

the union's performance last year in my run-in with discipline

Inbox



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from: **Mark Mercer** <sergechestnut@gmail.com>
to: Current members of the executive of SMUFU
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subject: the union's performance last year in my run-in with discipline
mailed- gmail.com
by:

To members of the executive of the Saint Mary's University Faculty Union:

A year has passed since I received from the president of Saint Mary's a summons to a disciplinary meeting. Eight months have passed since the university discontinued the disciplinary procedures against me. SMUFU did not act well during the four months of the affair and, moreover, it failed to finish its work.

To begin with, both union executive members who were present to my case were distant and impolite. Their rudeness toward me didn't affect me much, for I'm an old professor with plenty of friends and supporters. Nonetheless, their conduct was unprofessional and did not become the union. I hope the union would not give new or untenured professors the same cold shoulder.

More importantly, the union failed to bring to the university's attention any of the ways in which the university was shirking its duties or violating the Collective Agreement. And, in the end, it failed to safeguard my contractual right to exercise my academic freedom without fear of sanction.

The university alleged I had violated the Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination and the Saint Mary's Declaration of Respect. These documents advise that offended parties first contact the person who has upset them, before filing a complaint. The documents also urge parties, including the administration, to seek to settle differences informally. SMUFU made no approach to the university that the university had shirked its duty to advise the complainant to talk to me and made no approach to the university that the university had shirked its duty to seek an informal resolution.

The documents I was alleged to have breached note that being offended is not a ground for complaint. They in fact say that being offended is a risk people who wish to be members of a university community must be willing to take. SMUFU did not make this point to the university.

The documents are about respect. Respect in a university is respect for people's intellectual and moral autonomy. To treat someone disrespectfully is to use them to further one's own ends independently of their free and informed consent. I treated no one disrespectfully. (Indeed, had I elected not to send my message to someone on my list for fear that I might upset them, then I would have been acting disrespectfully.) The university, though, took respect to be solicitude for feelings or identities. The union did not raise with the university the university's anti-academic misinterpretation of the documents the university alleged I breached.

The disciplinary meeting occurred on 7 December and the union's lawyer met with the university's lawyer on 8 December. It was more than two months later that the lawyers met again, and they met only after I had sent the university's president an email message. The university dragged its heels throughout the procedure, for the process was (part of) the punishment the university was happy to see me receive. The union allowed the university to drag its heels, despite the Collective Agreement enjoining parties to resolve matters speedily.

The Collective Agreement takes precedence over all other university documents, policies and rules. The Collective Agreement protects both criticism of the university and Charter rights to freedom of expression. The union never explained to the university that the university's actions violated my academic freedom as guaranteed by the Collective Agreement. Failing to confront the university on the latter's abuse of the academic freedom of one of its members was the most serious deficiency of all the union's serious deficiencies.

I accepted a foul deal from the university in order to end the procedures against me because 1) I lacked confidence in the union's will to represent me or to argue in favour of academic freedom and 2) if both the union and the administration are hostile to academic values, who can trust that an arbitrator won't be? Even so, the deal I intended to take and the deal I got turned out to be quite different.

What I agreed to was to send a statement of regret to the university's president in exchange for the university discontinuing the disciplinary procedures. That itself would have been a foul deal because what was needed was a statement from the university that I had breached no policies or regulations and that in the future the university would be more strongly committed to academic freedom and collegiality, so that the university would not again make false allegations against a professor or violate his or her academic freedom. That is the resolution the union should have been attempting to get.

What I actually received in the discontinuation letter was not what I had agreed to. In the first paragraph of his letter, the university's president said that "you [Mark Mercer] expressed regret for your use of the 'n-word.'" I did not use the word in question; I mentioned it. I did not express regret for mentioning it; I expressed regret that the sight of my mentioning it caused someone to become upset. (My statement implied merely that it was not my intention to upset anyone – as though that was a point on which anyone might have been unclear.)

In the third paragraph of his letter, the university's president restated the allegations he had made against me in November 2020, again without argument. And he directed me to be mindful of the fact that he continues to hold the unsupported and false belief that I breached university policies.

I did not agree to have my statement of regret misinterpreted; I did not agree to watch the university's president shake his fist at evidence and argument; I did not agree to be directed toward self-censorship or toward acquiescing in the violation of my academic freedom. I did not agree to be warned.

I heard nothing from the union once I received the message discontinuing the procedure. A union that knows its business would have sought to have the president withdraw that final paragraph. By letting the letter stand, SMUFU allowed the university to threaten a professor with sanction should he speak in a way the university doesn't like.

I heard nothing from the union once I received the message from the university's president, but I did hear from SMUFU's lawyer. I had sent two messages to the university's president and the union's lawyer conveyed to me the president's wish not to receive any more messages. The lawyer should, of course, have told the president to contact me himself.

The union failed to defend and uphold the academic freedom of one of its members – and, thereby, of all its members – and failed as well to promote collegiality, candour, respect and other academic values.

All the best,

Mark

Mark Mercer
Philosophy