
Report on the Implications for Academic Freedom in the Case of Andrew Potter at McGill University

November 2018

Mark Gabbert
University of Manitoba



2705, prom. Queensview Drive, Ottawa (Ontario) K2B 8K2
Tel. 613-820-2270 \ \ Fax 613-820-7244 \ \ Email acppu@caut.ca

www.caut.ca

Report on the Implications for Academic Freedom in the Case of Andrew Potter at McGill University

Mark Gabbert
University of Manitoba

Author's Acknowledgements

I am grateful to Greg Flemming, Gavin Fridell, David Robinson, Penni Stewart, Jim Turk and members of the CAUT Academic Freedom and Tenure Committee for their comments and to CAUT professional staff members Margaret McGovern-Poté and Marissa McHugh for their very helpful editorial support.



Background

On March 20, 2017, Professor Andrew Potter, Director of the McGill Institute for the Study of Canada (MISC), published an article in *Maclean's* magazine entitled "How a snowstorm exposed Quebec's real problem: social malaise."¹ Reflecting on the March 15, 2017 blizzard that left hundreds of motorists marooned and led to the deaths of two by freezing,² Professor Potter concluded that the mishandling of this event reflected a deeper deficit of Quebec's "social capital." Evidence for this he claimed to find in, among other things, data indicating levels of volunteerism, warm friendships, and mutual trust among Quebecers that were considerably lower than the Canadian average, along with the practice of restaurants encouraging cash payments as ways to avoid tax and a widespread practice of paying under the table. Quebec was, Professor Potter concluded, "an almost pathologically alienated and low-trust society, deficient in many of the most basic forms of social capital that other Canadians take for granted."³

Public reaction to Professor Potter's article was quick to appear, and by the morning of March 21, there was a flurry of negative responses to the piece, with Professor Potter's detractors eventually accusing him of everything from professional incompetence to Quebec bashing, racism, and hate speech.⁴ The McGill University administration was soon coping with a spate of denunciations which came in both e-mails to the University and in the press. Professor Potter's piece had generated an emerging public relations problem for McGill. The upshot was that three days after the appearance of his *Maclean's* piece and a mere eight months after leaving his position as editor of the *Ottawa Citizen* for appointment to the McGill post, Professor Potter had resigned as Director of MISC, though he retained the remaining years of his three year term appointment as Associate Professor.

The Potter affair inevitably raised serious academic freedom questions. Here was a case where a professor's published work had generated public outrage which in turn led to the writer's resignation from the directorship of a research institute. Yet, on the face of it, Professor Potter had done nothing more than exercise his right to extramural public commentary, a right that was clearly protected by the principles of academic freedom as both commonly accepted and articulated in CAUT's policies on academic freedom. Moreover, McGill's own Statement of Academic Freedom required the University to protect its faculty's academic freedom against "infringement and undue external influence;"⁵ yet as the controversy developed, it became increasingly clear that the McGill administration had no intention of protecting Professor Potter's academic freedom to publish or of defending him against public attacks. Instead, in the interest of calming the uproar and protecting McGill and MISC from public hostility, the University took the position that the protections of academic freedom did not extend to academic administrators. Over the course of several weeks, the University developed and promoted a theory of

1. Andrew Potter, "How a snowstorm exposed Quebec's real problem: social malaise," *MacLean's*, 20 March 2017. Accessed 18 July 2017: <http://www.macleans.ca/news/canada/how-a-snowstorm-exposed-quebecs-real-problem-social-malaise/>.
2. "Stranded on highway 13: 'It's unacceptable,' Mayor Denis Coderre says," *Montreal Gazette*, 15 March 2017. Accessed 17 March 2017: <http://montrealgazette.com/news/local-news/montreal-snow-stories-hundreds-stranded-on-highway-13-during-storm;> "Two men died in car buried by Quebec blizzard," *CBC*, 17 March 2017. Accessed 1 October 2017: <http://www.cbc.ca/player/play/900332099760>.
3. Andrew Potter, "How a snowstorm exposed Quebec's real problem: social malaise," *MacLean's*, 20 March 2017. Accessed 18 July 2017: <http://www.macleans.ca/news/canada/how-a-snowstorm-exposed-quebecs-real-problem-social-malaise/>.
4. For examples, see CAUT FOI materials, "569 Documents_Previouse Requests," pp. 277, 305, 314, 321-38, 360, 367-81, 760-836. This is one of two collections of documents that CAUT obtained through a freedom of information request.
5. "McGill Statement of Academic Freedom," *McGill University*. Accessed 17 July 2017: <https://www.mcgill.ca/secretariat/statement-academic-freedom>.

the conditional academic freedom of academic administrators which both purported to justify Professor Potter's resignation and put other administrators on notice that their academic freedom was subject to limits.

In light of this, the Executive Director of the Canadian Association of University Teachers (CAUT) requested that Dr. Mark Gabbert, of the University of Manitoba, investigate this matter and report to the CAUT Academic Freedom and Tenure Committee. Professor Gabbert was asked to:

1. review all the documentary evidence in the case that was publicly available;
2. determine whether there was a violation of academic freedom as defined in the CAUT Policy Statement on Academic Freedom and the Policy Statement on Academic Freedom for Academic Administrators; and
3. advise the Academic Freedom and Tenure Committee of any actions that CAUT should take.

What follows is an account of the Potter affair, including the University's developing stance on the case and the emergence of concern among some McGill faculty members that the administration's handling of the case represented a serious threat to their academic freedom. This account provides the basis for an analysis of the academic freedom issues that the case raised and particularly of the negative impact on academic freedom of the McGill administration's unacceptable doctrine regarding academic freedom for academic administrators.

The conclusion is that not only did the University fail in its duty to protect Professor Potter's academic freedom but that, to make matters much worse, its justification for Professor Potter's resignation has seriously undermined the academic freedom of all McGill faculty, whether or not they are academic administrators. Given the gravity of this situation, CAUT must press McGill to amend its academic freedom policy to make explicitly clear that academic administrators at McGill enjoy the same full protection for their academic freedom as faculty members who are not administrators. Should the University refuse to do so, CAUT should take appropriate action.

III | Chronology

As McGill became aware of the Potter controversy in the early morning of March 21, 2017, the University's public affairs bureaucracy was soon scrambling to respond. By 7am, the Media Relations Department had advised senior administrators that the Potter article had generated "lots of outrage."⁶ The first official comment came in a tweet sent at 10:54 the morning of March 21 in which the University declared that "[t]he views expressed by @JAndrewPotter in the @MacleansMag article do not represent those of #McGill."⁷ Shortly thereafter, Andrew Potter posted an apology on Facebook which was e-mailed to the press. It read in part:

My intention in writing the piece was not to insult Quebec and Quebecers. As naive as this sounds, it came out of a good-faith attempt to understand what happened with the closure of Highway 13 during the snowstorm, and to find that understanding in some statistics on social capital in the province and compared to other parts of Canada. A political writer's first duty is to reflect his community back to itself. Quite obviously, I failed. When people you read and respect tell you they don't recognize their society in your description, it signals a failure of empathy and imagination, and it is time to take a step back. I regret the errors and exaggerations in what I wrote, and I'm very sorry for having caused significant offence.⁸

By this time, the Premier of Quebec had also waded into the discussion, publicly excoriating the article as "...deplorable, very poor quality. It's a work of very poor quality essentially based on prejudice and artificial impressions, some aggressivity even towards Quebecers."⁹

At the end of the afternoon of March 21, Professor Potter wrote to the Board of Trustees of MISC apologizing for the piece:

As some of you will have seen by now, I wrote a piece yesterday for Maclean's magazine making an argument about the relationship between the recent snowstorm crisis in Montreal and levels of social solidarity in the province. The article has generated a great deal of negative feedback here in Quebec, most of it directed at me personally but much has inevitably been directed at McGill and the Institute.

The piece is ill-considered in many ways, from the poor use of anecdotes to excessively negative rhetorical flourishes that add nothing to the argument. But probably the most significant is that it's simply not the sort of piece I should be writing in my capacity as Director....

