



Constructing clinical faculty through the discourse of self-determination: The University of Toronto policy for clinical faculty and implications for academic freedom

Maria Athina (Tina) Martimianakis, MA, Med, PhD (ABD)
Department of Theory and Policy Studies
Ontario Institute for Studies in Education

Abstract

This paper explores the events leading up to the implementation of the new Policy for Clinical Faculty at the University of Toronto, contextualizing this governance issue in larger systemic considerations. A policy analysis of public documents, including task force reports and press releases, was undertaken to contextualize the events and motivations leading up to the implementation of the new policy. Concurrently, a discourse analysis of these documents and the actual policy and guidelines for its implementation was conducted in order to ascertain the underlying assumptions regarding the regulation and delineation of clinical appointments. In creating consensus for the policy using the discourse of self-determination, policymakers held clinical appointments to different regulatory standards than other academic appointments, acknowledging explicitly the tension between academic responsibilities and clinical practice obligations, with implications for the way academic freedom is conceptualized in the clinical setting.

Introduction

On January 9, 2003, the University of Toronto Faculty Association (UTFA) announced in their newsletter their decision to take the necessary steps toward certification prior to June 30, 2003 (UTFA, 2003, Jan. 9). Leading up to this decision were a series of official communications reflecting disagreement between UTFA, the administration, and clinical faculty over who represents the interests of clinical faculty. The term clinical faculty at the University of Toronto is used to refer to physicians with academic appointments who teach, do research and practice medicine at one of the university's affiliated teaching hospitals. At the time there were approximately 1,300 full-time and 2,000 adjunct and part-time clinical faculty appointed to the UofT. The conflict was sparked by new policy arrangements involving payment plans that were being explored by the University affiliated teaching hospitals, the primary employer of clinical faculty. Specifically, UTFA disputed the university's decision "not to become a party to the Alternative Funding Arrangements (AFAs) for physicians practicing at the Hospital for Sick Children" (MedEmail, 2001, July 20, par. 1). UTFA saw these new funding arrangements as a direct threat to the academic freedom of clinical faculty and

brought an application to the Supreme Court to issue an injunction that would prevent finalization and implementation of the AFAs. The Faculty of Medicine, backed by the university administration, saw UTFA's involvement in the negotiation of these new funding plans as a direct infringement on the rights of self-determination of clinical faculty. While the application was withdrawn by UTFA the stage had been set. The Ministry of Health and Long-term Care (MOHLTC) had determined that AFAs would maximize government investment in health care and was pushing for broad adoption of these new financial structures. The Faculty of Medicine and university administration took the position that "clinical earnings belong to clinical colleagues, whether generated through AFAs or through fee-for-service billings to OHIP and that academic freedom was not a function of how clinical faculty were remunerated" (MedEmail, 2001, July 20, par. 3 and 4). They thus decidedly refused to assert jurisdiction over practice plans and other financial arrangements:

We respect the right of clinical colleagues, as self employed professionals with status-only university appointments, to negotiate and determine their own practice plans. We greatly value the contribution that clinical faculty make to the academic mission of the University. And we believe that clinical colleagues who have generated income in their role as self-employed professionals can best make informed decisions as to how to allocate that income so as to balance clinical imperatives of a particular practice setting with their teaching and research commitments. The Faculty and University Administrations unequivocally reject the arguments advanced by UTFA concerning academic freedom and practice plans. (MedEmail, 2001, July 20, par. 3)

Contributing to this impasse arguably may have been cases such as the high profile Olivieri case, which were successfully championed by UTFA and which drew attention to the ways that the academic freedom of clinical faculty could be compromised by the current governing structures and evolving relationships with industry. The rhetoric framing the administration's resolve to amend governing documents in order to remove clinical faculty from the jurisdiction of UTFA, and UTFA's subsequent response to pursue certification, constructed the concept of 'academic freedom' for clinical faculty as distinct from and arguably as secondary to the concept of 'self-determination'. In the end, the university administration circumvented UTFA and implemented a new governing policy for clinical faculty, ultimately backing the decision of clinical faculty to minimize the involvement of the university in "their affairs".

This paper will explore the events leading up to the implementation of the new Policy for Clinical Faculty, contextualizing this governance issue in larger systemic considerations. It will be argued that in creating consensus for the policy using the discourse of self-determination, policymakers held clinical appointments to different regulatory standards than other academic appointments, acknowledging explicitly the tension between academic responsibilities and clinical practice obligations, with direct implications for the way academic freedom is conceptualized in the clinical setting.

