ministration for this purpose would be the President and those immediately or mediately under his direction or responsible to him, and authorized to act in matters committed to his jurisdiction. Whether adverse unauthorized action has been taken by a subordinate officer of the University may itself be an issue in a disciplinary matter.

The Committee recommends that a York University office be established under the direction of an independent administrator whose duties should include (1) initial investigation of charges of misconduct by, or complaints of improper action against faculty members or students; and (2) efforts to resolve the matters before they become formalized by invocation of the jurisdiction of the proposed court system. If the efforts at composing the dispute fail and the moving party seeks the intervention of the court, the administrator should require a written and signed statement of the charge or the grievance, as the case may be, and provide a copy to the person or persons charged or against whom the grievance is lodged. The court should thereupon be constituted, as hereinafter prescribed, and the hearing and conduct of the case should thereafter be left to its direction. The results of the administrator's prior investigation, whether or not embodied in a report, should not be presented to the court, although they may have been presented earlier to the parties.

The Committee does not think it necessary in this Report to spell out in further detail the necessary elements of a fair hearing, which include the right to know what is charged or complained of and an opportunity to meet the charge or complaint and the right to be represented for that purpose by counsel or otherwise. It recommends that rules of procedure and rules for the fair conduct of the hearing of any disciplinary matter and, as well, rules respecting any appeal that may be taken against the decision of the court, be left to the panel of court members, as first selected, for determination and formulation by them, but, subject, of course, to amendment by later panels in the light of experience.

The Committee thinks it desirable to make a distinction between disciplinary matters arising in the precincts of one of the Colleges and involving the relations of a member of the College and the College administration (being the Master and those acting under him or by his authority), and matters of discipline arising outside College precincts involving a member of the College or arising within such precincts and involving a non-member. The Committee favours what might be called local autonomy and local jurisdiction in so far as an issue of discipline arises between a College and one of its members concerning any incident within the College precincts. It recommends that such an issue be left to resolution by such procedures as the College has adopted or may adopt, but subject to a right of appeal, either by the member affected or by the College to the appellate court of the university court system.

In all other matters of discipline, where formal grievances are brought or formal charges laid, resort should be had to the university court system by way of trial, with a right of appeal.

11. Constitution and operation of the university courts

Faculty members and students in the University form one community despite their different functions and roles, and the Committee has concluded that there should be one court system to serve them and not a different system for each group. It is also the Committee's view that the court system should reflect stability, continuity, adaptability and impartiality, and it has sought to ensure these attributes in the following proposals for its establishment and for the selection of members for particular cases.

There shall be a panel of judges composed of five faculty nominees of the Senate, five nominees of the Faculty Association, and one student nominee from each recognized College and student organization. There are at the present time eleven such organizations, as follows:

- Founders College Student Council
- Vanier College Council
- Winters College Council
- McLaughlin College Council
- College "E" Student Council
- Atkinson College Association
- Glendon College Association
- Graduate Students' Association
- Graduate Business Council
- Legal and Literary Society Council of Osgoode Hall
- Council of the York Student Federation

As other such organizations are established they should similarly be entitled to make one nomination. The Committee leaves it to the nominating bodies to determine how their nomineees shall be selected.

To the twenty-one (as of this time) nominees should be added two nominees of the Council of Osgoode Hall Law School, being members of the faculty. The Committee is of the opinion that at least one member of the court sitting on any case should have legal training; the reasons are obvious. It would have this member preside in the court, whether it be the trial tribunal or the appellate tribunal; and in order to provide for this and not have the same person preside both at trial and on appeal two nominees from the faculty of the Law School are proposed.

The twenty-three nominees shall serve as a judicial panel for one year, but the members shall be eligible for renomination. The composition of a trial court should vary according to whether a faculty member or members or a student or students or both are involved in the proceeding, apart from the involvement of the administration. In all cases it shall consist of five members of the panel and a law faculty nominee shall preside; but where students only are involved in the proceeding, the court shall consist of three student members of the panel and one faculty member, in addition to the presiding member. Where faculty members only are involved, or both faculty members and students, the five member court shall consist of two faculty members of the panel and two student members in addition to the presiding member.