6. At 6:38 am that morning, Social Media Manager Laurie Devine e-mailed Vice-Principal (Communications and External Relations) Louis Arseneault; the Principal's Chief of Staff, Susan Aberman; Provost Christopher Manfredi; and Leigh Yetter, Senior Director, Strategy and Operations in the Provost's office. See "569 Documents_Previours Requests," CAUT, p. 418. For a sense of the considerable resources McGill has invested in PR, see <https://www.mcgill.ca/communications/home-page> and the media relations website at <http://www.mcgill.ca/newsroom/contacts/>. Accessed 10 July 2017.

7. <https://twitter.com/mcgillu/status/844245844928974850>.

8. Quoted in "Writer 'very sorry' for causing offence at accusing Quebec of 'social malaise,'" *Montreal Gazette*, 21 March 2017. Accessed 11 July 2017: <https://montrealgazette.com/news/local-news/accusation-of-social-malaise-in-quebec-sparks-social-media-roar>. It is not clear whether the McGill tweet or the Potter apology came first.

9. *Ibid.*

I can't begin to tell all of you how much I regret even considering writing the article. I won't try to explain or justify it, except to say that after eight months in the job, it is clear that sometimes I still think too much like a journalist and not enough like the representative of an academic institution....

The Maclean's piece cannot be taken down, but I have written a post on Facebook, in both official languages, retracting the unsupportable aspects of the column and apologizing for the hurt caused. The university has also put out a short statement and a few tweets distancing itself from my comments.

I would like to apologize to the members of the Administration and the members of the Board, collectively and individually. Being Director of the MISC is an enormous privilege and responsibility, the dream job of a lifetime, and I am extremely sorry for having let all of you and the Institute down.

If anyone would like to speak to me privately about this, I would welcome a call or a meeting. If anyone can suggest any further steps I can take to make this right, for MISC and for McGill, I'm all ears.¹⁰

In the space of twenty-four hours, MISC Director Potter's world had turned upside down. But as the CBC pointed out in a later commentary, there was nothing in this late afternoon e-mail to his Board to suggest that he was planning to resign as Director of MISC.¹¹

The McGill administration was aware from the outset that the Potter case had academic freedom implications. Shortly after 9:00 am on March 21, Director of the Media Relations Office, Caroline Graveline, sent Vice-Principal (Communications and External Relations) Louis Arseneault the link to the McGill statement on academic freedom. She pointed out to him, however, that "Potter n'est pas un prof. L'academic freedom ne s'applique pas vraiment." When Vice-Principal Arseneault inquired about Professor Potter's status, Ms. Graveline affirmed that as an appointee of the Board of MISC and not a professor, Professor Potter could not be certain of support from the McGill Association of University Teachers (MAUT) if he claimed his academic freedom had been infringed.¹²

This view of Professor Potter's supposed lack of academic freedom rights due to the mistaken assumption of his not having professorial status persisted in some quarters until at least the end of the afternoon of March 21.¹³ Earlier in the afternoon, however, Principal Fortier's Chief of Staff, Susan Aberman, had written to Vice-President Arseneault pointing out that by writing under the byline of Director of MISC, Professor Potter had violated the provision of the Statement of Academic Freedom requiring that "[w]hen scholarly members of the university participate in public forums and debates, they should represent their views as their own." Vice-Principal Arseneault immediately responded his agreement.¹⁴ Ms. Aberman reaffirmed this view of Professor Potter's loss of academic freedom protection early the next morning, when responding to concerns from McGill's Media Relations Department about "a lot of harsh criticism on social media last night....re freedom of expression" directed at the McGill tweet of March 21. This time Vice-Principal Arseneault responded with an emphatic

10. E-mail from Andrew Potter to the Board of MISC, 21 March 2017, "569 Documents_Previous Requests," CAUT, pp. 352-53.

11. Benjamin Shingler, "No hint of resignation in Andrew Potter's apology to McGill, documents show," *Montreal Gazette*, 25 April 2017. Accessed 9 July 2017: <http://www.cbc.ca/news/canada/montreal/mcgill-andrew-potter-suzanne-fortier-1.4082989>.

12. E-mail exchange between Carole Graveline and Louis Arseneault, 21 March 2017, "569 Documents_Previous Requests," CAUT, p. 413. At this point, however, media relations was still forwarding to Professor Potter all inquiries from journalists.

13. E-mail exchange between Laurie Devine and Antonia Maioni, 21 March 2017, "569 Documents_Previous Requests," CAUT, pp. 482-83.

14. E-mail exchange between Susan Aberman and Louis Arseneault, 21 March 2017, "569 Documents_Previous Requests," CAUT, pp. 398-99.

“Absolutely!”¹⁵ So by the morning of March 22, the University’s position was that Professor Potter had no claim to academic freedom protections because he had failed to indicate that the views presented in the *Maclean’s* piece were his own and not those of MISC.

It was no doubt in part to respond to growing concerns about the impact of the Potter affair on academic freedom that at the McGill Senate meeting held at 2:30 the afternoon of March 22, McGill Principal Suzanne Fortier felt obliged to clarify matters. As the minutes record:

The Chair then took this opportunity to note that while the accomplishments of McGill students, employees and alumni, have a positive impact on the McGill community and the University, unfortunate actions or words may carry a negative impact. She stressed that academic freedom is one of the foundational principles at McGill and it must be defended with vigor. *She noted that responsibility is also an important principle and members of the McGill community, especially those with roles in governance and administration within the University, must remind themselves of their responsibility and the impact of their actions and words on the McGill community.*¹⁶ (Italics added)

So things remained until the following afternoon when the announcement came that Andrew Potter had resigned as Director of MISC. It is not certain what passed between Professor Potter and the McGill administration between his apology to the Board of MISC at the end of the afternoon on March 22 and the announcement of his resignation. At Professor Potter’s request, early in the afternoon of March 22, he met with Principal Fortier.¹⁷ During that meeting his position as Director was discussed. Writing to CAUT three months after the fact, Principal Fortier argued that Professor Potter’s earlier apology to the Board of MISC for the inappropriateness of his having written the column as Director of MISC “shows that he had, on his own, come to the conclusion that what he had done was incompatible with his role as Director, prior to meeting with me.”¹⁸ Of course this claim leaves open the question of what Principal Fortier actually said to Professor Potter during that meeting. In any case, by the end of the day on March 22, Professor Potter had resigned as Director of MISC:

March 22, 2017

In light of the ongoing negative reaction within the university community and the broader public to my column published in the March 20 online edition of *Maclean’s*, I have submitted my resignation as Director of the McGill Institute for the Study of Canada, effective immediately.

I deeply regret many aspects of the column—its sloppy use of anecdotes, its tone, and the way it comes across as deeply critical of the entire province. That wasn’t my intention, it doesn’t reflect my views of Quebec, and I am heartbroken that the situation has evolved the way it has.

15. E-mail exchange among Laurie Devine, Susan Aberman, and Louis Arseneault, 22 March 2017, “569 Documents_Previours Requests,” CAUT, p. 339.

16. Minutes of the McGill Senate Meeting, 22 March 2017, p. 4. Accessed 9 July 2017: https://www.mcgill.ca/senate/files/senate/senate_minutes_march_22_2017.pdf.

17. E-mail exchange between Susan Aberman and Louis Arseneault, 22 March 2017, “569 Documents_Previours Requests,” CAUT, p. 315-16. The meeting was underway by 1:45 pm.

18. Suzanne Fortier to David Robinson, Executive Director of CAUT, 22 June 2017. This letter was in response to David Robinson’s letter of 27 March 2017 in which he raised a series of questions relating to McGill’s handling of the Potter affair particularly as it affected Professor Potter’s academic freedom.