Methodology

A policy analysis of public documents, including background documents, task force reports and press releases, was undertaken to reconstruct the events and motivations leading up to the implementation of the new Policy for Clinical Faculty. Specifically, the University of Toronto news websites as well as the Faculty of Medicine website were searched using the terms ‘clinical faculty’ in combination with first ‘policy’ and second ‘academic freedom’ for public domain texts related to this topic. The UTFA and the Canadian Association for University Teachers (CAUT) websites were also searched using the same keywords, in order to capture the specific standpoints of each organization as contained in reports, memos or other correspondence, news releases/newsletters, and other documents published related to this policy or the issue of academic freedom and clinical faculty more broadly. All the texts that were identified with the aforementioned searches were included in the analysis.

Following the reconstruction of the events leading to the implementation of the Policy for Clinical Faculty, a discourse analysis of the texts identified as well as the actual policy and guidelines for its implementation was conducted in order to ascertain the underlying assumptions regarding the regulation and delineation of clinical appointments. Discourses are popular pronouncements linked to institutionalized processes that we draw upon to negotiate meaning in any given interaction and are often used to rationalize and sustain certain processes at the expense of others. The resulting social relations are the organized processes that govern how we do things (Foucault, 1980, p. 98). Dominant or popular discourses are identifiable from their pervasiveness and are often embedded in policy documents and may carry material effects. (Blackmore, 1997, p. 79). Discourse analysis thus provides a heuristic for understanding the implications of policy.

The Governance Structure for Academic Freedom at UofT

To date, UTFA is the governing body that represents and safeguards the interests of faculty vis-à-vis the university administration. The relations between UTFA and the administration are governed to a large extent by the Memorandum, a contract between the Governing Council of the University and the University of Toronto (UofT) implemented in 1977, which lays out policy with regard to matters involving faculty employment. William Nelson summarizes the scope of the memorandum:

The memorandum guarantees academic freedom and lays out policy and procedure in negotiating salary and benefits, handling grievances, and defining workload and leave policy. It also provides that a range of University policies regarding tenure, appointments, promotions and other matters may not be changed without the Faculty Association’s agreement. (UTFA, 2003, Jan 9)

The memorandum in effect is comprised of policies that in most other universities are set out in union contracts. The most important functions of the Memorandum policies, referred to also as the “frozen policies”, are linked to the safeguarding of the academic freedom of faculty by including protection against administrative reprisals that could

potentially impact faculty salaries or benefits. At UofT, in the absence of a faculty union, UTFA has acted on behalf of faculty on numerous occasions, including clinical faculty, when their positions are jeopardized as a result of possible infringements to their academic freedom and employment rights.

While specific mention is made of clinical faculty in the Memorandum, it is counterbalanced by a stipulation that further “advice from the Faculty of Medicine” would clarify how these policies apply to clinical faculty. According to the Faculty of Medicine, even though advice did ‘ensue’, this did not translate into official policy, thus creating a policy gap with regard to clinical faculty (Task Force on Clinical Faculty, 2002, p. 7). However, as noted above, UTFA, from its inception, has represented clinical faculty in need of UTFA’s support. UTFA argued that this historical precedent demonstrated that the University had, through its conduct and actions, accepted UTFA’s authority to represent clinical faculty by virtue of working with the organization to resolve such cases (Sack Golblatt Mitchell, 2004, 5-6). Interestingly, even in the face of historical precedent it is the purported policy ambiguity surrounding clinical faculty that was used as the starting point for the policy related discourse that culminated in the above noted impasse between UTFA and the University and Faculty administration. This shift, which may be seen as an attempt to curtail the scope of UTFA’s involvement in the affairs of clinical faculty, seems to have coincided with a shift in the governance relationships between the teaching hospital and the university; changes in the way physicians are remunerated.

Alternate Funding Arrangements and Academic Freedom

The position of the University and Faculty administrations reflected a clear belief that financial arrangements of physicians should not come under the regulatory jurisdiction of the university. This position is captured in the following statement made by former Dean of Medicine Arnie Aberman in response to the claim made by UTFA that he and other Deans had dealt with the organization as authorized to represent clinical faculty with respect to appointments and related matters:

It is my position that the University of Toronto and any UofT related bodies such as UTFA have no rights with respect to practice plan financial policies. If the UofT were to make it a policy that, in order for a member of a practice plan to have an academic appointment, the policies of the practice plan regarding financial arrangements were subject to University regulation (as opposed to voluntary compliance), I would recommend that members of practice plans do not accept a university appointment or resign from the Faculty, if they already were appointed. (MedEmail, 2002, Jan. 28, par. 3)

In contrast, UTFA’s involvement in the negotiations of the AFA plan at the Hospital for Sick Children (HSC) was articulated as an effort to safeguard the academic freedom of clinical faculty. UTFA considered aspects of the proposed AFA arrangements as risky in

that clinical faculty may find themselves subjected to employment or economic reprisals without sufficient recourse:

