

**LESSONS FROM THE FABRIKANT FILE:**

**A REPORT TO THE BOARD OF GOVERNORS OF CONCORDIA UNIVERSITY**

An independent review of the employment history of Valery Fabrikant at Concordia University, with particular emphasis on concrete measures to enhance the future ability of the University to deal with a wide range of issues raised by the case in question.

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## PREFACE

The police arrested Dr. Valery Fabrikant and escorted him from the campus of Concordia University on the afternoon of Monday, August 24, 1992. They left the institution from which they had removed him awash in a sea of fear, regret, guilt and blame.

Now, over twenty months later, it has still not fully made landfall. The ubiquitous "what if" and the corrosive "why didn't I", either overtly or by implication, suffuse scores of post-August 24th documents and nearly every interview I have conducted over the past four months. It is not a secret that the institution remains riven over many issues, and the public battles of its senior officers have been blamed for a profound stasis, of which that battle may be more symptom than cause. Indeed, finger-pointing has become a substantial intramural pastime at all levels.

The decision by the Board of Governors, following the conviction of Dr. Fabrikant, to commission separate studies on the issues of scientific integrity on the one hand and of a wide range of administrative issues on the other, is an important part of the process of healing and moving on. Employees, students and friends of the institution need to know that changes are taking place, and that the institution will not be so vulnerable in the future.

In the report which follows, I identify a substantial number of actions or omissions which I consider to be mistakes. It is, of course, vastly easier to see mistakes with a retrospectroscope. In many cases the mistakes were exacerbated or caused in their entirety by decisional processes, policies, practices and mechanisms which were never designed or contemplated to carry the burden of a like case. In such a milieu very fine people can make very poor decisions.

I cannot avoid identifying mistakes, because it is that analysis which may make the recommendations of this report credible. My great fear is that in doing so I may add to the burdens of some individuals. Mistakes, of course, are made in every university or other enterprise every day. Mistakes like many of the ones made at Concordia are really rather common. Their consequences are usually much less severe.

Thus I urge any reader of this report to keep firmly fixed on this point: **only Valery Fabrikant caused murder**. Only he was charged. Only he was convicted. No-one should be seduced by his argument that others made him do it. **No other person whose decisions or actions are questioned in this report caused murder**. The findings of this review may suggest that on certain matters the University was too benign or too passive with Dr. Fabrikant, while on others it may indeed have treated him harshly. Such errors are not rare. Usually, they are easily corrected. The penalty for such mundane error should not be to feel complicitous in murder.

## INTRODUCTION

The decision by the Board of Governors of Concordia University to seek an independent review of employment history of Dr. Valery Fabrikant at Concordia was taken on September 22, 1993. It was, however, not until November 10, 1993 that the Executive Committee of the Board appointed me as the independent person external to the University to carry out the review, and I did not begin that task until mid-December 1993.

The two relevant resolutions of the Board and of the Executive Committee are included as Appendix A. The Board resolution contains the full mandate for the review, but it can largely be summarized as a mandate to review all available documents, plus, where I deemed it useful, to interview persons capable of providing additional information. Based upon that review, I was to make recommendations to the University to enhance its future ability to deal with a wide range of human resource matters specifically noted in the mandate, as well as any other policies, procedures and practices I considered relevant to the subject matter of the review.

The mandate is somewhat open-ended, but the Board, not knowing what useful element might arise, chose not to limit scope, but rather to limit time, requiring the report no later than six months after beginning work.

A review is not a public inquiry, and I felt that no useful purpose would be served by public hearings. Indeed, there remains so much pain on these matters that I profoundly doubt that the marvellous candor which so many people exhibited in their dealings with me would have been possible in a more formal or more public setting. Nonetheless, I did not wish my ignorance to inadvertently exclude anyone from the process who felt they had something to contribute, so in addition to directly requesting meetings with a number of people, a general invitation was widely circulated to the University community. It is included as Appendix B. Thus I believe that everyone who wished to provide views or information has been given an opportunity to do so, and could choose whether to do so orally or in writing. More than two dozen people have been interviewed in confidence, a few on more than one occasion. Others submitted written comment.

I wish to thank all those members of the Concordia community who provided me with views, recollections, or materials. I was struck by the widespread willingness to be open, and by the efforts which people made to find me anything I was looking for. Every single person I invited to meet with me did so.

The administration, and specifically the office of the Secretary General facilitated my work both by making space and support services available to me whenever I requested them, and by making available to me copies of every single piece of paper which could be located in University files which related to the case at hand.

A measure of the difficulty of this latter task was seen when, in the course of interviews, some individuals proffered their own private stashes of documents which they thought explained their actions or observations better than what I might already have seen. While I received such additional documents gratefully, on later analysis I discovered that I already had greater than 95% of these "additional" documents in my possession, and furthermore, the small percentage of genuinely new documents turned up in this fashion all had the effect of corroborating things which were already known from the great mass of documentation provided to me at the outset. While I have not kept careful count, it is my approximation that I have now read roughly 900 documents of varying length on this matter.

This review in part ran concurrently with other processes, including the deliberations of the Independent Committee of Inquiry into Academic and Scientific Integrity, chaired by H. W. Arthurs, and the ongoing efforts of internal task forces within the University to establish new policy both in the domain of ethics and in the domain of rights, responsibilities and behaviour. The report of Arthurs et al makes a point in its introduction which applies as well to my report and is worthwhile paraphrasing here: the help from university officers and employees notwithstanding, none of them were privy to any information provided to me in confidence, nor did any of them assist in the drafting of this report.

Lastly, a comment about timing seems germane. The Board initiated this review after Dr. Fabrikant had been convicted and sentenced for his crimes. It was clearly not intended to be a review of those matters which have been resolved by the criminal justice system. The natural tendency to link those matters to the substance of my report should be resisted, and I have so pleaded in my preface. Arthurs et al have also done so eloquently in the introduction to their report. If in my report I am critical of the efforts of the institution to effectively address the problem of Dr. Fabrikant's behaviour, I speak exclusively about behaviour before August 24th, 1993 which interfered with the rights of others to go about their work unimpeded, and not his behaviour on August 24th. Likewise, if I am critical of certain academic decisions taken by the institution and its servants in this matter, I am not suggesting for one moment that these "wrong" decisions, all of which would likely have corrected themselves before today's date in any event, had Dr. Fabrikant done nothing but his job, can in any way account for or justify Dr. Fabrikant's deranged notions of grievance resolution.

## STRUCTURE OF THE REPORT

The main body of this report is composed of three parts:

**Part 1**, by way of a general summary, contains some of the major working hypotheses which my review has tended to confirm, and some of the general observations on which they are based.

**Part 2** is a partial account of Dr. Fabrikant's association with Concordia University. That account is intentionally incomplete. Another detailed history of every contractual wrangle and every nasty phone call would neither be helpful nor particularly gripping, and it has not been my intention to produce one. Rather, I have chosen to hang on a skeletal framework only those events whose examination has seemed to me to yield useful insights or led me to make specific recommendations. Thus the truncated tale in Part 2 is the setting for the recommendations to follow.

**Part 3** is composed of recommendations, in each case followed by a short explanation relating the recommendation to the relevant portion of Part 1 or Part 2.

The main body of the report is followed by a short conclusion and the appendices.

## PART 1: OVERVIEW AND CONTEXT

Valery Fabrikant spent almost 13 years at Concordia University. During that time he made many people unhappy, including, it would appear, himself. Viewed from a distance, the University handled him in very much the same way most Canadian universities are inclined to handle faculty who exhibit disruptive behavior patterns, which is to say that they treated him far too benignly on the behavioral issues, and somewhat too harshly on the academic issues. There are good reasons why this normally happens.

First, one must understand that the majority of academics who become academic administrators do not like administration itself, do not think of themselves as administrators, have no training for their administrative roles other than popular television shows and modest on the job exposure, and are accustomed to work in a milieu where the exercise of authority is considered in bad taste. Indeed, most expect to return to the ranks of working faculty after a brief sojourn in administration, and all are steeped in the important university traditions of academic freedom, pluralism, tolerance of eccentricity and reliance on self-direction for setting tasks. Giving an order, even a reasonable one, is anathema to many.

When faced with the challenge of a "bad" colleague, whose behavior is disruptive, threatening or merely unethical, they do not in general know what their powers are, and are massively risk-averse when it comes to exercising those powers, even when they are aware of them. (This aversion to risk has in recent years caused most internal ethics panels to adopt a criminal rather than civil burden of proof, when in fact only employment is at stake, making discipline for ethical violations as rare as hens' teeth).

Like all untrained administrators everywhere, they look for a cookbook, and the only one always readily available is the arcane, complex rulebook which exists in all of our universities for the exhaustive peer review and evaluation of qualitative aspects of academic performance. This is contained in a faculty handbook, a collective agreement, or, in some cases, both. There is a failure to recognize that there are general administrative powers on which a collective agreement is silent, and which flow from the right and obligation to operate the enterprise properly.

Administrators who rely upon the available local cookbook as a surrogate for exercising management authority evoke "academic" recommendations and decisions which reflect the unhappiness of the peer group about non-academic matters. In this way slightly unfavorable academic decisions become a surrogate for distasteful and risky disciplinary measures which would require the exercise of individual authority and the prospect of individual blame.

Thus at Concordia it would appear that Valery Fabrikant's behavior, which ranged from unpleasant to intolerable depending upon the circumstances and the year, had a negative impact upon a number of academic judgments. Delayed and refused promotion, a slight delay and extra conditions upon his first probationary contract, a disinclination to take into account a portion of his service as a faculty member for sabbatical and tenure purposes, and finally a rather problematic choice of teaching assignment for 1992-3 all appear to be connected in part to the difficulties in dealing with him. Furthermore, it seems likely that his outrageous behavior was also a factor in the failure of the university on two occasions to fully investigate his claims about ethical lapses in the research setting, a matter now dealt with by Arthurs et al.

On the other hand the warnings and strictures placed upon him which directly related to his behavior, (when they existed at all), were too mild, too vague or (finally) too slow and ponderous.