This has been the dream job of a lifetime, but I have come to the conclusion that the credibility of the Institute will be best served by my resignation. I intend to continue with my current academic position at McGill, and I hope to serve the school in any place I might be effective.¹⁹

Finally, in the early evening of March 23, McGill Principal Fortier wrote to the McGill community to announce Professor Potter's resignation. In it, she implicitly approved of his resignation as arising from his failure to adhere to the "mission" of MISC:

The Board of MISC regretfully accepted Professor Potter's resignation. The mission of MISC is to promote a better understanding of Canada through the study of our heritage and to support the study of Canada across the country and internationally. *Professor Potter recognized that he had failed to uphold this mission and that the "credibility of the Institute would be best served by his resignation."*²⁰ (Italics added)

Principal Fortier went on to assure her readers that Professor Potter would retain his faculty position. In response to what she referred to as "unfounded rumours and concerns regarding academic freedom" that the Potter resignation had triggered, Principal Fortier affirmed that "academic freedom is a foundational principle of McGill University." To emphasize the point, she concluded her message by reproducing without comment the McGill statement on academic freedom.

But the matter of academic freedom refused to go away. By the early evening of March 23, the McGill administration was hearing about the number of communications from alumni concerned about the implications of the Potter affair for academic freedom.²¹ Earlier that day, a *Globe and Mail* editorial had taken McGill to task for its failure to defend Professor Potter's academic freedom, concluding with:

Let's be perfectly clear: In a liberal democracy, the writing of an ill-considered magazine column is a trifling concern compared to the possible sanctioning of a university professor for writing the column in question.

Unless McGill offers a viable explanation, or Mr. Potter himself clears the air, the logical conclusion is uncomfortable: McGill professors can write whatever they want, as long as their views are palatable to Quebec's establishment. There can be no harsher condemnation of a university. Or of a society, for that matter.²²

The *Globe and Mail's* views were echoed the following day in the *Toronto Star*.²³ Already on the afternoon of March 23, MAUT President, Professor Terry Hébert, had written to the Principal and Provost asking for their "insights" into the

19. The tweet was dated 22 March but posted at 6:55am on 23 March 2017. Accessed 22 July 2017: <https://twitter.com/jandrewpotter/status/844910434281050112>.

20. "Message from the Principal and Vice-Chancellor of McGill University," *McGill University*, 23 March 2017. Accessed 22 July 2017: <https://www.mcgill.ca/newsroom/channels/news/message-principal-and-vice-chancellor-mcgill-university-267277>.

21. E-mail exchange between Derek Cassoff, Director of Communications, University Advancement, and Louis Arseneault, 23 March 2017, "569 Documents_Previous Requests," CAUT, pp. 185-86.

22. "Why did McGill fail to defend Andrew Potter's academic freedom?" *Globe and Mail*, 23 March 2017. Accessed 17 July 2017: <https://www.theglobeandmail.com/opinion/editorials/globe-editorial-why-did-mcgill-fail-to-defend-andrew-potters-academic-freedom/article34411662/>.

23. "McGill sends the wrong message about academic freedom: Editorial," *Toronto Star*, 24 March 2017. Accessed 17 July 2017: <https://www.thestar.com/opinion/editorials/2017/03/24/mcgill-sends-the-wrong-message-about-academic-freedom-editorial.html>. *Maclean's* had also reacted immediately to the McGill tweet on March 22. Macfarlane, Emmett. "The chilling effect of a McGill University tweet on its scholars," 22 March 2017. Accessed 22 August 2017: <http://www.macleans.ca/news/canada/the-chilling-effect-of-a-mcgill-university-tweet-on-its-scholars/>.

Potter case, saying he had received many calls for comments on the matter, noting that rumour had it that Professor Potter had been dismissed, and indicating MAUT's concerns with the impact of the case on academic freedom.²⁴ At the end of the day on March 24, Professor Hébert sent a memo to the MAUT discussion forum asking for clarification of the administration's part in Professor Potter's departure as Director and promising to raise in the University Senate the question "[w]hether the McGill administration should comment on any opinion expressed by academics, however controversial."²⁵

Such were the conditions under which Principal Fortier agreed to an interview in the *Globe and Mail* which appeared on March 26. There she attempted to clarify her views on the academic freedom issue in relation to the Potter resignation. The *Globe and Mail's* coverage of the interview describes Principal Fortier as claiming that, because he wrote as an administrator, Professor Potter's piece was not covered by the usual academic freedom protections enjoyed by ordinary faculty members without administrative duties. "If," she said, "he had written this article as Andrew Potter [period], nothing would have happened. He wrote it as director of the McGill Institute for the Study of Canada." She claimed that, as Director, Professor Potter was obliged to protect the "credibility" of MISC which meant avoiding taking sides and working to preserve the Institute as a centre where an interface between the academic and political world could be fostered. Given his article, it was, she claimed, "anybody's judgement" whether "politicians would be happy to come to an event." She claimed that: "We have an institute that is there to promote discussions between people who come to the table with very different perspectives....It is not a role to provoke, but to promote good discussion." In her view, it was perfectly acceptable for ordinary professors to publish work that triggers heated public disputes, but administrators did not enjoy the same freedom. Principal Fortier speculated that Professor Potter had forgotten the demands of his position and had unfortunately reverted to the practices of "a previous role." She concluded that "[w]hen you are an academic administrator, there are things you must be more prudent about doing."²⁶

The *Globe and Mail* interview made abundantly clear that the McGill administration was working with a version of academic freedom that saw the academic freedom of academic administrators as conditional upon the exercise of "prudence" and the avoidance of controversy consistent with the purposes of whatever unit for which they were responsible. The full meaning of Andrew Potter's supposed earlier realization that he had failed to act in ways consistent with the "mission" of MISC now became apparent.

Two days after Principal Fortier's interview with the *Globe and Mail*, the student newspaper the *McGill Tribune* carried an article on the matter in which Doug Sweet, the Director of McGill Internal Communications, elaborated on Principal Fortier's views.²⁷ Mr. Sweet emphasized that faculty members had to indicate clearly when they spoke for themselves and not for the University. Because Professor Potter's byline named him as Director of MISC, the assumption was that he was not speaking for himself. Mr. Sweet was quoted as saying that:

Had the article in question been signed by the Professor as an individual academic, the University would have had a responsibility to defend a matter of academic freedom.... [...Potter's] resignation from that post was not accepted because of controversy surrounding the article or whether McGill agreed with it or

24. E-mail from Terry Hébert to Suzanne Fortier and Christopher Manfredi, 23 March 2017, "569 Documents_Previous Requests," CAUT, p. 747.

25. Terry Hébert, MAUT Discussion Forum, 24 March 2017, "569 Documents_Previous Requests," CAUT, pp. 48-49.

26. Simona Chiose, "McGill Principal defends necessity of Andrew Potter's resignation," *Globe and Mail*, 26 March 2017. Accessed 17 July 2017: <https://www.theglobeandmail.com/news/national/mcgill-principal-defends-necessity-of-andrew-potters-resignation/article34431888/>.

27. William Pang, "McGill denies that Andrew Potter's resignation is related to academic freedom," *McGill Tribune*, 28 March 2017. Accessed 25 July 2017: <http://www.mcgilltribune.com/news/andrew-potter-resigns-as-director-of-mcgill-institute-for-the-study-of-canada-87606/>.

not; the resignation was accepted because the article's publication had significantly hampered Professor Potter's ability to perform his duties as Director of MISC.²⁸ (Brackets in original)

Not surprisingly, this revelation of the McGill administration's view that the academic freedom of administrators was conditional upon its exercise not undercutting their efficacy as administrators or stirring public controversy did not reassure some members of the McGill faculty who had been concerned about the University's handling of the Potter affair. Among those worried colleagues were ten directors of various McGill institutes who understandably saw the University's approach to the Potter affair as potentially threatening their own academic freedom. On April 4, 2017, they wrote to Principal Fortier to register their anxiety about this and to request that she clarify the University's position.²⁹

