

Chapter 5

Staff tenure

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The Visitation

The Orr Case involved a ten-year battle between University staff and the University administration and its establishment backers. From this considerable effort came two positive results: the settlement of the case itself, with financial recompense to Orr; and *Rules of Tenure*, which eventually became the basis on which most Australian universities designed their dismissal procedures. These *Rules*, and the case for tenure, were a direct result of an appeal by concerned individuals to Lord Rowallan, the Governor of Tasmania, in his role as Visitor to the University.

When Sydney Orr had lost his High Court appeal against the University of Tasmania for wrongful dismissal, his prospects for rehabilitation looked almost as bleak as those for reinstatement, which nobody other than Orr himself ever thought promising. Many people, however, quite apart from his supporters, were outraged that a university administration could act with malice but with all legality to dismiss a difficult professor. James Counsel, a retired lawyer and oldest living graduate of the University, remembered the office of Visitor, and the possibility of invoking his authority to examine the university's actions. A group was formed to present a petition to the Governor.

Not with universal warmth, for most were battle-weary, none relished the demands on time that another campaign would inevitably make, and few were hell-bent to put their names to a petition which may well damage their career prospects, at least in the University of

Tasmania. Some of those who were approached declined to act, although one or two later summoned the courage to make statements critical of the administration when they left the University for greener pastures. The final group of ten comprised James Counsel, three lecturers, George Wilson, John Polya, and me, five teaching assistants and post-graduate students, and Jim Brassil, a school teacher who represented the undergraduates on Council.

The petitioners claimed that “there is evidence ... that things not fit and proper to a University have been done and are being persisted in ... but which the Council of the University of Tasmania even now persists in upholding by word and action to be conduct befitting a University.” The Visitor asked the University Council for comment, which they made by saying that Orr and his associates had organised a campaign of vilification and defamation of the University: a claim easily dismissed, as only two of the petitioners had known Orr continuously since his dismissal.

Lord Rowallan’s finding at his Visitation on 10 August 1962 was a severe disappointment to the petitioners, who realised the difficulty of anyone making orders at variance with the judgments of the nation’s courts, but nevertheless hoped against hope that a morally strong Governor of Tasmania (and World Chief Scout) might find a way to instruct an errant institution without flying directly in the face of the legal system.

As it was, the Visitor decided “to reject the relief claimed by the Prayer of the Petition and formally dismiss it,” but he then instructed the University to pursue the matter of procedures relating to staff tenure, as follows:

Notwithstanding this decision my deliberations on these proceedings have made it clear to me that there exists two strongly opposed schools of thought concerning the propriety of the methods and procedures adopted within the University in relation to, and for the investigation of complaints made against the former Professor Orr. Whilst I have declined, for the reasons I have just given, to investigate these matters in detail and make findings in relation to them, I am deeply conscious of their importance and significance to the University as a whole and to the academic community in particular. Issues relating to the tenure of members of the academic staff, and to the procedures and methods proper for the investigation and determination of disciplinary complaints against them, I regard as matters of fundamental importance to the well-being of the University. I am glad,

indeed, to see from its answer that the Council takes a like view. I quote to you a passage from paragraph 6 of the Council's answer: 'On behalf of the Council, the Vice-Chancellor (Professor Isles) has consulted with his colleagues on the Committee of Australian Vice-Chancellors with a view to evolving, for consideration by the staff and Council, of standard procedures appropriate for the investigation of serious complaints against members of the academic staff.'

It is my duty as Visitor and most especially at this time and in the light of this earnest of goodwill to see to the well-being and beneficial administration of the University. In pursuit of this I now tell you that it is my wish and my direction that the University shall diligently persist with its deliberations, in consultation with other University authorities and bodies, to ascertain whether more specific formulations are desirable to lay down the means and methods and procedures by which matters such as are raised in the Petition should be resolved.

Staff/Council negotiations on procedures for the investigation of serious charges of misconduct

While the "Orr supporters" clutched this straw very firmly, with Brassil and I as members of Council pushing it to follow the Governor's directions without delay, we were neither unprepared nor unsupported. One week before the Visitation, a General Meeting of the Staff Association adopted a draft Statute of Tenure, which had been prepared by its Tenure Sub-committee, as a recommendation to the University Council.

