the Laskin discipline report

hand there is the administration; on the other, faculty and students. These kinds of people are recognized in two important ways.

a) The administration has a monopoly on the legitimate use of force. Like the Crown, it has inherent powers not susceptible of close definition. Faculty and students, on the other hand, are to have, by the very terms of the report, such rights and responsibilities as may be defined; but in no case may these legitimately cause "disruption".

b) The administration is marked off from the other kind of people in this further sense. While it cannot be forbidden to act, it can be called to account after the fact and be required to apologize if found guilty of an offense. The other kind of people — faculty and students — in similar circumstances may be dismissed.

We believe it consistent with the intentions of the report to interpret its declarations about a university community in light of these distinctions.

General recommendation

On the other hand, we believe that those directly involved in the teaching and learning situation are the university community as such. Those who perform essential and valuable services in aid of this situation are not outside it; but they are ancillary to it in a fundamental sense.

Thus there are indeed two kinds of people in the university setting. But their relationship ought to be recognized by appropriate means as being the reverse of that implied in the report. The rights and responsibilities of those directly engaged in teaching and learning cannot be "specified and secured" (1/ 11) because they are inherent and fundamental. It is entirely contrary to our tradition to suppose that the freedoms of the individual in civil society can be specified — and so to imply that beyond those specifications he is not free. How much more ought this to be true in the university community?

On the other hand, administrators and other essential ancillary people can have their rights and responsibilities specified in this sense: that they ought always, and by fairly safeguarded means, to be accountable for their actions. Further, their relation to the university community is not that of Crown to citizenry. They have no inherent prerogative to act; their roles may be specified; they may not only be held accountable after the fact, but forbidden to act in certain ways. The university community is the Crown. To serve the Crown is high office indeed; to set up as an independent entity called "administration", with its own interests, is insupportable and certainly ought not to be enshrined in university legislation.

Specific recommendation

We recommend that the accountability of administrators be ensured by not limiting to apology the penalties that may be imposed on them by the university court. Other penalties, such as suspension, ought to be applicable to administrators as well as to those directly engaged in teaching and learning.

3 There are two kinds of processes envisioned in the report: a) conciliation, in the sense of adequate access to complaint-processing machinery and the use of an "independent administrator" (10/ 3) as conciliator, helping the parties to reach voluntary agreement; b) the formal court adjudication system on which the report lays by far its heaviest stress. Here the ultimate sanction is force: exile from the university and/ or civil penalties or criminal penalties.

We are uneasy with the lack of attention paid — in a document addressed to a "community" — to the many tested and effective mechanisms for reaching agreement in use as in the civil community. Conciliation and mediation procedures, together with voluntarily-accepted binding arbitration, are well-known techniques. The Ontario Human Rights Code might provide us with workable models for the university setting.

But this report passes all-too-quickly from simple conciliation to the procedures of a formal court able to compel attendance at its sittings and able to order dismissal from the university. Among other fears we have over this paucity of procedures is this: that with the whole weight (despite assurances that it wasn't meant that way) of the system centered on the court, and with "disruption" so loosely defined or so arbitrarily defined, any refusal to participate in the court system could itself be construed as "disruption." Then the administration, acting under its prerogative to initiate action irrespective of the court system, could proceed to carry out summary justice. Any substantial number of students or faculty who refused jurisdiction could thus precipitate a situation in which the administration would feel obligated to treat this refusal as a "major issue." But surely this reaction is at once removed from the realities the proposed system is intended to deal with.

General recommendation

Thus there should be, in the university setting, a full range of means of adjusting and settling grievances and disputes. We endorse the proposal for a conciliation officer. We believe there ought also to be provision made for third-party mediation and for binding arbitration. There ought to be available a court mechanism.

All of these means ought to be available and elective for both faculty and students. One ought to be free to choose what seems to him to be the best means for resolving his problem or the best means for defending himself. In cases of parties opting for different procedures, the accused party's choice of procedure would be the determinative one. Choice of binding arbitration or of the court would of course preclude subsequent election of other procedures.

We consider it a dangerous principle to force an individual member of the community to face an internal court with powers of coercive punishment. This can only increase the likelihood of coercive confrontations. On the contrary, the individual should be at liberty to opt out of court procedures and face the consequences.

This elective feature should not extend to administrators, who are ex hypothesi accountable. A faculty person or student accused by an adminstrator would be free to choose the means of adjudication. An administrator should be prepared to vindicate himself in whatever procedural set-up his accuser elects; this is genuine accountability. We, in common with the authors of the Laskin report, hope and trust that these procedures will be seldom invoked. Much machinery within faculties now exists. And responsible men and women have often composed their differences without resort to any machinery.

What happens if a member of the university community proper — a faculty person or student — refuses to take part in any university procedure for adjudication? We must specify here the character of the alleged offense. If it is academic in character, the system already in use seems adequate; and these offenses were never within the purview of the court proposal. If, on the other hand, the offense is one that is directly actionable under civil or criminal law, an alleged offender, by refusing to take part in university procedures, may be electing — freely — to lay himself open to the law of the wider community. Similarly, one adjudged an offender in the university, who has so offended that he has been expelled and who nonetheless will not leave, also lays himself open automatically and freely to community law.

This full range of elective procedures for adjudication seems to us to be the most appropriate one for a university community. It provides no special privileges for any group directly involved in the teaching and learning situation. It maximizes freedom through individual choice, including the choice of facing the music downtown. No doubt it leaves much leeway for vexing conduct to continue prior to final adjudication. But we believe that freedom in a university community is not likely to be adjusted to the needs perceived by administrators, and by the administratively-minded, for clearly-defined role norms and for smoothly-operating procedures.

Specific recommendation

1) We recommend that, for faculty and students, the voluntary and elective basis of all university tribunals, including the university courts, be recognized.

2) That a committee struck by Senate and the Council of the York Student Federation prepare proposals for a full range of voluntary conciliation, mediation and arbitration procedures for the settlement of disputes within the university.

4 The general vagueness of the Laskin report's comments about penalties or sanctions prompts us to make further recommendations in this area:

a) The committee to be struck should define precisely the nature of the sanctions to be imposed by the university court.

b) In particular, suspension should be carefully described. Senate has already provided proper safeguards for tenured faculty under suspension. These provisions should be extended to non-tenured faculty by the court. And equivalent provisions and protection of rights ought to be made for students and administrators under suspension.

c) It should be recognized that expulsion of a student is a different penalty than dismissal of a faculty member. An expelled student is only temporarily prevented from finishing his university career and going on to his further career. A dismissed faculty member faces loss of his chosen career. That is, the expelled student is temporarily banished from university, while the dismissed faculty person is in permanent exile from a career and way of life. Therefore, the university court ought to be empowered to inflict penalties up to and including suspension on a faculty person. Dismissal proceedings ought to be undertaken under procedures already in force under senate legislation. Since these procedures provide maximum safeguards for the person facing dismissal, we recommend that the committee, in setting up court procedures that involve this ultimate sanction for others in the university, should be guided by these senate standards.