The reasons for this dichotomy are not solely the failure to offer and in some cases require a modest amount of training for academic administrators in the area of administration, though indeed, that is a profound need and a partial preventative for like situations. There are other powerful forces in the culture of the University which make it difficult to respond to disruptive, harassing or threatening behavior by a professor. Prominent amongst these is the recent and disturbing mutation of what academic freedom means to some within the university community in Canada.

The famous Crowe and Underhill cases in Canada notwithstanding, concepts of academic freedom in Canada owe much to the watershed joint AAUP/AAC declaration of 1940 in the United States. The four pillars of academic freedom set out therein are: (a) the right to teach without adherence to any prescribed doctrine (provided that one dealt with the subject matter in the senate-approved course outline); (b) the right to research without reference to prescribed doctrine; (c) the right to publish the results of one's research, and; (d) the right to speak extramurally, which includes the right to criticize the government of the day or the administration of one's institution.

It is some little while since there was much trade in academic freedom cases in Canada which were firmly rooted in discrimination based upon ideology. They petered out about two decades ago and the end of the Cold War makes it unlikely that they will become a growth industry. Indeed, iconoclastic thought and comment is now so revered in Canadian intellectual circles that it is hard to imagine the articulation of a political point of view which the governors of an institution would see as a threat.

Consequently, the boundaries of academic freedom and the challenges to it have moved to a more personal level. Academic freedom issues *continue* to converge with ordinary anti-discrimination issues, to the point now where they are often indistinguishable. Given the tradition of toleration of personal eccentricity in the universities ("If you can't have eccentrics in the universities, then where can you have them?") it is not surprising to hear faculty fall back on academic freedom to defend practices which have little connection to academic issues. This has all occurred at a time when our broader society is experiencing a great emphasis on individual rights and liberties, at the possible expense of some older notions of collective rights and liberties.

Nonetheless, one extension of the concept I have yet to come to terms with is the "academic freedom" to be brutish and miserable to colleagues and students, so that little work is assigned, and so that students consult one infrequently. When academic freedom is extended without caveat from the content of discourse to the conduct of that discourse, it opens up the prospect of a range of "protected" behaviors which interfere mightily with the well-being of others, as well as their ability to carry out their own work. Simply put, there is no academic freedom to harass. There is no academic freedom to be disruptive. There is no academic freedom to scare others off of assigning work to one. There is no academic freedom to intimidate, there is no academic freedom to interfere with the academic freedom of others, and there is no academic freedom not to work. Yet the confluence of extended notions of academic freedom, great respect for individual liberties and the rising tide of litigiousness has tended to restrain institutions from dealing expeditiously with problem cases.

This difficulty is exacerbated by another feature of university culture. Universities, along with hospitals and the military, are perhaps the last institutions in Canadian society to have true formal class structures. In the military, there are officers and there are other ranks. In the hospitals there are physicians and all others. The university equivalent is professors and all others. While there is recent evidence of some increasing sensitivity, behavior by professors which would never have been tolerated if it had been directed towards colleagues has been tolerated when directed towards students and particularly towards support staff. This means that behavioral problems must cross a rather high threshold to trigger any real institutional awareness. In the case of Valery Fabrikant some behaviors during his first nine years at Concordia were quite extreme, but escaped more than passing notice because they were not yet directed towards his faculty colleagues. It is regrettable but true that in most institutions the answer to the question, "How much harassment is allowed?" must begin with the question, "Who is being harassed, and by whom?"

The senior officers of Concordia university were further hampered in their abilities to react in a more direct fashion to the behavior of Dr. Fabrikant and to his complaints because they existed and still exist in a system that doesn't provide them with adequate management information, in at least three different ways.

First, Arthurs et al have reviewed the difficulties faced by the University in applying controls and extracting management information from the administration of trust funds, a fact which made the task of that inquiry vastly more difficult. Likewise, that situation would have made a timely internal examination of Dr. Fabrikant's complaints difficult, which may bear on the superficiality of the first two University efforts to do so.

Secondly, there was an absolute failure to have an institutional memory. This problem, which is quite common in the university setting, was exacerbated at Concordia due to infelicitous happenstance. The longest serving senior officer of the institution, the Rector, had arrived in 1984. While concrete evidence is slim, I have the distinct impression that he was not accorded any reasonable degree of cooperation from the officers of the administration he succeeded, and therefore any advice to him on problem areas or people, or any indication of files on which he should have had a watching brief was absent. There were some records relating to Dr. Fabrikant's behavior, none of which came to light until after August 24, 1992. The Vice-Rectors all date from 1986 or later, with the Vice-Rector Academic dating from September 1989. In each instance the senior officer concerned felt as if it was starting from scratch, though in the case of the Vice-Rector Academic, who came from another university, she was so discomfited by some of the bickering which she felt was related to lingering differences between Loyola and SGW factions that she became resistant to discussion of past history in any event. However, it is not clear that even the best information retrieval system guarantees continuity of the institutional memory, and some universities cultivate a reliable person at a senior level to act as both a senior officer and a living institutional memory. There is no easy answer here.

Thirdly, universities are vastly more decentralized than other enterprises when it comes to management of professional employees, and Concordia is not an exception. There is no central clearing house for important information. Even after the beginning of November 1991, when many people in diverse units were concerned about and alarmed by Dr. Fabrikant's behavior, there was no real consolidation of the file. In fact, existing decisional structures at Concordia militate against coordination and virtually guarantee that the right hand shall not know what the left is doing. These structural difficulties also contribute to the failure of administrative courage.

While they will be dealt with elsewhere in the report as well, the two principal difficulties with the administrative structure are that it is too tall and too compartmentalized.

By "too tall" I mean that the layer below Vice-Rector is too extensive and carries substantial line authority. Even the Assistants (or in the case of the Rector, his Executive Assistant) seem to have considerable *de facto* powers. There are in this third layer of the organization six or seven Associate Vice-Rectors, and four "Assistants to", without counting special cases like the office of the Secretary General. It is only below this third level that one reaches directors of specific services.

By "too compartmentalized" I refer to the absence of a collective approach to decision-making even for the most significant matters. It would appear that each senior officer decides in isolation about questions which arise from the line units which report ultimately to them. This results in great uncertainty for each senior officer about whether the others will support even a mildly controversial decision. A notable example of this is found in the provisions of the Collective Agreement with CUFA which provide for the Vice-Rector Academic to make the final decision on appointment to a probationary position, reappointment, and promotion to all ranks except full professor. In most institutions some or all of these would be collective decisions in which the Vice-Rector Academic or equivalent would play a prominent but not solo role.

It is important to understand that even if all of my concerns had been addressed by the University years ago, there is no certainty that the handling of Dr. Fabrikant would have gone entirely smoothly. I have not met Dr. Fabrikant, nor is it my intention or expectation to do so. My readings of the documentary trail of his obsessive application of his keen intelligence to his wars with his employer suggest to me that he would still have led a stronger or more coordinated administration on a rather wild chase. Some of his letters, powerful in both logic and sarcasm, would shake the resolve of the most independent-minded administrator. Given that English is not his first language, I cannot recall in my entire career a comparable ability to fawn and insult in the same letter. What is missing is any indication that Dr. Fabrikant ever feels or expresses any compassion about, concern for, or even interest in the well-being (or existence, for that matter) of any other adult human being.

This is the disconnectedness which deeply alarmed some, who certainly sensed at a visceral level that they were dealing with a person without limits on behavior, while others with more conventional antennae passed him off as merely another insensitive, self-centered ivory tower researcher, of which there are always a few in any large group of scholars.

The collegial culture of any Canadian university makes it difficult to halt the march towards some sort of disaster by individuals with such profound lacunae in their personalities. The customary process of discrete cautions and carefully graded responses does not fit the type; this accords with the advice which Concordia had received from psychiatric consultants, but not fully appreciated. On various occasions the institution and its officers tried to "draw the line" with Valery Fabrikant about his behavior. At first they did so informally in the department. Then they did so at the institutional level, with all the elegant circumspection befitting the academic milieu, including cross-referencing guidelines of other entities. Finally, on August 21, 1992, they did so ponderously and indirectly, through outside legal counsel.

At no time after 1989 (when concern had begun to mount) did any senior officer of the institution confront Dr. Fabrikant in the personal and almost brutal drawing of the line which occasionally works with persons whose disorders are those attributed by the University's consultants to Dr. Fabrikant. Nor, without particular training and practical experience, would I have expected them to feel able to do so. Nonetheless, there have been numerous instances in Canadian universities, of a senior officer calling in a faculty member and saying (more or less), "Dear Professor X, in the conversation which follows, I want you to understand that for all practical purposes, I am your employer. I do not like what you are doing. I will now give you chapter and verse about what I do not like. ... (does exactly that) ... . I am now instructing you as your employer, never to do any similar thing again, or I will fire you. This is a legal instruction. I will confirm it in writing. If you ever have any doubt about whether you are about to do something which may breach this legal instruction, call me and ask me, bearing in mind that the content, conduct and context of that call might also breach this instruction. Now get out." Even that sort of sudden burst of reality has had only modest but measurable success in like cases, and the probability that the University would have still faced a suspension and dismissal decision would have remained quite high.

One of the great ironies of the matter is that Dr. Fabrikant's immediate superior during his first seven years at Concordia handled him exactly in that peremptory and forceful way, with not inconsiderable success. Dr. T.S. Sankar, whose research grants paid Dr. Fabrikant's salary until 1985, and who was Chair of the Department during Dr. Fabrikant's first seven years there, was disinclined to take nonsense from anyone. With an autocratic management style and a deep and abiding conviction that everyone needs to be precisely instructed, Dr. Sankar did not apply this technique to Valery Fabrikant because of a profound realization that it fitted Dr. Fabrikant's personality. He merely did it because it came naturally to him.

