# news from CUASA

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Last spring CUASA launched a provincial lobbying campaign on behalf of the library. Our political logic was that since the Provincial Government had dug in its heels so hard against improvement of faculty (and other public sector) salaries, we just might move the political system in the capital cost area. We produced a special edition of CUASA News that we sent to every member of the Provincial Parliament and to every important official in the Ministry of Education. Within weeks the Government responded with the gratifying assessment that it was prepared to grant most of what we asked for.

Our newest CUASA Council representative from the library, Alison Hall, has agreed to serve on our Public Information Committee. Her first report follows:

## A NEW OVERCOAT FOR MACODRUM

Earlier this year the Ontario Provincial Government approved a grant of one point two million dollars for the re-cladding of MacOdrum Library. Meetings are being held with the consulting architects, and an initial design has been presented to the University Management Group. This calls for the removal of the entire exterior wall and replacement by pre-fabricated panels. The design reduces the window area, and dramatically increases the insulating factor. At present plans also include a new main entrance and tunnel access. It is planned that construction will begin in May, 1984, continuing through June and July. The work will be done one modular section at a time, and before the outer skin is removed a temporary wall will be built, clearing back to six feet within the outer wall. It goes without saying that all this will cause considerable disruption to the library affairs and services. The end result, we trust, will surely be worth the inconvenience. For many years now the building has been subject to howling draughts in winter, and persistent leakage of water through ceilings and walls. This has often caused considerable damage to library materials and fittings if not detected soon after the onset. Heavy rains or the annual spring thaw have always been harbingers of potential drips inside. No ark construction projects have yet been observed, but if this winter turns out to be a wet one, don't be surprised to see pairs of animals wading across the quadrangle to a primitive wooden superstructure! At any rate, when summer comes, I'm sure that the entire university community will look forward with eager anticipation to the grand unveiling of MacOdrum's new coat.

## ANOMALIES

A recent decision by the Inflation Restraint Board regarding an anomalies fund at the University of Toronto indicates that anomalies are indeed payable regardless of salary. Decision number 35508 reads as follows:

> On September 28, 1983, the Inflation Restraint Board considered an application of the University of Toronto, dated June 21, 1983, concerning the status of payments made from an anomaly fund.
>
> The Board noted that the compensation plan of the subject employees provides that a special fund of money shall be set aside to make payments to certain faculty members in order to rectify perceived anomalies in their salaries. However, the administrator recognizes that there is an element of merit associated with these payments. Consequently, the Board has been requested to determine whether or not these payments fall into one of the categories described by Clauses 12(5)(a) to 12(5)(e) of the Act.
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> In deciding the matter, the Board recognized that there is an element of merit associated with payments from the anomaly fund, but it held that in the main, they are not paid in respect of any of the matters described in Clauses 12(5)(a) to 12(5)(e) of the Act. Consequently the Board DECIDED that the payments from the anomaly fund may be continued to be paid according to the terms of the compensation plan that was in effect on September 21, 1982, regardless of the annual salary of the recipients.

Thus, if the compensation plan in effect on September 21, 1982 contained an anomalies fund and/or procedures for adjusting existing anomalies, it is clear that these must continue. If this has not been the case at any institution, steps should be taken to ensure that the proper procedures are followed.

It might also be that where no written policies exist, but anomaly adjustments have been made in the past, an anomalies case could be made on the basis of existing practice. If documentation of such adjustments can be provided as well as the procedures followed, it could be argued that this forms part of the compensation plan in effect on September 21, 1982.

# "DEFICITS LEGISLATION"

The following is a statement by the Ontario Confederation of University Faculty Associations to the Standing Committee on Social Development of the Legislature of Ontario regarding Bill 42, "An Act to Amend the Ministry of Colleges and Universities Act".

From February 1982, when the Minister of Colleges and Universities indicated she would seek suggestions from her advisory council on legislative ways to limit "unmanageable deficits", through the introduction of a version of such a bill in December, 1982, to the introduction of an amended version in May, 1983, OCUFA has consistently opposed the principle of so-called "deficits legislation". In representations to the Minister, to the advisory body (OCUA), and to members of the provincial Legislature we have argued that such a bill violates the spirit of university autonomy embodied in the Acts of the Legislature that established the provincial universities. It violates the Minister's own professed belief in university autonomy. It violates the wisdom of the university advisory body, which concluded that direct intervention in the affairs of universities should not flow from general or enabling legislation, but from case-by-case solutions fashioned by the Legislature.

OCUFA today remains opposed to the legislation before you. Our opposition is not based on the details of the proposal. The powers of the supervisor, for example, though amended somewhat by the government in consultation with university administrators, remain as powers over previously autonomous bodies. That there is a supervisor, with powers, we find objectionable.

