

CROSSING THE CULTURAL CHASM AND THE POWER OF LISTENING: HOW WE WROTE A NEW TENURE CODE

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I. INTRODUCTION

Revising the Tenure Code of an institution of higher learning may be among the most challenging of the processes it undertakes, especially when there is a commitment to shared governance by its Board of Trustees and Faculty. At Mitchell Hamline School of Law, we recently experienced this process—both difficult and ultimately satisfying—following the combination of two law schools.

In 2016, Mitchell Hamline School of Law became an independent institution formed through the combination of independent William Mitchell College of Law and Hamline School of Law, a school of Hamline University, both based in St. Paul, Minnesota. In the early years, implementing the combination agreement consumed trustee and faculty attention, requiring significant work that included integrating faculty from each school, organizing administrative structure, filling staff positions, adding staff where necessary, and creating annual and capital budgets.

Combining the cultures of each school at an appropriate location was the most immediate challenge facing the new school. Fortunately, faculty had frequently taught at both schools over the years, especially in areas that filled course requirements, allowing each school to expand offerings without adding full-time contracts. Additionally, the perspective, quality of teaching, and commitment to student success were similar at both schools, paving the way for the combination to occur. Because William Mitchell Law had a larger building and faculty than Hamline Law, and the combined law school would be larger than either of the two law schools alone, it made sense for the Hamline faculty to move to the William Mitchell campus.

Still, despite these favorable conditions, there were numerous logistical challenges that had to be addressed immediately following the combination. A particularly critical one was determining the Tenure Code to be used for the new school. At the time of the combination, each school had its own Tenure Code, but neither one was seen as appropriate for the new law school. In particular, there was a strong belief that the William Mitchell Tenure Code created a severe imbalance of governance and authority between the Faculty and Trustees. But because of the new law school's location in the William Mitchell building, we thought we could use the William Mitchell Tenure Code temporarily, merely as a placeholder.

No one imagined it would be in place for the next six and a half years. In hindsight, however, no one should have been surprised that the shortcomings of the original William Mitchell Tenure Code would become increasingly obvious and frustrating for the faculty of the new Mitchell Hamline School of Law.

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II. THE PROCESS IN A VIRTUAL WORLD

The process to review the Tenure Code started at the beginning of the 2021–2022 academic year after the Faculty and the Shared Governance Committee of the Board of Trustees asked the Board’s Executive Committee to move forward with the review. For many trustees with backgrounds in legal practice, corporations, and the judiciary, the principle of “shared governance” that would be fundamental to the revised code was a new concept. Introducing that concept and explaining why it was considered so important for colleges and universities required significant effort, including a Board retreat facilitated by the Association of Governing Boards. That retreat helped trustees understand and embrace shared governance as an institutional value. The time was right to put the principle to work.

On behalf of the Executive Committee, the Board chair charged the Academic and Student Affairs Committee (ASAC) of the Board to conduct a comprehensive review that would:

1. Establish a working group to review the Tenure Code and seek broad input from faculty, administration, and trustees in the spirit of shared governance;
2. Conduct the review within the work plan of ASAC;
3. Engage an equal number of trustees and faculty in the working group;
4. Address substantive issues to meet standards of best practice in legal education;
5. Improve the organization, written form, and clarity of the document to meet standards of best practice;
6. Develop and use an iterative process for faculty input and ASAC review;
7. Conduct the work in a transparent and timely way; and
8. Recommend adoption of the revised Tenure Code by approval of the Faculty Tenure Committee and the Board of Trustees.

Although a broad charge of this nature was needed, it would require significant effort to implement. As noted, it had been anticipated that a new tenure code would be written and adopted shortly after Hamline Law combined with William Mitchell Law at the beginning of 2016. Several short-lived attempts to begin drafting a tenure code had seen little progress. Faculty emotions regarding the failure to adopt a new tenure code included impatience, disappointment, frustration, and even anger. The William Mitchell Tenure Code simply did not work well for the new law school. Its inconsistencies and

fixed timelines made application difficult, creating problems and confusion for the faculty, the law school administration, and even for some of the trustees.

