Opinion

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& Comment

The freedom of academe is a fragile thing

In dismissing whistleblower Ted Steele, the University of Wollongong appears to have ignored the bitter lessons from another high-profile sacking half a century ago, writes ***Jim Jackson****.*

ACADEMIC freedom. You hear those two words increasingly these days. There's mounting concern in academic circles that the notion has been compromised in the case of biologist Ted Steele, recently dismissed by the University of Wollongong. And tomorrow the Australia Institute is expected to release its report "Academic Freedom", on whether universities have compromised their standards for money.

Before the expression gains any wider currency, it's worth considering just what the term academic freedom means, and how real it is for Australian university staff.

Let us go back to 1952, when Professor Douglas Wright told the professorial board at Melbourne University that a university might be defined as "a social group of people devoted to the pursuit of what is true". It followed, said Wright, that universities had to permit free discussion. And that, he concluded, was what most people understood by academic freedom.

He added that the freedom carried with it "severe obligations"; an indignant cry of academic freedom could not protect an academic who had knowingly spread material that was poorly researched, negligently prepared or deliberately falsified.

At the same time, we recognise that academic freedom requires safeguards for academics against arbitrary dismissal, particularly for those who offend the university or other sections of the community.

But the safeguards, too, will have their limits. In a recent case, Justice Rodney Madgwick, now of the Federal Court, said there had to be a balance between "the legitimate scope of such [academic] freedom and behaviour which would make it practically intolerable for the continuation of an academic's employment".

The judge noted that "a unique system has been established [in Australian universities] to deal with supposed cases of serious misconduct . . ."

The system he was referring to requires a committee of three – generally a lawyer and a representative of both the management and the relevant union – to investigate such allegations.

To "win" this case, the university will have to demonstrate that in all aspects Steele was not telling the truth.

The investigating committee must consider the evidence and make recommendations back to the university's chief executive, who must act on the recommendations.

These investigation procedures were enshrined in various academic industrial awards before the former industrial relations minister, Peter Reith, reduced awards to just a small list of allowable matters. Today they are contained in enterprise agreements between academics and their universities.

An allegation of serious misconduct will generally trigger such an investigation. The investigations provide an agreed mechanism between university management and staff unions that goes a long way towards ensuring procedural fairness.

It is worth noting that such investigations protect the university as much as the individual.

The University of Wollongong has chosen not to follow these procedures in the case of Ted Steele, sacked after claiming that a student had been improperly upgraded. Instead the vice-chancellor opted for summary dismissal under the Workplace Relations Act. The lawfulness of that action is yet to be tested.

The universities' investigation committee system has its origins in a sensational series of court cases, beginning almost half a century ago.

The years 1956 to 1966 saw litigation between the University of Tasmania and Sydney Sparkes Orr, a philosophy professor who had been summarily dismissed.

Orr and his supporters insisted this was because he had spoken out against those who ran the university; his detractors and the university said it was because of an improper sexual relationship with a student.

The Supreme Court of Tasmania, and subsequently the High Court, accepted the university's view and upheld Orr's dismissal.

However, Orr sued the vice-chancellor and the University of Tasmania for defamation, and the dispute was settled only weeks before Orr's death in 1966.

The settlement required the university to make a public statement, pay Orr $32,000 and forgive Orr's debts arising from costs awarded against him in the various court actions.

The cost to the university's reputation was also enormous. So it approached other universities with the aim of setting up procedures to prevent such a debacle happening again. The investigation committee emerged from those consultations.

It had also been recommended at the time by lawyers Hal Wootten and John Kerr, QC, who had been called in by the university to independently review the evidence in the Orr case.

In an article at the time, Wootten – declaring that every dismissal of a professor raised a question of academic freedom – said the right to criticise certain aspects of university administration was "a necessary incident of effective academic freedom, and that the possibility of bias arising from internal struggles within the university is a further reason for insisting on safeguards against arbitrary dismissal".

Wootten, later foundation dean of the law school at the University of NSW and a Supreme Court judge, was critical of the dismissal procedures of the University of Tasmania and called for quasi-judicial procedures for handling serious allegations against members of the academic staff in Australian universities generally.

The vice-chancellors could see the value of having such a procedure. After all, one of their number, vice-chancellor Keith Isles from Tasmania, had been hounded by the legal action, and the university itself had been damaged by a well-orchestrated campaign against it. Yet ultimately the only real charge that could be levelled against the university was a lack of procedural fairness.

The vice-chancellors saw that proper procedures would ensure that cases involving alleged breaches of academic freedom cases could be controlled. So the universities agreed to introduce the three-person investigating committees.

And the summary dismissal of academics became a thing of the past – until Steele.

The great danger for the University of Wollongong is that the Steele case could be with it for years to come.

Summary dismissal may look like an immediate way of removing what is perceived as the cause of a problem. But it is so rare in academic cases that unions will fight it.

Any challenge to a summary dismissal is likely to be very public. Rather than having an investigation on campus using the standard and very private investigation process, the Wollongong administration has effectively put the entire university and its standards on trial.

To "win" this case, the university will have to demonstrate that in all aspects Steele was not telling the truth.

The university also runs the risk of being remembered not as the place where Steele, an eminent biologist, did his work but only as the place that sacked him.

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