The Faculty association believes that clinical faculty have as much right to exercise their conscience at work as do other professors. They should not be vulnerable to attacks on their compensation because they criticize the Hospital administration, or the University administration, or a corporate sponsor of the Hospital or University. We believe such protection of academic freedom is crucial to the integrity and reputation of our institutions. (Med.Email, 2001, July 20, par. 19)

UTFA's decision to involve itself in the negotiations of the AFA at the HSC was consistent with its involvement over the years in other cases involving clinical faculty. What was different in this case perhaps was the direct link being made by UTFA between evolving governance arrangements between the hospitals and the government and the academic responsibilities and rights of faculty. This threatened the stability of the proposed new funding arrangements and potentially the resource sharing relationship between teaching hospitals and the University. The Faculty of Medicine and the University of Toronto administration rallied together against UTFA and a process was set in motion to remove UTFA's involvement in clinical affairs.

Clinical Faculty – Competing Accountabilities

In January 2002, Vice President and Provost Adel Sedra established the Task Force on Clinical Faculty with the mandate to make recommendations as to how the relationship between clinical faculty and the University of Toronto might be optimized. The task force was Co-Chaired by Vivek Goel, Vice-Provost Faculty and David Naylor, Vice-Provost, Relations with Health Care Institutions and Dean of Faculty of Medicine. It's membership included clinical faculty, tenured faculty from the university and representation from the hospital. Of the tenured faculty, all but one belonged to a department in the Faculty of Medicine. In the terms of reference, the Task Force was charged with obtaining "the views of clinical faculty as to how their relationship with the University should be governed" (The Task Force for Clinical Faculty, 2002, p. 22). In this manner, the deliberations are framed in the discourse of *self-determination*; clinical faculty deciding for clinical faculty, articulated both in the mandate and the composition of the Task Force. This discourse was also reproduced in the actual report and subsequent press coverage surrounding the report as analyzed below.

The report consists of "a review of the history and context for clinical appointments at the University of Toronto and its affiliated hospitals", and addresses issues specific to "clinical appointments, academic freedom issues in the clinical setting, the interface between practice plans and the University, the role of affiliation agreements between teaching hospitals and the University in practice plan issues, and potential mechanisms for renewal and revision of these policies" (The Task Force for Clinical Faculty, 2002, p. 5). Throughout the document, the "uniqueness" of clinical faculty is described and articulated. Clinical faculty are set apart from other faculty because they are ultimately accountable to three related but distinct institutions, the university, the hospital and the

regulatory body. The employment arrangements of clinical faculty are very complex, with “considerable heterogeneity in the nature of appointments across clinical departments, and even within departments across hospital sites” (The Task Force for Clinical Faculty, 2002: p. 2). Most clinical faculty have status-only appointments with the University and as such do not receive benefits nor are they enrolled in the University’s pension plan. In terms of remuneration clinical faculty perform the bulk of their academic activity without direct compensation, and draw their salaries from practice plans or alternative funding plans¹. Both funding structures reflect the belief that “competitive and financially unrestricted private practice is incompatible with academic goals” and that such plans are necessary to “ensure the academic productivity” of clinical faculty (The Task Force for Clinical Faculty, 2002: p. 3). As a result, “[g]iven the complex relationships between clinical faculty, practice plans, affiliated hospitals and the University, dealing with academic disputes, particularly those that involve academic freedom, is not a simple exercise” (The Task Force for Clinical Faculty, 2002: p. 4).

Having thus described the *uniqueness* of clinical faculty and the complexity of their employment arrangements, the report proposes mechanisms to make the appointment of clinical faculty more transparent and to develop a process for dispute resolution that would allow clinical faculty to have their grievances resolved by a panel of peers-in this context, other clinical faculty (The Task Force for Clinical Faculty, 2002: p. 4). The report thus sets clinical faculty apart from other university faculty justifying the need for specific policy relating to clinical faculty alone. It also makes important distinctions in the articulation of what academic freedom means in the context of clinical faculty given their often overlapping responsibilities:

Legitimate limitations and appropriate restraints on academic freedom in the clinical setting are based on the missions of the hospitals and the professional values of clinical practice. The potentially legitimate exceptions to academic freedom include confidentiality of patient information, patient safety, quality of care, and the need for health care institutions to pursue their missions (The Task Force for Clinical Faculty, 2002, p. 15).

University statements and coverage in UofT’s web-based newsletter regarding the report, continuously described the task force recommendations as an attempt to:

...safeguard academic freedom while respecting jurisdiction of the hospitals and practice plans and strengthening the role of clinical faculty in resolving university-specific disputes . (see for example, Bloch-Nevitte, 2003, Jan 13, par. 5 and Bloch-Nevitte, 2004, May 4, par. 5)

¹ The principle behind practice plans is to minimize the impact of the market on academic activities by pooling earnings from patient billings and “supporting members of the plan whose research and teaching responsibilities limit their clinical activities and their abilities to generate practice related income” (Alternative Funding Plans, 2002, 3). Alternative Funding Plans (AFP), are more recent arrangements that are independent of practice plans and replace traditional fee-for-service OHIP billings with a guaranteed “block” funding to a group of physicians (Alternative Funding Plans, 2002, 2).

