the School of Nutrition and Dietetics as a possible cognate department. Article 12.10.(d)(vi) states, “a cognate department shall be chosen by the Department in consultation with the Dean.”
- Dr. Peter McLeod, the appointee to the DRC from psychology, was ineligible to sit on the DRC because he was a member of the URC. This is a violation of article 12.55(b) which states, “No individual may serve on a DRC and the URC during the same academic year.”
- Instead of correcting the DRC’s errors, the URC reinforced them, despite the fact Dr. Hogan corrected the errors in her submission to the URC. The URC did not acknowledge Dr. Hogan’s corrections.

9.2 Appeal of Tenure Denial

All of the problems in the tenure review process could have been corrected by the UAC. Yet, the UAC did not fulfill its obligations under the collective agreement. It referred the file back to the URC solely on the one ground in Dr. Hogan’s appeal.

Dr. Hogan would have been better advised to raise every procedural violation. Nonetheless, once it accepted that the ground

was substantive the UAC was obligated to investigate all the issues in Dr. Hogan’s dossier. It was reasonable for Dr. Hogan to raise the additional grounds on a second appeal, since she had no evidence these grounds were addressed by the UAC.

Errors also occurred during procedures for renewal and career development.

9.3 Renewal

In its review of Dr. Hogan’s teaching the DRC considered only certain aspects of student course evaluations. The DRC did not appear to consider any of the other 14 teaching activities listed in Appendix I of article 12.

The DRC said it was concerned about the sustainability of future research, because “recent publications are based on data collected prior to arrival at Acadia.”⁹ The collective agreement has no mention of the sustainability of future research and it does not require publications to be based on data collected only while at Acadia.

The DRC encouraged Dr. Hogan to actively seek external funding. The collective agreement has no mention of encouraging external funding. We think this was an unfair expectation. The DRC focused on just one of the 22 scholarly activities mentioned in the collective agreement.

9.4 Career Development

In her summary of Dr. Hogan’s career development discussion, Dr. Johnston did not demonstrate that she had obtained an accurate or complete written record of Dr. Hogan’s contributions, as required by article 15.63(a). Dr. Johnston also made no mention of the suitability of Dr. Hogan’s application for tenure. This is a requirement of article 15.63(d) of the collective agreement.

10. Main Recommendations on the Status of Dr. Hogan

Dr. Eileen Hogan’s application for tenure was not given the fair review it deserved in accordance with the collective agreement.

We recommend the following:

- The current University Appeals Committee shall do an overall assessment of the candidate and the criteria for tenure, as set out in article 12.61(f)(i) of the 10th collective agreement.
- According to the requirements of article 12.61(f)(i), the UAC shall follow the procedures set down for the URC.
- According to the requirements of article 12.61(f)(i), the UAC shall meet with Dr. Hogan, to provide her an opportunity to present the case for tenure.

• If Dr. Hogan is required to travel to the Acadia campus in order to meet with the UAC, her travel expenses shall be paid by Acadia University.

• The UAC shall inform Dr. Hogan that she has the right to be accompanied by a representative of the faculty association and one other person of her choice. A request to be accompanied by more than these two persons requires permission of the UAC.

• The UAC shall determine if tenure shall be granted to Dr. Hogan.

• The decision of the UAC shall be final and binding.

11. Procedural Recommendations

The inquiry found that key committees failed to meet their obligations under the collective agreement. In future, there must be assurance that committee members are fully knowledgeable about due process and the requirements of the collective agreement. Candidates should also be informed about requirements and process before they prepare their dossiers.

11.1 Training and Preparation

• The employer and the faculty association should develop a training program that is required for deans, directors, department heads and all members of the DRC, URC and UAC. Training should cover due process and the requirements of the collective agreement for renewal of probationary appointments,

annual career development and review for tenure and promotion. There should also be coverage of eligibility requirements for membership on these committees, to ensure that they are properly constituted.

- The faculty association should hold annual workshops for members, about due process, and the procedures and requirements at each level of review, by the DRC, URC and UAC.

11.2 Departmental Review Committee

- There should be a written record of the consultation between the department and the dean, in designating the cognate department.

- Before submitting its recommendation to the URC, the DRC should provide a written draft of its report to the candidate and provide the candidate an opportunity to provide a written response. The collective agreement at Saint Mary's University has an example of such a requirement (article 11.1.30).

