



MAUT – APBM Newsletter

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Editor's Remarks

The votes on the revisions to the Constitution have been counted and, reminiscent of referenda on President-for-life status, were nearly 99% in favour of the proposal. Of the 192 ballots cast, only two commendably counter-suggestive individuals dissented; of these, one offered as an explanation the fact that the English and French names of our association do not have quite the same meaning. This is a fair point but, of course, the French name had already been approved separately in an earlier referendum. The Constitutional Review Committee has not yet been disbanded; there remains to be discussed a question concerning the voting rights of retired members.

In this issue we address two important matters. First, Past-President Myron Frankman returns to McGill's Intellectual Property Policy. There have been several developments since Myron last reported to us, and there are clearly important matters to be resolved. Through treatment of copyrighted works, one currently- contentious element could potentially affect virtually every member of MAUT, not only those of you with advances in bio-engineering up your sleeves.

Second, Dan Guitton, our VP External and therefore our prime delegate to CAUT and FQPPU, reports on commercialization in the University. This topic spans a variety of potential concerns from privately-funded research contracts to ads in the washrooms, and Dan has developed a great deal of expertise in the experiences and practices of other universities, in Canada and elsewhere. In this article, he distinguishes several quite different types of commercialization, and considers their potential impact. Regardless of your *a priori* views on public vs. private education and private-sector research, you will probably find disturbing elements in Dan's report.

As an aside, I hope that the word 'your' in the last sentence came out correctly. The software repeatedly tried to correct 'your *a priori*' to 'you're *a priori*', presumably on the grounds that whoever wrote the program could not conceive of an instance in which 'a' could follow 'your.' [However, it is acceptable to say 'You're a bunch of priories, you lot.'] Thanks, HAL, but I'm just going to have to pull your plug for a minute here. I'll turn you back on, truly I will.

Finally, please note that our office is once again temporarily unstaffed, as Nada Abu-Mehry has left us to take another job. She will be helping us in the transition, but her office will usually be empty during the day. Our professional and legal officer, Joseph Varga, remains available as usual.

— John Galbraith ■

Intellectual Property Policy

The special meeting of Senate on May 31, 2000 to consider the proposed Intellectual Property Policy ended with the draft document being referred back for further discussions between the Advisory Committee, which I chair, and Vice-Principal Bélanger. The Advisory Committee met with VP Bélanger and Line Thibault, McGill's General Counsel, in July. That meeting led to a revised document that took account of a number of comments that were made during the Senate meeting.

The latest version of the IP Policy Proposal, dated July 27, 2000 can be viewed at <http://vm1.mcgill.ca/~inmf/http/ip.html> or on the Faculty of Graduate Studies and Research web page <http://www.mcgill.ca/fgsr/ippolicy07-27-00.pdf>, from which a pdf version of the document can be downloaded. This draft divides into two columns on those articles where the Advisory Committee and the Vice Principal were unable to agree. The differences relate to the provisions governing the University's right to the royalty-free use of those of our works which are covered by Copyright (Article 4.3) and the ownership of works which the inventor wishes to commercialize through the Office of Technology Transfer (Section 5, Article 6.11, Section 7 and Articles 8.4, 8.5, 8.6 and 9.1.2. The Advisory Committee's position continues to be that ownership is vested in the inventor unless the inventor and OTT complete a mutually acceptable commercialization agreement which involves commercialization by OTT. At that point ownership becomes joint between the inventor and OTT.

The impending deadlines that hung over earlier stages of the IP Policy

discussion have vanished. The Senate-appointed ad hoc Advisory Committee has done its work. As of the Senate meeting of October 11 the IP Policy Proposal has not yet been brought forward by Vice-Principal Bélanger, who is apparently seeking advice from the Executive Committee of the Board of Governors prior to further consideration in Senate.