In other words, the proposed policy was being heralded as a tool to empower clinical faculty in the resolution of university specific disputes, clearly adopting the position of the Faculty of Medicine that up until then clinical faculty did not have adequate mechanisms – a point which was strongly disputed by UTFA.

UTFA's Position

In response to official statements from the Faculty of Medicine and the University administration that UTFA does not represent clinical faculty, UTFA articulated the following:

Although the matters may appear to be complex, they are in essence relatively simple: the University administration is obligated to protect academic freedom, to protect against reprisals and to provide impartial dispute resolution processes for its faculty. When the administration does not protect academic freedom, UTFA must respond (UTFA, 2001, Nov. 22, par. 6)

From the outset UTFA has extended its protection to clinical faculty in matters it has perceived to involve academic freedom. The ambiguity in the language of the Memorandum had not translated in ambiguity in the position of UTFA:

Academic freedom is the essential prerequisite of a real University. It is a specific, negotiated right, the most precious and most valuable right in the academy, one fought for over decades by faculty associations. It is a right that protects all academics, and clinical faculty are no exception. . .the obligation exists even if the individual is not a member of UTFA because UTFA must protect the fundamental values in the MOA which affect our entire community (UTFA, 2001, Nov. 22, par. 7).

Motivated by this concern, UTFA had historically ignored the fact that clinical faculty are non-voting members of the organization, and had extended their support but also their authority to include clinical faculty. The justification for what may be perceived as crossing jurisdictional boundaries is that anyone involved in the academic mission of the University is within UTFA's scope, because infringement of academic freedom in one location weakens the position of all faculty vis-à-vis administration. UTFA over the years since the implementation of the MOA has filed grievances on behalf of clinical faculty, incurring the costs of these cases. The matter of costs deserves a further note here. One of the concerns made by UTFA regarding the creation of a separate legal mechanism to represent and safeguard the interests of clinical faculty was that:

...in the absence of any viable organization representing clinical faculty that is equivalent to or has similar resources to that of UTFA, giving individual faculty members recourse to [such a body] is a mostly theoretical right that could not be exercised by the vast majority of clinical faculty given the expense involved in hiring their own counsel (Sack Golblatt Mitchell, 2004, p. 7)

A Question of Academic Freedom or Academic Capitalism?

Academic freedom is considered one of the most fundamental tenants of the academy, and to varying degrees an organizing principle of the university as an institution in our society. In the context of the University of Toronto, the principle of academic freedom is encompassed in the Institutional Statement of the Purpose of the University:

Within the unique university context, the most crucial of all human rights are the rights of freedom of speech, academic freedom, and freedom of research. And we affirm that these rights are meaningless unless they entail the right to raise deeply disturbing questions and provocative challenges to the cherished beliefs of society at large and of the university itself.

It is this human right to radical, critical teaching and research with which the University has a duty above all to be concerned; for there is no one else, no other institution and no other office, in our modern liberal democracy, which is the custodian of this most precious and vulnerable right of the liberated human spirit. (Governing Council, 1992, October 15, p. 3).

It is also legally defined and encompassed in article 5, of the MOA:

...academic freedom is the freedom to examine, question, teach, and learn, and it involves the right to investigate, speculate, and comment without reference to prescribed doctrine, as well as the right to criticize the University and society at large...(as found in UTFA, 2001, November 22, par. 8).

In both official statements noted above, the University's commitment to safeguarding and upholding the academic freedom of faculty seems unequivocally clear. Also clear, is the spirit of tolerance embedded, and to a degree encouraged, within these official statements. It is easy to infer from these statements that it is part of the social responsibility of the University to ensure that faculty can exercise unencumbered and without fear or reprisal their academic freedom. Also contained within article 9 of the MOA is an explicit protection of academic freedom through the prohibition of discrimination of faculty with "respect to salaries, fringe benefits, pensions, rank, promotion, tenure, reappointments, dismissal...leaves, or any other terms and conditions...or any activity pursuant to the principles of academic freedom" (as found in UTFA, 2001, Nov. 22, par 9).