- The dean should not be a member of the DRC. The dean's membership on a peer review committee is inappropriate. If the dean submits a separate recommendation the candidate should have the opportunity to provide a written response.

11.3 University Review Committee

- The faculty association should have the right to appoint an observer for all meetings of the URC. Saint Mary's has an example of such a requirement (article 11.1.41).

- Before arriving at a negative recommendation the URC should provide a written outline of its concerns and invite the candidate to respond in writing.

- The letter from the URC to the candidate, described in article 12.43(b), should detail the URC's reasons for its decision.

11.4 University Appeals Committee

- If the UAC upholds an appeal of tenure denial on procedural grounds, it should be required to review the entire file before it decides either to return the file to the URC or to do its own evaluation of the merits of the case.

- There should be clear specification of the grounds required for the UAC to conduct its own evaluation. The evaluation should require a full review of the merits of the case, according to procedures determined for the UAC. Currently the collective

agreement requires the UAC to use the same procedures as the URC. Since the two committees have different mandates, they should each have their own procedures. There may currently be some confusion about whether the UAC is required to follow the requirement in 12.43(b) for the URC to "not make its final decision until it has reviewed all recommendations within a given year, to ensure consistency." This requirement is not appropriate for the UAC. Unlike the URC, the UAC does not receive all recommendations for a given year.

- The candidate should simultaneously receive a copy of the letter of instruction from the UAC to the URC.

- The letter from the URC back to the UAC in article 12.61(f)(i) must contain reasons for the URC decision and a copy of the letter must be simultaneously provided to the candidate.

- If the UAC is not satisfied with the outcome of the URC decision in article 12.61(f)(i) it should evaluate the case itself.

- The information that the chair of the UAC is required to keep in 12.61(g) should be made available to the candidate upon request.

- The faculty association should have a designated person as advisor to members appealing to the UAC. The designated person should accompany the candidate at the UAC hearing.

11.5 General Recommendations

- There should be an explanation of the term "consistency" when it is applied to the DRC in article 12.42(b), and to the URC in article 12.43(b).

- There should be a statement in article 10.70(f) to ensure that any requirement in the letter of appointment must be consistent with the collective agreement.

- We recommend putting in place a system of mentoring for new academic staff.

- The faculty association should reexamine its view that decisions of the UAC are not subject to grievance. This arises from an interpretation of Article 12.61(f)(ii) of the collective agreement, which states that decisions of the UAC shall be binding. In our view, that statement means the UAC provides the internal appeal of last resort. The employer is bound by the decision of the UAC. Nonetheless, it may very well be possible for the association to appropriately grieve a decision of the UAC.

12. Methodology

We gathered (with the aid of Dr. Neil Tudiver, assistant executive director of CAUT) the relevant materials for the case. This included all correspondence between Dr. Tudiver and Acadia University, which was generated as a result of Dr. Tudiver's preliminary investigation to ascertain if the case merited an inquiry. Dr. Hogan submitted a dossier¹⁰ that included a detailed chronological summary of her case and all the correspondence in her possession. Dr. Hogan's dossier included minutes of the School of Nutrition and Dietetics faculty meeting of Sept. 16, 2002 and much of the correspondence from the DRC, URC and UAC to Dr. Hogan, with the exception of the UAC's directions to the URC. We corroborated most of the information in this dossier through interviews, and we are satisfied as to its accuracy.

We also requested (with the assistance of the faculty association and in a direct request to Dr. Ralph Nilson, the current academic vice-president at Acadia), but were refused, copies of the minutes of all committee meetings (DRC, URC and UAC) relevant to Dr. Hogan's case. We were also unable to obtain a copy of Dr. Hogan's letter of appointment to Acadia.

We also have, courtesy of the faculty association, the 10th and 11th collective agreements between the Board of Governors of Acadia University and AUFA. The 10th collective agreement was in force during the time of Dr. Hogan's application. The 11th collective agreement is currently in force, and is useful for comparative purposes, as some clauses have changed since Dr. Hogan's case.¹¹

We read all the documents that were available to us and consulted on details of the case and on procedures with Dr. Tudiver, CAUT executive director James Turk and Dr. Robert Perrins, who was AUFA president in 2004.

