



UNIVERSITY SECRETARIAT  
 • Board of Governors  
 • Senate

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## THE McMASTER UNIVERSITY ACT, 1976

**IN THE MATTER** of Complaint # (2010-11) U/SHAD-002 brought by **Dr. Chris Bart, Dr. Devashish Pujari, Dr. William Richardson, Dr. Joe Rose and Dr. Wayne Taylor** (the “Complainants”) against **Mr. Paul Bates and McMaster University** (the “Respondents”) dated March 31, 2011, under the McMaster University Anti-Discrimination Policy;

**AND IN THE MATTER** of Complaint # (2010-11) U/SHAD-003 brought by **Dr. Terry Flynn, Dr. Milena Head, Dr. Christopher Longo, Mr. Peter Vilks, Ms Linda Stockton, Ms Rita Cossa, Dr. Brian Detlor and Ms Carolyn Colwell** (the “Complainants”) against **Dr. George Steiner, Dr. Wayne Taylor, Dr. Chris Bart, Dr. Sourav Ray, Dr. Devashish Pujari, Dr. Joe Rose, and McMaster University** (the “Respondents”) dated March 31, 2011, including the Counter-complaint of **Dr. Sourav Ray** against **Dr. Brian Detlor**, with leave, pursuant to Supplementary Procedural Order # 3 dated October 7, 2011, under the McMaster University Anti-Discrimination Policy.

### BOARD-SENATE HEARING PANEL FOR SEXUAL HARASSMENT/ANTI-DISCRIMINATION McMASTER UNIVERSITY ANTI-DISCRIMINATION POLICY (“Policy”)

## DECISION

### NOTICE

#### ***CONFIDENTIALITY ORDER***

This document contains the Tribunal’s decision concerning whether breaches of the Policy were established in the (2010-11) U/SHAD-002 and (2010-11) U/SHAD-003 Complaints. The decision is released in confidence to the parties and counsel in order to prepare for the remedy submissions.

The decision is not to be released for public distribution.

The Tribunal’s remedy decision will be appended to this Decision after receiving further submissions from counsel as previously agreed. The Tribunal will prepare a summary of the decision for the public, as contemplated by Section 70(g) of the Policy, after the Tribunal releases its full decision.

The Tribunal’s Confidentiality Order, dated June 30, 2011, remains in effect until further notice.



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| 002 Complainants | Dr. Chris Bart, Dr. Devashish Pujari, Dr. William Richardson, Dr. Joe Rose and Dr. Wayne Taylor  |
| 002 Matter       | Complaint # (2010-11) U/SHAD-002 under the McMaster University Anti-Discrimination Policy (DSB-0001)   |
| 002 Respondents  | Mr. Paul Bates (also referred to as Dean Bates), McMaster University   |
| 003 Complainants | Dr. Terry Flynn, Dr. Milena Head, Dr. Christopher Longo, Mr. Peter Vilks, Ms Linda Stockton, Ms Rita Cossa, Dr. Brian Detlor and Ms Carolyn Colwell  |
| 003 Matter       | Complaint # (2010-11) U/SHAD-003 under the McMaster University Anti-Discrimination Policy (DSB-0002)   |
| 003 Respondents  | Dr. George Steiner, Dr. Wayne Taylor, Dr. Chris Bart, Dr. Sourav Ray, Dr. Devashish Pujari, Dr. Joe Rose, and McMaster University  |
| CBoC             | Conference Board of Canada   |
| CLA              | Contractually Limited Appointment  |
| CP/M             | Career Progress/Merit  |
| DC               | Director's College   |
| DSB              | DeGroote School of Business (Faculty of Business)  |
| DSB-0000         | Reference to Global Hearing Record document  |
| G21              | The term "G21" was used during the Hearings and in this Decision as the name of the group of 21 faculty in the DSB who initially drafted, signed, and submitted the Performance Report to the Senate and the Selection Committee for the Dean of Business. |
| GMAT             | Graduate Management Admission Test   |
| HLI              | Health Leadership Institute  |
| HRES             | The Office of Human Rights and Equity Services, McMaster University  |

|                        |   |
|------------------------|---|
| HSM                    | Health Services Management Program  |
| IS                     | Information Systems (Area of the DSB)   |
| the Komlen Report      | The report titled “Preliminary Audit on Allegations of Discrimination and Harassment at the School of Business McMaster University”, authored by Mr. Milé Komlen, Director of HRES, dated March 25, 2010 (DSB-0785) |
| MCM                    | Master of Communications Management Program   |
| MBA                    | Master of Business Administration   |
| MS/IS                  | Management Systems / Information Systems (Area of the DSB)  |
| MUFA                   | McMaster University Faculty Association   |
| MUFAgab                | McMaster University Faculty Association online communication tool, available distributed to all members of MUFA.  |
| the Newton Report      | The report authored by Ms Lisa Newton titled “Fact Finding Report – Investigation into Complaint of Ms Carolyn Colwell Concerning Conduct of Dr. Sourav Ray”, dated July 13, 2010 (DSB-1195)                        |
| PACDSB                 | President’s Advisory Committee on the DeGroot School of Business  |
| PACDSB Report          | The Report written by the PACDSB entitled “Report to the President”, dated December 15, 2010 (DSB-0786).  |
| the Performance Report | The report entitled “Performance Report (July 1, 2004-Present) on Mr. Paul. K. Bates” authored by 21 tenured faculty members of the DSB, dated October 2008 (DSB-0762) and December 2008 (DSB-0292)                 |
| the Policy             | McMaster University Anti-Discrimination Policy (DSB-0086)   |
| RBG                    | Royal Botanical Gardens   |
| RJC                    | Ron Joyce Centre  |
| SML/HSM                | Strategic Marketing Leadership / Health Services Management (Area   |

|                     |   |
|---------------------|---|
|                     | of the DSB)   |
| T&P                 | Tenure and Promotion  |
| T&P Policy          | McMaster University Revised Policy And Regulations With Respect To Academic Appointment, Tenure and Promotion [2007] [Tenure and Promotion Policy] (dated April 8, 2009), submitted as evidence at DSB-1286.<br><br>*NB: The most recent version of the T&P Policy, dated January 1, 2012, was not submitted as evidence to the Tribunal. |
| TAs                 | Teaching Assistants   |
| the Tribunal        | The three faculty members of the Board-Senate Hearing Panel for Sexual Harassment/Anti-Discrimination appointed to decide the 002 Matter and the 003 Matter, being Dr. Maureen MacDonald (Chair), Dr. Bonny Ibhawoh and Dr. Lorraine York.  |
| the Yellow Document | McMaster University Revised Policy And Regulations With Respect To Academic Appointment, Tenure and Promotion [2007] [Tenure and Promotion Policy] (dated April 8, 2009), submitted as evidence at DSB-1286.<br><br>*NB: The most recent version of the T&P Policy, dated January 1, 2012, was not submitted as evidence to the Tribunal. |

## II. INTRODUCTION

On March 31, 2011, Dr. Chris Bart, Dr. Devashish Pujari, Dr. William Richardson, Dr. Joe Rose, and Dr. Wayne Taylor pursued a Complaint under the McMaster University Anti-Discrimination Policy against Mr. Paul Bates and McMaster University<sup>1</sup>. The Complaint is identified as U/SHAD-002.

Also on March 31, 2011, a second group of faculty and staff (Dr. Terry Flynn, Dr. Milena Head, Dr. Christopher Longo, Mr. Peter Vilks, Ms Linda Stockton, Ms Rita Cossa, Dr. Brian Detlor and Ms Carolyn Colwell<sup>2</sup>) filed a Complaint pursuant to the Policy against faculty Dr. George Steiner, Dr. Wayne Taylor, Dr. Chris Bart, Dr. Sourav Ray, Dr. Devashish Pujari, Dr. Joe Rose and McMaster University. The Complaint is identified as U/SHAD-003.

On August 12, 2011, Dr. Sourav Ray filed a Counter-Complaint against Dr. Brian Detlor. The Counter-Complaint was allowed to proceed by Supplementary Procedural Order #3 dated October 7, 2011, on a consolidated basis with the U/SHAD-003 Complaint. The parties consented to, and Procedural Order #8 dated February 11, 2012 confirmed, that these matters would be consolidated.

On March 3, 2012, consolidated hearings for both the USHAD 002 and 003 Complaints commenced with the opening arguments and witnesses for 002 proceeding prior to those for 003 and closing arguments for both 002 and 003 taking place on June 5 and June 6, 2012.

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<sup>1</sup> Dr. Elko Kleinschmidt was originally named as a Respondent in the 002 Matter. However, the complaint against him was dismissed in a Procedural Order of the Tribunal dated October 7, 2011. Dr. George Steiner was originally a Complainant in the 002 Matter, however his counsel withdrew his complaint in a letter dated September 15, 2011.

<sup>2</sup> Dr. Al Seaman was originally named as a Complainant in the 003 Matter. However, the Tribunal dismissed his complaint in a Procedural Order of the Tribunal dated October 7, 2011.

### **III. SUMMARY OF THE TRIBUNAL'S FINDINGS**

We thank all counsel for identifying relevant jurisprudence and for the thorough submissions concerning whether the evidence establishes a breach of the University's Policy. The Tribunal has reviewed each of the claims for which we now provide our findings. The Tribunal has carefully considered the reliable and admissible evidence (affidavit and oral) including the voluminous documentary record entered as exhibits. Our findings are summarized as follows:

#### **A) DISPOSITION OF THE 002 COMPLAINTS AGAINST MR. PAUL BATES**

For the reasons that follow, the Tribunal finds that the Complaints raised in U/SHAD-002 do not establish that the individual Respondent Mr. Paul Bates engaged in harassment or otherwise breached the Policy.

#### **B) DISPOSITION OF THE 003 COMPLAINTS AGAINST THE INDIVIDUAL RESPONDENTS: DR. GEORGE STEINER, DR. WAYNE TAYLOR, DR. CHRIS BART, DR. SOURAV RAY, DR. DEVASHISH PUJARI AND DR. JOE ROSE**

For the reasons that follow, the Tribunal finds that the complaints raised in U/SHAD-003 failed to establish, on the evidence, discrimination contrary to the Policy.

For the reasons provided in this Decision, the Tribunal finds each of the individual Respondents, albeit in different ways, were found to have breached the Policy for certain complaints filed in U/SHAD-003:

The remaining portions of the 003 Complaints, not identified as a breach of the Policy, were dismissed where the Tribunal was not satisfied that harassment was established by the evidence.

#### **C) DISPOSITION OF THE COUNTER-COMPLAINT AGAINST DR. BRIAN DETLOR**

The Tribunal, for the reasons set out below, dismisses the Counter-Complaint of Dr. Ray and finds Dr. Ray breached Section 70(e) of the Policy.

**D) DISPOSITION OF THE 002 AND 003 COMPLAINTS AGAINST MCMASTER UNIVERSITY**

The DeGroote School of Business (DSB) was identified by all parties in 002 and 003 as an unacceptable and poisoned work/academic environment, albeit for different reasons. The Tribunal finds that the evidence in 002 and 003 confirms an unacceptable academic/work environment existed in the DSB contrary to the Policy for all the reasons outlined in this Decision.

The Tribunal finds McMaster is not vicariously responsible for any of the instances of direct harassment we have identified in 003 complaints. However, the Tribunal has determined the University must accept some responsibility for the unacceptable work/academic environment at the DSB. That the DSB became an unacceptable work environment had been identified in other administrative and investigative reports that were generated during the University's attempts to address the issues arising at the DSB prior to the filing of formal complaints under the Policy and commencement of the hearings associated with those complaints. In attempting to deal with this complex and emotionally charged situation, the University acted reasonably in responding to the challenging issues which arose at the DSB, given the information available. Specifically with respect to the tests of reasonable action in the case law, we find that the University did not "hide its head in the sand", did not trivialize the issues, and did not ignore the issues in hopes they would resolve. However, the Tribunal is of the view that in certain situations, as discussed in the decision, the University's processes were slow and ineffective.

The Tribunal has determined the primary responsibility for the poisoned work/academic environment lies with the individual 003 Respondents and other senior, tenured faculty in the DSB who collectively, as members of the "G21", or individually, engaged in the unacceptable conduct identified in this decision. In some cases this unacceptable conduct was judged to have crossed the line and has been identified as direct or adverse effect harassment while in other cases, though not specifically harassing, certainly exacerbated the difficult work environment at the DSB and brought undue scrutiny to the academic and administrative decisions of Dean Bates and some members of his senior management team. The Tribunal accepts that the group (G21), or at least some members of that group, were generally participating in a valid exercise of academic freedom and freedom of speech through their associations, intentions and actions; however, for the reasons identified in the decision, some of the overt and covert activities of some of the individual 003 Respondents and the conduct of other members of the G21 who were not parties in this hearing resulted in the poisonous and hostile work environment. In the Tribunal's view our identified concerns are properly proscribed by the Policy as well as being contrary to the University's fundamental values and policies.

Group email communications by the G21 were intended to remain within a select group of faculty perceived to be likeminded and trustworthy. The G21 did not include any member of the University's senior administration in these communications. The Tribunal is satisfied that the University did not know nor could it reasonably have known the full extent or intent of the activities of the G21 or specific individual members of the G21, nor the impacts on some of the 003 Complainants. It was only through an email being sent inadvertently to a person who was not a member of the G21 that the existence and the scope of the G21's activities were discovered

well after the hearing commenced despite the procedural order requesting full disclosure of documents. Relevant emails were ordered produced after the hearing had commenced. As stated, the Tribunal finds these emails provided some of the context that leads us to determine that some decisions and conduct affecting certain 003 Complainants were not legitimate and University process concerning Tenure and Promotion were tainted by conduct which breached the Policy.