While the purpose of the University and the MOA clearly state the University's commitment to respect and uphold academic freedom, in the context of clinical faculty, the issue is complicated, as noted previously, by the multiple institutional allegiances that clinical faculty necessarily must balance, namely the university, the hospital and their professional organization. Dr. Philip Berger, a member of the Task Force struck to study and make policy recommendations with regard to clinical faculty made the following statement in an interview, describing how academic freedom for clinical faculty needs always to be balanced with the independent mission and values of the profession:

There is a legitimate distinction. A clinical faculty member can't go to another private doctor's office and hand out literature calling for the dismantling of the Canadian Health care system; even with academic freedom that would be untenable (Bloch-Nevitte, 2003, Jan 13, par. 10)

On the basis of this statement one must wonder the degree to which critical scholarship is "tenable" or endorsed by the profession and how the definition of academic freedom is interpreted in the case of clinical faculty. On December 15, 1998, the University administration published in their web-based newsletter their official position with regard to the Olivieri case. Included are the following statements:

- As a faculty member of the University of Toronto, Dr. Olivieri is entitled to the full freedoms, rights and privileges of all members of the faculty including vigilant protection of her academic freedom.
- The contract entered by Dr. Olivieri with Apotex violated University policy and would not be administered by the University...
- ...the University intends to review its relationships with all of its affiliated teaching hospitals to ensure that the circumstances of faculty members working in these hospitals are fully consistent with the University's policies and the protection of our colleague's rights, privileges and freedoms as members of the University. (News@UofT, par. 2, 3 and 10)

Throughout this statement Dr. Olivieri is described as a member of faculty of the University, deserving the same consideration with regard to academic freedom as any other faculty member. Nowhere in the statement is there mention that Dr. Olivieri or clinical faculty in general are different from other faculty because of their multiple accountabilities or that academic freedom must be balanced with the profession's independent values. A few years later, in a public statement made by UofT President Birgeneau with regard to academic freedom, the University's position is shown to have aligned itself closer to the position presented by Dr. Berger above. At the same time, President Birgeneau's statement reveals the complexity of the issue by referencing the challenging and potentially volatile relationships researchers may find themselves engaged in, while working on industry funded research projects:

What is at issue in two highly publicized cases – the Dr. Nancy Olivieri/Apotex dispute and the Dr. David Healy/ Centre for Addiction and Mental Health job revocation – is the reach of academic freedom – namely, the extent to which academic freedom can be invoked by faculty members in their relationships with parties other than the university. In Dr. Olivieri's case, the dispute originated from a private contract which did not go through the university or indeed, through the hospital at which she was appointed. In Dr. Healy's case, the dispute involves an offer of appointment to a clinical leadership position at the hospital so that patient care issues also play a central role. Both these cases involve hospital clinical personnel with status-only university appointments...[H]owever, in my view, the central issue in each case is not academic freedom. To extend the reach of academic freedom to encompass such cases risks so distorting the concept that, in

the end, the final result may be a weakening rather than a strengthening of academic freedom at our Canadian universities. (Birgeneau, 2001, par. 6)

The discourse used to moderate the scope of academic freedom thus allowing the University to distance itself from these two cases is interesting. President Birgeneau refers to the status-only affiliation of these two faculty members and how both conflicts involved aspects of work conducted by the faculty in their non-university capacity. It is misleading to make such a reference without elaborating on how medical education actually takes place.

The status-only affiliation of clinical faculty is a by-product of the governance arrangements the University has with its teaching hospitals. Clinical expertise is by and large still taught in an apprentice model. As a result, the majority of clinical training at the undergraduate and postgraduate level must take place in a clinical setting, a highly expensive and resource intensive training. It is not functional and economical for medical schools to try and reproduce the clinical setting for their students. For this reason medical schools in North America have special arrangements with some hospitals, to ensure that students learn from established physicians and receive adequate and appropriate exposure to real patients. To work in such a setting and to be eligible to supervise and teach students, you must be appointed to the University. Because much of the clinical teaching takes place when the physician is treating actual patients, s/he is still primarily considered an employee of the hospital, and will thus receive a status-only appointment from the University. Status only appointments do not receive direct salary remuneration by the University, other than stipends linked to specific educational administrative positions. In some cases, when individuals want to contribute most of their time to teaching, including class room teaching, and perform academic related functions for the majority of their time, the majority of their salary is not linked directly to patient care, and thus they will become primary employees of the University with all the associated benefits and pension arrangements.

The medical school cannot complete its educational mission without the resources provided by the teaching hospitals and the support and involvement of status-only faculty appointments. Such being the case, the comment made by President Birgeneau seems to evoke an image of two-tiered faculty, those who have the explicit protection of the university and those who do not. Is it fair to discriminate against status-only clinical faculty, with regard to academic freedom, when they perform the bulk of medical training? This would have severe implications with regard to the type of teaching medical students are exposed to when the bulk of their teaching comes from faculty members who would not theoretically have the right to teach and conduct research critically. By extension, how can the medical school firmly entrenched within the confines of the university sustain clinical and other academic research, if not from the activity of its status only clinical faculty? This draws attention to another unique element in the relationship between the university and the teaching hospital.