In addition to interviewing Dr. Hogan, we contacted for interviews all members of the DRC and three members of the URC, including the chairs of both committees, and three members of the UAC — the chair, a faculty member and the secretary. The chair of the UAC was the only one who agreed to talk with us. The secretary of the DRC corresponded with us. We also contacted faculty members who were either acquainted with the case through their involvement in AUFA, or who worked with Dr. Hogan. People involved with AUFA comprised most of the interviewees. All members of the administration refused to speak with us, as did numerous of the faculty members. Of the 22 people we contacted, 10 agreed to interviews.

We visited Acadia University from May 24–May 26, 2005, and interviewed six people. Four other interviews were conducted by telephone. During the course of each interview, and at this visit, we met regularly to discuss and interpret the information we gleaned from this process to ensure corroboration and to confirm specific facts. During each interview, we both took hand-written notes and after each interview we jointly reviewed our notes to ensure their consistency and accuracy. We met in Halifax on Oct. 15, 2005 to begin to write the final draft of this report. We met again in Halifax on Jan. 21, 2006 to revise this report.

The parties involved are listed here, along with reference to those individuals interviewed and those contacted who declined to be interviewed.

Individuals who were interviewed

- Dr. Janice Best, vice-president, AUFA
- Dr. Richard Cunningham, president, AUFA
- Dr. Julie Green-Johnson, acting director [when Dr. Hogan applied], School of Nutrition and Dietetics¹²
- Dr. Eileen Hogan, complainant¹²
- Dr. Shanthi Johnson, member, School of Nutrition and Dietetics
- Dr. Patrick O’Neill, chair, UAC
- Dr. Bob Perrins, past president, AUFA¹²
- Dr. Vernon Provencale, past president, AUFA
- Dr. Jim Sacouman, chief negotiator, AUFA¹²
- Dr. Beert Verstraete, past president, AUFA
- Professor Judy Lowe, secretary, DRC and faculty representative, School of Nutrition and Dietetics¹³

Individuals who were contacted, but declined to be interviewed

- Dr. Michael Leiter, chair, URC and then vice-president academic
- Dr. Cy McLatchey, chair, DRC and dean
- Dr. Marlene Snider, member, DRC
- Dr. Peter MacLeod, member, DRC
- Dr. John Sumarah, member, URC
- Dr. Diane Holmberg, member, UAC
- Ms. Sonia Beattie Richards, secretary, URC and UAC
- Dr. Dan Toews, member, DRC
- Dr. Tom Herman, member, DRC
- Dr. Ralph Nilson, vice-president academic
- Dr. Elizabeth Johnston, director, School of Nutrition and Dietetics

Respectfully submitted: **Dr. Patricia Baker**, Mount Saint Vincent University, Halifax, NS
Dr. Gayle MacDonald, St. Thomas University, Fredericton, NB
July 13, 2006

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1. Letter from Julia Green-Johnson, secretary of the DRC to Michael Leiter, chair of the URC, Oct. 30, 2000.
 2. Compiled from data supplied by Dr. Eileen Hogan in a letter to Dr. Elizabeth Johnston, director, School of Nutrition and Dietetics, June 17, 2001.
 3. Letter from Dr. Elizabeth Johnston to Dr. Eileen Hogan, dated June 13, 2002.
 4. This information was obtained during the interview with the chair of the UAC.
 5. From a letter dated Nov. 14, 2002, from the secretary of the DRC to Dr. Michael Leiter, chair of the URC.
 6. Letter from Julia Green-Johnson, op. cit. The correct reference is to Article 12.92(c).
 7. This information was confirmed in a telephone conversation with Dr. Eileen Hogan.
 8. Dr. Eileen Hogan’s notes from the Jan. 22, 2003 meeting of the UAC.
 9. Letter from Julia Green-Johnson, secretary of the DRC to Michael Leiter, chair of the URC, Oct. 30, 2000.
 10. Dr. Eileen Hogan, 1998–2004 at Acadia University. Denial of Tenure, Jan. 30, 2004. Compiled by Dr. Eileen Hogan and W. A. (Sandy) Hogan (brother). A copy of this file is held at CAUT.
 11. We spoke on Oct. 5, 2005 to Dr. Jim Sacouman, a professor of sociology at Acadia University. Dr. Sacouman was AUFA’s chief negotiator for the 11th collective agreement, and to his knowledge, nothing substantive was changed in the collective agreement as a result of the Hogan case. AUFA did not table specific proposals that arose from this case.
 12. Individuals who were interviewed by telephone by both members of the investigatory committee.
 13. Correspondence only.