For the reasons outlined, McMaster must accept some responsibility for the development and continuation of the unacceptable workplace environment in the DSB despite the University's lack of specific knowledge concerning the full nature and extent of the harassing conduct by the individual 003 Respondents. The Tribunal finds that some of the University's policies were not effectively mobilized in a timely fashion and as a result, issues festered. Manageable issues and differences among faculty became insidious and destructive. Faculty divided into two distinct camps thereby aggravating and needlessly extending the poisoned work/academic environment at the DSB. Regrettably, the formation of these camps fuelled mistrust. The G21 declared "war" as evidenced by the behaviours of certain members of the group or by the silence and/or acquiescence of some members despite the comments and the strategies identified in the private group emails. Information was shared with apparently little concern about accuracy or personal impact. Certain conduct was found to breach the Policy and resulted in a poisoned work/academic environment. Other conduct which may not have been identified as breaching the Policy often could be understood as resulting from or contributing to a poisoned workplace.

Drs. Taylor, Bart, Steiner and Pujari were particularly unconcerned about the collateral damage to others and specifically lacked concern about the reputation of Dean Bates. This "ends justifies the means" mentality exhibited by the individual 003 Respondents was poisonous and unbecoming of senior tenured faculty who have the academic freedom and knowledge of established processes to raise concerns constructively. Further, evidence was provided that these senior tenured faculty were unaccepting of results when established processes did not achieve outcomes they desired. Some faculty then turned to inappropriate and disruptive methods to achieve their desired outcomes or to obtain retribution. The G21 emails provided context and were relied upon by the Tribunal when assessing intent and whether the conduct of some of the individual 003 Respondents participating in Tenure and Promotion decisions were *bona fide* or tainted by intent to harass. The general inability of some faculty members to respectfully engage in vigorous debate, accept different visions and outcomes and to act collegially resulted in an unacceptable poisoned work/academic environment for which the blame appeared abundant. As such, the Tribunal finds the primary responsibility for the poisoned work/academic environment falls on the individual 003 Respondents to varying extents for the reasons which follow.

## IV. BACKGROUND

### A) THE POLICY

The *McMaster University Anti-Discrimination Policy* establishes procedures by which a member of the University may initiate a complaint of harassment or discrimination. The Policy provides a formal resolution procedure, including the selection of a hearing panel, the application of the *Statutory Powers Procedure Act*, R.S.O. 1990, c.S.22, the duties of the Tribunal Chair, the order of proceedings, rules regarding witnesses and evidence, deliberations by the Tribunal, and sanctions and remedies. In addition, before the commencement of the hearing, the parties to the Complaints agreed to specific procedural rules for the hearing, as discussed below. The hearing was conducted pursuant to those procedural rules.

On April 25, 2011, pursuant to s.54 of the Policy, the University Secretariat provided notice regarding certain names as proposed members for the constitution of the Tribunal to hear the above-noted Complaints. The Chair received certain objections regarding proposed members of the Tribunal. After considering the objections on June 14, 2011, the Chair nominated the following members who are not within the DSB faculty to serve on the Tribunal: Dr. Maureen MacDonald (Chair), Dr. Bonny Ibhawoh and Dr. Lorraine York.

No issue or challenge was raised with respect to the jurisdiction of the Tribunal to consider matters raised in the Complaints referred to it.

### B) PROCEDURAL MATTERS BEFORE THE TRIBUNAL

The Tribunal made a number of procedural orders before and during the hearing of the two matters. The procedural orders of the Tribunal are attached as Appendix A.

### C) THE HEARING

The hearing proceeded at McMaster University over a course of 21 days from March 3, 2012, to June 6, 2012, and did so *in camera*, in accordance with section 66 of the Policy. The Tribunal accepted 2694 documents into evidence as exhibits into the Global Hearing Record, consisting of 14,891 pages. The Tribunal heard testimony from 65 witnesses (listed in Appendix B of this Decision) during the hearing.

In the 002 Matter, the Complainants (Dr. Bart, Dr. Taylor, Dr. Rose, Dr. Pujari, and Dr. Richardson) were represented by Ms Catherine Milne and Ms Tamara Ticoll from Turnpenny Milne LLP. The Respondents in the 002 Matter (Mr. Paul Bates and McMaster

University) were represented by Mr. George Avraam, Mr. Andrew Shaw and Ms Sophie Roy-Lafleur (Student-at-Law) from Baker & McKenzie LLP.

In the 003 Matter, the Complainants (Dr. Longo, Dr. Head, Dr. Flynn, Dr. Detlor, Ms Cossa, Mr. Vilks, Ms Stockton, and Ms Colwell) were represented by Mr. James Heeney of Robinson Heeney LLP (formerly of Rubin Tomlinson LLP) and Mr. Aaron Rousseau of Whitten & Lublin LLP (formerly of Rubin Tomlinson LLP). Mr. George Avraam, Mr. Andrew Shaw and Ms Sophie Roy-Lafleur (Student-at-Law) from Baker & McKenzie LLP represented McMaster University as a Respondent. Dr. Pujari, Dr. Ray, Dr. Bart, Dr. Rose, and Dr. Steiner as Respondents in the 003 Matter were represented by Mr. Mark Fletcher and Mr. Jeff Hopkins of Grosman, Grosman and Gale LLP. Dr. Taylor, as a Respondent in the 003 Matter, was represented by Mr. Derek Collins of Turkstra Mazza Associates.

Witnesses provided affidavit evidence in writing in advance of their examination-in-chief where possible. The witnesses' in-chief examination was then supplemented with up to 60 minutes of oral testimony, with the opportunity for additional evidence in chief where requested.

Counsel for all Complainants and Respondents had a full opportunity to call witnesses in-chief and there was no time limit imposed on cross-examination and re-examination. Counsel were also afforded the opportunity to request the Tribunal compel a witness to give evidence at the Hearing under the Tribunal's power to issue Summons. Counsel availed themselves of this opportunity and certain testimony of witnesses was compelled by Order of the Tribunal.

**D) THE COMPLAINTS**

In both the 002 and 003 Complaints, the individual Respondents and the University are allegedly responsible for unacceptable academic/working conditions. In 002, Mr. Bates has been alleged to have harassed each Complainant. In 002, the persons allegedly responsible for an unacceptable academic/work environment were, at the time, persons in authority including Dean Bates and the Provost, Dr. Ilene Busch-Vishniac, albeit not personally named as a Respondent. In 003, the individual Respondents are tenured faculty (except for Dr. Ray at the relevant time) who are alleged to have harassed the 003 Complainants and to be responsible for an unacceptable academic/work environment. The 003 Complainants submitted that as tenured faculty, the individual 003 Respondents were in a position to negatively affect career aspirations and/or negatively impact reasonable workplace expectations of staff and untenured faculty. The evidence submitted to the Tribunal also suggests that other faculty who were not parties to these hearings actively participated in creating and perpetuating the unacceptable academic/work environment which was identified by the hearing participants.

The Tribunal has carefully reviewed the voluminous documentary evidence and testimony. The Tribunal in reaching our conclusions has required the Complainants in 002 and 003 to discharge evidentiary onuses before finding a breach of the Policy by any of the Respondents. Context has been considered and was often important to the Tribunal's analysis and findings. The Tribunal was careful to satisfy itself that evidence was reliable. For example, the Tribunal in weighing evidence was careful that evidence remained reliable despite the passage of time; was not impacted by witnesses being improperly influenced by hindsight; or by the disclosure of productions of which they were not aware when events occurred. In some instances, the Tribunal was required to make findings of credibility including assessing the reliability of the affidavit and oral testimony which was presented and determining the likely validity of representation of events where there was contrasting evidence presented.

The Tribunal has presented the Decision using a common structure for each individual material complaint. Due to the large volume of documentary evidence received (approximately 14,891 pages) and the length of the hearing (approximately 225.5 hours), we have attempted to make general common findings where appropriate. The material evidence and submissions presented by both the Complainants and Respondents in each case will be briefly summarized in the Tribunal's decision if required. The Tribunal's findings follow the summary of the evidence and submissions reflecting the structure of the Complaints submitted to us.

**E) PARTIES TO THE HEARING****002 Complaint**

Dr. Devashish Pujari is currently Area Chair of the SML/HSM, and an Associate Professor in Marketing at the DSB. He joined McMaster University in 2001 and was awarded tenure in 2006, becoming Area Chair in 2007.

Dr. Joe Rose became a Professor at McMaster University in 1979, and a tenured Professor in 1982. He teaches in the Human Resources and Management Area.

Dr. Chris Bart is a Professor in the SML/HSM Area and a Fellow of the Institute of Chartered Accountants of Ontario. In 2003, he helped co-found The Directors College at McMaster.

Dr. Wayne Taylor is an Associate Professor at the DSB, having joined the Faculty in 1986. He was the Director of the Health Services Management program for 23 years, and was the founding Director of the HLI.

Dr. Bill Richardson was an Assistant Professor and Associate Professor at the DSB from 1974 to 1988. He moved to Brock University in 1988, where he retired in 2004. In that year, he returned to McMaster on a two-year CLA to teach accounting courses.

Mr. Paul Bates was Dean of the DeGroot School of Business and Industry Professor in Financial Management Services from July 1, 2004, to February 28, 2011. He is also a Certified Management Accountant and Fellow of the Society of Management Accountants of Ontario. Presently, Mr. Bates is a Special Advisor to the President of McMaster University.

**003 Complaint**

Dr. Terry Flynn is an Assistant Professor in the Department of Communications Studies and Multimedia in the Faculty of Humanities. From July 1, 2004, until June 30, 2011, he was a faculty member at the DSB in the SML/HSM Area. He was first appointed in July 2004 as an Industry Professor with a 3-year CLA. In 2007, Dr. Flynn was appointed to a tenure-track position in the Area, as well as being appointed as the Director of the MCM program.

Dr. Milena Head is a Professor in the Area of IS. She was first appointed as Assistant Professor in the Area of MS/IS in 1998 and became a tenured Associate Professor in 2003. In 2004, she was named Associate Dean Academic of the DSB and served in this position until 2010. She was promoted to Professor in 2010.

Dr. Chris Longo is an Associate Professor in the SML/HSM Area. Dr. Longo was appointed as a tenure-track Assistant Professor in the SML/HSM Area in July 2005 for a three-year term. In 2008, he was reappointed for a further three years.

Ms Linda Stockton is an Assistant Professor in the SML/HSM Area. She began in 1995 as a sessional instructor teaching marketing courses at the undergraduate and graduate levels. From 1997 to 2011, she was appointed on a CLA, carrying the title of Lecturer for six separate contracts. In July of 2011, she was converted to teaching-track Assistant Professor.

Dr. Brian Detlor is an Associate Professor of IS who was awarded tenure in 2005. He is currently the Chair of the McMaster Research Ethics Board. From 2006 to 2011 (including a research leave from July 2006 to June 2007), Dr. Detlor was appointed to the position of Director of the Ph.D. program in Business Administration.

Ms Carolyn Colwell was the Graduate Program Coordinator at the DSB. She started at McMaster University in 2001 in the Clinical Epidemiology and Biostatistics Department, and was hired by the DeGroot School of Business in 2003 as the Administrative Coordinator of Business Administration Ph.D. Programs. In 2012, she was selected as an MBA Academic Advisor in the Ron Joyce Centre.

Mr. Peter Vilks is an Assistant Professor in the SML/HSM Area. He first started to teach at the DSB in 2003 as a Sessional Lecturer. Mr. Vilks was as hired on a CLA in September 2004, and held seven contractually limited appointments. As of July 1, 2011, he was converted to a teaching-track Assistant Professor.

Ms Rita Cossa is an Assistant Professor at McMaster University in the SML/HSM Area. She began teaching at McMaster in January 1999 as a Sessional Instructor at the DSB and also at the Centre for Continuing Education. Subsequently, she was granted a CLA and taught from 1999 to 2011 over the course of 6 CLAs. In July 2011, she was appointed as a teaching-track Assistant Professor.

Dr. George Steiner is a Professor in the Operations Management Area of the DSB, an Associate Member of the Department of Computing and Software and a member of the School of Computational Science and Engineering. He joined McMaster University in January 1981, and has served in various administrative roles, including the Coordinator of the Management Science/Systems Ph.D. field, and Chair of the MS/IS Area for two terms in the 1990s.

Dr. Sourav Ray is an Associate Professor of Marketing and an Associate Member of Operations Management in the DSB. Dr. Ray was awarded tenure in 2009.

**F) COMMON BACKGROUND FACTS FOR THE 002 AND 003 COMPLAINTS****Dean Bates Selection and Second appointment**

The Senate Committee on Appointments and the Senate initiated the process to select a Dean in 2003, forming a search committee composed of faculty, students, staff and the business school's advisory committee, chaired by the University's Provost. In March 2004, McMaster University announced that Mr. Paul Bates would be appointed as the new Dean of Business in July 2004. The selection committee also determined that it would be important to have an academic serve as an Associate Dean.<sup>3</sup> In May 2009, Mr. Bates was appointed to a second term as Dean of the DSB, becoming the first Dean to be reappointed in the DSB's history.