The directors were concerned, they said, not about the Potter case itself but about the possibility that "the reasons and justifications that have been offered for the University's response may undermine academic freedom and may discourage faculty members from taking positions of responsibility, contributing to University service, and entering into public debate." The writers appealed to the "CAUT Policy Statement on Academic Freedom" that affirmed both faculty rights to protection from institutional and state interference in their work and their civil rights to extramural speech. Notwithstanding their status as administrators, they considered themselves to be faculty members entitled to undiminished protections of academic freedom in all of their functions. They asked whether it was the University's and the Principal's position that being administrators "so changes our relationship to our academic appointments as to diminish the protection of academic freedom." The Principal's comments in the *Globe and Mail* interview led them to request a comprehensive explanation of McGill's view on the extent to which the academic freedom of administrators might be limited by comparison with that enjoyed by faculty members without administrative appointments. They also questioned Communications Director Sweet's claim that when identified in a byline as administrators it is reasonable to assume that administrators' views are those of the institution they lead rather than their own. In conclusion, the writers called on the Principal to address four questions:

1. Are "academic administrators" outside the protection CAUT describes as applying to "all academic staff"?
2. If so, which academic administrators are outside of it? Does the exclusion apply to the principal, the provost, deans, associate deans, directors of centres and institutes, department chairs, all occupants of administrative posts?
3. The McGill policy on academic freedom which you quoted in your memo to the University community on March 23 reads in part: "They may exercise this freedom in the service of both the university and the wider society. When scholarly members of the university participate in public forums and debates, they should represent their views as their own." We note that the policy language quoted does not distinguish between academic administrators and other members of the academic staff. Does the university consider the use of language such as "the views expressed here are those of the author alone" to be mandatory in order for extramural contributions to public debate to be protected by academic freedom? For all members of the academic staff, or only for academic administrators (and if so, for which administrators)?

28. Ibid.

29. Shelley Clark et al. to Suzanne Fortier, 4 April 2017, "569 Documents_Present Request," CAUT, pp. 16-19. The letter was later signed by an eleventh person.

4. Relatedly, the University's official twitter account posted this on March 21: "The views expressed by @JAndrewPotter in the @MacleansMag article do not represent those of #McGill." Is there not a default presumption that individual members of the academic staff, even ones holding an academic administrative position, do not speak for the University when publishing their research or engaging in public debate? Does this tweet imply that in other cases the University *does* treat members of the academic staff (or only those holding administrative positions) as speaking for the University? If not, how will the University resist that inference in future cases?

Principal Fortier's response to these questions came two weeks later at the meeting of the McGill Senate held on April 20, 2017. At that meeting, several Senators raised questions reflecting the concerns expressed in the letter of the Directors.

The first set of questions arose from Principal Fortier's interview with the *Globe and Mail* in which she defended the Potter resignation and the related issue of the apparently conditional nature of academic freedom of administrators. The Principal was asked to explain how the administration would determine when an academic administrator should resign on grounds of poor judgement and whether "safeguards are in place that assure fair treatment of an academic administrator in such cases as well as protection of the fundamental principle of academic freedom." A second set of questions related to the administration's initial tweet distancing itself from Professor Potter's piece which raised concerns about institutional censorship. The Principal was asked to give reasons for having sent the tweet; to indicate the circumstances under which the University could take a position on such questions; and, finally, to explain how going forward the administration proposed to avoid future statements that could be perceived as "a selective disavowal of contentious opinions."³⁰

Principal Fortier chose to respond to the two sets of questions together. She began by restating the importance of academic freedom at McGill, but did so by quoting the University's mission statement in which academic freedom comes first in a list of principles that also includes "integrity, responsibility, equity, and inclusiveness." She pointed out that in their "scholarly activities," academic administrators could rely unquestionably on protection for their academic freedom.³¹ She noted, however, that the University administration's general obligation to protect the academic freedom of faculty members was complicated in the case of academic administrators due to the need to assure that administrative duties be properly carried out:

Although University officers may not interfere with the academic freedom of academic administrators and, moreover, have a duty to respect and protect it, they also have an obligation to ensure that administrative responsibilities are discharged effectively to the highest institutional standards, *in a manner that pursues the academic mission and responsibilities of the unit that they are charged with overseeing.*³² (Italics added)

According to Principal Fortier, the difficulty was that academic administrators could face situations where the exercise of their academic freedom might run counter to the requirement for administrative efficacy and adherence to the prescribed mission statement. In some cases, too, the University might have to deal with situations in which its obligation to protect the academic freedom of administrators ran up against its corresponding mandate to assure the

30. Minutes of the McGill Senate Meeting, 20 April 2017, pp. 6-7. Accessed 8 July 2017: https://www.mcgill.ca/senate/files/senate/senate_minutes_april_20_2017.pdf.

31. *Ibid.*, p. 7.

32. *Ibid.*

proper administrative functioning of a unit. There could be no hard and fast way to determine in advance how to handle such cases, a matter that would have to be left to the discretion of administrators:

Tensions or conflicts between the exercise of academic freedom by academic administrators and their obligation to execute their administrative responsibilities effectively are rare. So are tensions or conflicts between the University's duty to protect the academic freedom of academic administrators and its obligation to ensure effective execution of administrative responsibilities. None of these tensions or conflicts can be resolved through bright-line rules. Moreover, their resolution also depends on the nature, level, and category of the administrative responsibilities in question. Ultimately, it is a matter of judgment on the part of both academic administrators and senior university officers, acting carefully and with due regard for institutional neutrality and free inquiry.³³

When such cases do arise, Principal Fortier claimed, academic administrators who conclude that they are not able to meet the standards for good administration are well advised to resign their positions. But in cases where the standard is not met and there is no voluntary resignation, the University might have to intervene to remove an administrator:

When academic administrators no longer believe that they are able to discharge their administrative responsibilities effectively, then it is reasonable for them to step down from those responsibilities. Similarly, the University may, through the relevant institutional procedures appropriate for each case, replace academic administrators who are no longer able to discharge their responsibilities effectively. In either case, with the exception of a finding of serious misconduct, there is no impact on the academic administrator's status as a scholarly member of the university community.³⁴

What was clear from all this was Principal Fortier's position that cases could arise where a concern for administrative effectiveness could trump the University's commitment to academic freedom.

Turning to the question of the University's initial tweet on March 21, Principal Fortier confirmed that when individual faculty members speak or publish they are generally assumed to be speaking for themselves and not for the institution. She argued, however, that problems could arise in exceptional cases where academic administrators spoke as such and therefore might be wrongly taken to be speaking for the University. The March 21 tweet had been sent to avoid any such uncertainty. That said, Principal Fortier recognized that the tweet unfortunately had had the unintended effect of creating other uncertainties, namely about whether the University was abandoning the default assumption about individual academics speaking for themselves and whether the tweet implied a weakening of McGill's protections for academic freedom.³⁵

Responding to follow-up questions, Principal Fortier resisted pressure to set a written policy with respect to academic freedom for administrators since such problems arose infrequently and were "a matter of judgment, better addressed on a case-by-case basis." The appropriate action for administrators who had damaged their "credibility" and could no longer function effectively was to resign, the implication being that the University should seldom have to resort to removal. As for the difficulty of deciding when to state that an academic was speaking personally or for the

33. Ibid.

34. Ibid.

35. Ibid, p. 8.

institution, Principal Fortier claimed that that was “a matter of judgment” to be decided in light of “McGill’s principles, which were endorsed by Senate and the Board of Governors, *noting that responsibility is among those principles*” (Italics added). When pressed on the question of whether Professor Potter’s piece appeared under the byline of an ordinary professor, rather than of Director of MISC, would the University have responded differently, she “responded in the affirmative, noting that if there were no indication of his administrative leadership position, there would have been no reaction from the University.”³⁶

Principal Fortier returned to these issues a week later at a meeting of the McGill Board of Governors. According to the *McGill Tribune*, she noted that it was “part of McGill’s mission to serve society and specifically talk about our service to Quebec,” implying that Professor Potter’s column had not been consistent with that mission. To faculty members present who raised concerns about academic freedom, she responded that the expression of administrators had to conform to McGill standards. Among the norms of proper administrative comportment, avoiding “provocation” and “heated debate” were apparently central. The *McGill Tribune* quotes her as saying:

There is no restriction on academic freedom as faculty members....It is only as it pertains to your ability to deliver your mandate. [Faculty members] will choose not to occupy administrative positions because they have assumed a role that is important in university of being provocative, [...creating] a lot of heated debates, and that’s fine. We need people like that. But they usually choose not to be in academic administrative leadership positions because they believe that is where they can best fulfill the role they want.³⁷ (Brackets in original)

So things stood at the end of April 2017.