At the end of September 1962 the Council received the Staff Association's Draft Statute and appointed a Tenure Committee, of which I was a member, to deal with the issue. Meetings of this Committee and of a Staff Committee established under the Vice-Chancellor's chairmanship constituted the most intensive negotiations in which I have ever been involved. But it took three years to reach final agreement.

In addition to the Vice-Chancellor the Staff Committee consisted of Professors Max Clark, Gerald Firth and Ian Smith, Mr Abe Harari and me. The Deputy Registrar, Tony Kearney, acted as Secretary. The committee first met on 11 April 1963, when it discussed a Second Draft of a *Statute of Tenure*, which had been prepared by the Vice-Chancellor. The meeting agreed to postpone further formulation of a *Statute of Tenure* and to support the adoption of 'Procedures for the

Investigation of Serious Charges of Misconduct' [by members of staff]. It also agreed to accept a Council resolution as the basis for these procedures.

Between 11 April and 7 May 1963 no less than seven drafts of dismissal procedures were produced. Eight "sticking points" emerged, beyond which the staff would not make concessions to the Council Tenure Committee. In an attempt to reach agreement, the Staff Association Executive on the 10 May endorsed an Eighth draft, which met only three of the Staff Committee's sticking points. At a Special General Meeting held on the 14 June, the staff association members with more fire in their bellies than their Executive had rejected the latter's actions, which resulted in the resignation of the Executive and the election of a politically tougher crew. It was December 1965 before the *Rules of Tenure* were agreed, in which the elements deemed essential by the Staff Association were largely present.

All this was happening in the context of continuing pressure for justice for Orr. In March 1963 a student strike was proposed, those involved including Pierre Slicer, now a Judge of the Supreme Court, and Dennis Altman, later a well known political scientist and writer on homosexuality. In April, the Anglican Bishop, the Catholic Archbishop, and the Moderator of the Presbyterian Church publicly condemned the University's continued injustice to Orr. In May, the Secretary of the Australasian Association of Philosophy, Bill Ginnane, published an article in *Nation* summarising these two agitations. In it he mentioned Slicer's withdrawal of support for the student strike when his articles were suspended by his legal master, Senator Reg Wright QC, the University's longstanding legal adviser. This was typical of the pressure exerted on dissidents in a small community, despite which there were (and still are) those who decline to believe that Orr was the victim of any kind of conspiracy.

Sticking points

The sticking points reflect staff reaction to the administration's behaviour in the 1955 Royal Commission and in the still alive Orr Case. The fact that they were largely met gives a view of academic staff independence in the early 1960s of which the passing may be a case for serious regret by academics working in these managerialist times.

The first of the eight sticking points was the deletion of an introductory sentence to the whole *Procedures* document formulated by the Council Tenure Committee at its 6th May meeting: “Without prejudice to the powers of the Council under the University Act 1951 ...”

This really epitomised the nature of the conflict in the negotiations over tenure. The staff (or an effective majority thereof) were absolutely convinced that the University administration had misused its powers in the dismissal of Sydney Orr (and, prior to that, in matters leading to the Royal Commission of 1955), and would have been naive fools to ignore recent history in assessing the likely future behaviour of the Council. Not surprisingly, that body did not want to renounce any of the authority vested in it by statute, in favour of some future combination of political radicals and mid-week gardeners whose self-interest would undoubtedly outweigh the public interest dutifully guarded by such worthy citizens as themselves.

The second sticking point concerned “gross inefficiency” as a cause for dismissal. The staff felt that inefficiency should neither be a cause for dismissal nor a ground for the termination of appointments by notice because:

- a) Inefficiency is not misconduct, is rarely wilful, and lacks *mens rea*. Where inefficiency is blameworthy (involves *mens rea*) it can be characterised as dereliction of duty (included in the draft Statute).
- b) As a ground for termination of appointment inefficiency nullifies the security of tenure required by academics “to fulfil their most important functions,” including the “free and fearless pursuit of knowledge and understanding and the dissemination of their findings.”
- c) The major part of the academic’s labour is not amenable to the test of efficiency. How for instance could one test Bertrand Russell’s “inefficiency” in preparing *Principia Mathematica* (see Chapter 4)?
- d) The waste and inefficiency which occasionally result from adherence to the principle of academic freedom are greatly outweighed by the advantages reaped from it. The principle demands rejection of inefficiency as a ground for the termination of appointments. Wilful or blameworthy failure to fulfil academic functions amounts to dereliction of duty, which is a cause for dismissal.