**Expansion to Burlington Campus**

In the 5 years prior to Mr. Bates' appointment as Dean in 2004, the MBA enrolment at the DSB had decreased by half. Stated plans at the level of the University for the DSB were: 1. Growth in the MBA program, 2. Growth in faculty, and 3. Growth in doctoral studies. In January 2006 an *Ad Hoc* Committee was struck and chaired by the Associate Dean to discuss potential programs for the Burlington campus. In 2007, an external review committee was struck to investigate the viability of an expansion of the DSB to Burlington, Ontario. The committee consisted of three current and former business Deans from Business Schools in Ontario including from McMaster University. The external review committee endorsed the Burlington expansion initiative. A resolution regarding the Burlington expansion was proposed at the Faculty Council meeting in December of 2007. The majority of the faculty of the DSB ultimately approved the resolution, as did the University Senate and Board of Governors. A detailed timeline of events related to the Burlington initiative was provided at DSB-0808. In December 2010, the Ron Joyce Centre ("RJC") opened and is home to the DSB's MBA and executive education programs.

**The Komlen Report**

After receiving allegations of discrimination and harassment from members of the DSB, the Provost requested that HRES engage in a preliminary audit to investigate the allegations. The report entitled "Preliminary Audit on Allegations of Discrimination and Harassment at the School of Business, McMaster University" (the "Komlen Report") was written by Mr. Milé Komlen, Director of HRES, and was released on March 25, 2010 (DSB-0785). The scope of the Komlen Report was:

1. To meet with a wide group of faculty members, as well as academic administrators, to hear their views on the issues facing the DSB.<sup>4</sup>
2. To assess the likelihood of whether discrimination and/or harassment have been encountered in the DSB;

<sup>3</sup> Page 8 of the PACDSB report, DSB-0786.

<sup>4</sup> Page 1 of the Komlen Report, DSB-0785.

3. To assess the likelihood of whether the DSB has become a dysfunctional work environment, thereby requiring immediate intervention;
4. To identify viable proposals for resolution from the perspective of legal compliance, operational governance, and the commitment to build an inclusive community with a shared purpose;<sup>5</sup>
5. To determine whether more comprehensive actions are warranted.<sup>6</sup>

Mr. Komlen prepared the report by performing “extensive in-person interviews.”<sup>7</sup> He first conducted interviews among individuals who brought forward allegations of discrimination or harassment. Following these interviews, Mr. Komlen undertook a second round of interviews among other individuals who were identified as “potentially having information that could be relevant to the audit.”<sup>8</sup> In order to maintain confidentiality of the participants of the preliminary audit, the comments and allegations in the report were presented anonymously.

The Komlen Report listed six different factors behind the dysfunction, being: (1) The Dean’s credentials, (2) Objections to the Dean’s reappointment, (3) Expansion to the Burlington Campus, (4) Governance issues, (5) The Dean’s leadership, and (6) Following Rules and Procedures. Mr. Komlen also outlined certain allegations made by faculty members, which were: descriptions of the climate at the school, alleged discrimination of faculty members, alleged harassment and intimidation of faculty members, and tenure and promotion issues. Mr. Komlen noted that “there [did] not appear to be sufficient information at this time to pursue complaints of direct discrimination based on human rights prohibited grounds.”<sup>9</sup> However, he did note that a “stressful climate” existed at the DSB, and “some members are feeling harassed and intimidated.”<sup>10</sup>

The Komlen Report concluded that the DSB had become a dysfunctional work environment.<sup>11</sup> However, the author noted that a full scale investigation was not contemplated in the preliminary audit process, and the report “[did] not purport to make any conclusive findings of fact or recommendations.”<sup>12</sup> Five recommendations were made in the Komlen Report:

1. The invocation of the *Anti-Discrimination Policy* (investigation and resolution of complaints with the University as complainant);
2. The invocation of *Group Conflict Policy* (appointment of review committee and suspension of Faculty By-laws);
3. A series of workplace investigations to take place in consultation with HRES to identify some of the underlying issues at the DSB and make recommendations toward their resolution;
4. The engaging of dispute resolution professionals to provide aggrieved individuals with a forum or outlet to have their concerns heard; and

<sup>5</sup> Page 3 of the Komlen Report, DSB-0785.

<sup>6</sup> Page 4 of the Komlen Report, DSB-0785.

<sup>7</sup> Page 3 of the Komlen Report, DSB-0785.

<sup>8</sup> Page 3 of the Komlen Report, DSB-0785.

<sup>9</sup> Pages 11-12 of the Komlen Report, DSB-0785.

<sup>10</sup> Page 12 of the Komlen Report, DSB-0785.

<sup>11</sup> Page 18 of the Komlen Report, DSB-0785.

<sup>12</sup> Page 4 of the Komlen Report, DSB-0785.

5. Discrimination and harassment training and policy initiatives.<sup>13</sup>

The President of the University, Dr. Peter George, invoked the *Group Conflict Policy* and struck the President's Advisory Committee on the DSB ("PACDSB") as a direct result of the findings and recommendations of the Komlen report.

### PACDSB

The PACDSB commenced its analysis of the DSB on March 28, 2010. The committee consisted of Dr. Susan Denburg (Professor, Department of Psychiatry and Behavioural Neurosciences; Associate Vice-President Academic, Faculty of Health Sciences), Dr. Martin Kusy (Professor, Department of Finance, Operations and Information Systems, Brock University; Dean of Graduate Studies and Research at Concordia University, 1991 to 1997; Dean of Business, Brock University, 1998 to 2008), and Dr. David Wilkinson (Distinguished University Professor and Dean of the Faculty of Engineering). Its mandate was threefold:

1. To advise on the management of the School of Business;
2. To determine the causes and effects of the current situation in the School of Business;
3. To recommend a set of actions to establish a productive and collegial work environment at the School of Business.<sup>14</sup>

In the committee's own words:

This report briefly delineates the activities undertaken with respect to the first part of the mandate, provides extensive information that pertains to the second, and offers recommendations to fulfill the third. It should be noted that while PACDSB arose out of a recommendation in Mr. Komlen's audit report, any formal actions undertaken by his office with respect to allegations of harassment and intimidation in School of Business are independent of the activities of PACDSB. The latter's recommendations address some of the same "climate" issues, but from an academic, governance and collegiality perspective. Both Mr. Komlen and more recently PACDSB have interviewed many of the members of the School. PACDSB has in fact met with all members of the community who wished to speak with us. We made it clear to all that their comments would be held in confidence and reported only anonymously. **We are therefore of the opinion that the School has been subjected to more than sufficient open-ended, fact-finding, and that further investigations related to harassment and bullying should be focused on those cases where individuals and/or groups are prepared to come forward and work with HRES to move towards formal action. For cases in which mediation and dispute resolution can be used to**

<sup>13</sup> Pages 13-18 of the Komlen Report, DSB-0785.

<sup>14</sup> Page 4 of the PACDSB report, DSB-0786.

**address relationships and enable individuals in the School to better work together, an ombuds person has been appointed to facilitate the process. Again, this functions under the auspices of HRES and is not part of the work of PACDSB.**<sup>15</sup> (emphasis added)

At the time of the release of the PACDSB report, the committee stated that the DSB was “currently dysfunctional.”<sup>16</sup> The report listed eight issues that led to the state of the Faculty, and listed four areas of future direction for the DSB. As well, the PACDSB listed twelve major recommendations and a new organizational structure for the DSB appended to this decision at Appendix C.

### The G21

The term “G21” was used throughout the Hearings and in this Decision as the name of the group of 21 faculty in the DSB who initially drafted, signed, and submitted the Performance Report to the Senate and the Selection Committee for a Dean of Business. The G21 corresponded by email to jointly draft that report and solicit further signatories. Members of the group also met in person to discuss the report. After the Performance Report was submitted in December 2008, the G21 continued to correspond via email to discuss other issues within the DSB.

Additionally, counsel referred to a group known as the “G21+”, which was a group that succeeded the original G21 and included seven additional DSB faculty members on various email correspondence. The earliest G21+ email received by the Tribunal was sent by Dr. Kwan on May 5, 2010 (DSB-2540).

The term “Gang of Four” was used in one G21 email to refer to G21 members who were also Area Chairs, at or around the time of March 2009 (DSB-2601). Those members were Dr. Pujari, Dr. Chamberlain, Dr. Chan, and Dr. Abad.

The Tribunal received documentary and oral evidence that showed the G21 was active between September 2008 and April 2011. The topics of discussion of the G21 included the following:

- Drafting of the Performance Report (DSB-1606, 1618, 1630, 1689, 1693, 1694)
- Collecting signatories to the Performance Report (DSB-1573, 1922, 1816, 1845, 1568, 1934, 1935, 1590, 1957, 1896, 1943, 1928, 1927, 1990, 1591, 1636)
- Dissemination of the Performance Report (DSB-1661, 1662, 1663)
- Arranging in-person meetings of the G21 (DSB-1919, 1612, 1615, 1619, 1626, 1628, 1635, 1968, 2003, 1602, 1604, 1840, 1852, 1828, 1920, 1760, 1729, 1730, 1656, 1642, 1679)
- Conflict of Interest in nominees to the Dean’s Search Committee (DSB-1683)

<sup>15</sup> Page 10 of the PACDSB Report, DSB-0786,

<sup>16</sup> Page 10 of the PACDSB report, DSB-0786.

- G21 Strategy of “going public” and releasing information to the media (DSB-2537, 1557, 1674, 1589, 1724, 1613, 1907, 1603, 1507, 1563, 1567)
- Discussion of MUFAgab posts (DSB-1508, 1557)
- Discussion of which G21 members should be elected to various committees at McMaster, how G21 members should vote, and minimizing vote-splitting (DSB-1656, 1762, 2017, 2535, 2544, 2556,2562, 2568, 2574, 2575, 2576, 2577, 2579, 2579, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2649, 2676, 2678, 2699)
- Commentary on successful candidates to Committee elections (DSB-2571, 2572, 2573, 2545, 2662, 2663)
- Discussion of the Student Survey regarding support of Dean Bates, “diluting” the results (DSB-1494, 1491, 1516, 1517, 1518, 1519, 1521, 1522, 2029)
- Dr. Bart’s meeting with the Chair of the Board of Governors (DSB-1893, 1669, 1548)
- Proposal to bring a motion in Senate to have balloted votes for contentious issues (DSB-2538, 2638, 2639, 2640)
- Administrative procedures in the DSB (DSB-2607, 2608, 2609, 2610, 2611, 2612, 2613, 2547, 2458, 2549)
- Items of discussion of the Senate (DSB-2540, 2543, 2544)
- Sign at Burlington Campus (DSB-2551, 2552, 2553, 2554)
- Charles Sturt University’s potential for a Burlington Campus (DSB-2569, 2570)
- Executive Education magazine advertisement, whether faculty should have say over educational content (DSB-2637)
- Salary of McMaster’s new Vice President Administration (DSB-2558, 2565)
- Commentary on PACDSB (DSB-2565, 2592, 2596, 2542, 2540, 2620, 2615, 2621, 2625, 2626, 2628, 2543, 2632)
- Report from closed Senate Meetings and other events by Dr. Zeytinoglu (DSB-1644, 2627, 2630)
- Quotation from the television show “24” regarding “lasting peace” (DSB-2633)

Of the parties in the 002 and 003 Complaint, Drs. Bart, Pujari, Rose, Steiner, and Taylor were members of the G21. Dr. Ray was not a member of the original G21, but was a member of the G21+. Dr. Richardson, Dr. Flynn, Dr. Head, Dr. Longo, Ms Stockton, Dr. Detlor, Ms Colwell, Mr. Vilks, Ms Cossa, and Mr. Bates were not members of the G21 or G21+. The members of the G21 and G21+ were:

*Parties to the Hearings*

1. Dr. Chris Bart
2. Dr. Ashish Pujari (Member of the “Gang of Four”)
3. Dr. Joe Rose
4. Dr. George Steiner
5. Dr. Wayne Taylor

*Members of the G21 who were called as witnesses to the Hearings*

6. Dr. Trevor Chamberlain (Member of the “Gang of Four”)
7. Dr. Lilian Chan (Member of the “Gang of Four”)
8. Dr. Narat Charupat

9. Dr. Ken Deal
10. Dr. Elkafi Hassini
11. Dr. Clarence Kwan
12. Dr. Khalid Nainar
13. Dr. Mahmut Parlar
14. Dr. Mohamed Shehata
15. Dr. Willie Weisner
16. Dr. Isik Zeytinoglu

*Other members of the G21*

17. Dr. Prakash Abad (Member of the “Gang of Four”)
18. Dr. Peter Miu
19. Dr. Sudipto Sarkar
20. Dr. Jiaping Qiu
21. Dr. Toru Yoshikawa

*Additional members of the G21+*

22. Dr. Sherman Cheung
23. Dr. Anna. N. Danielova
24. Dr. Kiridaran (Giri) Kanagaretnam
25. Dr. Emad Mohammad
26. Dr. Sourav Ray
27. Dr. John Siam
28. Dr. Yufei Yuan

## V. POLICIES AND JURISPRUDENCE FRAMEWORK

We now identify the Policy and jurisprudence excerpts upon which the Tribunal placed primary reliance in reaching its decision. The issue for the Tribunal is whether harassment has been established on the evidence, relying upon the principles found in the jurisprudence and the University's Policy.

### A) UNIVERSITY POLICY

#### The Policy

The Tribunal is guided by the Policy and the definitions included therein.

Discrimination is defined in Section 11 as

*“differential treatment of an individual or group of individuals which is based, in whole or in part, on one or more than one of the prohibited grounds of discrimination, and which thus has an adverse impact on the individual or group of individuals.”*

The University's Policy defines “harassment” in Clause 11b. as follows:

*“Harassment means engagement in a course of vexatious comments or conduct that is known or ought reasonably to be known, to be unwelcome. “Vexatious” comment or conduct is comment or conduct made without reasonable cause or excuse.”*

The University's Statement of Principles also guides the Tribunal when interpreting conduct prohibited by the Policy. The Tribunal has considered the Policy's definitions of harassment and discrimination and the Statement of Principles in conjunction with the University's *Statement on Academic Freedom* (DSB 0210) as required by the Policy.