Two separate law schools had combined and, although progress had been made, differences of opinion still existed regarding how a law school should be operated. The challenge was not only to find language that a law school faculty, administration, and Board of Trustees would accept; it was also to learn and appreciate the two similar but still unique cultures that had combined to create a new institution, and then to draft a code that recognized and facilitated the full integration of those two cultures. Under these circumstances, the working group formed to review the Tenure Code—the Tenure Code Review Task Force (TCRTF)—was asked to complete a task that was daunting, to say the least.

III. FORMATION OF THE TENURE CODE REVIEW TASK FORCE (TCRTF)

The composition of the TCRTF was critical to its success. The TCRTF had to include recognized leaders who were sensitive to the cultural concerns and understood the academic and administrative issues. The faculty, administration, and trustees needed to know that the legacy interests of both institutions would not be lost. Furthermore, the new Mitchell Hamline School of Law had pledged to be an anti-racist law school and had passed a resolution to “identify and eliminate racism that exists at our school, in the legal profession, and in the judicial system.” The TCRTF needed to be created with that pledge in mind. The TCRTF members, it should be noted, were diverse in terms of gender, race, religion, and disability.

The first decision was to appoint the ASAC Chair to be the Board of Trustees representative to the TCRTF, a wise choice because, as president emerita of Hamline University, she brought valuable experience and insight to the TCRTF. After receiving the Executive Committee’s charge, the ASAC Chair invited a tenured, well-respected faculty leader at Mitchell Hamline School of Law to co-chair the TCRTF. Each Co-chair then recruited two others to form a committee of six, achieving an equal number of trustees and faculty.

One of the three TCRTF faculty members had been a tenured faculty member at Hamline Law. After the law schools combined, she accepted an appointment to be the Provost at Hamline University. When her term as Provost ended, she joined the Mitchell Hamline School of Law faculty. Her experience as a tenured law school faculty member and as a university provost brought valuable perspectives to the TCRTF. The second TCRTF faculty member had been a faculty member at William Mitchell Law since 2007 and had been the Associate Dean at that school prior to the combination. He is a

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full-time professor at Mitchell Hamline School of Law. His tenure as a faculty member and experience as Associate Dean ensured that the legacy William Mitchell perspective would be represented. The third faculty member was one of the TCRTF Co-Chairs and is one of the co-authors of this article. He has taught at five different colleges and universities, including Hamline Law, and was tenured at four of those institutions. He was able to bring a helpful comparative perspective to the TCRTF. He has national leadership experience, and, while the TCRTF was doing its work, he was serving as Chair of the American Bar Association Section of Dispute Resolution.

For the Board of Trustees membership, as explained above, one of the TCRTF Co-Chairs was the ASAC Chair of the Board of Trustees. As ASAC Chair, she had a leadership platform within the Board of Trustees that allowed her to effectively communicate the progress of the TCRTF and explain why the TCRTF was including the language and provisions that it did. The second Board of Trustees member was a federal magistrate judge, with a long history in private practice and service to the law school prior to her appointment. Her legal experience and focus on procedure and process proved invaluable, especially at one point when the TCRTF was struggling to explain the contingencies that might confront a faculty tenure applicant. The third Board of Trustees member had a variety of prior legal experience, including the position of Senior Vice President and General Counsel of a Minnesota-based health insurance company. His substantial corporate legal experience allowed him to clearly explain how and when the Board of Trustees fiduciary responsibilities might be implicated by proposed Tenure Code provisions.

The individuals chosen as members of the TCRTF had leadership experience, policy creation skills, and respect from the relevant constituents. Just as importantly, everyone worked extraordinarily collaboratively. Although the six members of the TCRTF had different previous experiences, everyone was willing to be educated and flexible when it came to making final decisions and choices. And the fact that all the members on the TCRTF were kind, patient, and had well-developed senses of humor made our weekly meetings the second semester actually enjoyable.

We initially decided to meet as a full task force bi-weekly in the fall, and in between we worked in teams of two on discrete assignments. The full task force meetings became weekly meetings in the spring. This proved to be an efficient way to compose drafts of code sections. Task force members then worked together online to finalize specific language and reach consensus on the recommended changes. We engaged an expert legal writing editor who had been the Director of the Legal Writing Program at Hamline Law as our consultant. She was extremely helpful. By attending the meetings and turning drafts around promptly, our editor accelerated the pace of review considerably.