—Myron J. Frankman Past-President, MAUT ■

The Commercialisation of the University: the Increasing Role of the Private Sector in University Affairs

Introduction

As academics we take it as evident that the mission of the university should be to disseminate knowledge and seek truth via freedom of enquiry, assembly, thought and speech. The growing ties between universities and business are seen by many as threats to the university's mission. This is provoking widespread debate on university campuses and in organizations that represent university teachers. "Commercialization" is the word commonly used to designate the influence of the private sector in university affairs. The multifaceted and aggressive pace of this phenomenon has sparked many studies, reports, articles and books. Among the hundreds of potential references, some very recent examples are the study by the Federation des Professeurs et Professeurs du Québec *La Commercialisation de la Recherche... dans les Universités Québécoises*¹⁴; the Canadian Government's *Report of the Expert Panel on the Commercialization of University Research*¹⁵; an article in the Atlantic Monthly entitled *The Kept University*⁷,

and books sponsored by the Canadian Association of University Teachers "*Universities for sale*" and "*The Corporate Campus*" (see References).

The following is a brief overview of some different forms of commercialization.

Universities as marketing sites

The potential of easily reaching a large number of young consumers obviously leads to attempts by corporations to have their product actively visible and sold on campus. Here at McGill, we have witnessed the student reaction

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against an exclusive deal with Coca Cola. In such deals the University typically may receive a financial "reward" if a certain quantity of the product is sold. Thus, the University becomes de facto a merchant with a vested interest in selling this particular product. This form of commercialization is irritating to many, but appears to be a comparatively minor problem relative to others listed below.

Corporate access to the delivery of education

This is a topic of great concern to academics. In the January 10 issue of *Business Week* we may read: "Although education is a huge part of the U.S economy, until recently it wasn't much of a business. ... But as the millennium dawns, the private sector is poised to play a much larger role ... fueled by an explosion in the money available to education start-ups." Indeed, on-line universities owned by large corporations are increasingly challenging traditional universities¹. Tudiver² and Winner³ have summarized this phenomenon. Among many possible examples we note that the University of Phoenix, a subsidiary of Apollo Group, had in 1998 about 50,000 students paying an average annual tuition of US\$6,500. Faculty are part-time and untenured. Annual growth of Phoenix is reported to be about 20%.

Traditional universities themselves are involved in marketing educational products. "The University of California at Berkeley licenses to America On Line rights to market, distribute, and promote electronic courses. Professors are paid an honorarium for developing a course, but must sign copyright over to the university and waive any rights to royalties⁴." Clearly, liberated from the traditional university's physical plant communication technologies permit educational institutions to reach potentially an immense customer base. In this context, the role of the professor is diminished. Courses conducted electronically separate students from each other and from their professors and obviously, many full-time professors are no longer needed. Such processes lead to what has been called the "proletarianization" of professors because their role is diminished in favor of administrators that run the operation.

In Canada the problem of private universities seems most acute in British

Columbia⁵. Most provinces tightly regulate university-level education, keeping, say, the University of Phoenix out of their jurisdiction. However in BC, institutions with degree-granting authority from other jurisdictions have been allowed to operate in the province, subject only to a nominal licensing and bonding process administered by the Private Post-secondary Education Commission. The rise of private universities in BC has sensitized the *Confederation of University Faculty Associations of British Columbia (CUFABC)* to potential threats to public education that might be created by changes to the *General Agreement on Trade in Services (GATS)*. This is a multilateral agreement designed to govern international trade in services. CUFABC warns that if GATS were applied to the Canadian education sector, education would no longer be considered a public service, but rather merely another commercial enterprise. "The Canadian government would then be required under GATS to give access to the Canadian 'educational market' to companies from any of the GATS signatory countries⁵." Under such an agreement the use of public funds for public institutions could be viewed as unfair subsidies⁶.