Whenever he responded in this obdurate and "non-academic" way to Dr. Fabrikant's excesses of behavior, Dr. Fabrikant would concede and apologize. Neither Dr. M.O.M. Osman, the subsequent chair, nor Dr. S. Sankar, the Director of the CONCAVE Research Centre had the same impact in drawing the line with Dr. Fabrikant. However, it is problematic to ascribe it uniquely to their less overpowering styles, since their stewardships occurred in the years after 1987 and 1985 respectively, when the evolution of Dr. Fabrikant's lexicon of grievances against the University (real and imagined), and the increasing tension in his soul had escalated matters beyond solution at the departmental level.

In the end, the senior officers of the institution, each of whom is well-intentioned, skilled in specific areas, and imbued with a sense of public service, were individually and collectively incapable of fully addressing any of: (1) Dr. Fabrikant's complaints, (2) the confusion of disruptive behavior with academic issues, (3) wrong interpretations of the collective agreement, and finally (4) the threat which Dr. Fabrikant's behavior posed to the institution. The story of just how this came to pass has now been told many times, each quite imperfectly, due variously to journalistic excess, understandable internal partisanship, or a dearth of facts.

The version of this story which follows in Part 2 is also imperfect in two significant respects. First, it is unavoidably tainted by hindsight and by my personal biases about how a university should be run. Secondly, it is incomplete, and this latter blemish is intentional. In telling elements of the story, I have avoided more than passing and contextual mention of those matters dealt with by the inquiry of Arthurs et al. I have also decided to concentrate only on those portions of the story which give rise to recommendations in Part 3 of this report. I therefore apologize in advance to those who were anticipating a faithful and scholarly precis of the 900 documents and nearly thirty interviews.

## PART 2: FABRIKANT AT CONCORDIA

On December 18, 1979, Dr. Valery Fabrikant, a Russian emigré travelling on Italian travel documents, and holding a U.S. green card appeared at the office of Dr. T.S. Sankar, the Chair of the Department of Mechanical Engineering at Concordia University. He wanted to see Dr. Sankar about a job, but the acting secretary to the chairman explained that Dr. Sankar never saw job seekers unless they had provided him in advance with a CV and subsequently made an appointment. Dr. Fabrikant tried to talk his way in but was not successful, so he left his CV. The next day he returned, and even without an appointment was persistent enough to get Dr. Sankar to see him. He must have impressed Dr. Sankar, too, as he was hired immediately as Sankar's research assistant, at \$7000 p.a. Fabrikant started the next day, December 20, 1979, on a work permit. A research assistant is a sort of better educated technician, a position with no autonomy and no academic pretensions.

In letters to others somewhat later Dr. Sankar concedes that it was not a suitable level or role for someone of Fabrikant's experience and accomplishments, but, wrote Sankar, he wanted to do something to help out this bright emigré who desperately needed work, and the \$7000 were all the uncommitted resources he had under his control at that moment.

Six months later, on June 1, 1980, Dr. Sankar raised Dr. Fabrikant's salary to \$12,000 p.a. and on August 1, 1980 got his title changed to Research Associate. A research associate is still under direct supervision, and is a sort of very high class technical or professional assistant who is expected to hold one or more graduate degrees. It is not a faculty position and it is not normally autonomous.

Still feeling that he couldn't pay Fabrikant what he deserved, Sankar got him an add-on part time teaching contract to give a basic probability and statistics course in January 1981, for a further \$2080. On June 1, 1981, 18 months after Fabrikant's arrival, he raised Fabrikant's pay to \$16,000 p.a. and lined up another iteration of the same part time teaching task for Fabrikant for the coming winter, for the same supplement of \$2080 again. Thus even though Fabrikant was still classed as a high-level technician, his annual income had risen from \$7,000 to \$18,080 in 18 months.

On May 27, 1982, Sankar took the substantial step of recommending to Dean Swamy that as of June 1, 1982, 30 months after his arrival, he would be moved from his support staff position of Research Associate to the most junior soft-funded faculty position, that of Research Assistant Professor, at \$23,250 p.a. Fabrikant accepted this new position on June 3, 1982.

In some ways it was not such a big change. His salary was still soft-funded, and indeed was still being paid by T.S. Sankar's grants. But it reflected Tom Sankar's recognition that in fact Dr. Fabrikant was pursuing his applied mathematical research without significant direct supervision, and that evidently, his teaching at the basic level in probability and statistics had been reasonably well received, since Sankar also lined up another iteration of it for September 1982. In a way, Fabrikant's autonomy in research was a godsend, since interaction with him was fraught with sharp edges even then.

On the form converting Fabrikant's status to one of faculty rank is a space for noting the receipt of letters of reference. Apparently three references are required. In this instance there were none, and the form carries the notation, "Research appointment - currently Research Associate in the department", creating the impression that this requirement for references is waived for research faculty. I have been unable to identify any policy or guidelines to that effect.

Years later, in December 1990, when Dr. Fabrikant's research faculty appointment was transformed into a tenure-stream (probationary) hard-funded appointment, the same type of form was again used, and in the box setting out the need for three letters of reference is the notation, "On file". It would appear that this is false.

This is not to say that seeking such references would somehow have turned up information which would have dramatically changed any cascade of decisions about Dr. Fabrikant. I am merely noting that it was not done, and the subsequent excuse that it was not done in 1982, or 1985 (when he joined the Actions Structurantes program) or in 1990 (when he became tenure-stream) because of the Cold War is not fully credible for any of those dates and frankly laughable for the last date. Two points are clear here: (1) the series of shifts from technician to junior research faculty to research faculty under the Actions Structurantes program, and lastly to regular faculty bypassed both normal university notions of competition and any reasonable seeking of references. Furthermore, (2) programs like the Actions Structurantes may well not be in a desirable form because of the extent to which they do subvert normal free competition.

That being said, the practice at most Canadian universities of checking degrees, key elements in CV's, and references for new faculty is highly deficient. A secretary's references are more carefully vetted. This stems from the naive confidence of researchers that if they hear one research talk by someone and read that person's CV, they know all they need to know about the individual. In the current environment, from any perspective (liability, equity, good use of scarce resources) such cavalier hiring practices have no place.

In 1982 another event occurred which did not come to light until much later. In that year a female student complained to the University Ombudsperson that she had been raped by Fabrikant. The Ombudsperson believed the complainant (or such is my impression) and was so moved by the details of the story that she kept the tape of that conversation for many years, the only case in her long experience where she did so. The complainant, however, was in considerable psychological difficulty, and did not wish to pursue the complaint at that time. The Ombudsperson felt bound by the constraints of confidentiality, and took the matter no further.

The role of an ombudsperson is difficult. One's first duty is to those who come with concerns, and who hope for redress or justice. Independence from the institution must be established and maintained. And yet, there is also a responsibility to the institution as well, a responsibility for the future well-being of the institution and its members. How can these be balanced? Could the Ombudsperson have done anything which respected the confidence but shored up the future? There are some things which could have been attempted, but the most passive might have been to follow up the police report, because the complainant had indicated that the police had taken her to hospital, partly because of a dislocated shoulder. Something akin to the preliminary study of a matter by a Sexual Harassment Officer could have been done. It was not. The complainant repeated the contact with the Ombudsperson again in 1989, but again in the end elected not to advance the matter further. In the first week of April 1992, the complainant phoned the Assistant to the Vice-Rector Academic and told her the entire story. She said that newspaper coverage of the wars between Dr. Fabrikant and the University had prompted her to call, mainly just to warn the University about Dr. Fabrikant. She left a phone number and gave the Assistant to the Vice-Rector permission to access the records of the Ombudsperson. The Ombudsperson, however, while not doubting the conversation between the complainant and the official, still indicated that such permission would have to be received directly from the complainant. The Assistant to the Vice-Rector called the complainant and asked her to do so, but the complainant, over the next few days did not phone the Ombudsperson. The Ombudsperson, however, did not phone the complainant to pose the question either. The Assistant to the Vice-Rector did not follow up with checking of police reports or the like, even though the call from the complainant could have been construed as express clearance to do so.

Given the intensity of the Fabrikant issue in April 1992, it is virtually certain that the Vice-Rector Academic, Dr. Sheinin, was informed of the facts of the complaint. However, some while later, the University Assistant Legal Counsel called the Ombudsperson asking about rumors of a rape accusation. The Ombudsperson received the call with some surprise and asked the

lawyer why he did not speak directly with the Assistant to the Vice-Rector, who had the whole story. This in turn surprised the Assistant Legal Counsel, so there was symmetry in surprise.

During the trial, the matter of this complaint arose. Dr. Fabrikant's treatment of it evidently made it clear to various observers that he was aware of the probable existence of the complaint.

The complainant died of unrelated causes late in the trial of Dr. Fabrikant, and so never did learn of the verdict.

Somehow, universities must find a balance in their obligations towards the privacy of aggrieved persons, the rights of the alleged perpetrator, and the health of the whole institution. It is a delicate balance, and must vary from case to case. Nonetheless, that balance was not struck in this case.

In the spring of 1983, Dr. Fabrikant was taking a French language course in Continuing Education on a waiver (without fee). It was not usual at that time, but Dr. T.S. Sankar had arranged it for him because Dr. Fabrikant had complained that the credit courses for which he was automatically eligible to have a waiver of fees were too basic and were held at inconvenient times.

By early May 1983 Dr. Fabrikant was in intense dispute with the part time teacher giving the course. What had begun as a complaint by Dr. Fabrikant about the instructor smoking, in contravention of a Senate rule, degenerated into vitriolic criticism of the teacher's methods and accent, which Dr. Fabrikant characterized as "joual". His derogatory and abusive attacks were so intense that both the teacher and the other students expressed a desire to Continuing Education to quit the course. Dr. Fabrikant was barred from the course, first by oral instruction from a first-level supervisor, and then by a legal and proper order in a letter from Gwynn Cherrier. He attended class anyhow, and demonstrated to the class and the teacher their utter powerlessness in the face of someone who obeyed no rules by tearing up a copy of the letter in front of them. Some were quite alarmed. On May 6, the Assistant Vice-Rector and Director of Continuing Education, Douglas Potvin barred Dr. Fabrikant from all Continuing Education classes, and that order was obeyed.