Relevant extracts from the Policy's Statement of Principles include:

1. Discrimination and harassment, as defined in this document (see clause 11) are prohibited at McMaster University and constitute punishable offenses under this Policy. Discrimination and harassment are serious human rights issues.

Inasmuch as discrimination and harassment are demeaning to human dignity and are unacceptable in a healthy work environment and one in which scholarly pursuit may flourish, McMaster University will not tolerate such behaviour against any member of the University community

- and will strive to create an environment free from such behaviour on its premises.
2. McMaster University affirms the right of every member of its constituencies to live, study and work in an environment that is free from discrimination and harassment. Discrimination and harassment are incompatible with standards of professional ethics and with behaviour appropriate to an institution of higher learning.
  3. McMaster University recognises that as an academic and free community it must uphold its fundamental commitments to academic freedom and to freedom of expression and association. It will maintain an environment in which students and teaching and non-teaching staff can engage in free enquiry and open discussion of all issues.
  5. All persons entrusted with authority by the University have a particular obligation to ensure that there is no misuse of that authority in any action or relationship.
  6. The University recognizes its legal and moral responsibility to protect all of its members from discrimination and harassment, and to take action if such behaviour does occur. To these ends it has developed a Policy on, and procedures for, dealing with complaints arising out of such behaviour including a range of disciplinary measures up to and including removal. It has also established an educational programme to prevent incidents of discrimination.
  7. The University prohibits reprisal or threats of reprisal against any member of the University community who makes use of this Policy or participates in proceedings held under its jurisdiction. Any individual or body found to be making such reprisals or threats will be subject to disciplinary action.
  8. The intention of this Policy and its procedures is to prevent discrimination and harassment from taking place, and where necessary, to act upon complaints of such behaviour promptly, fairly, judiciously and with due regard to confidentiality for all parties concerned.

### **McMaster's Code of Conduct**

The *Code of Conduct for Faculty and Procedures for Taking Disciplinary Action* is also instructive to the Tribunal. The following sections informed the Tribunal:

#### **“DUTIES AND RESPONSIBILITIES OF FACULTY MEMBERS**

1. Unless stated otherwise in the letter of appointment (and/or the annual contract, if applicable), faculty members have obligations to McMaster

University in three areas: (a) teaching; (b) research, scholarly, or creative activities; and (c) university service. ...

d. Each faculty member is responsible for conducting himself or herself in a professional and ethical manner towards colleagues, students, staff, and other members of the University community. Without limiting the generality of the foregoing, faculty members at McMaster University

- will not infringe the academic freedom of their colleagues;
- will not discriminate against any member of the University community on grounds prohibited by Ontario Human Rights Code;
- will observe appropriate principles of confidentiality, particularly regarding students;
- ...
- will disclose conflicts of interest or other circumstances which may reasonably introduce or appear to introduce bias into any academic or administrative decision to which they may be a party; ...

#### CONFLICT OF INTEREST

38. The Faculty Dean and the Provost shall undertake to avoid conflicts of interest at the respective levels of these proceedings. Any changes required to preserve arm's length dealing supersede the requirements of these procedures. Should the Faculty Dean or Provost not be at arm's length from the matter under these proceedings, the Dean of Graduate Studies shall act for the Dean and the Vice-President (Research) shall act for the Provost. Should the Dean of Graduate Studies or Vice-President (Research) not be at arm's length, the President shall appoint a Faculty Dean not otherwise involved in the proceedings to serve in his or her place."

## B) HARASSMENT JURISPRUDENCE

The Tribunal has considered the jurisprudence, listed in Appendix D, received from the parties in reaching a decision. The following cases addressing harassment were particularly helpful.

### How Harassment has been interpreted

In addition to the definition found in the Policy, the definition of harassment utilized in the case of *Sobeys Inc. v. CAW-Canada, Local 1090*, 2008 CarswellOnt 7687, [2008] L.V.I. 3808-1 (OAB), at paragraph 19 is instructive:

“Harassment has been defined in many ways. But the accepted components of personal harassment include the objectionable or hostile maltreatment or abuse of power that creates a risk, affects a person's dignity or amounts to an actual or attempted exercise of physical or psychological duress. This is not a subjective test. Just because someone perceives an action to be hostile or vexatious does not mean that harassment has occurred. There has to be an objective basis for the conclusion.”

*Sobeys Inc. v. CAW-Canada, Local 1090* was also relied upon, at paragraph 29, to illustrate the difference between harassment and the proper exercise of management rights:

**“... It is true that the materials show that management has responded to his actions. But even this recognizes that there is a real difference between harassment and managements' legitimate supervisory functions: Article 13.02; "Harassment is not: Properly discharged supervisory responsibilities, including but not limited to disciplinary action, or conduct that does not interfere with the climate of understanding and respect for the dignity of work or Sobey's employees." The materials reveal only that he has been dealt with by management each time he does something that would trigger a proper exercise of supervisory diligence over any employee. There has always been a rational basis to support management's intervention. Whether those initial reactions would satisfy the standards of just cause, Management has the right and duty to respond to issues concerning discipline, order and safety in the workplace. If management fails to exercise its supervisory responsibilities, an unsafe and unhealthy environment can develop. If it was concluded from these allegations that management's decisions to investigate problems in the workplace raised a *prima facie* case of harassment, then management rights would be effectively frozen and it would be rendered incapable of fulfilling its duties.”** (emphasis added)

The decision in *U.F.C.W. of B.C., Local 1518 v. 55369 BC Ltd.*, [2007] BCCA No. 130, 90 CLAS 94. (Harassment Grievance) (Larson) provides the Tribunal with further guidance on what constitutes harassment, at paragraph 32:

“Even severe criticism of an employee by a supervisor who is genuinely attempting to deal with a perceived performance problem is not harassment: *Re Religious Hospitaliers of St. Joseph* (1995), 50 L.A.C. (4<sup>th</sup>) 225 (Simmons). Nor is it necessarily harassment where an employee is demonstrated to have been improperly disciplined by a supervisor or other supervisory action is shown to be unjustified. **Supervisors have a right to be wrong provided they act in good faith and not for an improper purpose. Poor judgment or wrong action is not discriminatory per se. It only becomes harassment when it [is] done in a seriously hostile or intimidating manner or in bad faith.**” (emphasis added)

Arbitrator Starkman, in *Ottawa (City) v. Amalgamated Transit Union, Local 279*, [2011] OLA No. 154 (Starkman) at paragraph 29, found that “[n]ot every inappropriate action meets the test of harassment,” relying on the following passage from *Re Government of Province of British Columbia (S. Complainant) and British Columbia Government Employees’ Union (M. G & Z Respondents)* (1995) 49 L.A.C. (4<sup>th</sup>) 193 (H.J. Liang) at p. 242-43:

“In these times there are few words more emotive than harasser. It jars our sensibilities, colours our minds, rings alarms and floods adrenaline through the psyche. It can be used [casually], in righteous accusation, or in a vindictive fashion. Whatever the motivation or reason for such a charge, it must be treated gravely, with careful, indeed scrupulous, fairness given both to the person raising the allegation of harassment and those against whom it is made.

The reason for this is surely self-evident. Harassment, like beauty, is a subjective notion. However, harassment must also be viewed objectively. Saying this does not diminish its significance. It does, however, accentuate the difficulty of capturing its essence in any particular circumstance with precision and certainty.

For example, every act by which a person causes some form of anxiety to another could be labeled as harassment. But if this is so, there can be no safe interaction between human beings. Sadly, we are not perfect. All of us, on occasion, are stupid, heedless, thoughtless and insensitive. The question is then, when are we guilty of harassment?

I do not think that every act of workplace foolishness was intended to be captured by the word ‘harassment’. This is a serious word, to be used seriously and applied vigorously when the occasion warrants its use. It should not be trivialized, cheapened, or devalued by using it as a loose label to cover petty acts or foolish words, where the harm, by any objective standard, is fleeting. Nor should it be used where there is no intent to be harmful in any way, unless there has been a heedless disregard for the rights of another person and it can be fairly said ‘you should have known better’.”

Arbitrator Starkman goes on to further define harassment, citing the decision in *Toronto Transit Commission and A.T.U.* (Slina), (2004) 132 L.A.C. (4<sup>th</sup>) 225 (O.B. Shime) at paragraph 30:

“Abusive conduct includes physical or mental maltreatment and the improper use of power. It also includes a departure from reasonable conduct. Harassment includes words, gestures and actions which tend to annoy, harm, abuse, torment, pester, persecute, bother and embarrass another person, as well as subjecting someone to vexatious attacks, questions, demands, or other unpleasantness. A single act, which has a harmful effect may also constitute harassment”

The Tribunal was also asked to consider Ontario’s *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, recently amended by Bill 168. It provides, in part:

“1. (1) “workplace harassment” means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome;...

25. (2) Without limiting the strict duty imposed by subsection (1), an employer shall, ...

(h) take every precaution reasonable in the circumstances for the protection of a worker; ...

27. (2) Without limiting the duty imposed by subsection (1), a supervisor shall, ...

(c) take every precaution reasonable in the circumstances for the protection of a worker. ...

28. (1) A worker shall,

(a) work in compliance with the provisions of this Act and the regulations;  
...

(d) report to his or her employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he or she knows.”

In *Kingston (City) v. C.U.P.E., Local 109*, 2011 CanLII 50313 (ONLA) (Newman), Arbitrator Newman provides a thorough review of the impact of the amendments in the *Occupational Health and Safety Act*:

236 ... I interpret the legislation to mean that an employer must protect a worker from a hazardous person in the workplace. The failure to comply with these requirements will attract penalties under that Act, and subject the employer to the enforcement mechanisms administered by the Ministry of Labour. ...

248 Second, the Bill 168 amendments have changed the manner in which the employer and a worker must react to an allegation of a threat. An employer may not hide its head in the sand, or take a passive stand, hoping that things will sort themselves out. It must not trivialize the allegation. The utterance of a threat is workplace violence, and must be reported, investigated, and addressed. A worker who becomes aware of a danger is required to report the incident, as Hale was required to do here. ...

251 Of course, this is not to say that an employer will be justified in acting without facts, or in precipitous over-reaction. It must investigate allegations of workplace violence with a full and fair approach, assessing objectively verifiable fact, and ensuring that decision-making in responding to the incident is informed, reasonable and proportionate. The seriousness of the allegation does not minimize the requirement for thorough and appropriate investigation and decision-making.  
...

253 An employer can fulfill its obligations and responsibilities to provide a safe workplace, and to take reasonable precautions to protect an intended victim of violence, in a variety of ways. In fact, it may be wise for an employer to maintain contact with the offending employee, to contemplate providing a lengthy leave of absence during incarceration, or while some form of therapy or counselling is undertaken. There may be safety in maintaining some ability to observe and control the trajectory of anger that has been demonstrated. But this is for the employer to determine, at the end of an appropriate investigation and consideration of options. ...

255 The critical point is that it will not do for an employer to disregard, to minimize, or to turn a blind eye to a report of workplace violence in the form of a threat. An employer may not be passive or indifferent to any report of workplace violence. That option no longer exists in Ontario. It would constitute an abrogation of the employer's obligations under the Occupational Health and Safety Act, and would expose that employer to the penalties and offences set out in that Act.

256 Here, the Employer reacted with the appropriate deliberateness required by the allegation of workplace violence. It did not over-react, but addressed the allegation with appropriate care and attention. It investigated, and involved the most senior level of management, in order that decision making could occur with effective and timely action. It did not jump to precipitous termination, but undertook investigation of the facts. It deliberated upon its decision, taking into account the relevant data, including the grievor's history of discipline, the level of her seniority, the seriousness of the misconduct, the impact of the misconduct upon the others affected by the misconduct, and most importantly, the likelihood of improvement of the grievor's behaviour, and the likelihood of restoration of the employment relationship.

### C) ACADEMIC FREEDOM AND FREEDOM OF SPEECH

The importance of academic freedom and freedom of speech has been stressed in this hearing by the parties as well as by some non-party witnesses in their testimony. The Tribunal agrees that longstanding values of academic freedom must be preserved and protected in universities. Therefore, the Tribunal has also undertaken its duties recognizing that academic freedom and freedom of speech principles are valued both by the University and the Faculty. The Tribunal, in assessing statements, whether written or oral, has been mindful of these important principles when considering whether the Policy has been breached.