Commercially sponsored research within the university

Recent reports show that in higher education today, corporations not only sponsor a growing amount of research, they frequently dictate the terms under which it is conducted. The Atlantic Monthly⁷ describes a deal between UC Berkeley and Novartis, the pharmaceutical giant, in which the latter gives a Berkeley department \$25 million in exchange for first rights to negotiate licenses on about a third of all departmental discoveries including those emanating from publicly funded research. Berkeley also grants

Novartis two of the 5 seats on the department's research committee, which determines how money is spent. Furthermore, the company is allowed to postpone publication of research results for up to 4 months.

The problem with such deals is that they not only clearly inhibit the free flow and exchange of information, but they also raise the ugly possibility that corporate sponsors will manipulate information that might, if released, undermine their commercial interests. The Atlantic monthly describes numerous cases in the U.S. in which drug studies have been influenced by corporate sponsors. The article reports a surprising and troublesome analysis published in the *Journal of the American Medical Association* "... that studies of cancer drugs funded by pharmaceutical companies were roughly one eighth as likely to reach negative conclusions as non-profit-funded studies." Such scandals have also been reported closer to home⁸. Nancy Olivieri, a physician at the University of Toronto, reports that she was conducting clinical trials on a drug when she discovered, in some patients, complications that severely threatened their health.

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The drug company that was partly subsidizing the trials attempted to silence these findings. "In 1996, after I informed the administration of the Hospital for Sick Children and the University of Toronto, of the possible side effects of this drug's toxicity in their own patients, these institutions sided with [the drug company]. Unknown to us, the hospital and the university were at that very time negotiating a donation of \$25 million... the largest donation ever made to a university in Canada."

Publically funded universities operating as if they were private

Incentives to operate a university using private sector approaches may be enhanced by reduced public funding and associated government efforts to render universities accountable for the money they receive. For example, in the drive to reduce expenses it is tempting for universities to hire part-time labor. The American Association of University Professors on their website claim that part-time and non-tenure-track appointments constitute more than half of all faculty in the U.S.⁹ In some Quebec universities the proportion of "chargés de cours" reaches close to 50%. "Royal Roads University in Victoria, British Columbia, employs less than a dozen 'core' faculty, hired on renewable fixed term appointments, and a much larger number of 'associate faculty' who teach a single course each."⁴

Commercialization of the results of university research

The commercialization of the results of university research is a subject of considerable current interest in university, government and industrial circles. This undoubtedly results from the transforma-

tion of our society from one having initially an industrial base dependent on natural resources, to finally the current trend where the 'natural resource' for future industry is *knowledge*. For the large part knowledge, at least in terms of its future evolution, resides in universities. Hence the marked interest of government and industry in exploiting this knowledge base for enhancing economic development in a highly competitive environment.

This phenomenon is very widespread and also of great concern in the US university system. Even though the US government has maintained, compared to Canada, a much stronger funding of basic research which includes university overhead expenses, large corporations are increasingly influential within US universities, as has been discussed above.

In Ottawa, the co-called Fortier report has been studied in parliamentary commission, for the purpose of formulation as law¹⁰. This is the '*Report of the expert panel on the commercialization of university research*' by Pierre Fortier, Senior Advisor to the Chairman, Innovitech Inc. The report is entitled: '*Public investment in University Research: Reaping the Benefits*.' The report makes 6 recommendations which all academics should study because they reveal a strong opinion in the community and if implemented could have a strong impact on academic freedom as we know it now. Because of their importance I reproduce them below.

Recommendation 1

The federal government should require an explicit commitment from all recipients of federal research funding that they will obtain the greatest possible benefit to Canada, whenever the results of their federally funded research are used for commercial gain.

Recommendation 2

In order for researchers to qualify for

federal research funding and universities to qualify for commercialization support, universities should be required to adopt policies consistent with the principles set out below:

Universities must recognize the importance of research-based innovation as a mainstream activity by identifying "innovation" as their fourth mission, in addition to teaching, research and community service; alternatively, they might explicitly identify innovation as an element of the three missions, as appropriate.

