

EMPLOYEE FREE SPEECH: IS IT MUTED BY "ABUSIVE STARDOM"?

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"Give me the liberty to know, to utter, and to argue freely according to conscience above all liberties."

John Milton, Areopagitica

Penned in the midst of England's Civil War, Milton's great pamphlet published 370 years ago remains seminal to recent events at the Canadian Broadcasting Corporation (CBC). Indeed, while his specific target at the time was the system for licensing and approving books, the classic plea for free expression resonates, particularly in the case of bungled attempts to muzzle celebrated CBC journalist Linden MacIntyre.

When the CBC announced that there would be 657 full time jobs cut as part of (further) budget cuts, MacIntyre and others took a principled stand in May 2014: for the good of the organization, they decided to voluntarily retire so that more opportunities would be available for younger people.

When asked about the need to retain younger colleagues at the CBC, MacIntyre said that the institution depends on the energy, imagination and intake of youth. He bluntly added that "without that potential, the place is doomed". In voting with his feet to end his celebrated 38 year career at the CBC, MacIntyre presumably hoped that his voluntary and very public departure would bring public attention to the challenges facing the public broadcaster.

Intervening events at the CBC, which others have commented on in exhaustive detail, have done little to suggest that the CBC has or will soon turn the corner. Though the optimist might note that it is difficult to imagine affairs getting worse. And even though MacIntyre's "banning" from the CBC was later reversed, his treatment upon departure would make Milton turn over in his grave.

The ruckus emerged after the Globe and Mail interviewed MacIntyre prior to his scheduled voluntary departure. In his remarks, MacIntyre hinted that the two CBC Saints Peter, [*authors note: he did not use those words*] being Peter Mansbridge and the late Peter Gzowski, had engaged in what some might consider to be workplace bullying. In describing the newsroom culture, and the related challenges of "abusive stardom", MacIntyre referred to "tantrums" by stars and said: "You know, it's Mansbridge, Gzowski, whatever. They were

not like shrinking violets either. So along comes [The Name Who Cannot Be Mentioned]."

Despite his attempt to highlight his concerns about vulnerable employees, the retiring MacIntyre was quickly rebuked. The personal comments expressed out of apparent and genuine concern were described by Jennifer Harwood, managing editor of CBC News Network, as "disgraceful". And as a result, the CBC told on-air staff to cancel any interviews with MacIntyre ahead of his last scheduled episode of the Fifth Estate. The potential that senior brass at the CBC may have inadvertently reinforced the implied allegations of chill and tyranny were seemingly not appreciated.

The resulting "outrage at the outrage" forced a dramatic reversal, with the CBC backing down the next day and reversing MacIntyre's ban. Apparently Harwood's directive had not been cleared with those actually in power, and the edict did not meet the CBC's allegedly "rigorous" standards.

While Harwood later herself acknowledged that the ban had been "shortsighted", the incident highlights the difficulties of an organization seemingly paralyzed by internal politics. Cancelling the right of a journalist (who happens to have impeccable credentials and have been in the midst of a graceful exit engineered out of his heartfelt concern for future vitality of the institution) is a fundamental betrayal of the values which the CBC is in business to propagate and foster.

Takeaway for Employers

The MacIntyre departure highlights the risks to employers who attempt to recklessly ignore Milton's plea and try to limit what current and former employees can say, especially in the case of voluntary departures. When an experienced and respected colleague leaves an organization, there can be scope for what has historically been considered "fair comment". And in light of current valid concerns about respectful workplaces and how harassment can be eradicated, employers must be extremely cautious when trying to denigrate departing employees. It is indeed rather ironic that sometimes the best way to validate a contentious point of view is to be disproportionate in how one responds to criticism.

by George Waggott

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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