The Tribunal has considered the University's *Statement on Academic Freedom*, "Appendix A" to the Policy (DSB-0210). The Tribunal in making its decision has also considered the MUFA Newsletter (DSB-2528) and the testimony of some non-party Faculty to help inform its views. Further, as faculty members, the Tribunal is also familiar with and take notice of former President Peter George's statement dated February 29, 2008 issued in a non-related matter arising on campus during "Israeli Apartheid Week". Dr. George, in his statement, opined as follows:

*"Universities have a fundamental role in our society. They educate, they create new knowledge and they provide opportunity. These goals can only be accomplished if certain fundamental principles are upheld. The most important of these principles are academic freedom and freedom of speech.*

*But while we defend freedom of speech we must also remember the responsibility that comes with it. Each of us is responsible for speaking, writing and acting with respect for those who may have a different view. We are all responsible for promoting tolerance and meaningful dialogue that focuses on productive discussion and encourages people to be part of the debate in a safe and supportive environment.*

*We have a choice. We can let the current issue create divisions on campus or we can choose to unite with a common voice that the fundamental principles of freedom of speech and academic freedom will not be compromised and that through respect and tolerance will in fact be strengthened."*

The MUFA article (DSB-2528) affirmed the challenges of balancing rights. The article specifically discusses academic freedom for academic administrators and its limits. The Tribunal has specifically relied upon the following excerpt when considering and assessing the Complaints:

*"The issue is not black and white. MUFA and CAUT have a mandate to protect academic freedom. On the other hand, a smoothly functioning administration needs some constraint on public opposition to agreed administration initiatives by those who lost out in the internal debate ..."*

Therefore, academic freedom and freedom of speech principles are integral in a university setting and are recognized as important by all parties in these proceedings. The Tribunal remained mindful of academic freedom and freedom of speech principles when it reviewed the evidence, especially when assessing the numerous oral and written statements alleged to be evidence of harassment. In fact, these principles of academic freedom and freedom of speech were often generally relied upon by some individual 003 Respondents to justify comments, especially for offensive statements identified in the numerous emails received as evidence. Specific comments and conduct found to be harassment will be identified and addressed in the details of the Decision.

What constitutes acceptable language in contemporary society, never mind a university setting, is challenging to define. What is subjectively offensive to one person may be acceptable to others and context is often important. Language that was previously regarded as obscene and vulgar is today common or even normal social interaction. Community standards vary. It would be practically impossible to predetermine what language is acceptable, not only in the work place, but in a democratic society as a whole. The Tribunal was comprised of a panel of faculty members from McMaster University and as such this panel of peers is uniquely able to assess what constitutes acceptable language in this workplace. The findings with respect to acceptable language and behaviour in this Decision may be specific to the workplace at McMaster University.

We live in a democratic society which permits free speech. Further, principles of freedom of speech are especially cherished at the University. However, rights are not absolute. Competing rights may need to be balanced. Censorship is a concern. The general prohibition of statements or crude conduct is dangerous. Context is important. The Tribunal understands that comment or conduct which is crude or in bad taste is not necessarily sufficient to constitute harassment or discrimination. The Tribunal accepts that free speech does not include the right to slander or harass others contrary to the law generally or the *Human Rights Code* and/or University Policy specifically without consequence. For example, language which is in common usage is no longer acceptable when it results in discrimination or harassment proscribed by law or policy. If someone chooses to engage in vexatious conduct or comment, they do so at the risk of being held accountable if it meets the legal test for harassment and discrimination.

Therefore, the Policy ought not to be seen or perceived as inhibiting free speech. For example, differences of opinion do not establish a violation of the *Code* or University Policy. However, University citizens must abide by the law including human rights principles. Policy prohibitions are likely triggered when language or words may be reasonably construed to form an unacceptable condition of employment or result in direct harassment or adverse and unequal treatment. Power imbalance and context were important contributing factors when the Tribunal determined whether the line between prohibited harassment and protected academic freedom and freedom of speech was crossed.

The Tribunal has therefore been cautious in drawing the line between academic freedom and freedom of speech and harassment prohibited by the Policy and the law. The Decision does not inhibit or dictate terms of normal social contact among administration and faculty/employees or difficult performance, managerial and philosophical discussions among administration and

faculty/employees. Such discussions are not abnormal, nor are they prohibited. The wrongdoing that is to be avoided is coercion, intimidation or academic interactions adversely affecting faculty or an employee contrary to the Policy or the law without lawful justification.

The Tribunal is comfortable that any findings of harassment which it identifies in our following reasons are based upon comments and conduct that are prohibited under the Policy. The Tribunal's findings of harassment do not include any comments or conduct appropriately protected by academic freedom and lawful freedom of speech. The Tribunal has also been careful not to minimize important human rights concepts such as harassment and has not accepted allegations, that, when viewed objectively, they found to be trivial or not reflective of behaviours intended to be prohibited by the Policy or in the jurisprudence.

The Tribunal will now address the individual harassment allegations as brought forward in the complaints and provide its findings as to whether the alleged harassment contrary to the Policy has been established by the evidence.

## VI. THE CONSOLIDATED COMPLAINTS

The Tribunal considered all the jurisprudence and policies referenced by counsel in the 002 and 003 Complaints in making its findings. On consent, the matter was consolidated. The Tribunal will refer to harassment generally in this Decision. Our general references to harassment are inclusive of the prohibited harassment defined in the Policy as reflected in the jurisprudence which guided the Tribunal in making findings. The Tribunal interpreted “harassment” in a manner consistent with the Policy’s Statement of Principles. The Tribunal also confirms that discrimination allegations were raised by the 003 Complainants. The Tribunal is not satisfied that any discrimination allegation has been established by the evidence or under the definition of discrimination. In any event, if the evidence established a breach of the Policy, the Tribunal was satisfied that harassment and reprisal principles applied and did not find it necessary to also determine whether the same conduct was also discrimination proscribed under the Policy.

The Tribunal, as stated, remained mindful of the purposes of the Policy and the definition of harassment. Harassment is broadly defined in the jurisprudence. However, harassment is a concept often dependent upon the individual facts. The alleged breaches took place over a significant period of time. Issues overlapped and context was important to understanding and assessing the conduct and motivations of the parties, including whether harassment occurred. Ultimately, the Tribunal had to be satisfied that harassment was established by viewing the reliable evidence objectively.

Briefly, the 002 and 003 Complainants and the 003 Counter-Complainant, in essence, allege both direct harassment and an academic/work environment that is unwelcoming, intimidating and hostile. The legal principles relied upon by the parties were not in dispute. Rather, the application of the legal principles to the evidence and the question of whether the Policy was breached were vigorously contested. Complainants allege that they were harassed through vexatious comments or vexatious conduct, or both. Complainants identified various comments or conduct that they relied upon as evidence of direct harassment or for which Complainants claim adverse effects. It was accepted by all parties that the Complainants bore the onus to establish breaches of the Policy.

Harassment identified by Complainants included both isolated comments or conduct and multiple incidents. Harassment can be direct, such as comments which belittle a targeted individual, or indirect, such as the display of inappropriate posters in a workplace. The conduct or comment, whether isolated or a pattern may be found to be a prohibited condition of employment, because it created a negative working environment contrary to the Policy.

The Tribunal is satisfied that an isolated comment or conduct, which is not repeated, if egregious, can be evidence of harassment according to the jurisprudence. Furthermore although conduct or comment, if viewed in isolation, was not objectively egregious, the Tribunal in some cases found that such comment or conduct was prohibited harassment if the comment or conduct was “vexatious” and part of a “course” of comment or conduct made without reasonable cause or excuse. The Tribunal found harassment where the reliable evidence established engagement in a course of vexatious comments or conduct that was known, or ought reasonably to be known, to

be unwelcome and which was not justified at the University. In reviewing the evidence, the Tribunal remained cognizant of these important principles when determining whether direct harassment has been established by the evidence. Furthermore, the Tribunal identified when a harassment finding was based on a course of comments or conduct or on an isolated comment or conduct which was egregious.

In addition, adverse effect harassment or a poisoned work/academic environment is also alleged by the Complainants. A poisoned work/academic environment may, or may not, be more subtle but it is equally offensive if there is evidence of harassment. Adverse effect harassment is recognized in the jurisprudence and is unacceptable under the Policy and its Statement of Principles. The conduct or comment at issue must reasonably be construed to create a work environment that constitutes an unwarranted intrusion upon the employee's dignity contrary to the University's Policy. An academic/work environment that is hostile, offensive or intimidating is not acceptable. Such harassment generally arises because of conditions of work or the workplace environment. Prohibited comments or conduct may include overt harassment or more subtle comments/conduct which may reasonably be perceived to create a negative work environment contrary to the Policy.

The Tribunal has been requested by the Complainants in both 002 and 003 to make findings that they were subjected to a poisoned work/academic environment. Submissions were made and no issue was raised with respect to the Tribunal's jurisdiction to consider adverse effect harassment resulting in a poisoned work/academic environment under the Policy. In this Decision, for the reasons identified, the Tribunal has concluded that a poisonous work/academic environment exists at the DSB. The challenge for the Tribunal was to identify which parties breached the Policy and the conduct for which specific individuals, the University, or both should be held accountable especially if harassment was found to be indirect rather than direct.

The parties also asked the Tribunal to make findings of credibility. The Tribunal has done so, where required, if the objective evidence of alleged misconduct could otherwise be viewed as harassment or discrimination and the finding required the Tribunal to choose between different versions provided by witnesses and circumstances where there was no other reliable or corroborating evidence. In these situations the Tribunal did not accept as reliable the testimony of witnesses we observed as not credible and preferred the evidence of witnesses we viewed as credible.

The Tribunal in the 002 Complaint was satisfied that the reliable and admissible evidence did not establish that Mr. Bates harassed any of the 002 Complainants. Credibility findings were not necessary for most of the allegations to reach this conclusion. Credibility was a factor in the Tribunal's disposition of the allegations against the University and for certain findings by the Tribunal in the 003 Complaint. In addition, certain non-party witnesses provided reliable evidence that assisted the Tribunal in determining whether there was reliable evidence to support a finding that the Policy was breached where contradictory evidence was received from the parties.

Due to the volume of evidence received, this Decision does not identify all situations in which there was contradictory evidence as there were situations when such inconsistencies were

not judged to be relevant to the allegations or were not relied upon if other reliable evidence, either documentary or testimony from non-parties, supported a finding that the Policy was breached. Credibility findings that specifically support our findings are reviewed in the decision. In this process, the Tribunal considered and was guided by the following jurisprudence before making its findings where it felt credibility was an issue or required to support a finding.

## A) CREDIBILITY GENERALLY

The approach followed by the British Columbia Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA) at 356-357 (hereafter, “*Faryna*”), (quoted with approval by the Ontario Court of Appeal in *Re Phillips et al. v. Ford Motors Co. of Canada Ltd., et al.*, [1971], 18 D.L.R. (3d) 641) which considers a witness’s opportunities for knowledge, powers of observation, judgment and memory, and ability to describe clearly what he/she has seen and heard is generally followed. The Court stated the following in the *Faryna* decision:

“The credibility of interested witnesses, particularly in cases of conflict of evidence cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. **In short, the real test of the truth of the story of the witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions (...)** Again, a witness may testify to what he sincerely believes to be true, but he may be quite honestly mistaken.” (emphasis added)

Another test for credibility that informs the Tribunal is set out by Justice Green in the case *R. v. Taylor*, [2010] O.J. No. 3794. At paragraphs 58 to 60 of the decision, the Honourable Justice opines:

“Credibility is omnibus shorthand for a broad range of factors bearing on an assessment of the testimonial truthworthiness of witnesses. **It has two generally distinct aspects or dimensions: honesty** (sometimes, if confusingly, itself called “credibility”) **and reliability**. The first, honesty, speaks to a witness’s sincerity, candor and truthfulness in the witness box. The second, reliability, refers to a complex admixture of cognitive, psychological, developmental, cultural, temporal and environmental factors that impact on the accuracy of the witness’s perception, memory and, ultimately, testimonial recitation. **The evidence of even an honest witness may still be of dubious reliability.** (emphasis added)

Furthermore, Doherty J.A. for the Court of Appeal in *R. v. Morrissey* 1995 CanLII 3498 (ON C.A.), (1995), 97 C.C.C. (3d) 193, at 205 stated:

Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's

testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. **The evidence of a credible, that is honest witness, may, however, still be unreliable.**

Depending on the circumstances, some portions of a witness' testimony may be more credible or worthy of belief than other portions. **Accordingly, I can, with good reason, accept all, some or none of any witness' evidence:** see *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at para. 65." (emphasis added)

**B) CREDIBILITY AND LACK OF CORROBORATION**

The Tribunal notes that relevant factors when assessing credibility include corroborative evidence from other witnesses, and the extent to which witnesses may have an interest in the outcome of the case, or have a self-serving interest in testifying for one of the parties. For example, reliability of evidence was addressed by Vice Chair Joachim in *Chukwudi v. Brampton (City)*, 2010 HRTO 127 (CanLII). In this case, the Applicant claimed that when he had attempted to discuss the possibility of employment with the City of Brampton, he was met with comments that indicated he would never obtain a position in the City due to his colour. The Respondents denied these comments were made.

Adjudicator Joachim applied the rule in *Faryna* and found the applicant's evidence was not credible. Adjudicator Joachim held that in the absence of the Applicant presenting corroborating evidence, it was very unlikely that the City officials would make such offensive comments. In addition to the "inherent improbability" that City Senior Management would make such racist comments, the applicant had no evidence to support his claims. She writes at paragraph 20:

"I completely disbelieve the applicant's allegations described above and find him not credible. I cannot accept that his description of the alleged events is in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize is reasonable in that place and in those conditions; *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 356-357 (B.C.C.A). Accordingly, with respect to other allegations, I give the applicant's evidence no weight unless other reliable evidence corroborates it."

The Tribunal is further informed by comments made by Adjudicator Martin in the decision in *Farris v. Staubach Ontario Inc.*, 2011 HRTO 979, at paragraphs 41 and 42:

"In addressing credibility, the parties urged me to make a global assessment of the credibility of each witness. With a few exceptions, I did not find it appropriate to do so in this case. Particularly with the party witnesses, I found their evidence was better assessed on an issue-by-issue basis. **As is common once litigation is commenced, parties begin to see events through the lens of their position.** I found this perspective was present with most of the party witnesses.