The third matter on which the Staff Committee was adamant was the composition of the committee to which charges of misconduct

would first be referred. This Committee had to include two non-professorial members, doubtless reflecting the important contribution of staff below the rank of Professor to the Orr Case. The Council Tenure Committee eventually conceded this point.

The Council Tenure Committee wanted the Preliminary Committee to report directly to Council, whereas the Staff Committee had it referring any charges which it considered to be valid to the Joint Committee, thus denying the whole Council an opportunity to consider the rights and wrongs of the charges after their initial investigation. It is hardly surprising that the Council wished to preserve its full authority as the governing body of the University of Tasmania, not least because some of its members still believed, and were being legally advised, that the University was in a master-servant relationship with its staff.

Of all the issues considered essential by the staff, this was the most strongly supported. Understandably, the staff did not trust the Council to do the right thing, and the Council did not wish to delegate its authority to a committee containing only one Councillor who was not an academic or an academic administrator.

The Staff also insisted that the staff member charged with misconduct had the unqualified right to be represented by counsel, whereas Council wanted representation subject to the approval of the Preliminary Committee.

Another issue on which the staff would not back down concerned the record of proceedings. They were very mindful of Orr's unfortunate experience in trying to write down Miss Kemp's accusations against him as they were spoken, and being criticised for asking that her speech be slowed sufficiently for him to record it. The rule which said 'The staff member shall be allowed to record the proceedings in any reasonable manner' was therefore unacceptable, and the staff insisted on the right to record the proceedings on tape.

Concern that the University of Tasmania Council should maintain control over events in the institution was apparent at all stages of the tenure negotiations. Despite the criticism heaped on the Council by the Royal Commission of 1955, Sir John Morris's successors, men like Sir Henry Baker, Chancellor and President of the Legislative Council (upper House); Alan Knight, Deputy Chancellor and head of the powerful Hydro-Electric Commission; and Harold Solomon, disaffected lawyer and son of a Tasmanian Premier, firmly believed in the

master-servant relationship and their duty to see that academics did not act beyond their station.

Resolution

Finally, then, the *Rules of Tenure*, dated December 1965, were agreed. The opportunity to resign with six months' notice, so blatantly denied Sydney Orr, was early stated. The causes for dismissal had moved from "gross misconduct" or "major dereliction of duty" to "gross inefficiency" or "gross misbehaviour." While the 1963 terms were grouped as "professional misconduct," their 1965 counterparts were joined as "gross misconduct." Perhaps a case of semantics: the staff's strong resistance to the use of "inefficiency" during the intense negotiations of 1963 seems to have been overcome as the people arguing the case changed.

The core of the investigative procedure, the two committees, was firmly retained. The composition of the Preliminary Committee remained unchanged, with three Deans and two present and past non-professorial staff representatives on Council. The Joint Committee's membership was somewhat altered, but in name rather than rank or status: the Council member became the Deputy Chancellor; the nominee of the Staff Association became its Chairman; the Vice-Chancellor was replaced by the senior Dean; and the Warden of Convocation was substituted for the nominee of the accused. The Chairman of the Professorial Board retained his place. An addition to the investigative Committee provisions (Clause 11) was the designation of the Dean of Law as Chairman of the Preliminary Committee, and the Chairman of the Professorial Board as Chairman of the Joint Committee.

The opportunity to resign and bring the investigation of misconduct to an end remained (as Clause 8) in 1965, together with the right of a staff member found guilty to avoid dismissal by resigning. The nine Basic Rules for the conduct of an inquiry in the 1963 document were expanded to 12 in the 1965 *Rules of Tenure*, probably for the better. To the extent that these Rules of Tenure became part of the administrative structure of the University of Tasmania, and their variants were taken up by other Australian universities,¹ the Orr Case can be held to have left an important legacy to a generation of university teachers.

Note

1. The University of Sydney was a notable exception. From 1888 to 1988, the tenure of staff under the rank of professor could be terminated on six months notice. See Bruce Williams, 'Status and conditions of employment at the University of Sydney, 1850-1985', in F.B. Smith & P. Crighton, eds., *Ideas for Histories of Universities in Australia*, History Program, Research School of Social Sciences, Australian National University, 1990, p. 19.