In representations to the Minister regarding this legislation we have sought a rationale, a coherent reasoning, for its introduction. We have been told government has a responsibility to ensure that universities, as recipients of public funds, are adequately accountable for the expenditure of those funds. We agree. However, we have not been presented with any evidence that the present accounting of the universities through the submission of annual audited statements, and through the detailed and scrupulous reporting and analysis of the Committee of Finance Officers of the Ontario Universities, is lacking, and fails the test of adequacy on accountability.

We have been told that other provinces have legislation to limit deficits, and that it would be remiss of the Ontario government to continue its responsibility for universities without parallel legislation of its own. Detailed examination of the legislative provisions of other provinces reveal two types of Acts: simple prohibitions, and "negotiated" deficit funding. Some simply prohibit deficits. Some allow them, with permission; some allow them with provision of pay-back in future years. Ontario's government is proposing a new type, not found elsewhere: an interventionist model that goes well beyond the scope of those of other jurisdictions. The Ontario model contains elaborate control mechanisms and non-financial penalties. In these regards it is unique.

It has been implied that this legislation makes provision for action only in extreme cases, and that it is unlikely that it will ever be used. We find this argument not only unpersuasive, but disturbing. First, we see an ominous implication in such reasoning: statutorily autonomous bodies are to be caused to modify their courses not through openly debated changes in their legislative bases, but through the threat of action by officials appointed on the executive authority of the government. Second, the purely financial focus of the threat can have no other effect than to cause those who manage the institutions to pay more attention to balanced financial states than to effective academic operations to the exclusion of financial considerations. We argue for balance, and we maintain that such balance is best achieved by each institution charting its own responsible course. Third, we find the notion that government intends to rule by threat, for that can be the only construction to be placed on this legislation, a direct admission that its policies and approaches to university affairs have failed.

In seeking explanations for the introduction of this legislation we have been told that it will help universities in their planning to have clear and specific limits. This is the heart of the paradox of government-university relations. On the one hand the government insists it respects university autonomy and is committed to the model of citizen-controlled governing bodies. On the other hand it fashions legislation that can have no other meaning than that it does not trust those who manage the institutions. It asserts a belief in responsible management, while at the same time implying that there are mismanaged institutions in need of correctives. On one hand the government determines the objectives of the universities; on the other hand it sets at least 93% of the income of the institutions. The gap is to be bridged by the universities. Those that cannot find a way to achieve the increasingly impossible are to be assisted in correcting the error of their ways by investigators and supervisors.

This legislation is designed for one purpose: to place on the affected institutions responsibility for managing the consequences of government actions. By implying that financial difficulties result from university actions rather than from government policies, the government seeks to evade its own responsibilities.

We urge the withdrawal of this legislation. We are not persuaded of its necessity, and we have yet to see specific cases analyzed by the Minister to demonstrate a need for the powers contained in this bill.

It is our belief that certain remedies already exist for the situations this legislation hypothesizes. Many universities have established financial exigency systems, negotiated between employer and employees. Should a financial emergency arise, a university community, acting together, can identify and seek to correct the difficulties. Such a system has been used in one institution, and that institution was able to weather and emerge the stronger from its crisis.

Institutions are free to seek changes in their mandates for the purpose of better defining their roles. One university has done this in recent years. And the government itself has shown that it is willing and able to look at a group of related institutions and seek advice on structural changes that will enable them to deliver more effective university service to their region.

We suggest that university crises do not blow up overnight. The careful monitoring of the administrations, the Boards of Governors, the shared experience of the university collective itself, all serve to give the kind of advance warning that responsible management should and does heed. If all else fails, if an institution cannot, despite the exercise of all its powers, bring order to increasing chaos, then a final remedy exists in the power of the government to bring amendments to that specific institution's Act to the Legislature. In the case of each institution, the Legislature has place the public trust in the hands of a Board of Governors or a Governing Council. It is our belief that only the Legislature should decide in each particular case on the withdrawal of that trust.

We believe that the real issue facing this committee, as it has faced other bodies, stems from funding. OCUFA, along with the Council of Ontario Universities, the Ontario Council on University Affairs, the Committee on the Future Role of Universities in Ontario, and many other groups, have stressed time after time that the university crisis lies in the disparity between objectives and funding, The government wishes to maintain access for all qualified and able to benefit from university education. The government wishes to have institutions where first-class teaching takes place; where world-class research is done; institutions with the capacity to serve their local and regional communities; institutions that are looked to as cultural and intellectual resources. The government is unwilling to accept the true price of its declared aspirations. Instead, it seeks to shift the responsibility that rightly belongs with it onto the institutions themselves.