Having not made a global assessment I have approached the assessment of each witnesses' evidence being mindful of the considerations in *Faryna* but also **considering the witnesses' motives, their ability to recall events, their relationship to the parties and the internal consistency of their evidence and the inconsistencies and contradictions in relation to other witnesses.**" (emphasis added)

The Tribunal has required objective and reliable evidence when identifying what conduct constitutes harassment contrary to the University's Policy. The Tribunal has been careful not to

consider evidence and/or give evidence any weight where it was unreliable or speculative and made note during the proceedings when objections were submitted with respect to the credibility or weight of a particular piece of evidence. The Tribunal was particularly concerned that evidence not be tainted by the passage of time. Our findings are based upon the evidence which we felt was reliable having been able to observe each witness's demeanour. If the Tribunal only had conflicting testimony between two witnesses, we preferred and relied upon the evidence of the witnesses for whom no credibility issues were identified. The motives of the witnesses, the internal consistency of a witness' evidence, inconsistencies and contradictions with other witnesses' evidence and the relationship of witnesses to the parties also guided the Tribunal when assessing the reliability of the evidence.

## VII. ALLEGED BREACHES OF THE TRIBUNAL'S ORDERS

During the hearing, a number of alleged breaches of the Tribunal's order were identified and the Tribunal deferred some of its findings. Each of the breaches is addressed in detail in the following sections.

### A) LEGAL FRAMEWORK

The McMaster University Anti-Discrimination Policy and the *Statutory Powers and Procedures Act* established the procedures governing this hearing. A number of Procedural Orders before and during the hearing were issued (see Appendix A). Furthermore, prior to the commencement of the hearing the parties agreed to the procedural rules for conducting the hearing.

The Confidentiality Notice issued by the Chair dated June 20, 2011, and the Tribunal's subsequent directions and Orders, confirmed the strict confidentiality expectations being imposed on the parties. The confidentiality directives were issued to protect personal and confidential information for all parties responding to concerns that were raised about intimidation and reprisal and recognizing the DSB environment was not acceptable to the parties. The proceedings were to be held in-camera.

The Tribunal's direction confirmed that a breach of the confidentiality requirement would be deemed a breach of the Policy. *Inter alia* any witness, potential or otherwise, and the parties were to be provided with the Confidentiality Notice before the commencement of any interview or questioning by a party or his/her representative. All witnesses were directed to maintain the confidentiality of the Complaints. Furthermore, all information, documents or proceedings related to the Complaints and their contents or any details relating to the Complaints were not to be disclosed to any person except to a party (or his or her advisor) or to a witness's own advisor provided he or she was made aware of the Confidentiality Notice.

In addition, the Confidentiality Notice expressly provided that “all parties and witnesses are **required to refrain from engaging in any negative behaviour, reprisal or retaliation against or towards any other individual who may have participated, has participated or may participate in such proceeding. Engaging in any reprisal or retaliation against any individual(s) involved in the process is a breach of the University's applicable policies and in violation of the rules under which the hearing shall proceed and may be subject to disciplinary action.**” (emphasis added)

The confidential nature of the proceedings and the obligations imposed were affirmed on numerous occasions with counsel and also in the presence of the parties at the commencement of and throughout the hearing. Legal counsel were reminded to confirm these directives with persons interviewed and/or witnesses called to testify at the hearing or who provided affidavits. A Witness Information Sheet dated March 22, 2012 (attached as Appendix E) was also issued, and circulated to further ensure compliance with the Tribunal's orders after further issues arose during the hearing. Non-party witnesses were excluded from the hearing in order that their

evidence not be influenced by the evidence or testimony received by the Tribunal. These obligations were also reaffirmed with each witness by the Chair during the proceedings when a witness appeared to provide testimony. Commencing March 22, 2012, each witness confirmed they had received the Confidentiality Notice and acknowledged they understood their legal responsibilities.

**B) ALLEGED BREACHES**

Alleged breaches of the Confidentiality Notice and/or the Tribunal's Orders were raised during the hearing. The Tribunal generally reserved its decision on some of the issues raised. Breaches alleged to have occurred are summarized as follows:

1. Dr. Taylor engaged in reprisal and breached the Confidentiality Notice by sending an email to Mr. Grant Walsh, a non-party witness, on March 15, 2012.
2. Dr. Bart disclosed confidential information to Dr. Schreiber about the hearings and engaged in a reprisal by asking Dr. Schreiber to allege that Dr. Flynn committed plagiarism.
3. Dr. Steiner's conduct involving Drs. Randall, Hackett and Dooley who were non-party witnesses, breached the Tribunal's orders.

The submissions of counsel and the Tribunal's findings follow:

**i. Dr. Wayne Taylor****Summary Of Evidence And Submissions**

On March 16, 2012, counsel for McMaster University raised concerns about an email sent by Dr. Taylor on March 15, 2012, (DSB-2513) after the hearing had commenced. It was submitted the email breached the Confidentiality Notice and was a reprisal by Dr. Taylor against Mr. Grant Walsh, who had provided a letter in support of Mr. Bates' second appointment on January 7, 2009 (DSB-0359). The March 15, 2012 email to Grant Walsh states the following:

"Grant,

As you may, or may not have heard, the hearing against Paul Bates is underway. I was disappointed, but not surprised, when I read your letter to the Provost supporting Bates and deriding me (which is now part of the public record).

Wayne."

The Tribunal heard submissions on March 23, 2012, from Mr. Avraam, Mr. Heeney and Ms Milne. The Tribunal also questioned Dr. Taylor under oath about the email.

Mr. Avraam submitted that sending the email because of Mr. Walsh's letter, which was an exhibit, breached the Confidentiality Notice. Sanctions were requested against Dr. Taylor. Furthermore, the Tribunal was asked to consider the breach when assessing credibility and when making findings of fact. In addition, Mr. Avraam submitted the breach should be considered an aggravating factor should any discipline be recommended. It was also noted the email was sent from Dr. Taylor's personal email account after Dr. Taylor saw the production in preparation for

the hearings. Furthermore, Dr. Taylor engaged in another reprisal when he confirmed, in cross-examination, that as a result of the letter, Mr. Walsh was no longer a friend.

Mr. Heeney, amongst other things, asked the Tribunal to consider the effect of the breach on potential witnesses (the Tribunal heard submissions on this issue on the third day of what would be a twenty-day hearing). Mr. Heeney referred the Tribunal to the affidavit of a non-party witness who feared reprisal as a result of participating in the hearing.

Ms Milne, on behalf of Dr. Taylor, submitted that this was simply an error in judgment on the part of Dr. Taylor. Ms Milne submitted that Dr. Taylor was contrite about what happened. Dr. Taylor had considered Mr. Walsh to be a good friend. Dr. Taylor was surprised by the negative comments expressed by Mr. Walsh concerning Dr. Taylor's role in the HLI. Counsel confirmed that Dr. Taylor apologized for the email and acknowledged that he should not have sent it. Ms Milne suggested the breach would cause minimal damage, stressed that the recipient of the email would not be required to testify at the hearing and emphasized the fact that the individual did not work at McMaster.

Ms Milne identified extenuating factors. Dr. Taylor had not attended the prehearing when the Chair confirmed the *in camera* nature of the proceedings and issued the Confidentiality Notice. Ms Milne also submitted the fact that Dr. Taylor sent the email from his Rogers email account and not his McMaster email was not material. She suggested that individuals use different email accounts for different things and no adverse inference should be made. Ms Milne suggested a verbal reprimand of Dr. Taylor was appropriate to address the breach. Further, the breach should not impact the credibility of Dr. Taylor's testimony, since it was a mistake.

In reply, Mr. Avraam suggested Dr. Taylor was not, in fact surprised, simply because he said so in his email. Mr. Avraam submitted that a verbal reprimand was not sufficient. The Tribunal was asked to consider the message being sent to the 003 Complainants and witnesses.

When asked by the Tribunal, Dr. Taylor explained that he used the Rogers email when at home and the McMaster email while at work, since he cannot access his McMaster email from home. Dr. Taylor further explained he was reviewing the evidence raised during the hearing when he "gratuitously came upon the impugned letter". Dr. Taylor said he was shocked, surprised, and disappointed. In his words, the document was "a shocking thing to read from former friend". His email in response was a "guttural ... spur-of-the-moment response." Dr. Taylor said he sent the email impulsively, not thinking about the Tribunal's Confidentiality Notice; had he given it a sober second thought he would not have sent it.

On March 16, 2012, the Tribunal again affirmed that all parties were required to refrain from any negative behaviour, reprisal or retaliation and to abide by the Confidentiality Notice dated June 30, 2011. The Tribunal informed Dr. Taylor that the breach of the Confidentiality Notice was a serious issue but reserved judgment concerning whether further sanctions were appropriate as a result of the breach. However, the Tribunal reminded all parties that it intended to protect the integrity of the hearing process.

### **Tribunal's Findings**

Dr. Taylor's conduct, as was conceded, breached this Tribunal's Order. The Confidentiality Notice provides "all parties ... are required to refrain from engaging in any negative behaviour, reprisal or retaliation against or towards any other individual who may have participated, has participated, or may participate in such proceeding." The Tribunal finds that Dr. Taylor's email of March 15, 2012, was negative behaviour, reprisal and retaliation against a non-party who provided a document that became an exhibit at the hearing.

The Tribunal has considered counsel's submissions and Dr. Taylor's explanations. Dr. Taylor retained separate legal counsel for the 002 and 003 hearings who were aware of the Confidentiality Notice. The issue was specifically addressed in Supplementary Procedural Order #5 dated November 28, 2011 (see paragraph 4(iii)). Dr. Taylor was also present during the hearing prior to March 16, 2012, when confidentiality and the *in camera* nature of the proceedings were being adhered to and reaffirmed. Dr. Taylor was or ought to have been reasonably aware of the Tribunal's orders. Whether he was physically present on the day the Tribunal reaffirmed the order is of little consequence.

The letter was produced pursuant to the parties' production responsibilities and made an exhibit. The *in camera* nature of the proceedings was confirmed prior to the breach. Dr. Taylor suggested to the individual that his letter was "part of the public record" (DSB-0359) which is misleading given the proceeding was conducted in-camera. The Global Hearing Record documents are not part of a public record even if some documents submitted as evidence are publicly accessible. The Tribunal finds that it is reasonable that Dr. Taylor knew or ought to have known this.

Furthermore, Dr. Taylor's conduct is material to the integrity of the process. The hearing process depends on the honest participation of both party and non-party witnesses, many of whom expressed considerable anxiety and reluctance about participating and raised fears of reprisal. In addition, Dr. Taylor's expressed regret appeared insincere to the Tribunal. For example, Dr. Taylor argued this was not an act of reprisal, yet continued to refer to the individual as a "former friend." It was suggested that Dr. Taylor was surprised by seeing the evidence in question. The Tribunal finds Dr. Taylor was not surprised by the letter's content but rather was upset that it was sent.

The Tribunal may have been prepared to find the breach did not impact Dr. Taylor's credibility. However, the Tribunal found Dr. Taylor was not a credible witness having observed his demeanour during his testimony in the 002 Complaint and especially with respect to his testimony in the 003 Complaint. As such, the Tribunal in making findings, in many cases, gave Dr. Taylor's evidence little weight unless other reliable evidence corroborated his testimony. The Tribunal will consider the breach further after receiving remedy submissions from counsel given that we found Dr. Taylor breached the Policy in the 003 Complaint.

**ii. Dr. Chris Bart****Summary Of Evidence And Submissions**

On May 23, 2012, an alleged breach of its Confidentiality Notice by Dr. Bart was raised with the Tribunal. Dr. Bart allegedly disclosed confidential information to Dr. Schreiber. Furthermore, Dr. Flynn's counsel submitted that Dr. Bart used Dr. Schreiber to accuse Dr. Flynn of plagiarism thereby engaging in a reprisal against Dr. Flynn.

Dr. Schreiber produced an affidavit in advance of his attendance at the hearing, found at DSB-2298 (delivered to the Tribunal on February 14, 2012). On May 23, Dr. Schreiber was called as a witness (via video conferencing software "Skype"). Dr. Schreiber confirmed he had received the Witness Information Sheet prepared by the Tribunal. Dr. Schreiber affirmed that his affidavit was true when he testified. The Tribunal informed Dr. Schreiber that evidence concerning any suggested plagiarism was not being considered by the Tribunal. However, Dr. Schreiber was advised that counsel may question him as to how those concerns arose when Dr. Schreiber prepared his affidavit.

Dr. Schreiber testified that he attended the DC on January 26 and 27, 2012, as a member of a review committee and spoke with Dr. Bart who showed him Dr. Flynn's presentation slides. On cross-examination, Dr. Schreiber stated that he first saw the slides when Dr. Bart sent him an email attaching the slides (DSB-2500). When asked by Dr. Bart "what he thought", Dr. Schreiber suggested the slides were outdated. In his affidavit, Dr. Schreiber suggested there were substantial similarities to material he had taught previously and which he considered his intellectual property. However, Dr. Schreiber confirmed that the syllabus was not sent to him, and he had not seen the current syllabus for the MBA course M740 in Reputation Management.

The Tribunal Chair clarified with Dr. Schreiber the process by which he submitted his affidavit after counsel concluded their questions. Dr. Schreiber stated he prepared his affidavit in January or February 2012 and he did not have specific conversations about the affidavit with Dr. Bart. They did discuss Dr. Flynn's removal from the DC. Dr. Schreiber was informed that Dr. Flynn had switched Faculties at McMaster (moving from DSB to Humanities). Dr. Schreiber stated that Dr. Bart explained that he was interested in Dr. Schreiber's perspective about the quality of the slides, since Dr. Flynn was no longer teaching at the Directors College. Dr. Schreiber also testified that Dr. Bart told him that Mr. David Weiner thought there was duplication in the slides and that they were outdated. Dr. Bart asked him if he agreed with Mr. Weiner's opinion.