36. Ibid, pp. 8-9. Principal Fortier’s response to the Director’s letter of 4 April 2017 was identical with her statements in Senate. See Suzanne Fortier to Shelley Clark, et al., 20 April 2017, “569 Documents_Present,” CAUT, pp. 20-21.

37. Daniel Freed, “Principal Fortier addresses Potter resignation at a Board of Governors meeting,” *McGill Tribune*, 29 May 2017. Accessed 17 July 2017: <http://www.mcgilltribune.com/news/principal-fortier-addresses-andrew-potter-resignation-at-board-of-governors-meeting-052917/>. The full minutes of the Board meeting of 27 April 2017 are at http://www.mcgill.ca/boardofgovernors/files/boardofgovernors/summary_open_session_and_closed_session_minutes_april_27_2017.pdf. The discussion of the Potter affair is reduced to one general paragraph at page 4. It reads as follows: “In an exchange that followed, members discussed the role, duties, and responsibilities of staff in their roles as academic scholars and academic administrators. The Principal stated that in the case of academic administrators, the position responsibilities were based on academic unit mission statements, which in turn were reflected in responsibilities outlined in letters of appointment that are shared with academic administrators at the beginning of their mandates. Members also discussed the University’s recent social media communication. It was reported that the recent tweet published by the University may have generated confusion within and outside the University community. It was noted that the University normally reserves stating its position on matters when they are directly related to its mission and principles.” The fuller account is apparently the work of a reporter from *The McGill Tribune* who was in attendance at the open session where the discussion took place.

||| Academic Freedom Issues

As a number of colleagues in the McGill faculty understood, the Potter case raises important academic freedom issues. The most significant one is the question of the extent to which academic administrators are protected by academic freedom and whether the McGill administration's position on that matter is acceptable. There are also some other academic freedom issues arising from this case that need to be addressed. For example, there is the claim that, since Professor Potter's piece was "shoddy" or mere journalism and not up to academic standards, it was not protected by academic freedom. Additional concerns include the implications for academic freedom of the University's initial declaration that it did not share Professor Potter's views and the appropriateness of Professor Potter's writing under a byline as Director of MISC. These matters are addressed below before turning to the main question arising from the Potter case, namely the McGill administration's claim that the academic freedom of academic administrators ought to be understood as conditional upon whether its deployment is consistent with the mission and the effective and responsible administration of their units.

Expression revealing academic incompetence

Among the hostile responses to Professor Potter's article were many asserting that the piece was so sloppy and its arguments so unsubstantiated as to justify Professor Potter's dismissal. From one perspective, the claim that Professor Potter's article lost academic freedom protection because it was of poor quality or mere journalism rather than academic speech is moot. The McGill administration generally maintained throughout that, had it been the speech of a faculty member without administrative duties, Potter's piece would have been fully protected. What was at issue was, therefore, not the quality of the piece but the status of its author. Otherwise, the administration saw the article as clearly constituting protected academic speech. This view of the content of the article is consistent with the long standing principle that academic freedom protects not just teaching, research, and intramural service but extends to the right to make extramural comments on matters of public concern without fear of retaliation by the employer. This principle does not distinguish between journalistic or non-journalistic discourse, between speech that is provocative and that which is not contentious—nor, it must be emphasized, between the utterances of those with and without administrative duties.³⁸

But while the McGill administration did not consider the quality of Professor Potter's article to be grounds for dismissing him from his faculty position, this view was not extended to his speech as Director. In her interview of March 26, 2017 with the *Globe and Mail*, Principal Fortier was quoted as saying that Professor Potter's piece "was an unfortunate article," which was probably due to "a moment not remembering what his new role was and falling back on a previous role."³⁹ Here, Principal Fortier was making a problematic distinction between journalism and appropriate academic speech or between the role of newspaper editor and that of director of a research institute. Later in her interview she returned again to the quality of the article, appearing to introduce the notion that the academic speech of administrators had to meet a higher standard than that of ordinary faculty members: "I think [Professor Potter] would be the first to admit that it is not a good piece of scholarship, which is important when you

38. See especially points 2 and 4 of the "CAUT Policy Statement on Academic Freedom." Accessed 10 July 2017: <https://www.caut.ca/about-us/caut-policy/lists/caut-policy-statements/policy-statement-on-academic-freedom>.

39. Simona Chiose, "McGill Principal defends necessity of Andrew Potter's resignation," *Globe and Mail*, 26 March 2017. Accessed 17 July 2017: <https://www.theglobeandmail.com/news/national/mcgill-principal-defends-necessity-of-andrew-potters-resignation/article34431888/>.

are director of an Institute” (Brackets added).⁴⁰ Here, Principal Fortier was suggesting an unjustifiable distinction between journalism and academic speech. Such a distinction leaves out of account that academic freedom protects extramural speech as much as it does peer-reviewed academic publications.

If the inappropriate distinction between journalism and speech protected by academic freedom, at least for administrators, was only suggested in Principal Fortier’s comments, McGill’s Dean of Arts, Professor Antonia Maioni, held a much clearer view of the matter. In an e-mail to Principal Fortier written two days after Professor Potter’s resignation was announced, Dean Maioni strongly suggested that Professor Potter had not met the standards of scholarship necessary to bring his piece under the protection of academic freedom:

I just want to clarify that academic freedom is a privilege, not an entitlement. It is based on a responsibility to strict standards of research and intellectual honesty in the academy. And an administrative position has a further responsibility based on the description of its duties. Andrew was no longer a journalist and editor when he came to McGill: he was given the title of professor and of director, with the rights and responsibilities that go with those roles.⁴¹

Here Dean Maioni invoked a putative distinction between journalism and scholarship in a way that disregarded the right of academics to engage in extramural controversy. Her view could be taken to imply that Professor Potter’s work fell outside the ambit of protected speech even for a professor without administrative duties. Her comments unfortunately echo recent Universities Canada (UC) attempts to roll back the academic freedom protection for extramural speech and to restrict its coverage only to research and teaching.⁴² This is also revealed in Dean Maioni’s assumption that protection for academic freedom is lost in cases where an academic failed to act in some unspecified “responsible” fashion. All of this went along with the problematic assertion that rather than being an “entitlement” of each and every academic, academic freedom was a “privilege” leaving the impression that it might be revoked when circumstances required.

Remarkably, Professor Potter himself appeared to accept that the allegedly poor quality of his piece deprived him of protection. As he put it to the Board of MISC in his apology of March 21, he saw his problem as having a tendency to “think too much like a journalist and not enough like the representative of an academic institution.” Here he was at least in part making a distinction between journalism and scholarly work—a distinction that the principles of academic freedom do not admit, least of all with respect to extramural utterances.⁴³ Arguably, Professor Potter most fully revealed his misunderstanding of the demands and principles of academic life when he apologized for behaving like a journalist and for forgetting the comportment supposedly required of him as a professor or as Director of MISC.⁴⁴

These criticisms of the quality of Professor Potter’s article, including those of Professor Potter himself, overlook a fundamental principle of academic freedom, namely that all academics, whether they be administrators or not, have the right to intervene in public debates outside the university without fear of retaliation from the employer. Exceptions to this

40. Ibid.

41. E-mail from Antonia Maioni to Suzanne Fortier, 25 March 2017, “569 Documents_Previours Requests,” CAUT, p. 83.

42. “Universities Canada Statement on Academic Freedom,” October 2011. Accessed 12 August 2017: <https://www.univcan.ca/media-room/media-releases/statement-on-academic-freedom/>.