This is a marvelously clear example of classical insubordination, from a labour law perspective. I can not remember a better one in a university setting. It would appear that if a faculty member (however junior and tenuous) disobeys a legitimate instruction from a person who is not resident above that faculty member in the traditional university academic hierarchy, their action is winked at, even if it is classical cause.

What followed Potvin's order, however, is bizarre. Styling himself as the aggrieved party, Dr. Fabrikant took his case first to the Ombudsperson and then to the Rector (at that time J. W. O'Brien). He argued that his career was being damaged by the refusal of the University to let him become bilingual for free. The Ombudsperson came down on the side of Continuing Education, but was only briefly seized of the matter. The Rector referred the matter on May 19 to the Vice-Rector Academic Russell Breen. On June 30, Fabrikant again argued that the University must give him \$1000 to take French elsewhere, and continued thereafter to prod in a slightly insulting way, till a further refusal on July 26. He prodded again and the Rector referred the matter to the Vice-Rector Academic, by then J. Daniel, who wrote a curt response. Dr. T.S. Sankar wrote trying to persuade the Rector to give Fabrikant \$400.

At just this time, Dr. T.S. Sankar had launched his effort to get Fabrikant promoted from Research Assistant Professor to Research Associate Professor. This juxtaposition obviously bothered the Vice-Rector Academic, Dr. Daniel, who on August 9, 1983 wrote to T.S. Sankar that, "Dr. Fabrikant's behavior, both in connection with NSERC and the Centre for Continuing Education has given cause for complaint in several quarters". To this day I do not know what row Dr. Fabrikant had with NSERC as early as 1983, but clearly Dr. Daniel was suggesting that Sankar ought to spend his grant money on salary for someone less disruptive.

Dr. Sankar, still the Chair of Mechanical Engineering, replied to this suggestion of his Vice-Rector with the most scathing denunciation, indicating his views that issues of personality had utterly no place in hiring decisions for academic staff, and that anyone who thought they did was a bad academic. Dr. Sankar had only heard Dr. Fabrikant's side of the story, and had not thought to enquire more deeply.

On September 1, 1983, Dr. Valery Fabrikant was promoted to the rank of Research Associate Professor, still soft-funded on the grants of Dr. T.S. Sankar.

The battle over the demanded \$1000 of guilt money persisted, until, on September 27, legal counsel J.P.Dufour advised no further concessions, writing that Dr. Fabrikant "continues to act in a completely irrational manner". This is the first use of "irrational" in the written record of this case at Concordia.

On June 1, 1984, Dr. Fabrikant's salary was increased to \$27,000, and on June 1, 1985 to \$30,000. On September 1, 1985 he was transferred to the Actions Structurantes program which used Quebec government money to set up CONCAVE.

This program was a government soft-funded project of five years (3 plus 2 more after a review) which, if fully satisfactory, could lead to the government soft money becoming permanent funding, which might by 1990 permit the opening of three tenure-stream positions in CONCAVE. In this CONCAVE appointment, still soft funded, Dr. Fabrikant was not a member of the CUFA bargaining unit, but was apparently guaranteed rights of recourse and rules which on most matters paralleled the collective agreement with CUFA. At this point he had a contract until May 31, 1988. During periods when his employment was not at risk Dr. Fabrikant was not as aggressive, so the next three years is a period of slim records.

On October 1, 1986 his salary rose to \$37,500, and then to \$40,000 on June 1, 1987. In November 1987, it was raised further to \$42,000, retroactive back to June 1.

During the spring of 1988, Dr. Fabrikant had to go through the renewal process to get the next two years of salary support under the Actions Structurantes program. It began in the early spring. By April 13 he got a positive recommendation from the department. On May 13 the faculty recommended positively as well, and the Vice-Rector Academic, Francis Whyte, offered the renewal, to run to May 31, 1990 on May 18, 1988. Fabrikant accepted it six days later.

True to form, while under the stress of a renewal situation he had another row, this time with the Purchasing Services. He had ordered a laser printer, and its delivery was expected to be a few days late. On April 29 he tried to cancel the order, but in fact it had been shipped from the factory to him on April 27. The goods, valued at \$8402, arrived 10 days after the date for which they were promised. Dr. Fabrikant was apoplectic, refused to authorize payment of the bill, demanded free installation and an extended warranty as compensation for the delay. He advanced strange interpretations of the law as to why he did not need to pay, and said he was going to charge rent for storing the unit. By June 8, the Manager of Purchasing Services, Mike Stefano, was exasperated beyond belief. The supplier was about to cut the University off (which they later did on June 29), Fabrikant refused to authorize payment without major concessions or a direct order from the Rector, and was threatening to go to the press and start a scandal, though I still cannot figure on what basis. Mr. Stefano, in a letter to the Chair of the Mechanical Engineering Department, Dr. Osman, asked for help and wrote, "Also this is not the first problem I've had with Dr. Fabrikant, who seems determined to see the inside of a courtroom. I am considering refusing to process any future purchase requests without a co-signature, but would like some advice from you first." Osman's advice was to explain it to Dr. Fabrikant's satisfaction.

In the end, as was usual, it was explained to Dr. Fabrikant's satisfaction, in that Vice-Rector Charles Giguere met with him and caved in. The University agreed to make the printer work to Fabrikant's satisfaction, bear any repair costs arising over the next 12 months (the original warranty had only been 90 days) and to allow a \$2000 overexpenditure by Fabrikant of his 1988-89 research account. On the facts, Fabrikant was not in the right, but outrageous threats had again won the day.

The renewal on June 1, 1988 carried a pay increase to \$46,000.

By early 1989, Dr. Fabrikant was very unhappy again. He wrote to Patrick Kenniff on January 19 (strangely, received by Kenniff on the 18th) about his "unfair treatment by the department over the years". Arthurs et al deal with some of the research-related questions in their report, but it is sufficient to say here that to the extent that there was any unfair attribution in research, Fabrikant was playing that game as effectively as anyone else. On January 23, the Department Personnel Committee (DPC) declined to consider early promotion to Research (Full) Professor for Fabrikant. During the spring of 1989 Fabrikant showed very obsessive behavior about this issue. On March 8, the Executive Assistant to the Rector tried to get the matter reconsidered on the basis of "new evidence" but to no avail, as the department remained unconvinced that any of it was new. Fabrikant claimed a link between the promotion and the unfair benefit he claimed that others got from his research, as well as his refusal to engage in what he termed "questionable publishing". He pursued the matter doggedly and viscerously. On March 23 Kenniff sent him a fair and friendly letter.

During this same time, in early 1989, at least two persons were privy to Fabrikant's threats of violence. He said, "I know how people get what they want, they shoot a lot of people". He also said he would get the Rector. Somebody must have taken it seriously, because the Rector had security protection for a portion of the spring of 1989. The Rector now feels that he was probably unaware of that fact then, but there are various indications in interviews that he did know he was being protected, to say nothing of how brave an employee would have to be to order security protection for the CEO and not tell him! During this same period Dr. Kenniff was very keen to get Dr. Fabrikant out of the University, though when the possibility did actually arise later, Dr. Kenniff's training as a lawyer may have prevented him from seizing the opportunity.

It was also in April of 1989 that officers of the University started consulting an outside psychiatrist, Dr. Warren Steiner, for advice on how to handle Dr. Fabrikant. Dr. Steiner's advice apparently was to be firm and to record everything.

On May 18, 1989 Dr. Fabrikant got a merit award. On June 1, 1989 his pay went from \$49,340 to \$54,340. On September 20, a congratulatory memo circulated by Osman drew attention to Fabrikant's new book.

On that same day the department recommended a further two years (to May 31, 1992) for Fabrikant, subject to whatever happened to the Actions Structurantes program. Dean Swamy concurred on November 15, 1989.

On December 21, 1989, Dr. Fabrikant sent a short and polite note to the new Vice-Rector Academic, Dr. Rose Sheinin, enquiring about the process of converting Actions Structurantes positions to regular ones, and what conditions needed to be met. He also asked if his teaching load (till then a 1/2 load) would continue that way, and sought clarification of his eligibility for sabbatical leave. These were all good questions properly posed. The Vice-Rector's response on Jan 23, 1990, copied to the Dean and Chair, is fuzzy and unhelpful in the extreme. On February 1, Fabrikant replied in a somewhat brittle manner, but in the reply he proposed answers to some of the questions he had himself posed, and, with the exception of silly deadlines which he was always inclined to make up, I agree with those answers. The response from the Vice-Rector chided him for his tone (not without reason) but did not cast light upon any of the issues. In the spring of 1990 Dr. Fabrikant was refused promotion to the rank of Research Professor despite good external reviews and the positive recommendation of the Department, the Faculty, and the Dean. No reason is given in the file for the refusal, and no-one interviewed can now recall. Fabrikant appealed to the University Appeals Board on June 26, but by early September the various parties had concluded that Fabrikant's rights did not extend to the use of the UAB, which was the first indication that his parallel rights of recourse were really not parallel to those of the bargaining unit members. I believe this decision to be wrong.

There is a key misinterpretation which appears to have led the University to making wrong decisions in a number of matters relating to Dr. Fabrikant, and that centers around the counting of time. The University maintained to the end that only Fabrikant's service from 1985 onward counted towards promotion, sabbatical and tenure consideration (he was, of course, not eligible to be considered on sabbatical or tenure until he joined the bargaining unit in 1990). This appears to be a wrong interpretation. Dr. Fabrikant became a soft funded non-unionized faculty member in 1982. The shift to the Actions Structurantes program in 1985 changed the source of the soft funds, but not his rank or status. He was just as much a Research Associate Professor in 1983 as he was in 1989. Suggestions to me by University officers that the pre-1985 situation was a phony or courtesy rank are unworthy.