While the teaching hospital helps sustain the educational mission of the medical school, the relationship between university and teaching hospital is mutually reinforcing. It is

through the status afforded to clinical faculty through their affiliation to the University that the research enterprise of both the medical school and the teaching hospital is sustained. Clinical faculty account for over half of the research funding flowing through the Faculty of Medicine and the University's affiliated hospitals (Med-E.mail, January 21, Vol. 10 no 18 par. 1) Clinical faculty, as members of the academy can access all the government granting agencies that support academic research. Each teaching hospital has an affiliation agreement with the medical school where issues such as how these grants are administered is worked out. In some cases grants are administered through the University and in other cases through the hospital research offices. Members of clinical departments can secure additional contracts negotiated privately as consultants, as all faculty members can, and the university again facilitates this activity through a variety of mechanisms, such as establishing group consortiums for consulting, providing insurance etc. Why would the university do this? Dissemination of the results of privately funded research is included on the curriculum vitae of faculty and counts towards their academic promotion and contributes to the knowledge generated and used by the academy as a whole. Faculty members are expected to attract funding to sustain their research activity, and if some of this funding is in the form of private contracts, this is still seen as beneficial to the research mandate of the University, as long as it does not conflict with other governing principles of the University. Without going into the details of the Olivieri and Healy cases, Birgeneau's comment about compromising academic freedom if it is applied to situations that do not involve the University directly is important to ponder with respect to clinical faculty given that medical education is very much intertwined with clinical practice in the teaching hospitals and clinical research is increasingly being supported directly through industry sponsored clinical trials, or indirectly through matched funding formulas supported and encouraged by government funding agencies.

Winning the Standoff but Losing the War

Faced with UTFA's threat to certify following what was perceived a unilateral move by the Administration to change the Memorandum, Shirley Newman responded with a letter arguing that the University never intended to destabilize the working conditions of faculty and librarians, rather it was trying to "stabilize the nature of academic appointments for clinical faculty and to maintain [the administrations] working relations with UTFA" (Newman, 2003, Jan, 13, par. 3). This opened up the process to ongoing discussions between UTFA and the University and Faculty administrations.

UTFA published a Memorandum re Clinical Faculty on December 2003 summarizing the points of agreement and disagreement between UTFA and the administration. Within the memorandum UTFA stated that "it had no interest in the negotiations of physician compensation, the structure of clinical practice plans or the governance of alternate funding plans" and that it was prepared to "cease to represent clinical faculty under the MOA provided that appropriate conditions were created for the representation of clinical faculty" (UTFA: 2003, December 11, par. 4-5). This marked a significant shift on the part of UTFA, a willingness to compromise on the issue of representation if sufficient safeguards for academic freedom were put in place. One of the major points of contention for UTFA, as noted previously has been the governance structure created with the new

policy on clinical faculty, which they argued undermined the ability of the University to protect clinical faculty from any infringement on their academic freedom, since the University would not have binding authority over disputes involving academic issues. This point was never resolved to UTFA's satisfaction, as acknowledged by Vivek Goel, Vice Provost, in his statement to the Academic Board on October 28, 2004:

An outstanding item with the faculty association is their position that a University Tribunal should have the authority to impose a remedy on a hospital or practice plan where there is a finding of a breach of academic freedom. The hospitals and clinical leaders have made it clear that they are not willing to accept this viewpoint given the independent governance and finances of their institutions and practice plans. Nonetheless, they have accepted the key provision that the findings are binding in their internal dispute resolution mechanisms, along with other safeguards and sanctions inherent in the manual. (Goel, 2004, par.7)

In the same statement, Goel proceeded to present the proposed policy for clinical faculty in favorable terms stating clearly the resolve of the Administration to proceed in implementing this policy despite UTFA's refusal to amend the appropriate paragraphs in the Policy and Procedures for Academic Faculty. To justify the decision to move ahead with the implementation of the proposed policies without UTFA's support, Goel stated that "the University has never agreed that the Memorandum applies in full to all clinical faculty" and that "clinical faculty have endorsed the new policies and view them as superior to the current arrangements". Also embedded in the document are several references to amendments made to the proposed policies as a result of discussions with UTFA. (Goel, 2005, par. 10) The message in the statement is clear. UTFA's representation of clinical faculty in previous years was allowed because there was no alternative mechanism available for these disputes to be heard. These were outstanding cases and did not represent implicit or explicit acceptance of UTFA's representation of clinical faculty by either the University or by clinical faculty. In the words of Dr. Philip Berger:

Clinical faculty have always found it to be unacceptable that fully employed UofT faculty could sit in judgment on independent, self-employed professionals and their private funding arrangements. (Block-Nevitte, 2004, May 4, par. 12)