43. And of course some journalists thought that, even as journalism, the Potter piece was beyond the pale. An example is Chantal Hébert’s “It was shoddy journalism that cost Andrew Potter his job at McGill,” *Toronto Star*, 24 March 2017. Accessed 6 July 2017:

<http://www.thestar.com/news/canada/2017/03/24/it-was-shoddy-journalism-that-cost-andrew-potter-his-job-at-mcgill-hbert.html>.

44. See above, note 9.

would be restricted to cases where the law was violated or where the content revealed egregious professional incompetence. Notwithstanding the claims of some of Professor Potter's detractors,⁴⁵ his piece did not meet the standard for hate speech. As for competence, this standard must be applied in the most generous way. If an astronomer were to intervene in a public debate to promote astrology as a science, then questions could be raised about that scientist's professional competence,⁴⁶ but Professor Potter did not commit such a breach of the norms of academic speech. Professor Potter's piece was not meant for a peer reviewed journal; and many critics saw it as at best not up to the highest academic standard. But Professor Potter was exercising his extramural academic freedom rights and operating within the acceptable boundaries of public discussion. His column did not indicate unfitness worthy of dismissal, nor did the McGill administration ever claim otherwise, at least with respect to his faculty position. That the piece was controversial and published as opinion in a popular magazine is not grounds for depriving Professor Potter of academic freedom protection for his extramural writing.

All this said, it is important to keep in mind that the Fortier doctrine does not rely on assessments of the academic quality of expression to justify the dismissal of an academic administrator. Thus, the claims about the quality of Professor Potter's piece are very much a secondary issue when it comes to assessing the consequences of the Potter case for academic freedom at McGill.

The University's disavowal of Professor Potter's views

A second issue was the University's decision on the morning of March 21 to tweet that "[t]he views expressed by @JAndrewPotter in the @MacleansMag article do not represent those of #McGill." The concerns arising here were the basis of questions put to Principal Fortier during the McGill Senate meeting of April 22, 2017 when Senators questioned the assumption that the University could "take a position on statements made by members of its community" and noted the negative impact on academic freedom that flowed from what they called "selective disavowal of contentious opinions."⁴⁷

Principal Fortier responded that notwithstanding the standard view that individual academics speak for themselves and not the institution, when the academic in question writes under an administrator's byline, there is a risk that the public might take the views expressed to be those of the University. The purpose of the University's initial tweet, she said, had been to address that possible confusion. In retrospect, she saw that the statement had created uncertainty "about the University's commitment to academic freedom and the general norm that extramural statements by faculty members do not represent the views of the University. I regret this ambiguity."⁴⁸ In response to a follow-up question, she claimed that, had the *Maclean's* piece been attributed to Professor Potter with no reference to his position as Director at MISC, the University would not have sent the problematic tweet.⁴⁹

45. See for example some of the letters cited in note 2 above and the letter of a retired Quebec judge that appeared in *Le Devoir* of 23 March 2017. Accessed 21 August 2017: <http://www.ledevoir.com/international/actualites-internationales/494574/genocide-dites-vous>. On hate speech, see Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12876/index.do>.

46. Matthew W. Finkin and Robert C. Post, *For the Common Good: Principles of American Academic Freedom* (New Haven: Yale University Press, 2009), p. 39. See also Matthew W. Finkin, "Academic Freedom and Professional Standards," in James L. Turk, ed., *Academic Freedom in Conflict: The Struggle Over Free Speech Rights in the University* (Toronto: James Lorimer, 2014), p. 70.

47. Minutes of the McGill Senate Meeting, 20 April 2017, pp. 6-7. Accessed 8 July 2017: https://www.mcgill.ca/senate/files/senate/senate_minutes_april_20_2017.pdf. These concerns were first raised by McGill's Directors of Institutes in their letter to Principal Fortier of 4 April 2017 (see above note 29).

48. *Ibid.*, pp. 7-8.

49. *Ibid.*, pp. 8-9. The Senate minutes in this passage relate to supplemental questions and are not entirely clear about the distinction between issues arising from the tweet and the question of byline and the general problem of academic freedom protection for administrators.

A month after the fact, Principal Fortier appeared to register the problem with the University's immediate response to the uproar over Potter's piece. In the process, she admitted that when individual members of the academic staff spoke publicly it was fair to assume that they spoke for themselves and not for the University. What was missing in her response, however, was any acknowledgement that the tweet represented a failure on the part of the McGill administration to uphold a key provision of its own statement on academic freedom that required the University to defend both its own autonomy and the academic freedom of its faculty members against outside interference:

The university and its officers have a duty to protect the academic freedom of its scholarly community, both individually and collectively, from infringement and undue external influence as well as to maintain the university's institutional autonomy.⁵⁰

Principal Fortier's tweet failed to defend either the University's autonomy or Professor Potter's academic freedom. Principal Fortier could have used the University's initial statement as an opportunity to take a principled position on the University's autonomy, academic freedom and freedom of expression generally. She could have reminded the McGill community and the broader public that, as she later admitted, the default assumption is that when individual academics speak publicly they are not speaking for the University. She could have stated that the views of McGill's faculty members are those of the faculty members themselves, which is true of everything from their lectures to scholarly publications and magazine articles to public speeches. She could have affirmed that, consequently, the University is not responsible for the views of its faculty, who in the course of their work are assumed to be exercising their academic freedom free from institutional censorship or any obligation to conform to prescribed views. She could have made absolutely clear that it is not the University's role either to endorse or to disavow the work of its faculty. Rather, the University's role was to create an institutional space in which such work could be freely carried out. She could have made it clear that Andrew Potter was, therefore, entitled freely to express his opinion and others were entitled to criticize it, and it was not the University's place to interfere in that process or appropriate for others to press the University to do so.

Such a statement would have affirmed critically important principles of academic life instead of leaving the unfortunate impression that the University's official view set some sort of standard against which the statements of Professor Potter or others would be judged acceptable. It would also have represented an attempt to enlighten public opinion about those unique qualities of university life that Principal Fortier worried were not clear to the community at large; and it would have reassured McGill faculty who were alive to the adverse implications for academic freedom of the tweet that was actually sent. Instead, McGill's tweet left the impression that, in this particular case, the University was not supporting the views expressed, while in others it might give such support. The implication was that the University could be held to have official opinions on any which question addressed by a member of the academic staff. As it stood, the tweet was anything but a defense of Professor Potter's academic freedom, nor did it affirm the University's autonomy from external interference. Rather, it left the impression that the University's primary concern was to escape the blowback from Professor Potter's piece.

50. "McGill Statement of Academic Freedom," *McGill University*. Accessed 17 July 2017: <https://www.mcgill.ca/secretariat/statement-academic-freedom>.

Academic freedom for academic administrators

The central academic freedom issue in this case arises from the McGill administration's claim that academic administrators do not enjoy the same protections for their academic freedom as academics without administrative positions. As indicated above, Principal Fortier's doctrine of the limited academic freedom of academic administrators was gradually revealed over several weeks, beginning with the University's initial tweet, continuing through her announcement of Professor Potter's resignation as Director of MISC, her interview with the *Globe and Mail*, her comments at two meetings of the McGill Senate, and her response to concerned faculty members at the Board of Governors meeting at the end of April. The Fortier doctrine does not define "academic administrator," and Principal Fortier never responded to the request in the Directors' letter of April 4, 2017 to specify which administrators were subject to her doctrine. As Director of MISC, Professor Potter reported to the Dean of Arts, which presumably put him in the same category as a Head of Department. In any case, the Fortier doctrine makes no distinctions according to position in the administrative hierarchy beyond leaving it to senior administrators to decide when their subordinates might be removed for a breach.