Some claimed to me that Concordia just made up the rank of Research Assistant Professor to help Fabrikant find a job elsewhere in 1982, and that the University, unlike the research-intensive places with medical schools, had never before used that rank, and that it was meaningless. This is dubious at best. Indeed, the same rank was used in 1979 for Dr. T. Krepec of the same department, until a tenure-stream slot could be found for him. Furthermore, nobody told Fabrikant he wasn't really a faculty member from 1982-1985! The particular source of soft funds is irrelevant, and the period 1982-1985 counts. Thus the 1990 request was not an early promotion request, as Fabrikant had been at the Associate level for seven years. Yet it was exactly the allegation that he had not yet reached his seventh year in the rank which was the basis for Associate Vice-Rector Hal Proppe's decision of August 30, 1990, with respect to the UAB.

On July 24, the University began to integrate the personnel on the Actions Structurantes program into the regular faculty, one at a time.

During this period, there is no written record of Dr. Fabrikant being disruptive, but I encountered plenty of oral evidence to that effect. Furthermore, there are flocks of internal memos about dismissal for disruptive conduct, though in some Fabrikant isn't mentioned, and in others the behavior is not described.

On September 12, 1990, Dr. Osman as chair, and the Department of Mechanical Engineering recommended to Dean Swamy that Valery Fabrikant be appointed to a regular tenure-track position at the rank of Associate Professor. The tone of the reasoning in the recommendation is laudatory. It concludes with the request that his previous service as a Research Associate Professor be applicable for tenure consideration. It does not distinguish between Research Associate Professor paid on T.S. Sankar's grant or paid by the Actions Structurantes funding.

On September 12, there is also a letter from the Rector to Fabrikant, which implies that Fabrikant had been pestering many people about his concerns, including the Chancellor and Claude Ryan. It did not purport to restrict his right to do so, but correctly pointed out how inappropriate and unproductive it was.

By October 9, Fabrikant seemed to be a bit contrite, according to a message he tried to pass via Grendon Haines. On October 18, the Vice-Rector Academic, Dr. Sheinin, warned Fabrikant that she considered that he was harassing her and her staff. This letter contains the first written mention to Fabrikant directly of possible discipline.

On October 31, Dr. Sheinin met with Dean Swamy, Dr. Osman, other members of the DPC and two members of the University's informal University Intervention Team (UIT), who were the Director of Health Services, and the Code of Conduct Administrator, plus the psychiatrist consulted earlier. Her hope at that meeting was to persuade either the department or faculty level to make a less favourable recommendation for Fabrikant with respect to the probationary (tenure-stream) appointment, largely because of his conduct. In this she failed utterly. While they were somewhat aware of his behavior, they did not have full information, but neither did Dr. Sheinin and those present to assist her. Furthermore, the engineers still had great difficulty with assessing anything other than research and teaching. While some might have been happy to see Fabrikant go, as long as they had nothing to do with the decision, others, including Dr. Osman, indicated that they would actually counter any negative decision with a grievance.

While very disappointed with the results of that meeting, Dr. Sheinin wrote to the Rector on November 16, 1990 about her dilemma. She indicated that most of those who complained about Dr. Fabrikant's behavior were "disappearing into the woodwork", so she felt that if she made a negative decision on the probationary appointment, the university would face grievances and disputes. On the other hand, she remained convinced that "problems.....with. .Dr. Fabrikant will continue", and that "he should not be taken on to the full-time faculty at Concordia".

This is a crucial moment in the story. Dr. Sheinin maintains that she felt unsupported from both directions, in that the Dean was not helpful and she felt the Rector would not back her up if she declined to appoint Fabrikant. Under the collective agreement it is the Vice-Rector Academic, acting alone, who makes the final decision in such matters. The Rector claims that he was quite prepared to back her up, but it is not clear to me how well he communicated this. Certainly there is a written record, at least, of two suggestions, which were (a) that a copy of the formal warning letter of October 18 be sent to Dean Swamy for inclusion in Fabrikant's file, so that the disciplinary cascade would have begun, and (b) that if Dr. Fabrikant was to be given a probationary contract, a condition of further renewal of that contract, stated in the contract, should be an assessment of his success in avoiding previous (and unacceptable) behavior patterns. These views apparently were communicated orally (with note to file) on November 27, 1990.

On December 4, 1990, Dr. Sheinin did exactly what she had not wanted to do, and wrote to Dr. Fabrikant, offering him a two-year probationary appointment ( really June 1, 1990 - May 31, 1992) as an Associate Professor at \$59,677 p.a.

That offer did not contain any conditions with respect to behavior, but did, on the recommendation sheet, indicate (a) that Fabrikant "should be informed that his future research activity shall be directed to support the research focus of the CONCAVE Research Centre", and (b) the Fabrikant "is eligible for tenure consideration only in his third year of probationary appointment (during 1992-93)". This is the same famous sheet which refers to Dr. Fabrikant's three required letters of reference being "on file", which they were not.

The imposition of the condition with respect to holding off consideration for tenure till the third year was probably done because of the behavioral problems, though the link is nowhere mentioned. It does not appear as a condition in the two otherwise very similar contracts given in 1990 to the two other faculty members moved from the Actions Structurantes posts into the resulting probationary posts, Dr. A.K.W. Ahmed and Dr. S. Rakheja.

Dr. Fabrikant accepted the offer on December 11, 1990. It had retroactive effect for over six months. At that moment he became a member of the bargaining unit represented by CUFA and a unionized employee.

The imposition of the condition of delayed access to tenure was not contrary to the collective agreement with CUFA at that time. However, two months later on February 13, 1991, a new collective agreement came into force with provisions which dictated clearly how service in a research faculty position counted towards tenure consideration. That new collective agreement, which for the first time included provisions about research appointees, set out in 12.05(g) that: "If a person obtains a tenure-track position and if the person has taught at least ten (10) courses on research appointments, the accumulated service shall count for mandatory tenure consideration. For persons who have taught between five (5) and nine (9) courses the accumulated service shall also count for mandatory tenure consideration, but, Article 18.10 notwithstanding, such persons are not eligible for mandatory tenure consideration until they have completed at least one (1) year of probationary appointment."

Dr. Fabrikant was now an Associate Professor, had eight and a half years service on research faculty appointments, and had taught often (though narrowly) so that, while records are poor, he had probably taught more than 10 one-term courses since 1982, not counting academic year 1990-91 during which he was teaching two more. Thus under this new rule he was eligible for mandatory tenure consideration (18.10) either in 1990-91, which is to say immediately after the ratification of the collective agreement, or, at worst, in 1991-92, but certainly not as late as 1992-3.

Even if the service and teaching was only counted from 1985, one error which the University was already making, he would have still been up for mandatory tenure consideration in 1991-92, with six courses taught during 1988-91, and others in 1985-1988 and 1991-92, since he was nominally on half teaching load from 1985 to 1988, and full-load 1991-92.

When provisions of a collective agreement contradict some element in an individual contract with a bargaining unit member, the collective agreement prevails. This is true in every jurisdiction in Canada. Individual contracts can certainly modify things upon which a collective agreement is silent or permissive, but that is all. By not addressing the rigid wording of 12.05(g) at the bargaining table the University gave up any breathing space it had won by getting Fabrikant to sign his probationary contract with the delay condition. Nor can it reasonably be argued that if he signed his acceptance before ratification of the new collective agreement, he was bound by those constraints, even though they extended even beyond the end of the new collective agreement. Simply put, the University, by "compartmentalization" made certain that the right hand would never know what the left hand was doing. Either 12.05(g) should have been negotiated with some latitude based on assessment of performance and suitability, or a different method should have been employed in the first place to avoid tenuring a disruptive and harassing employee. When Fabrikant later argued that the collective agreement gave him the right to be considered for tenure in 1991-92, the Vice-Rector Academic paid scant attention, but in fact he was correct.

As could be predicted, after Dr. Fabrikant got his probationary appointment, things quieted down for a while. However, by the early fall, an arrogant request from Dr. Fabrikant to use his internal University research grant to buy out some of his teaching was refused by Dr. Osman in scathing terms. This triggered a war of words in which Dr. Fabrikant began to level accusations at colleagues. This war of words never really ceased from October 14, 1991 until his departure from Concordia on August 24, 1992. Indeed, it merely picked up steam as it went. We now know, from the work of Arthurs et al, that a few of Fabrikant's accusations were in fact correct. These, however, were interspersed among a large number which were false; this created a fear in the Department that no-one was safe from some degree of victimization. On the teaching buy-out issue, Fabrikant was evidently fully in the wrong. By October 25, 1991 the majority of senior faculty in the Department were so concerned about Dr. Fabrikant's behavior (now that it had begun to impact them) that they passed and signed a sort of censure motion.

By October 30, the Department Personnel Committee (DPC) was struggling with how to bring behavior into the consideration of Dr. Fabrikant's contract renewal for the period after May 31, 1992.

This was not easy for quantitative scientists to cope with. They were used to counting papers and checking the teaching evaluation scores. They spent over thirty hours just to get to the point of introducing behavior into the question. This level of naiveté is not uncommon in some quantitative disciplines, so the usual howl by the experimentalists over the "softness" of the humanities has its counterbalance here.

The October 30 meeting, therefore went on into the night. By this point the members of the Department, who in the past never had much information about Dr. Fabrikant's bad behavior outside the faculty, were learning more and becoming more fearful. Then, late in the evening they discovered Dr. Fabrikant just outside their meeting room door. Whether or not he was eavesdropping will never be established, but they certainly thought he was doing so. Dr. Osman tried to prevent Dr. Fabrikant from leaving until security arrived. It has never been clear why he tried this. This action by Osman was held by a Code of Conduct panel decision in July 1992 to be inappropriate, and a small fine was levied upon the DPC members, though the murders occurred before it could be collected.

The members of the DPC were not the only ones nervous about Dr. Fabrikant. At the Senate Meeting of November 1, 1991, Associate Vice-Rector Catherine Mackenzie, who was responsible for security (among other things) became concerned that Fabrikant was carrying a gun in a valise. She sat next to him to monitor him closely during the meeting, and had him searched by police as he left. No weapon was found. Dr. Mackenzie had been very much aware of Dr. Fabrikant's threats for years, and during the 1989 period of trouble when she was Executive Assistant to the Rector, it was probably she who had decided that security protection for the Rector was needed. Fabrikant had first mentioned shooting people to her in 1989. Of all the persons involved in this matter, Dr. Mackenzie was probably the one most alarmed by Fabrikant's behavior. She was also fined by a Code of Conduct panel decision in July 1992.