The members of the court for any case shall be chosen by drawing names from a hat from the respective categories of panel members up to the number needed.

The appeal court shall similarly consist of five members, but in all cases shall have two faculty members and two student members with the law faculty member as president. No panel member who has sat at trial shall sit on the appeal in the same case. It follows that other names than those drawn for the trial will have to be drawn to make up the composition of the appeal court.

If the number of courts to be established, or sickness, or inability to serve for other reason, exhausts the panel members in any category, the nominating groups should be required to submit additional names in the appropriate category.

The Committee recommends that in general the courts should deliver written reasons for their decisions but would not bind them to do so in every case. The decision of the majority will be the effective decision; and, of course, the decision at trial or on appeal, as the case may be, shall be binding on the parties involved in the particular proceeding, that is the faculty members or students or both and the administration, as the case may be.

A central issue before the Committee was the relation between the University courts and the public civil and criminal courts respecting misconduct which invited civil or criminal sanctions and which could also be regarded as meriting University discipline. This issue was brought to the fore by forebodings about "double jeopardy" which were reflected in some of the submissions made to the Committee. What was advocated was a hands-off policy by the administration and by the university courts in respect of misconduct, even though on the campus and touching University interests, if that very misconduct was being dealt with by the public courts.

The Committee gave sympathetic consideration to this contention but it cannot accept it as an invariable principle. The contention does not raise an issue of "double jeopardy" in the strict legal sense of prohibiting the state from mounting multiple prosecutions against a person for the same conduct. However, it does project the notion beyond its legal signification, seeking to apply it by analogy to punishment by the public courts and discipline by the university courts for the same matter. The Committee sees the problem in three aspects upon which it wishes to elaborate. First, it does not lie with the university courts to initiate proceedings before them, but rather they can only be activated by grievances or charges properly laid by others. If that occurs when a civil suit or a criminal charge is pending before the public tribunals, in respect of the same alleged misconduct, the university court may think it proper to defer its hearing until the proceedings before the public courts have terminated. This should, however, be a matter for the court itself to determine, and the Committee does not think it proper to limit the court's discretion by an inflexible rule. Second, where a faculty member or student has been visited with a sanction, whether damages or a fine or imprisonment, after proceedings before the public courts, the university court, if it is called upon and does deal with the same misconduct as a subject of University discipline, may think it proper to take that sanction into consideration in determining the appropriate University penalty, if guilt be established or confirmed. Again, this must be left to the university court to determine in any particular case.

Third, and most important, assuming a faculty member or a student commits an act which is cognizable by the regular courts and is also wrongful so far as the University is concerned, he may have to face the prospect and the consequences of punishment, in the role of citizen amenable to the ordinary law, and the concurrent prospect and consequences of discipline, in the role of faculty member or student amenable to the law of the University. There is nothing new or special in this as being oppressive to faculty members and students and to no one else who has a dual capacity. Doctors, lawyers and other professional persons who violate the law of the land may find their professional status at stake through the action of their governing bodies if the violation has any bearing on their fitness to continue in their professional work. Members of non-professional associations and members of trade unions may similarly run the risk of discipline for conduct which has rendered them liable to public sanction through the regular courts. The ordinary citizen who violates the law may find himself liable criminally (and subject to fine or imprisonment or both) and civilly (and subject to a judgment for money damages) for the same act. This does not put that person in double jeopardy in the proper legal meaning of that concept.

Two things must be emphasized. First, there can be University violations which do not engage the ordinary law of the land; and there can be violations of this law which would not rationally amount to a University offence. This very matter might be an issue to be determined by a university court, and the Committee does not feel it can foretell how it should be decided; this is better left to be worked out on a case by case basis. Second, if there is misconduct which, in the administration's opinion, violates University regulations or merits University discipline, and which is also a violation of the civil or criminal law of the land, it does not automatically follow that charges will be laid or action taken at both University and public authority levels. The Committee can appreciate that there may be situations which the public authorities may be content to leave to University sanction. There may likewise be cases which the public authorities may think are too serious to be ignored, and they may have to deal with them in such a way as to make it unnecessary for the University to act: for example, misconduct which attracts a substantial term of imprisonment. In between there may be cases which both the University and the public

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