CAUT has addressed this issue in a policy statement that clearly rejects any distinction between the protections for academic freedom enjoyed by ordinary faculty members and that of academic administrators.⁵¹ It describes academic freedom as "indivisible and undiminished in all academic and public settings, whether or not these settings are aligned primarily with teaching, research, administration, community service, institutional policy, or public policy." Given its essential contribution to "the common good of society," academic freedom may not be inhibited on grounds of such lesser principles as "management rights, commitment to a team, or speaking with one voice." Though implicitly accepting that institutional decisions properly arrived at must be carried out by administrators and affected academic staff, CAUT policy nevertheless affirms the ongoing right of all academics, whether administrators or regular faculty, whether excluded from the bargaining unit or not, to continue to criticize a given policy or practice even while being obliged to implement it. On this view, there is no valid distinction to be made between the academic freedom rights of academic administrators and those of all other members of the faculty. Consequently, academics who serve as administrators must be able to rely on the same protections in their academic activities as administrators that they would enjoy were they in non-administrative academic positions. And that protection must be seen to cover *all* of their activities, both intramural and extramural, so that they are not treated any differently as administrators with respect to academic freedom than they would be if they were academic staff without administrative duties.

The fundamental point here is that the university is not a workplace like any other, where managerial conformity or corporate reputation must be maintained by gag rules that assure administrative unity of practice or discourse. Instead, the university is understood as a space where gag rules themselves must be prohibited in the interest of protecting the institution's fundamental commitment to the search for "knowledge and understanding" which requires an environment where there is no place for "institutional censorship."⁵²

Limiting the expression of any group of academics creates a direct restriction for some members of the university community and a chilling effect for others; hence such restrictions are contrary to the very purpose of the institution. The importance of this principle is revealed with great clarity in the way McGill handled the Potter case.

51. "CAUT Policy Statement on Academic Freedom for Academic Administrators," November 2010. Accessed 20 July 2017: <https://www.caut.ca/about-us/caut-policy/lists/caut-policy-statements/policy-statement-on-academic-freedom-for-academic-administrators>.

52. "CAUT Policy Statement on Academic Freedom," November 2011. Accessed 20 July 2017: <https://www.caut.ca/about-us/caut-policy/lists/caut-policy-statements/policy-statement-on-academic-freedom>.

Principal Fortier's view of the limited academic freedom of academic administrators is in fundamental conflict with the CAUT position. The Fortier doctrine stipulates that academic administrators may be restricted in their public utterances to those that are not provocative, that do not have a negative impact on the McGill community, that are not inconsistent with the mission of the unit that they lead, that do not suggest or trigger a failure of effective administration, that do not lead to a loss of credibility for the administrator or the unit, and that cannot be faulted as a breach of the McGill mission statement's principle of "responsibility." In her view, academic administrators who fall short of these standards should have the good sense to resign their administrative positions and return to their primary roles as academics without administrative duties. Failing that and where, in the judgement of senior administrators, a breach of the doctrine had occurred as a result of expression which would ordinarily be protected by the principles of academic freedom, the administrator in question could be removed. Subject to such conditions, it followed that academic administrators could not count on exercising their extramural rights in the usual way; but of course even their scholarly publications and teaching, not to mention critical comments on university policy, might possibly have the sort of "impact" that could result in their dismissal as administrators. In any given case, potentially damaging public controversy might itself be taken as sufficient evidence to support a charge of administrative failure. Where under such circumstances senior administrators acted to remove a unit administrator, they would simply be acting to fulfill what Principal Fortier referred to as their "obligation to ensure that administrative responsibilities are discharged effectively to the highest institutional standards, in a manner that pursues the academic mission and responsibilities of the unit they are charged with overseeing."⁵³

In an attempt to mitigate the negative impact on academic freedom of her position, Principal Fortier took care to assert that the limits placed on the academic freedom of administrators as administrators would not impact on the administrators' exercise of academic freedom as rank and file professors. Indeed, the claim was made that had Professor Potter not published under the byline of Director of MISC, there would have been no reason for him to resign. Thus, in her interview with the *Globe and Mail* Principal Fortier claimed that, had Professor Potter signed his article as an Associate Professor, the University would have said nothing.⁵⁴ McGill Communications Director Doug Sweet also appeared to take this line in his comments to the *McGill Tribune* to the effect that: "Had the article in question been signed by the Professor as an individual academic, the University would have had a responsibility to defend a matter of academic freedom."⁵⁵

But given the fundamental propositions of the Fortier doctrine, it is simply not credible to claim that a mere change of byline would have saved Andrew Potter as Director of MISC. One need only consider that it would have taken no time at all for those who would have been outraged by Associate Professor Potter's article to discover that he was not just Associate

53. Minutes of the McGill Senate Meeting of 20 April 2017, p. 7. Accessed 8 July 2017: http://www.mcgill.ca/senate/files/senate/senate_minutes_april_20_2017.pdf.

54. Simona Chiose, "McGill Principal defends necessity of Andrew Potter's resignation," *Globe and Mail*, 26 March 2017. Accessed 17 July 2017: <https://www.theglobeandmail.com/news/national/mcgill-principal-defends-necessity-of-andrew-pottersresignation/article34431888/>. It is not clear whether "saying nothing" refers to not sending the original tweet distancing McGill from Professor Potter's piece or not accepting Professor Potter's resignation or both. There are some documents that could be taken to imply that if only Professor Potter's piece had not been attributed to him as Director, then his resignation would never have become an issue. However, such a view runs counter to the predominant evidence that in Principal Fortier's view Professor Potter's error was writing the piece at all. Had it been otherwise, the whole matter could have been resolved by simply making publicly clear that Professor Potter was speaking only for himself and leaving it at that. This, of course, leaves aside the more fundamental question whether as Director he should have had the right to publish such a piece and to expect that the University would support his right to do so as required by its own statement on academic freedom.

55. See "McGill denies that Andrew Potter's resignation is related to academic freedom," *The McGill Tribune*, 28 March 2017. Accessed 25 July 2017: <http://www.mcgilltribune.com/news/andrew-potter-resigns-as-director-of-mcgill-institute-for-the-study-of-canada-87606/>.

Professor Andrew Potter but also Director of the McGill Institute for the Study of Canada. It is not reasonable to suppose that because of the detail of a byline, Principal Fortier would have abandoned her preoccupation with institutional credibility, the MISC mission statement, the adverse impact of negative publicity on McGill and MISC, and the principle of “responsibility” that was her talisman from the McGill mission statement.⁵⁶ Nor is it reasonable to suppose that she would have remained silent in the face of the resulting hue and cry or that she would have publicly defended Professor Potter’s academic freedom in the face of public outrage. Such a public outcry would have engaged all the foundational concerns of the Fortier doctrine as described here. It strains credulity to believe that the same administration that abandoned Professor Potter as Director would have both defended him as having written as Professor Potter *and* permitted him to remain as Director of MISC. Given the McGill administration’s position on the academic freedom of academic administrators there would be no salvation through byline. To suggest otherwise is to obscure the real meaning of the Fortier doctrine.

Looked at from this perspective, the chilling effect of the Fortier doctrine on the academic work of academic administrators becomes quite clear. Administrators will certainly be constrained in their personal academic work if they know that, should their writings or other forms of expression cause a hostile public outcry, they could be judged to have created a “negative impact” and to have failed to uphold the mission of the unit they administer. Further, as administrators they may feel compelled to refrain from acting even where their best professional judgement is that highly controversial views need to be expressed and addressed. This chilling effect will have an impact on their personal scholarly work, their public activity, and their actions as administrators. Seen in this light, the concerns of those McGill directors of institutes who wrote to the Principal on April 4, 2017 are more than justified: institute directors at McGill cannot assume that the University will hold them blameless if they publish something that the public finds provocative or outrageous and that might raise questions about “credibility,” never mind how it is signed or the venue in which it is published or spoken.

The Fortier doctrine introduces into the academic community at McGill a distinction between members who have full academic freedom and those who do not. Those who are administrators or, practically speaking, who have ambitions to become administrators are expected to comport themselves in ways that persuade senior administrators that they are not given to provocative positions that may lead to pitched battles with public consequences. Those interested in administration must presumably conform to the Fortier principles in both their academic and administrative work if they expect ever to be appointed to such positions. Once appointed, the conformity to prescribed doctrine must continue, both in their acts as administrators and, for all practical purposes, in their scholarly work as well. If the Potter case is any indication, no future Director of MISC will dare to write a controversial piece no matter how they choose to sign it.