Throughout November of 1991 there was alarm in many quarters. Dr. Osman's secretary was by now quite concerned, and was making sure she knew reflexly how to handle an emergency. (When the time came, she handled it in an exemplary fashion). On November 6, Grendon Haines wrote that he thought the police should be involved. On November 7, four senior Department members wrote to the Secretary General asking for an emergency suspension of Dr. Fabrikant under 29.07 of the collective agreement. About November 20 the informal University Intervention Team ended its work with the suggestion that an outside person be called in to manage the situation. On November 18, the DPC recommended not to renew the appointment of Dr. Fabrikant after May 31, 1992, based on behavioral issues and the narrowness of his teaching expertise.

On November 20, Dr. Fabrikant countered with a submission to the FPC about his teaching. In it he outlined both what he had taught and what he *could* teach, which was indeed rather broader than what he had been assigned. In early December, the FPC backed off a bit, recommending a renewal for one year, with four conditions, the fourth of which dealt with behavior. On December 12, the Vice-Rector Academic acceded to the recommendation of the FPC and accorded a further one year renewal with the four conditions.

Meanwhile, in a parallel matter, Fabrikant was denied the opportunity to have a sabbatical leave application considered. On November 21, 1991, Dr. Sheinin wrote to Fabrikant refusing, on the basis that under 26.02, only tenured members were eligible.

Unfortunately, Fabrikant had not been applying under 26.02, but rather 26.16, which had been in the collective agreement since 1984, and which reads, in its entirety: "A member who is not tenured and who has ten (10) years or more years of continuous service shall be eligible for sabbatical leave under the provisions of this article." This provision, which is most unusual in Canada, had originally been inserted to benefit a small number of long service limited term faculty. In particular, at least one person, Prof. A. Boswall, in Mathematics, has received leave under this provision (though I was repeatedly told by senior University officers that no one had ever done so).

When the new collective agreement of February 13, 1991 appeared, the juxtaposition of 26.16, which was retained, with the new 12.05 on research appointees made it probable that Fabricant's service as a (research) faculty member would be service for the purposes of 26.16. No-one had noticed the interaction between these two provisions. Thus by June 1, 1992, Dr. Fabrikant did have exactly ten years of service as a member, and did not have tenure. He was, in my view, eligible to be considered for a sabbatical leave. At various times, various officers wrote to him alleging that only his time since 1990 counted, that only his time from 1985 counted, and that (probably correctly) his pre-1982 time did not count. The ongoing pretense that he was not a faculty member during 1982-85, but was during 1985-90, surfaces here again.

By January, 1992, many observers felt that Dr. Fabrikant's stance had become even more brittle, detached, and extreme. Dr. Osman began to investigate slightly back-door methods of relieving himself of Dr. Fabrikant. On January 15, Dr. Osman asked the Secretary General for assistance because Dr. Fabrikant had failed to comply with a DPC request that he prove his credentials. On January 23, Dr. Osman was advised by the Secretary General to desist. In fact, much has since been written about Dr. Fabrikant falsifying elements of various CV's. Some of this derives from the apparent differences in his CV's over the years. I have compared them, and the differences are largely explicable, if one

examines differences in academic ranks and degree granting systems between North America and the former USSR. Thus his "upgrading" of his USSR academic ranks and subsuming of "Mechanical Engineering" within his degrees in Mechanics and Applied Mathematics in post-1983 CV's are not uncommon reinterpretations made by such emigrés once they fully understood Canadian equivalences, according to a number of them I consulted.

Despite Mme Gaudet's advice Dr. Osman continued to follow up this issue by pressing Fabrikant again on February 5. Doubtless, Dr. Osman was feeling very bruised by this point, considering the raft of grievances filed by Fabrikant, plus some very strong (and quite articulate) letters he had recently written to Osman. By February 10, Dr. Mackenzie was asking for outside assistance in conflict resolution, and on that same date Ms. Maureen Habib, Executive Assistant to the Rector, attempted to get cooperation on centralizing all data on harassment by Dr. Fabrikant. Some outside advice was sought, as evidenced by one long letter from an external consultant in conflict on March 10.

Throughout this period Dr. Fabrikant was widening the war, writing to all and sundry outside the University about his grievances, real and imagined. The E-mail campaign had also begun, in which Dr. Fabrikant used that facility to campaign with his views. By the end of March, Dr. Sheinin wrote to Maureen Habib that, "I am not comfortable meeting with Dr. Fabrikant". This was also the date of the first formal warning under 29.03 from Dr. Sheinin to Dr. Fabrikant, the first step in a disciplinary cascade which could lead to dismissal. This first step was flawed in the first instance by failing to base the action on a complaint originating from the Dean. This was later corrected on April 21. On April 13, the Internal Grievance Committee inexplicably upheld the University position on Fabrikant's requests to be considered for sabbatical and tenure, but did find for Fabrikant on his eligibility to be considered for promotion. On May 25, the Rector, though he had doubts about the correctness of those decisions, confirmed all three.

By May 18 there was evidence that Dr. Fabrikant's wars had nearly totally distracted him from his science. An editor of a journal wrote that he couldn't get a response from Fabrikant to a provisional acceptance of an article, and had been trying since October 1991.

By June 11, the Chair of the Board of Governors, Me A. Gervais, suggested to the Rector that an independent inquiry similar to that eventually carried out by Arthurs et al be set in motion to address Dr. Fabrikant's accusations about scientific misconduct. It is worth noting that this is well before the July 17 request from NSERC to do so. By July 24, the Rector had written to the Vice-Rector Academic, urging her to organize such an inquiry. On August 12, he even proposed possible names for members, one of whom did join the inquiry when it took place much later.

On June 17, the second (and last) warning under 29.03 was drafted, but not sent. On June 22, CUFA decided to take the (probably wrong) sabbatical decision of the Internal Grievance Committee to arbitration.

On June 22, Dr. Fabrikant sought to get employer endorsement for his request for a handgun transport permit. He started at the Department level. This request implied that he already owned at least one handgun, a fact lost on some, but not all officers of the University.

On June 23, Dr. Osman restarted the promotion consideration process, as he had been directed to do by the success of Dr. Fabrikant's grievance on the matter.

That same day, in response to the gun permit issue, an emergency meeting of some senior officers yielded a request by two Vice-Rectors (Drs. Sheinin and Bertrand) to have the Rector suspend Dr. Fabrikant under his emergency powers. Dr. Kenniff's failure to do so has been the subject of much comment and speculation. While I believe he should have done so, there were powerful reasons why he did not:

1. The compartmentalized decision-making structure which made Dr. Sheinin so fearful of blocking Fabrikant's probationary appointment came into play again. The Rector felt exposed and unsupported. There were no signed complaints, and the two Vice-Rectors asking him to do this thing were both leaving the next day on holidays, (Bertrand for 10 days and Sheinin for 43 days). Neither had exactly offered to stick around and extract signed complaints. (Both Vice-Rectors, in turn, believed that nothing would have persuaded the Rector to suspend, and therefore were more passive than might have been expected).

2. The Rector had indeed used those powers before, in a case where there were signed complaints, and it was still a massive struggle to prevail in the resulting grievance process. It is likely that the discipline provisions of the collective agreement were then too narrowly drawn. It has been mentioned but not confirmed that the Rector had also had a similar bad experience trying to appropriately dismiss someone in the civil service.

3. Perhaps due to his training as a lawyer, the Rector has an instinctive inclination to look first at individual rights, and only later at collective ones. Usually a valuable reflex, it did not serve him well in this instance.

The problem faced by Dr. Kenniff is not unusual. In cases of threats or harassment elsewhere in Canadian universities, it is a general finding that signed complaints rarely can be obtained before taking clear executive action. Clear executive action, however, generally results in a sufficiently renewed level of confidence to get signed complaints, sometimes in large quantities. In the future it will be important for Boards of Governors to understand this, and to expect that the Rector or President may have to take somewhat precipitous action on well-founded suspicion rather than proof. This means tolerance of a situation in which a Rector or President who has reason to believe a hazard exists can act, and if, by some happenstance, the expected formal complaints do not materialize, may not be able to maintain that stance.

On July 14, Dr. Kenniff forcefully declined Dr. Fabrikant's request with respect to the permit to transport a handgun. During the same period, the senior officers of the institution were preparing a letter to the Service des Permis of the S.Q., based on a draft by Me B. Freedman done on June 29. Somehow, in the process, the most forceful two paragraphs of the lawyer's draft, dealing with Dr. Fabrikant's behavior, were deleted. Furthermore, in a move which belied the emergency atmosphere, a further week was lost in translation, despite the best evidence that the S.Q. reads very well in either language. The letter to the S.Q. went on July 14, and sat on the desk of a chap who was on holiday until September.

During July and August, there were many salvos fired on both sides. Dr. Osman turned up the heat a bit by trying to set in motion a process to reclaim some internal grant money from Dr. Fabrikant's control. Dr. Osman had also determined that he would get Dr. Fabrikant to teach two design courses among his four course load for the next year. Dr. Fabrikant had objected, and indeed he had not been the first faculty member to try to avoid teaching design, since those who have not worked in that area find it very hard to get in to. It is well understood that Dr. Osman wished Dr. Fabrikant to demonstrate a greater topic breadth in teaching before being considered for tenure, but it seems likely that the choice of design was intended to put on some extra pressure. A number of engineers have indicated to me that there were better (and fairer) choices of courses which could have been used to demonstrate adequate breadth.

By August Dr. Fabrikant was in trouble on a number of fronts. He risked contempt of court for his comments about Mr. Justice Gold contained in his vituperative E-mail messages, he faced a most taxing shift in teaching in the fall, he was facing lawsuits, and launching others, and had utterly alienated even CUFA, his faculty association. His big E-mail campaign to vilify his enemies was beginning to backfire. But he still had full access to the campus and its facilities.