In fact, in a 2004 survey sponsored by the Ontario Medical Association at the request of the medical staff associations of UofT's nine fully affiliated teaching hospitals, clinical faculty were asked their views on the proposed policies. Eighty three per cent (83%) of four hundred and eighteen (418) eligible respondents agreed with a statement endorsing the proposed clinical policies and eighty five per cent (85%) indicated that they do not want UTFA to represent them in dealings with the University (Wahl, 2004, June 10, par. 7). The Faculty of Medicine and the University Administration were thus portrayed as respecting the right of self-determination of clinical faculty by working hard to incorporate the suggestions made by UTFA while at the same time showing resolve in their refusal to infringe upon the self governance structures of the hospitals and their practice plans. Self-determination was asserted as a right, which emerged from the

associated responsibilities clinical faculty have to hospitals, professional regulatory bodies and patients. UTFA was thus cast as being inflexible and unwilling to acknowledge the unique challenges these tripartite accountabilities pose for clinical faculty.

In a letter written by George Luste, President of UTFA addressed to Ms. Rosa Patten, Chair of the Governing Council, the degree to which UTFA's authority was undermined and circumvented by the whole process is clearly articulated:

...the most troubling aspect of the entire matter is the Administration's determination, now supported by the Academic Board, to proceed unilaterally with respect to clinical faculty by ignoring its legal obligation to obtain UTFA's consent to these changes....UTFA recognizes that there appears to be support for these policies and procedures from the various "estates". ...[H]owever...hospital institutions including CEOs, now have broad authority regarding University matters, without concomitant legal commitment by them to protect the academic freedom of clinical faculty which lies at the heart of the academic mission carried out by clinical faculty...Accordingly, UTFA is unable to agree with the proposed policies and procedures as they now stand...UTFA disputes the legal right of the University to unilaterally approve and implement these policies and procedures. UTFA reserves the right at any time in the future to challenge the validity of the new policies and procedures, both on its own behalf and on behalf of clinical faculty. (Luste, G., 2004, June 15, p. 1-2)

Clinical faculty thus succeeded in severing their official ties with UTFA. In the spirit of solidarity, UTFA refused to give up its right to challenge these new policies and left its door open to those members of the clinical faculty that may in the future need their help.

The Discourse of Self-Determinations and Implications for Academic Freedom

The discourse of self-determination as activated in the development of the UofT policy for clinical faculty reinforced impressions that clinical faculty have a strong sense of professional identity, which is very much connected to the profession's self-regulatory status in society. Because of their complicated employment arrangements, clinical faculty do not perceive themselves as typical university faculty, hence the multiple references in the UofT Task Force Report to their "uniqueness". This perception, coupled with legislation in Ontario, which prohibits medical professionals from joining unions, may have interfered with the ability of UofT clinical faculty to relate to UTFA, which in many ways functions like a union and thus looks to push forward collective concerns. In the process, the ability of clinical faculty at UofT to challenge the institutions that govern their work and academic activity was curtailed.

The discourse of self-determination has now created a very material implication for clinical faculty appointments. Not only are clinical faculty officially set apart from other university faculty, but within the ranks of clinical faculty distinction is made between

clinical faculty who have the right to academic freedom and those who do not. This distinction is made on the basis of “professional time commitment to academic work and not source of compensation or practice location” (Procedures Manual, 2006, p.i). Only full-time clinical faculty who spent the majority of the time (i.e. 80%) engaged in academic activity (teaching, research, administration) and belong to a conforming practice plan² or its equivalent are considered ‘eligible’ faculty and have access to the Academic Clinical Tribunal to resolve disputes involving academic freedom. This implies that part-time or adjunct clinical faculty, who are also involved in educational activities do not require academic freedom. While the Tribunal has the power to deliberate on a concern, issue a finding as to whether there has been a breach of academic freedom and delineate the implications of the breach, “it does not have the power to award remedies, or to change the provisions of a duly enacted policy or established practice of the University, relevant site or conforming practice plan” (Procedures Manual, 2006, p. 4). Further mitigating the scope of protection enjoyed by clinical faculty with regards to academic freedom, is clause 8 of the policy that states:

The University and fully affiliated teaching hospitals affirm that eligible clinical faculty have academic freedom in their scholarly pursuits. All clinical faculty remain subject to the applicable ethical and clinical guidelines or standards, laws and regulations governing the practice of medicine and the site-specific relevant site’s policies or by-laws. (Clinical Policy, 2004, p. 3)

Clause 8 allows teaching hospitals to assert the primacy of their missions as health care institutions and curtail academic freedom in the clinical setting if they perceive it to interfere with their ability to fulfill their mission. For example, after the Policy for Clinical Faculty came into effect on July 1, 2005, one of the University’s teaching hospitals, St. Michael’s hospital, a Catholic faith-based institution created an internal policy that states that a claim of academic freedom can not be made in situations that interfere with the Hospital’s ability to provide health care in accordance to the ethical and social teachings of the Catholic Church. This hospital policy has implications not only for the way medicine is practiced within the hospital but also by extension the way it is taught and researched.