Mr. Heeney for the 003 Complaints submitted the plagiarism allegation played no part in why Dr. Flynn no longer taught at the DC. Mr. Heeney called it unnecessary, untrue, and a "shot at Dr. Flynn to ruin his reputation." As such, it was submitted that Dr. Bart had breached the Tribunal's orders and that these actions constituted reprisal.

Mr. Fletcher, counsel for Dr. Bart, submitted the evidence was clear that Dr. Bart did not suggest to Dr. Schreiber that he allege plagiarism against Dr. Flynn. Mr. Fletcher stated that Dr. Schreiber's opinions were his own and did not amount to reprisal by Dr. Bart against Dr. Flynn.

### **Tribunal's Findings**

The Tribunal is only considering the plagiarism allegations in the context of whether the Confidentiality Notice was breached. Therefore, the Tribunal was interested in the process by which plagiarism allegations may have developed and in particular Dr. Bart's role and input concerning Dr. Schreiber's affidavit.

The issue is whether that conduct breached the Confidentiality Notice. The Tribunal finds the evidence did not establish a breach of the Confidentiality Notice or a reprisal. The Tribunal is not satisfied that, in the circumstances, the evidence established a breach of the Confidentiality Notice or that Dr. Bart disclosed confidential information or that a reprisal was established.

Briefly, Dr. Schreiber alleges, at paragraphs 13 and 15 of his affidavit, that Dr. Flynn used his original teaching materials (presentation slides and an MBA course syllabus) without permission or an acknowledgement of authorship. Both Dr. Schreiber's affidavit and Dr. Bart's testimony confirm that Dr. Bart showed Dr. Schreiber the slides from Dr. Flynn's last presentation to the Director's College in January 2012, when Dr. Schreiber was attending a portion of the Module 1 presentations as an external evaluator, on the invitation of Dr. Medcof. At paragraph 44, Dr. Bart's sworn affidavit (DSB-2292) repeats Dr. Schreiber's assertion that the "slides were essentially [Dr. Schreiber's] work and not Dr. Flynn's." Dr. Bart also stated (at paragraph 40) that one reason Dr. Flynn was removed from the DC was because a national sponsor was of the opinion that Dr. Flynn's research was outdated. Dr. Schreiber, who was advised of this by Dr. Bart, believed it to be true and repeats that reason at paragraph 16 of his affidavit.

Dr. Bart testified that he made the request of Dr. Schreiber "Just to bolster my case". The conversation took place prior to the commencement of the hearing. However, the evidence did not establish that Dr. Bart manipulated or encouraged Dr. Schreiber to allege plagiarism and, in any event, Dr. Schreiber did not use the word "plagiarize". Allegations can be made and not be proven and this does not constitute a reprisal. Furthermore, evidence may not be relevant or admissible under an adversarial process. The Tribunal is not satisfied that a breach by Dr. Bart has been established either with respect to reprisal or that Dr. Bart improperly disclosed evidence.

**iii. Dr. George Steiner**

Counsel for the 003 Complainants raised alleged breaches of the Tribunal's orders by Dr. Steiner involving three non-party witnesses prior to their testimony. It was alleged that Dr. Steiner attempted to improperly influence or dissuade Drs. Randall, Dooley, and Hackett's testimony and disclosed information about the hearing in contravention of the Confidentiality Notice and the Tribunal's order excluding witnesses.

**a) Conduct with Dr. Randall****Summary Of Evidence And Submissions**

Dr. Randall was summonsed on April 10, 2012, as a witness and appeared on April 30, 2012. Dr. Randall did not provide an affidavit. Dr. Randall's testimony addressed the MUFA meeting regarding the Dean's Selection Committee, where he observed Dr. Steiner "shaking and waiving his finger saying 'that Chris Longo'".

Dr. Randall confirmed Dr. Steiner initially discussed this incident with him approximately four to six weeks (in mid February 2012) prior to his attendance before the Tribunal. Dr. Randall testified that "apparently that incident was written in somebody's affidavit, and so he just wanted to verify... he didn't recall the incident, so he just wanted to verify, was that accurate? Did I see those things?" Dr. Randall confirmed Dr. Steiner also read a portion of an affidavit related to the MUFA meeting which he agreed with. However, Dr. Randall did not know whose affidavit Dr. Steiner read from.

Dr. Randall also testified he and Dr. Steiner had another conversation regarding the MUFA meeting on or about April 19, 2012, which was after the hearing commenced on March 3, 2012. Dr. Randall said the conversation lasted approximately one hour and Dr. Steiner was "just trying to understand better what it is I had to say."

Dr. Randall confirmed in cross-examination that Dr. Steiner had shown him the Witness Information Sheet and Confidentiality Notice at one of their meetings. It was further suggested in cross-examination that Dr. Steiner would testify that Dr. Randall did not tell him what his evidence would be at the hearing. Dr. Randall disagreed and testified that "I pretty much told him that exactly what I said here today. ... I didn't want to get into great details of what I thought he was thinking... further than that I witnessed Dr. Steiner making those statements. There wasn't much detail. He read me the affidavit and I said 'Yes, that happened.'"

Dr. Steiner testified that he first approached Dr. Randall because Dr. Steiner did not understand the context of the statement identified in Dr. Longo's Complaint. Paragraph 59 of Dr. Longo's Complaint alleged that Dr. Steiner made his "that Chris Longo" statement after a meeting of Senate. Dr. Steiner testified Dr. Longo's productions suggested the incident took place after a Faculty meeting. Dr. Steiner did not recall there being an incident after a Faculty meeting. Dr. Steiner testified that he approached Dr. Randall to determine after which Senate meeting the alleged incident took place. Dr. Steiner confirmed Dr. Randall told him he was not

sure what meeting it was after, but that Dr. Steiner had indeed made the statement. The initial conversation concluded.

Dr. Steiner testified that after Dr. Longo's testimony clarified the statement took place after a MUFA meeting he approached Dr. Randall again and sought further clarification. Dr. Steiner testified the second conversation was a friendly meeting where he was trying to determine facts. On cross-examination, Dr. Steiner denied that he tried to convince Dr. Randall that he did not witness the alleged incident. Dr. Steiner testified he wanted to find out what he said to Dr. Longo, since Dr. Longo's complaint and productions were "confusing."

Counsel for the 003 Complainants suggested in cross-examination that Dr. Randall told Dr. Steiner that he did not want to talk about the issue anymore, but Dr. Steiner approached Dr. Randall a second time. In response, Dr. Steiner stated "but he could not tell me what meeting it was. It did not make sense. He could not remember what meeting it was. I couldn't understand it." Dr. Steiner denied that the second conversation took an hour. Counsel pointed out to Dr. Steiner that he approached Dr. Randall on the same day that Dr. Hackett testified to the Tribunal, April 19, 2012. Dr. Steiner replied to counsel, "Well, I was very surprised, and certainly I did not know that Dr. Hackett was going to be on that morning, because Ms Cossa was supposed to be coming on. This is why I didn't even show up here. And that same evening, I had to leave for Chicago."

Counsel for the 003 Complainants submitted Dr. Steiner knew Dr. Randall's statements were true and that he tried to have Dr. Randall change his evidence. Counsel emphasized Dr. Randall told Dr. Steiner he did not want to talk about the issue anymore after the first meeting. Counsel submitted that Dr. Steiner has "a bias against anyone who is the Dean or a supporter of the Dean and he lumps them all together."

In response, Dr. Steiner's counsel argued that Dr. Steiner "sees something in an affidavit and he doesn't understand it, [so] he is going to go talk to the person to help understand what happened." Counsel argued that the two were simply having a discussion and Dr. Randall did not indicate any discomfort with Dr. Steiner's questions.

Counsel for Dr. Steiner also directed the Tribunal to the case of *Wexler v. Bhullar* [2006] BCJ no. 2192, 2006 BCSC 1466 (paras. 19-22). Counsel for Dr. Steiner submitted that the case stands for the proposition that "there is no property in a witness." The case also makes clear that counsel for either party is "free to speak with a non-expert witness or prospective witness whether or not that person has been interviewed or called as a witness by the opposite party. There is no requirement to obtain the other party's permission before doing so." The British Columbia Supreme Court's *obiter* comments were submitted as relevant at paragraph 22 where the Court states: "What would be improper is if someone attempted to dissuade a witness ... from answering questions he was required to answer under oath in the witness stand." Counsel for Dr. Steiner further submitted that the case of *Han v. Gwak and Nami Immigration*, 2009 BCHRT 17 at paragraph 8, supports Dr. Steiner's position and states that "merely contacting another party's witness is not necessarily improper. ... Whether it is improper would depend on whether a reasonable person in the position of the person receiving the phone call would reasonably perceive it to be intimidating."

Counsel for the 003 Complainants submitted that the jurisprudence applies to a situation where one interviews a witness to gather evidence before they testify because their evidence is not known. However, it does not apply where a party attempts to influence the evidence of a witness. Counsel for McMaster University similarly submitted that the jurisprudence does not stand for the proposition that one has the right to approach a witness and ask a witness to amend or influence the evidence.

### **Tribunal's Findings**

There is no dispute concerning the proposition that there is no “ownership” in a witness. The relevant issue for the Tribunal, however, is whether Dr. Steiner improperly tried to influence a witness, dissuade or intimidate a witness or otherwise act in a manner which tainted the evidence or in the case of Dr. Steiner’s second meeting with Dr. Randall, breached the Tribunal’s exclusion order issued on the first day of the hearing.

Dr. Randall was a summonsed witness and did not submit an affidavit prior to attending the hearing. Dr. Steiner approached Dr. Randall to clarify the hearsay evidence raised by Dr. Longo. Dr. Steiner could reasonably have been seeking clarification on a material issue which he believed was not clear from the 003 Complaint or in Dr. Longo’s affidavit. Paragraph 59 of the 003 Complaint (DSB-0002) alleges: “Following a meeting of Senate, Dr. Steiner raised his concern to a group of faculty about Dr. Longo’s appointment to the Dean’s reappointment committee.” At paragraph 8 of Dr. Longo’s affidavit (DSB-2108), Dr. Longo testified that “[o]n or about December 2008, following a McMaster University Faculty Association (MUFA) meeting, I am told [by Dr. Randall] that Dr. Steiner raised concerns to a group of faculty at the DSB about my appointment to the Dean’s reappointment committee.”

The Tribunal accepts Dr. Steiner approached Dr. Randall to clarify a material allegation. The evidence did not establish that Dr. Randall felt Dr. Steiner had attempted to influence his evidence or that he felt intimidated. The Tribunal was not convinced, on a balance of probabilities, that Dr. Randall did not want to talk to Dr. Steiner about the “that Chris Longo” event when he stated he “didn’t want to get into great details of what [he] thought [Dr. Steiner] was thinking.” The Tribunal is satisfied that Dr. Randall was likely uncomfortable having the discussion and wanted the meeting to be brief. However, the evidence did not establish that Dr. Steiner tried to dissuade Dr. Randall or ask him not to testify about what he had observed. Furthermore, the hearing had not yet commenced when the first meeting took place. The Tribunal is satisfied that the evidence of the first meeting between Dr. Steiner and Dr. Randall did not establish a breach of the Confidentiality Notice.

The Tribunal has more concerns about the second meeting after the hearing had commenced especially given the exclusion of witness order. There was insufficient evidence and clarity concerning the conversation to satisfy the Tribunal that Dr. Steiner had breached the Confidentiality Notice. However, the Tribunal finds that Dr. Steiner’s second conversation with Dr. Randall breached the order excluding witness as reaffirmed in the Witness Information Sheet dated March 22, 2012.

**b) Conduct with Dr. Hackett****Summary Of Evidence And Submissions**

The Tribunal was made aware of a second incident involving Dr. Steiner's conduct with Dr. Hackett.

On January 31, 2012, Dr. Steiner approached Dr. Hackett to discuss his affidavit (DSB-2104) addressed events after the May 13, 2010, PACDSB meeting (at paras. 11-15). Dr. Steiner asked Dr. Hackett to consider amending his affidavit. Dr. Hackett stated that Dr. Steiner questioned him in a "frustrated and angry tone" which he believed was "questioning [his] personal ethics and credibility." Dr. Steiner also asked Dr. Hackett to sign a copy of the Confidentiality Notice (DSB-2689).

Dr. Hackett testified that Dr. Steiner asked him to remove the portions of his affidavit related to the May 13, 2010 PACDSB meeting:

"[Dr. Steiner] said, firstly that this did not represent a pattern of behaviour of him towards me over the years, that it was a one-off, that he apologized, that while he regrets the tone and the way in which he communicated to me, he doesn't regret the substance of what was communicated. And because this had not represented a pattern of behaviour over the years and that it was a one-off, and he's apologizing, he would ask that I remove that clause or any information related to that specific incident. He further said that to leave that in would be, in essence, a whole other complaint being brought against him, and that really I'm serving as a witness as opposed to a complainant. And he had been advised with that information in there, this would need to be treated as an additional complaint.

On February 4, 2012, Dr. Hackett emailed Dr. Steiner and wrote that "[a]s per the matter we discussed, for a variety of reasons I have decided to not make amendments." The next day, Dr. Steiner replied to Dr. Hackett and wrote: "Hi Rick, I'm very disappointed, especially after our lengthy and friendly discussions last week. This could have served as an important opening towards true reconciliation in the faculty." Dr. Hackett replied "thank you George, [sic] Regretfully, this is tough on all parties involved. As with all things in life, this too will pass, hopefully not leaving any permanent scars." The entire email exchange was submitted as evidence at DSB-2690.