# PART OF ONTARIO'S RESTRAINT ACT JUDGED UNCONSTITUTIONAL

A recent decision of the Ontario Supreme Court has far-reaching consequences for union rights in Canada. The following summary is extracted from materials prepared by the Ontario law firm of Sack, Charney, Goldblatt and Mitchell, and is reprinted from CAUT FACTS AND FIGURES, dated November 3, 1983:

## BACKGROUND OF DECISION

The Ontario Inflation Restraint Act, enacted in 1982, imposed wage controls of 9% and 5% during a two-year control period. Section 13(b) of the Act also extended the terms and conditions of collective agreements for the duration of the control period, so that many activities which are triggered by the expiry dates of collective agreements, could not take place. These include bargaining over non-monetary as well as monetary issues and the ability to displace a bargaining agent.

The Ontario Inflation Restraint Act was challenged in three applications. The Ontario Labour Relations Board (OLRB), in the Broadway Manor case, dismissed an application by the Christian Labour Association of Canada. The OLRB held that the Inflation Restraint Act extended collective agreements so as to suspend collective bargaining over non-monetary matters and the right to change bargaining agents for the control period. However, another Ontario tribunal disagreed with the OLRB. In a case involving the Durham Board of Education and the Ontario Secondary School Teachers' Federation (OSSTF), the Education Relations Commission (ERC) ruled that the Inflation Restraint Act did not have this effect, that "terms and conditions" as opposed to collective agreements per se were extended.

In an application to judicially review the decision of the OLRB, the SEIU challenged the constitutional validity of the Ontario Inflation Restraint Act. The SEIU argued that the Act violated the fundamental freedom of association guaranteed by section 2(d) of the Charter of Rights in that it interfered with the right to organize and restricted non-monetary collective bargaining. The OSSTF, seeking to uphold the ruling of the ERC supported this position.

In a third case, the Ontario Public Service Employees' union challenged the Act in general, on the basis that the prohibition of the right to strike violated freedom of association.

Each of the three Supreme Court Judges hearing the case - Justices Galligan, O'Leary and Smith - wrote separate judgements, which were released on October 24, 1983. Justices Smith and O'Leary ruled that the Act did have the effect of suspending collective bargaining on non-monetary issues; Mr. Justice Galligan held that it did not. However, on the issue of constitutionality of the Inflation Restraint Act, all three judges were basically in agreement.

## SUMMARY OF DECISION

Justices Galligan and Smith held that freedom of association includes the freedom to engage in conduct which is reasonably consonant with the lawful objects of the association. All three judges accepted the argument that freedom of association under section 2(d) of the Charter includes the freedom to organize, collectively bargain, and strike, and that any infringements of these freedoms must be shown to be "such reasonable limit...as can be demonstrably justified in a free and democratic society". This is the language of section 1 of the Charter of Rights which permits legislatures to enact reasonable limits to fundamental freedoms.

In taking this broad view of the meaning of freedom of association, two of the three judges emphasized that freedom of association would be "barren", "useless", "meaningless", "a hollow thing", and "an illusion", without the right to strike.

All three judges were in agreement that there was no justification for controls on the right to organize or on non-monetary bargaining, since the Government had presented no evidence of any necessary connection between these matters and restraint of compensation.

Accordingly, all three judges declared section 13(b) of the Inflation Restraint Act to be unconstitutional insofar as it purported to extend collective agreements and thereby restrict the right to organize and bargain about non-monetary matters.

In dealing with the application by the Ontario Public Service Employees' Union, all three judges agreed that suspension of the right to strike for the period in question, at any rate over compensation, was justifiable under s.1 of the Charter as a "reasonable" limit which could be "demonstrably justified in a free and democratic society".

Justices Galligan and Smith made it clear that, in their opinion, the decision of the Government to fight inflation by controlling wages was a political and economic one, which they would be reluctant to interfere with.

## GENERAL COMMENTS

Any infringement on the freedom to organize, collectively bargain and strike by the Government must now be shown by the Government to be a reasonable limit demonstrably justified in a free and democratic society. The Government must present evidence unless the case is obvious. Mr. Justice Galligan set out the tests as follows:

1. Is the object of the legislation a reasonable objective in the advancement of the common good?
2. Is the legislative program reasonably appropriate to the furtherance of the object of the legislation?
3. Is the infringement reasonably necessary to the success of the legislative program?
4. Is the infringement too great a price to pay for presumed benefit to be obtained from the legislation?

All three judges, in upholding the wage controls themselves, were careful to note the program was limited to one or two years.

Mr. Justice Smith noted that the acceptance of the Ontario Government's one or two year wage control program did not automatically involve acceptance of an extended program.