There follow 11 additional principles via which universities should treat intellectual property (IP) and professors. Number 9 is interesting:

Universities must provide incentives to encourage their faculty, staff and students engaged in research to create IP... These incentives must also include appropriate recognition of innovative researchers in tenure and promotion processes.

Recommendation 3

The federal government should invest new and additional resources to strengthen the commercialization capacity of universities in an amount equal to 5% of its investment in university research. This new funding is to be invested in the commercialization function and must be additional to the university's current spending...etc.

Recommendation 4

With the new funding proposed in #3, universities should make the commitment to use their educational resources to develop the people with the necessary entrepreneurial, business, and technical skills required to increase the number of successful innovations created from the results of university research. Etc.

Recommendation 5

The federal Department of Finance is encouraged to undertake a wholesale review of Canadian tax policy to ensure that it does not impede...research-based innovations.

Recommendation 6

Governments should increase their investment in university research. They should also resolve, on an urgent basis, situations where universities have difficulties conducting research when federal funding is provided, but when limited provincial support is available for the associated indirect costs.

Paradoxically, the Fortier report itself states that universities should not expect more than 1-2% increase in revenue from the commercialization process. This also corresponds to the estimate given for the US in the Atlantic Monthly article. The Fortier report has been strongly criticized by both CAUT and FQPPU and both organizations have joined forces in promoting a letter writing campaign to Prime Minister Chretien, which was described by Edith Zorychta in a MAUT Newsletter. CAUT has also published a 9-page commentary on the report, available as a CAUT document¹¹. CAUT's views may be summarized by the following: 'Less and less space is left for researchers and scholars interested in basic research that may have important scientific, social, and cultural implications but which holds little foreseeable prospect for commercial advantage. CAUT believes the views underlying the report ... are harmful to universities, harmful to researchers, and not even in the long term interest of the corporate sector.' John Polanyi (U of T Nobel Laureate) said "It's hard enough to make discoveries in the first place. I don't know how to produce tailor-made discoveries for a particular industrial sector."

In Quebec there is a recent report¹² on university research published by the 'Conseil de la science et de la technologie du Quebec' presided by Camille Limoges, entitled: '*Connaitre et innover: des moyens concurrentiels pour la recherche universitaire*.' This report is much more in line with the concerns of academics than the Fortier report. The

Limoges report recommends additional strong government funding for university research, while noting that the proportion of university research in Quebec funded by the private sector is already one of the highest in the world. Nevertheless the report does recommend that Quebec university research should seek to augment its impact on the society that funds it.

Conclusions

Why has the commercialization of university research become such an important issue? I mentioned above one reason: the evolution of our society's economic strength as depending increasingly on knowledge. Another reason is the gradual underfunding of universities

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(very prominent in Quebec) coupled to the underfunding of research which makes it difficult for scientists in Canada to remain competitive internationally and forces them to seek private funding as well as partnerships with industry.

The CAUT report on university finances¹³, shows that the most significant change in Canadian university revenues,

over the past 25 years, has been the transfer of financial responsibility for university education from government to students via student fees: in Canada fees have increased 224% between 1981 and 1998. Apart from student fees the fastest growing source of university revenue is private grants and contracts for sponsored research. University revenues from sponsored research have about doubled between 1972-1998 and now amount to about 18% of university revenues.

In this commercialization debate many questions arise. To what extent does the commercialization process threaten academic freedom and the traditional mission of the university? What are acceptable limits? What is the relationship between universities and business, and how is it evolving? Is it realistic to 'close the doors' on any form of partnership with the private sector which is the basis of our economy? (For example it seems to me evident that discoveries made by Canadians should be commercialized in Canada rather than being given away to the US in order to, say, strengthen their own local research parks.) Are partnerships with public institutions such as the ministry of education, different than those with the private sector? What does the 'university in the service of society' mean and how far does one go in serving this idea? The concerns of academics are easy to understand. These questions and many others and how they impact on university education in general and on Quebec universities in particular are worthy of our attentive surveillance.

—Daniel Guitton VP External ■

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