In broad terms, the Policy for Clinical Faculty reinforced the longstanding disaggregated operational arrangement between UofT, its medical school and its affiliated teaching hospitals. While the medical school is embedded in the university administratively, the teaching hospitals are independently governed and their relationship with the University is codified in separate affiliation/partner agreements as well as separately negotiated practice plans for each clinical site (Ferris, L. E. et al., 2007, p. 25). The Policy for Clinical faculty delineated the scope of academic freedom in such a way that the independence of teaching hospital operations was reaffirmed.

The reluctance to interfere with this disaggregated governance arrangement, despite threats of eroding the academic freedom of clinical faculty, warrants separate and more

² A conforming practice plan is one that adheres to several core principles that promote, support and sustain academic activity (see Procedures Manual, 2006, p. 3-5).

focused study as it raises the question of whether or not clinical professions as currently organized really ‘fit’ within the traditional governance structure of the university.

Conclusion

UTFA refused to support the governance structure proposed by the task force for clinical faculty. They accused the University and Hospital administrations of supporting a two-tiered notion of academic freedom, one for the university and one for the hospital:

In the University setting the current MOA provides for “final and binding” resolution of a grievance by an independent arbitration committee...the task force report, which was accepted in principle by the Academic Board, removes the “final and binding” provision for clinical faculty in the affiliated hospitals, effectively voiding real academic freedom in hospital setting. (Luste and Love, 2005, June 15, par. 5)

The fear with such an arrangement was that affiliated hospitals may place “a higher priority on their perceived institutional self-interest and control than on the public good that academic freedom serves” (Luste and Love, 2005, June 15: par. 6). For some clinical faculty, this fear is well grounded:

My experience and that of David Healy is illustrative. We fulfilled our ethical obligations by exercising academic freedom to disclose scientifically identified risks to patients. The attacks against us were potentially career destroying. Although our struggles were widely publicized, the inaction of the university administration was matched only by the silence of the UofT Joint Centre for Bioethics. Only UTFA and the Canadian Association of University Teachers (CAUT) provided effective support. (Olivieri, 2004, June 15: par. 3).

Is it an issue of standpoint? As Peter Durie writes, the policies were not drafted by “vulnerable faculty who see a wrong that needs righting, but by persons in secure administrative positions” (Durie, 2004, June 28, par. 5). The University and Faculty of Medicine administrations are convinced that the new policies have addressed a significant policy gap and now serve to make the governance relationship between the teaching hospitals and the university more transparent and less ambiguous.

While the circumstances that led to this new policy arrangement between clinical faculty and the University of Toronto were unique to this institution, the concerns raised by UTFA regarding the protection of academic freedom in clinical teaching settings speak to a much more pervasive problem. The CAUT Task Force on Academic Freedom for Faculty at University-Affiliated Health Care Institutions notes:

Widely publicized academic freedom cases involving clinical faculty, such as Olivieri or more recently, David Healy, are the exception. Hidden from public view have been scores of other clinical faculty who have suffered in recent years

for voicing their concerns about prevailing orthodoxies within their specialties, for criticizing administrative decisions within their institutions, for questioning the priorities of their colleagues, or for upholding the academic freedom of fellow clinical faculty (CAUT, 2004, 6).

Across Canada, clinical faculty have less academic freedom than their non-clinical colleagues. While the legislative arrangements differ from province to province and the institutional arrangements differ from university to university, generally, the following issues define the scope of the problem: a) not all universities and academic health care settings have strong and clear statements supporting academic freedom for clinical faculty, b) the majority of clinical faculty do not have security of appointment and income and can suffer reprisals during academic freedom disputes, c) for the most part clinical faculty can not access adequate dispute resolutions mechanisms to resolve academic freedom disputes both in the university and academic health care settings, and finally d) for various reasons, including legislative, cultural and financial, clinical faculty do not have strong ties to representative bodies that will advocate for them, and buffer the costs of arbitration during academic freedom disputes (CAUT, 2004).

As the UofT case demonstrates the resolution of such complicated issues are very difficult particularly since the various stakeholders involved are tightly entrenched within a culture resistant to change (Bloom, 1988). While on the surface the new Policy for Clinical Faculty seems to address the problem of representation and protection of academic freedom for clinical faculty, in fact, one may argue it has not evolved the relationship of clinical faculty to the university that dramatically. Many of the concerns raised by the CAUT Task Force still apply to the University of Toronto situation. Inevitably we must wait for the true test, for someone to find himself or herself in a position of compromise when they are no longer able to sustain the responsibilities of tripartite accountabilities. It is at this point of disjunction that the robustness of the policy will be tested and we will know for sure if the concerns articulated by UTFA were correct.

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