> It is not for the Courts to say whether or how the Attorney-General would have discharged his burden under s.1 had the period of suspension of rights been lengthier, or would meet it were the present situation to be continued by the legislature without change for another period. The decision would then have to be made in light of the circumstances prevailing at the time and a new balancing exercise engaged in by the Court.

(... continued)

## Part of Ontario's Restraint Act Judged Unconstitutional (continued)

Justices O'Leary and Smith made references to international labour law, including international conventions to which Canada is a party. Substantial emphasis was placed upon ILO Convention No. 87 concerning Freedom of Association and the rulings of the ILO Freedom of Association Committee thereunder. In short, ILO decisions as to the meaning of freedom of association have great importance in determining the scope of freedom of association under the Charter of Rights.

In general, it may be said that the ILO considers that the right to strike can only be restricted in strictly essential services and provided that there are adequate guarantees to safeguard the interests of workers in the form of binding conciliation or arbitration proceedings. The ILO takes an adverse view regarding the exclusion of matters from collective bargaining. Furthermore, while the ILO recognizes that stabilization measures restricting the right to collective bargaining might be acceptable, this is only "on condition that they are of an exceptional nature, and only to the extent that they are necessary, without exceeding a reasonable period, and that they are accompanied by adequate safeguards to protect workers' living standards". The ILO also considers that such controls should only be undertaken as a last resort after serious efforts have been made to reach a voluntary agreement between the parties.

### IMPLICATIONS OF THE ONTARIO SUPREME COURT'S DECISION

Governments will have to think carefully, before passing legislation which restricts the freedom to organize, collectively bargain and strike, in order to ensure that they can justify any such restriction should the legislation be challenged in the courts.

Governments will have to pay much more attention to international conventions and ILO rulings in the future.

Subject to the legislature's power under s.33 of the Charter to "override" its provisions, unions will no longer be wholly at the mercy of majority governments prepared to legislate away the freedom to organize, collectively bargain and strike. The independence of trade unions is thus considerably strengthened, and correspondingly greater respect must be paid by Government to fundamental trade union freedoms.

It is quite likely that the following types of legislation will come under attack in the courts:

a) legislation which extends controls beyond their initial limited period, especially where there is insufficient evidence that such an extension is necessary;

b) legislation which restricts the right to strike of workers in non-essential services in the public sector;

c) legislation which removes matters from collective bargaining, such as job security, without adequate justification; and

d) legislation which unjustifiably restricts the right to organize.

## CAMPAIGN TO FREE J.L. MASSERA: AN OPEN LETTER TO CUASA

G.F.D. Duff, Professor of Mathematics, University of Toronto Teaching Staff Association Chairman 1965-67, writes to ask our support for this campaign:

"If your association has not already taken this action, please consider this letter as a request for formal support by your association for this campaign to free Professor Massera. As soon as your association can ratify such support, please notify the campaign headquarters at 39 Elm Ridge Drive, Toronto, M6B 1A2.

Please distribute the enclosed statement to your association members and colleagues.

As the Uruguayan government has shown some response to pressure, we earnestly ask your co-operation in this campaign to free an elderly academic who is now in ill health following unjust imprisonment and torture.

Because he also studied under the same professor in Princeton, the late Solomon Lefschetz, I have been aware of Massera and his work since 1950. I can assure you that this campaign merits your support."

### A KEY CASE OF A PRISONER OF CONSCIENCE

José Luis Massera is a mathematician, respected internationally for his research in differential equations. He holds honorary degrees from Rome and Nice, and he has offers now of professorships in France, Italy and the U.S.A. When the military junta seized power illegally in Uruguay, Professor Massera had been a member of the Uruguayan parliament, highly respected by all, a leader in the Communist Party (which was a legal party in Uruguay at the time, just as the Communist Party is legal in France today). Professor Massera was seized in 1975 and savagely beaten. One leg is shorter than the other as a result of torture. He is now 68 years old. He is still in prison.

For the past 8 years, protests have been made on his behalf by governments, scientific societies, national academies, and thousands and thousands of scientists and scholars all over the world. He was adopted as a prisoner of conscience by Amnesty International. The Human Rights Committee of the United Nations accused Uruguay of holding Massera in prison without justification but Uruguay ignores this Committee. The Uruguayan government replied to thousands of persons and organizations around the world, who have expressed their concern for Massera. This reply grossly misrepresents the situation but it does show that the government of Uruguay is worried by the world-wide unfavourable publicity. Clearly, this is the time to increase the pressure.

What you can do:
1) write to the Ambassador, Embassy of Uruguay, Washington, D.C., U.S.A. protesting the unjust imprisonment of Massera and calling for his release; or
2) contribute to the International Campaign-Massera, c/o Professor I. Halperin, Department of Mathematics, University of Toronto.