In addition to strains in the working relationship between the Rector and the Vice-Rector Academic, that summer their schedules did not make for easy coordination on what was a growing crisis. Dr. Sheinin was on holiday from June 24 to August 2 inclusive. After one week back, she was in Europe on University and academic business during August 11-17 inclusive. Dr. Kenniff left on August 15 for what was intended to be two weeks in Maine.

On August 17, the University's external legal counsel, Me R. Beaulieu at McCarthy Tétrault, sent a draft of a strong letter about the E-mail campaign to Me M. Gamache, the University internal legal counsel. No one can now recall who had requested the draft or when, but the cover letter from Beaulieu makes it clear that he finds it unusual for an employer to send such a letter to an employee rather than exercising management rights or rights enshrined in a collective agreement. The draft was evidently approved as written some time between August 17 and August 21, because the final version which was sent to Dr. Fabrikant was identical to the original draft. The final version was dated August 21, signed by Richard Beaulieu, and sent by registered mail. The Rector's office received a copy in the mail on or before August 24, as it bears a receipt stamp dated August 24. The last paragraph of that letter reads (in its entirety):

"By the present letter you are hereby advised that our client will hold you entirely responsible for all damages incurred by it and will not hesitate to take appropriate legal proceedings against you to compel you to cease your current course of action. You are further advised that action will be taken regarding your employment status with the University in accordance with the collective agreement. Finally, the present letter in no way should be considered as addressing itself to individual recourses which any grieved person has against you as a result of the matters herein discussed. Do govern yourself accordingly."

It seems very unlikely that Dr. Kenniff was the originator of the request. He was on vacation when the draft was approved, and the detailed reaction to the E-mail campaign had been largely handled by the office of Dr. Sheinin, who had certainly been frequent in her use of outside counsel for human resource management assistance. On the other hand, Dr. Sheinin was away for six days before the draft appeared on the scene, so if she requested it, she could only have done so in the eight day period before August 11. Given the difficulties between the two senior officers it is unlikely that one ordered the draft and the other approved it. Thus while there are hints, there is no certainty as to the true originator of this initiative. I certainly cannot believe that it was an assistant to one of the senior officers, nor is it likely to have been initiated by internal legal counsel.

The letter is problematic, in that I find it to be a very strong letter. The second sentence of the last paragraph appears to be an advance notice of dismissal. While I appreciate that it was absolutely necessary to bring the Fabrikant E-mail campaign to a halt, it is clear that Dr. Fabrikant placed great importance in his job and his job security. He may at one time have been responsive to strong threats, but that was only when he had something to gain by complying. Predicted dismissal just before the season in which he would be considered for tenure was not what he had in mind as a University response to his grievances and accusations, and could be viewed as giving him little to lose.

On the other hand, things had reached the point where dismissal seemed quit logical, either by the second warning and dismissal route (29.04 and following in the collective agreement) or the emergency powers route (29.07 in the collective agreement). Article 29 of the collective agreement then in force is silent on all other discipline other than letters of warning, ordinary dismissal after two warnings, or emergency suspension, which becomes a dismissal unless successfully grieved. This does not mean that other discipline is precluded, but that it remains a management right which, according to 5.02, must be exercised in a fair and reasonable way. The title of Article 29 is "Dismissal and Other Disciplinary Measures", and I don't doubt that CUFA would have read that to mean that all other disciplinary measures, including, for example, suspensions with pay not leading to dismissal, were precluded. I find that unlikely, because the entire article is oriented to dismissal, so that other measures mentioned therein are mentioned as ante-chambers to dismissal. It is unlikely that even CUFA intended that the only true discipline would be dismissal.

Even so, given Dr. Fabrikant's history, it would certainly have been preferable to take certain precautions before launching either route to dismissal. Among these would have been to bar him from campus until any investigation was complete. This may be held to be tantamount to a suspension with pay if the intent is disciplinary, but if is merely a stopgap measure for public safety, it has been argued in some settings that if there is no loss of pay and benefits, it is only discipline if it persists after the investigation is concluded.

Much of this is academic, as a direction barring him from campus would not necessarily have been obeyed. It would, however, have provided a basis for taking steps both to have personnel in place who could enforce such a bar, and to alert the staff in his usual haunts that he was being barred. This requires a coordinated effort, which is exactly the point. A letter such as the one sent on August 21 is not normally sent to a person with a history of harassment or threatening behavior without a coordinated effort in preparing for its effect.

Indeed, that makes it all the more problematic that such a communication would go via external legal counsel to the recipient, especially by registered mail, because the timing of receipt is never known. Coordination normally implies controlling timing, so that where behavior is an issue, a more controllable method of advising the employee is used.

There is no evidence that anyone at the Department of Mechanical Engineering or the Faculty of Engineering and Computer Science was advised that it had been sent.

It is not even known whether Dr. Fabrikant ever received or saw that letter. Just because the University's copy arrived on or before the 24th, and was opened on the 24th, does not mean necessarily that Dr. Fabrikant's did. That is merely a presumption.

He may indeed have decided to act so violently that day without the extra stimulus of predicted dismissal. That does not invalidate the notion that extra care normally ought to be taken when delivering such a stimulus to someone of whom people are already quite fearful.

By August the 24th, the University's plans to commission an external inquiry into Dr. Fabrikant's complaints about research ethics were actually fairly advanced. The Rector and the Vice--Rector Academic had discussed details of the project on a number of occasions. Both the Chair of the Board and later NSERC had suggested that it be done. It was a certainty that it would occur. Dr. Fabrikant had no knowledge of these plans, however, and it is another irony that his crimes had the effect of delaying by about a year the inquiry he had been insisting upon.

### **PART 3: RECOMMENDATIONS**

The recommendations which follow are placed in a sequence which is not one of descending order of importance, but rather descending order of generality. In specific circumstances each may be important, but the earlier ones are likely to bear on more situations than the later ones.

**RECOMMENDATION 1: In selecting academics to take on administrative roles, favour those with proven leadership skills; encourage and in some cases insist upon some management training for such appointees, from department chairs to Vice-Rectors or Rectors. In certain cases taking the training should be a condition of appointment.**

That the Vice-Rector Academic, the person principally responsible for the conduct of academic labour relations at Concordia, was completely innocent of any knowledge about managing in a unionized milieu is evidenced by a cascade of errors and mistaken decisions. On the other hand, both chairs of Mechanical Engineering were unhelpful in terms of their narrow view of elements to be considered in making fundamental employment decisions, and in obscuring from the gaze of more senior officers just what the situation was. The Dean was equally unhelpful, and furthermore failed on numerous occasions to act as a line manager. The failure of the Dean to use his separate recommendatory opportunities to draw attention to concerns is unconscionable, particularly in late 1990. The failure of administrative courage at all levels, including that of the Rector, is partly due to inadequate experience, a flawed understanding of what powers exist, and a failure to understand that from time to time the occupant of any senior post must risk opprobrium. It comes with the job.

It is facile to say that training gives managerial courage. It manifestly does not. Lack of training prevents it, however, or guarantees that its exercise is flawed. Appropriate programs do exist in Canada for basic training of chairs, deans, vice-rectors and even rectors. I am advised that Dr. Sheinin was proposed to attend one such, but declined. Others who needed it were not even proposed.

In recruiting to academic administrative posts it is not sufficient merely to pay lip service to leadership. Advertising must be clear as to those qualities sought, and evaluation of candidates for those qualities must be thorough.

**RECOMMENDATION 2: Decisions on important or potentially controversial matters at the highest level must be collective decisions. It is not enough for the Rector and the Vice-Rectors to meet regularly. It is important that the collectivity of the Rector and Vice-Rectors be constituted as a body with status, and that the Board delegate to that body, rather than to individuals, the power to make certain decisions. Otherwise collective leadership is a pure accident. In the absence of collective leadership, senior officers are at risk of being undercut when they make difficult choices.**

It seems unlikely that Dr. Fabrikant's probationary contract would have been given if probationary appointments went to such an Administrative Committee. It is possible that Dr. Kenniff would have been more comfortable with a vote from such a body when he was asked to exercise emergency powers. Finger pointing becomes more difficult when the same finger votes on those same issues. This concept parallels that of cabinet government, and works well elsewhere. Changes to the collective agreement with CUFA may be needed if such a body is to approve new appointments, but not necessarily, in that the reference to the Vice-Rector Academic in the collective agreement does not preclude an internal management requirement that the Administrative Committee approve an appointment before the Vice-Rector can act on it.

In this type of cabinet-style administration, the officers whose line areas of responsibility are closest to a given matter are the ones who take the lead in its presentation to the Administrative Committee, and indeed, it is usually (but not always) the initial position advanced by them which is the collective decision. The discussion, however, affords opportunity for information known to others to be brought to bear before decisions are concretized.

**RECOMMENDATION 3: Improve record keeping and management information systems, and take other steps to create and maintain an institutional memory. Arrange careful and coordinated transitions from one administration to the next.**

This bears little further comment. Neither Dr. Kenniff nor Dr. Sheinin knew all they needed to know about Dr. Fabrikant. Dean Swamy, in turn, had imperfect knowledge about Fabrikant-related matters outside his faculty, as did Drs. Sankar and Osman. As evidenced by the reaction to Dr. Daniel, Dr. T.S. Sankar didn't even want to know.

**RECOMMENDATION 4: Do not use qualitative academic assessments as surrogates for the reluctance to exercise management rights. Do not treat insubordination or misconduct as an issue of academic quality.**

It is my view that improper or mistaken decisions on eligibility for promotion, promotion, sabbatical eligibility, date of tenure consideration, counting of service and on how to handle Dr. Fabrikant's research ethics complaints were all related to his behavior. On the other hand, inadequate, late and clumsy action was taken with respect to his behavior.

**RECOMMENDATION 5: Reduce the numbers of Associate Vice-Rectors and/or Assistants to Vice-Rectors. Place the Rector more fully in the day-to-day business of the institution.**

Information flows poorly in organizations which are too tall. The large number of persons at the rank below Vice-Rector contributes to the compartmentalization discussed. More complex institutions twice the size of Concordia function well with fewer than half Concordia's number at that level, with most of those in a staff rather than line capacity. Such a structure automatically places the Vice-Rectors and the Rector closer to the action.