The Fortier doctrine has a profoundly negative impact on the academic freedom of administrators, on those currently outside the current body of administrators who might be interested in making contributions to administrative work, and by implication on faculty members who participate in the work of units bound by such a doctrine. Nor does the doctrine’s distinction between the administrative and purely professorial positions of academic administrators serve as full protection for their speech provided they use the proper non-administrative byline. The doctrine makes it highly likely that those who become administrators will be conformist bureaucrats with little taste or capacity for the critical commentary and engagement necessary for academic life. In such an environment, the academic freedom of all academic staff is undercut, with those holding critical perspectives that run against the grain of conventional opinion or generate

56. For a discussion of the insidious impact of mission statements on the exercise of academic freedom, see Pierre Trudel, “Le vrai danger de l’affaire Andrew Potter,” *Le Devoir*, 28 March 2017. Accessed 1 October 2017: <http://www.ledevoir.com/societe/education/494972/le-vrai-danger-de-l-affaire-andrew-potter>.

controversy under particular threat. The deployment of mission statements and related required comportment as prescribed doctrine has a negative impact on the freedom of expression of the entire academic community, not just administrators. Heads, deans, and directors will be under pressure to avoid anything that might generate negative public controversy. This can only undermine the leadership necessary to a vibrant intellectual community that has a secure place for those who raise difficult issues or whose views run counter to prevailing orthodoxies and may offend the general public.

Early in the controversy over Professor Potter's article, there were rumours that the University had been subjected to external pressure to take action against Professor Potter and that Principal Fortier had pressed Professor Potter to decide between resigning as Director of MISC or being dismissed from that post. On March 27, 2017, CAUT Executive Director David Robinson wrote to Principal Fortier raising a series of questions relating to these issues and to the University's actions as they affected Professor Potter's exercise of his academic freedom. The CAUT letter noted that "if Professor Potter was pressured or coerced into resigning, this would represent one of the most significant academic freedom cases in recent decades."⁵⁷

Principal Fortier did not respond to David Robinson's letter until June 22, 2017. In her response, she referred to her statement to the McGill community of March 23, 2017 and her comments on the Potter affair in the Senate meetings of March 22 and April 20 as embodying her position on the Potter case. She denied that there had been any external pressure exerted on the University administration to press Professor Potter to resign as Director of MISC. She took the position that given his earlier apology to the Board of MISC for his article, Professor Potter had himself already recognized the need to resign as Director of MISC before he had met with her on the afternoon of March 22. She stated that "[n]o one suggested that he should resign as a Professor, or that he should be disciplined. That was not even considered."⁵⁸

Principal Fortier was silent in response to the CAUT's questions as to whether the administration pressed Professor Potter to resign as Director of MISC or whether any member of the administration had ever made it clear that McGill would defend Professor Potter's academic freedom in this matter. These very important questions remain unanswered. What is clear, however, is that the application of Principal Fortier's view of the conditional academic freedom of academic administrators would have justified any attempt to pressure Professor Potter to resign. But whether or not any unacceptable pressure was brought to bear on Professor Potter to resign is not the key issue here. Rather, it is the emergence of the Fortier doctrine itself which affects all McGill faculty that makes the Potter case so important to the fate of academic freedom in Canada.

57. David Robinson, Executive Director of CAUT, to Suzanne Fortier, Principal of McGill University, 27 March 2017.

58. Fortier to Robinson, 22 June 2017.

IV | Findings

1. Neither Andrew Potter nor some members of the McGill administration properly understood that academic freedom protects the right of academics to extramural speech.
2. McGill's tweet of March 21, 2017 and subsequent behaviour violated the McGill Statement of Academic Freedom's requirement that the University's autonomy and the academic freedom of its faculty be protected against "undue external influence," generated uncertainties about the University's willingness to defend academic freedom, and undercut the standard assumption that the views of individual academics were not to be taken as those of the University.
3. There is no conclusive evidence that the McGill administration put pressure on Professor Potter to resign as Director of MISC, and this report makes no finding, implied or otherwise, on that issue. What is critically important, however, is that the application of the Fortier doctrine as the Principal expressed it in her various public statements after Professor Potter's resignation as Director of MISC, could certainly serve to justify such pressure as a legitimate prerogative of senior administrators.
4. The Fortier doctrine of the conditional nature of the academic freedom of academic administrators is contrary to the academic freedom rights of the University's academic administrators and of all members of the McGill faculty. The doctrine constitutes a violation of the CAUT Policy Statement on the Academic Freedom of Academic Administrators and threatens the protections embodied in the CAUT Policy Statement on Academic Freedom as they apply to all faculty members at McGill.

V Recommendations

In considering what action CAUT should take with respect to the findings of this report, it is important to keep in mind the views on the fundamental importance of academic freedom of former President of York University, Harry Arthurs. Speaking in 1995 to a meeting of the Association of Universities and Colleges of Canada, Arthurs affirmed that “[a]cademic freedom is a central, arguably *the* central value of university life. Anything which interferes with it has to be justified by reference to prior or higher values. I can think of very few, other than perhaps the protection of human life: certainly not institutional solidarity; certainly not institutional reputation.” Thus, “[academic freedom] ought to be protected all the time, everywhere.”⁵⁹

This view is evidently not shared by McGill’s Principal. According to the Fortier doctrine, academic administrators are subject to such lesser principles as concern for institutional reputation, “responsibility,” administrative efficiency, “credibility,” avoidance of heated debate, negative impact on the McGill community, and the content of mission statements as interpreted and applied by senior administrators. It appears that the McGill administration invoked such lesser principles against the more fundamental principle of academic freedom because it wanted to protect MISC (and with it McGill) as an institution that, in the words of journalist Chantal Hébert, was established “to contribute to the larger Quebec conversation” and hence critically important given “McGill’s rather unique position as one of the key junction points on the language map.”⁶⁰ No doubt it was legitimate for the McGill administration to be concerned about the potential impact of Professor Potter’s piece on the reputation and standing of MISC. However, such secondary concerns could not and did not in any way justify McGill’s very serious violation of the fundamental principles of academic freedom represented by the Fortier doctrine. A respect for these principles must prevail over any concern for institutional reputation.

It is evident that the Potter affair has created threats to academic freedom at McGill that go far beyond the particulars of the Potter case itself. What has emerged from it is the Fortier doctrine of the conditional academic freedom of academic administrators. This doctrine has imposed an institutional standard for the comportment of academic administrators that trumps academic freedom. From this flows manifest negative consequences for the entire McGill community as well as very negative implications for academic freedom in Canada as a whole. Therefore, CAUT should press McGill to adopt a clearly articulated policy that gives full protection to the academic freedom of academic administrators as outlined in the relevant CAUT policies. This language should be included in a suitably revised statement of academic freedom which would replace the current one as posted on the University website. The new language should also be included in the faculty handbook with the McGill Association of University Teachers. Should McGill fail to establish an acceptable policy, CAUT Council should impose censure.

59. Harry W. Arthurs, “Academic Freedom: When and Where? Notes for a Panel Discussion,” Annual Conference of the Association of Universities and Colleges of Canada, Halifax, 5 October 1995, p.1. Accessed 15 August 2017: http://www.crowefoundation.ca/documents/Academic-Freedom-When-and-Where_Arthurs-AUCC-Conference-October-5-1995.pdf.

60. Chantal Hébert, “It was shoddy journalism that cost Andrew Potter his job at McGill,” *Toronto Star*, 24 March 2017. Accessed 11 July 2017: <https://www.thestar.com/news/canada/2017/03/24/it-was-shoddy-journalism-that-cost-andrew-potter-his-job-at-mcgill-hbert.html>. Hébert took the line that, even had McGill begged Professor Potter to stay on as Director, he should have resigned. See also the e-mail exchange between Louis Arseneault and a correspondent whose name is redacted on 21 March 2017. “569 Documents Previous Requests,” CAUT, pp. 358-59.