**RECOMMENDATION 6: Require deans to perform as line managers when appropriate.**

The passivity of Dean Swamy is hard to explain. Even in so clear a matter as the row with Purchasing over paying for the laser printer, there was no evidence of a role by the Dean. Why indeed was it necessary for various Vice-Rectors to vie with one another for the honour of caving in to Fabrikant, when, if a faculty member is simply willfully flaunting the ordinary elements of the system, like paying for goods ordered and received, the Dean should simply authorize payment from the faculty member's grant and reprimand the faculty member.

**RECOMMENDATION 7: Assign academic labour relations to a knowledgeable, experienced person, and not automatically to the Vice-Rector Academic. Coordinate negotiations of the Collective Agreement with what is actually happening in active cases in the institution. Get people to read the Collective Agreement if they are going to administer it. Answer questions of interpretation fully when posed by members.**

In the three years prior to Dr. Sheinin's arrival, some more reliance was placed on the labour relations knowledge of Vice-Rector Maurice Cohen, Associate Vice-Rector Hal Proppe, and others, even though they were not the Vice-Rector Academic. They were by no means infallible, but they did have substantial experience, and it showed.

Many institutions chose not to burden the Vice-Rector Academic with academic labour relations because: (1) being a good Vice-Rector Academic is a very full-time job without that added portfolio, and (2) the adversarial aspects of the labour relations tasks can harm the ability of the Vice-Rector Academic to be a true academic leader. To lead in the area of academic choices and goals involves types of persuasion which may be closed off by the scars left from the other role.

The changes in the February 1991 Collective agreement which negated the modest safeguard of delayed tenure consideration in the first probationary contract given to Dr. Fabrikant, and the accidental according of sabbatical rights to him are examples of failure to coordinate negotiations and executive action.

Fabrikant's letter of December 21, 1989 was answered in a disgraceful fashion, considering that it raised valid questions of interpretation of his contract, his potential probationary contract and the collective agreement.

**RECOMMENDATION 8: Renegotiate the discipline article (Article 29) of the Collective Agreement.**

I understand this has now been done, though I have not yet been shown the result. A proper article 29 would allow for ordinary suspension with or without pay, would permit non-disciplinary restrictions as precautions for the sake of public safety while in the course of applying discipline, and would certainly recognize that some forms of cause are sufficiently grave that they neither require a warning letter or a period of suspension to be permitted to dismiss, given that full recourse via the grievance system remains, and the onus remains on the employer to show that it had cause when the arbitration provided for in that recourse takes place.

**RECOMMENDATION 9: Use emergency suspension powers or other emergency powers on reasonable apprehension, not on signed complaint. Use the collective decision making approach to decide this, regardless of what the collective agreement says about the officer who exercises those powers. Be prepared to lose the resulting grievance from time to time.**

This relates in part to the June 23, 1992 failure of the Rector to take the recommendation of his two Vice-Rectors and act under 29.07. Collective decisions help reduce and spread the opprobrium a bit if the ensuing grievance succeeds. As discussed before, there is widespread experience that signed complaints are readily obtained after the threat is removed.

**RECOMMENDATION 10:** Put in place a protocol for Sexual Harassment Officers, Ombudspersons and the like which balances their responsibilities, and encourages them to explore possible wrongdoing of which they become aware, even without a formal complaint, provided that all reasonable measures are taken to protect the identity of the informant, and provided that no disciplinary measure ever results without due process.

This is obviously motivated by the failure of various and sundry officials of the University to follow up the 1982 rape allegation, especially since some were not even bound by the same constraints as the Ombudsperson. However, it applies to some extent to the rather vague attempts to obtain formal complaints about behavior after January 1989.

**RECOMMENDATION 11:** Whenever possible, hire by open competition, get references, make proper enquiries and evaluate against criteria. Try to modify programs such as Actions Structurantes to the extent possible to avoid having them subvert this process, and failing that, hold open competitions for the soft-funded positions made available by such programs.

Was Valery Fabrikant the best choice for CONCAVE in 1985? We don't know, because the hypothesis was never tested.

**RECOMMENDATION 12:** Formalize the University Intervention Team (UIT) or scrap it.

This informal internal crisis help group formed itself in the 1980's, but did have tacit approval from the senior officers of the University. The unofficial status led to nearly non-existent records and a spotty history. It now appears to have disbanded itself, though that too is informal. The University appears not to know whether it does or does not have this entity.

**RECOMMENDATION 13:** Don't use external legal counsel to handle major discipline. Get legal advice there, not strategic advice.

The coordination and other problems inherent in letters such as the August 21, 1992 one have been fully discussed.

**RECOMMENDATION 14:** If you have an emergency, don't send it to translation.

The supposedly emergency letter to the S.Q. on the issue of the permit to transport a handgun was sent on July 14, 1992. Assistant Legal Counsel had drafted that letter on June 29. All that happened in the interval was translation into French, which took a full week, and the deletion of the two best paragraphs. The S.Q. has occasion to read in both languages and does it very well.

## CONCLUSION

When an outsider is appointed to review a matter, ordinarily it is the recommendations which are thought to be the useful part of the report. Indeed, I hope the University does find the recommendations to be of use. In this case, however, the circumstances are unique, and there are more lessons to be learned than those contained in the 14 recommendations. Some of those lessons are already being applied at a number of Canadian universities, and to my personal knowledge a number of dangerous situations have been defused and possible tragedy averted. Thus Concordia's pain has already paid a certain positive dividend in a wider context.

Many of the additional lessons are subtle; they are imbedded in the setting of the stage or the telling of the tale, but do not lend themselves to a numbered recommendation or specific directive. They are lessons in how to see the familiar world around us in different hues.

Hence this report has no executive summary, and it is my fond hope that readers of this report will read it all. The circulation of the recommendations (Part 3) in the absence of context from Parts 1 and 2 would create the illusion that there are easy fixes. There are fixes. They are not easy. And they are not all in the recommendations.

**APPENDIX A: MANDATE GIVEN BY THE BOARD**

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Concordia University

Executive Committee of  
the Board of Governors

Excerpt from the Minutes of a regular meeting  
of the Executive Committee, held on Wednesday, 10 November 1993

Upon motion duly moved and seconded, it was unanimously RESOLVED:

WHEREAS an administrative review was established by the Board of Governors by resolution adopted at its meeting of 22 September 1993, to examine the employment history of Valery Fabrikant at Concordia University and to make recommendations to the University on the matters outlined in the said resolution;

WHEREAS the said resolution of the Board of Governors provided for the appointment of an independent person, external to the University, to perform this administrative review; AND

WHEREAS the Executive Committee was given full power and authority to make the said appointment.

BE IT THEREFORE RESOLVED:

THAT Dr. John Scott Cowan be appointed to perform the above mentioned administrative review, in accordance with the terms of reference outlined in the Board resolution adopted on 22 September 1993, and with the understanding that the said review will be completed, and the findings and recommendations presented to the Executive Committee, no later than six (6) months after commencing work.

CERTIFIED TO BE A TRUE COPY

Me Bérengère Gaudet  
Secretary of the  
Executive Committee of  
the Board of Governors

**EXCERPT FROM THE MINUTES OF THE OPEN SESSION OF THE MEETING  
OF THE BOARD OF GOVERNORS OF CONCORDIA UNIVERSITY HELD ON  
WEDNESDAY 22 SEPTEMBER 1994**

Upon motion duly moved and seconded, it was unanimously RESOLVED:

THAT an independent person external to the University be appointed:

- 1.a) To review all documents related to the employment history of Valery Fabrikant at Concordia University and, where he or she deems it useful, to interview any persons capable of providing additional information.
- b) To make recommendations to the University, based upon this review, for concrete measures to enhance the University's ability in the future to address the following matters:
  - (i) policies, procedures, norms and criteria used for the hiring, rehiring and promotion of faculty;
  - (ii) duties and conditions attached to employment contracts;
  - (iii) policies, procedures, practices and mechanisms for dealing with harassing, uncivil and disruptive behaviour from members of the University community;
  - (iv) policies, procedures and practices for resolving grievances concerning employment or the conditions of employment; and
  - (v) any other policies, procedures and practices he or she considers relevant to the subject matter of this review; AND
2. The person shall be appointed by the Executive Committee of the Board. He or she shall begin work immediately upon appointment and shall present any findings and recommendations to the Executive Committee as quickly as possible and in no event later than six months after commencing work.

CERTIFIED TO BE A TRUE COPY

Me Bérengère Gaudet  
Secretary of the Board of Governors

**APPENDIX B: INVITATION TO THE UNIVERSITY COMMUNITY**

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**To all members of the Concordia Community**

I was appointed by the Executive Committee of the Board of Governors, at its meeting of November 10, 1993, to conduct an administrative review of Valery Fabrikant's employment history at Concordia University. A copy of the Board resolution establishing the mandate and the terms of reference for this review as well as a copy of the resolution appointing me to conduct this review are attached.

I would like to stress that my mandate is a forward-looking one that will focus on recommendations for concrete measures to enhance the University's ability to address certain specific matters in the future.

Since my appointment, I have been reviewing the documentary record provided to me by the University. I intend to interview various individuals and I invite members of the community to provide any information, opinions or suggestions which might be pertinent to the review.

In conclusion, I would be happy to hear from anyone who feels that he or she has something to contribute to the review. I am prepared to meet with individuals or groups, in confidence, or to receive written submissions. Written submissions should be made by February 15, 1994 while meetings will be scheduled between February 15, 1994 and March 20, 1994.

**Enquiries, communications, submissions etc. should be addressed to Dr. John Scott Cowan c/o Room BC-124, 1463 Bishop Street, Montreal, H3G 1M8. Tel: 848-4813. Written communications marked "Confidential" will be forwarded to me directly, unopened.**

John Scott Cowan

January 6, 1994