Dr. Hackett was disappointed to receive Dr. Steiner's email. The witness testified he had personally felt that he was being ignored by some faculty. Dr. Hackett perceived the "true reconciliation" comment was intimidating because "(although I may be over-interpreting things) but here is an open door to reconciliation, and obviously I'm standing outside that door, and this is a missed opportunity" given what he had experienced at the DSB. Dr. Hackett perceived the email to have "an intonation of intimidation."

Under cross-examination, Dr. Hackett denied the suggestion that Dr. Steiner apologized immediately after the PACDSB meeting, but confirmed Dr. Steiner had apologized for the

comment in their meeting on January 31, 2012. Dr. Hackett said if Dr. Steiner had apologized after the PACDSB meeting, he would have remembered it. Dr. Hackett stated that while he signed a copy of the Confidentiality Notice, he did not recall Dr. Steiner saying that he should sign the document for both of their protection. Dr. Hackett recalled Dr. Steiner mentioning the polarizing effect that the Tribunal and hearings had on himself and the DSB in general. Dr. Hackett stated he did not recall Dr. Steiner talking about mediation and its potential effects on the DSB. Counsel for Dr. Steiner asked Dr. Hackett whether he felt Dr. Steiner was genuinely concerned with their relationship. Dr. Hackett replied: "I struggled with that. On the one hand, every indication was 'yes.' But the only thing that really questioned that was, before apologizing he said 'it was advised to me by my lawyer that I should apologize.' So that took a little bit for me, in terms of genuineness." Dr. Hackett confirmed that he did not feel intimidated when Dr. Steiner first approached him. However, after he learned about the reason Dr. Steiner approached him, Dr. Hackett stated he felt uncomfortable and in an awkward position, but did not tell Dr. Steiner how he felt.

Dr. Steiner testified he apologized to Dr. Hackett for his behaviour after the PACDSB meeting. Dr. Steiner stated that he "I lost my cool and I shouldn't have done that. I fully accept and accepted the responsibility for making my comments in a somewhat frustrated fashion." Dr. Steiner stated he told Dr. Hackett he did not mean to make the original comments in the manner that he did. Since he believed he apologized for it, Dr. Steiner was "surprised" that the same event was included in Dr. Hackett's affidavit. Dr. Steiner testified:

"I was very surprised to see this incident being mentioned in his affidavit because I felt it was settled and was not between us anymore.

...

I consulted with yourself [points to his counsel] to know whether it's ok to go to a witness to find out why is, what there, what he said and so on. And I was told, yes, it was fine, as long as we stay within the confidentiality agreement. There was no witness information sheet at that time, it was not issued. This was very early. So I asked for a confidential meeting with Dr. Hackett. He agreed. I went to his office and I started out telling him-- showing him the confidentiality sheet. And he seemed to be surprised, he said 'What is this?' I said 'Well this is what we are supposed to be showing every witness that we talk to, and this is for your protection and my protection.' And so he read the document and he indicated to me that this was the first time he saw it. So I asked him, do you mind signing it, so that it's clear that you saw it. And he did sign it. Subsequent to that, I told him that I felt I was surprised that this might have made it into your affidavit because I had been under the impression that I apologized and that this was settled. This is not a statement which refers to any of the complaints that had been launched against me. So this would have to be looked at as a new complaint. And he responded that 'Well, I'm not complaining against anybody. I simply gave a witness statement about the general atmosphere in the business school. And I used this incident with you as an example.' And I told him that 'Well, if you're not complaining and you're using it as an example, then, then, why are you using me as an example when I felt that we settled the case.' And

he kept saying-- And I asked him whether he would consider withdrawing that part of his affidavit, because I felt that this has been dealt with. He did not object to any of this as a matter of fact. He was sitting in his chair, leaning back, I was sitting in front of his desk. And then, it was a very cordial conversation. As I was saying, that this has been settled between us, so why is this happening, he was nodding with his head, and acknowledging, in my opinion, what I said. And so he said he would consider my request. I also told him that the Tribunal has a very, very bad effect on a lot of people. Not just personally myself, but the whole proceedings I mean. And, it really means that things are escalating further and further, new things are being brought in all the time, and polarization is getting even worse, in my opinion, with the faculty. It would be very nice bridging move if he was to agree to withdrawing that thing because essentially my position had been ever since I withdrew my complaint. I accepted that bygones be bygones. This is not in anybody's interest to continue with this horrendous dispute. It is hurting the school. It is hurting many, many individuals on both sides. It is clearly affecting the atmosphere in the school. And I think people who have been engaged in this whole thing for many years should try to move on. So that was the context in which I put this whole thing to him. And he did not object at all. I did not sense any discomfort on his part. If I did, I would have stopped at that point."

When he received Dr. Hackett's email, Dr. Steiner felt that

"it would be rude not to respond. ... I do not understand how he could interpret [my response] as any kind of intimidation or anything like that. It was a very friendly message, repeated essentially what I told him in the very first meeting and moreover, I don't think that he perceived it as such because he also replied almost immediately we produced, his reply, he did not produce that. ... Essentially all he said was that I know this is very hard on everybody and I hope this whole process will not leave permanent scars. To me that does not mean that he felt that there was any kind of intimidation."

On cross-examination, Dr. Steiner admitted that he knew Dr. Hackett's evidence was truthful and he knew Dr. Hackett had sworn the affidavit was truthful. Dr. Steiner testified when asked why he asked Dr. Hackett to remove portions from his affidavit by answering: "Because I felt that the issue had been settled." When shown his email to Dr. Hackett, Dr. Steiner provided the following testimony:

"This part was not new because I did tell him that also in our meeting, the very first meeting.

...

No, I am not speaking on behalf of the whole faculty. But in our discussion that ensued, we were talking about the situation in the faculty and I felt that the situation was deteriorating because of all the goings-on. And I felt that it was time that people would kind of try to build bridges to bring about some kind of

reconciliation after all I'm saying, at least my understanding is, that we all should be able to work together without these accusations and all these things constantly flying around. And I told him in that context that it would serve as an important opening towards reconciliation. And he did not object to that. He did not feel that that was threatening in any way. He came back to me after this long conversation two or three days later and we had another fifteen twenty minute talk in my office because he came to me. There was absolutely no discomfort expressed by him that he felt intimidated or threatened or anything like that. And I still don't see why anybody would be intimidated by this."

Dr. Steiner denied the suggestion put to him that his use of the word "reconciliation" meant "reconciliation with the G21". Dr. Steiner then testified in response:

"I just felt that these kind [sic] of steps would lead to an improvement of the atmosphere in the faculty. I was constantly seeking all kinds of ways of mediation. I made the decision after a long reflection of withdrawing my old complaint, I explicitly asked my counsel to seek out opportunities for mediation. And I kept reminding of this. ... If I could bring about closure of this whole thing today, I would be prepared to consider whatever it needs."

Counsel for Dr. Steiner submitted the evidence in Dr. Hackett's affidavit was mischaracterized. Dr. Steiner harbored no improper motive for approaching Dr. Hackett. Counsel stated Dr. Steiner was cautious about approaching the witness. Dr. Steiner received legal advice about approaching Dr. Hackett, allowed Dr. Hackett to sign the Confidentiality Notice, and had several conversations. Counsel submitted Dr. Hackett did not tell Dr. Steiner that he felt uncomfortable with having the discussion, or with Dr. Steiner's request that he consider removing that specific aspect of his affidavit because Dr. Steiner was under the impression that the matter was settled.

Counsel submitted it is not unreasonable for a party to review and question a witness's anticipated evidence in advance before submitting his/her own affidavit. Counsel for Dr. Steiner suggested Dr. Hackett's response to Dr. Steiner, at DSB-2690, proves there was no breach of the Policy because Dr. Hackett's response does not indicate that he was intimidated. Lastly, counsel stated Dr. Steiner's email was not reprisal, because, in the words of his counsel, "You can't fault Dr. Steiner for being Dr. Steiner."

Counsel for the 003 Complainants submitted that Dr. Steiner's conduct violated the Policy and his legal obligations. In response to the submission that Dr. Hackett did not amend his evidence, counsel called Dr. Steiner's response an example of "inactive retaliation." Counsel reminded the Tribunal that Dr. Steiner knew what Dr. Hackett was going to say and acknowledged he knew it was truthful.

### **Tribunal's Findings**

The Tribunal finds Dr. Steiner breached the Tribunal's Confidentiality Notice. Dr. Steiner improperly approached Dr. Hackett for the purposes of altering his affidavit.

Dr. Steiner asked Dr. Hackett to remove portions of his affidavit which was true thereby attempting to dissuade a witness and tamper with the evidence. Dr. Steiner admitted in cross-examination that he knew Dr. Hackett's evidence was truthful. Dr. Steiner's evidence concerning his motivation was self-serving and irrelevant. Dr. Steiner engaged in negative behaviour towards a non-party witness who was participating in the hearing. Furthermore, after Dr. Hackett refused to comply, Dr. Steiner's email reply amounted to a reprisal which is prohibited under Section 7 of the Policy.

### Credibility

The Tribunal observed that Dr. Hackett provided evidence in an objective, straight-forward manner. His evidence was internally consistent with other reliable evidence heard by the Tribunal. In spite of Dr. Steiner's improper request of him, any potential effect on his career, and a "great reluctance" (DSB-2104 at para. 24) to provide his affidavit, Dr. Hackett stated that it was his responsibility to provide truthful information to the Tribunal about his recollection of events and of Dr. Steiner's request of him. The Tribunal found Dr. Hackett to be a very credible witness and found Dr. Steiner was, in many instances, not a credible witness. Where there was inconsistent testimony between Dr. Hackett and Dr. Steiner, the Tribunal preferred the evidence of Dr. Hackett.

Dr. Steiner testified he apologized to Dr. Hackett after the PACDSB meeting in May 2010. Dr. Hackett denied this apology occurred. Dr. Hackett testified that Dr. Steiner only apologized for the event on January 31, 2012, at the behest of his counsel, which he admitted to Dr. Hackett. The apology merely consisted of a regret for the tone of his words (relating to why Dr. Hackett would agree to serve on the Dean Selection Committee since he was on the original Selection Committee), but not the substance of the discussion. The Tribunal accepted Dr. Hackett's evidence and found that Dr. Steiner was not truthful with regards to when he apologized.

Dr. Steiner believed that since he had apparently apologized for his "tone" after the PACDSB meeting, the incident would therefore be "all settled." Even if he had done so, an apology does not permit him to dissuade a witness from testifying about a truthful event. Furthermore, we accept Dr. Hackett's testimony and find that Dr. Steiner attempted to intimidate a witness and interfere with the evidence which he felt may have been interpreted by the Tribunal as harmful to Dr. Steiner. Dr. Steiner asserted "bygones should be bygones" and suggested Dr. Hackett's recollection in his affidavit, which Dr. Steiner acknowledged as accurate, should be removed from Dr. Hackett's affidavit. In contrast, Dr. Steiner harboured a grudge against Dr. Head for several years, despite his email to Dr. Head in which he indicates that his issues with the changes in the Ph.D. Program, and how the changes were introduced, were "water under the bridge".

### *Approaching Dr. Hackett*

Dr. Steiner's explanation was that his actions "did not represent a pattern of behaviour of him towards [Dr. Hackett] over the years, [and] that it was a one-off." Dr. Steiner stated that he was in fact concerned that Dr. Hackett's affidavit amounted to another complaint against him. In that context, Dr. Steiner's conduct with Dr. Hackett is of great concern.

The Tribunal finds that Dr. Steiner attempted to tamper with the evidence by requesting that Dr. Hackett remove a portion of his affidavit. Dr. Hackett provided an accurate representation of the exchange with Dr. Steiner in his affidavit at paragraphs 11 and 12 and the Tribunal finds Dr. Hackett to be a credible and reliable witness. Dr. Hackett's evidence was:

*"I was taken aback by what I believe was Professor Steiner's lack of professionalism in this exchange, in as much as he spoke to me in such a loud and angry tone, at very close proximity (face to face), which was easily audible to others who had not yet left the meeting room."*

Dr. Steiner suggested to Dr. Hackett that since he apologized after the PACDSB meeting, his apology would negate a claim of harassment. Dr. Steiner's suggestion was an attempt to influence Dr. Hackett's evidence. Dr. Hackett was called as a witness on behalf of the 003 Complainants. Dr. Steiner knew Dr. Hackett would testify against him. Nevertheless, he suggested to Dr. Hackett that he had apologized after the meeting. The Tribunal found that Dr. Steiner in fact did not apologize after the meeting. Therefore, Dr. Steiner tried to provide new and misleading information to Dr. Hackett in order to convince him to alter his affidavit and future testimony at the hearing.

The Tribunal finds Dr. Steiner's motivation for requesting Dr. Hackett to remove the section was to advance his own case. As Dr. Hackett wrote in paragraph 23 of his affidavit (DSB-2104):

*"It is ironic that the very individuals who were complaining that the Dean's office was not observing established governance procedures themselves ultimately engaged in tactics to suppress the voice of faculty with views different from their own."*

Dr. Steiner's suggestion he approached Dr. Hackett in an effort to 'de-escalate' the volatile working environment at the DSB is not accepted. We find Dr. Steiner's motivation was to advance his own case and remove any suggestion he could become "angry and frustrated" with others. Had Dr. Steiner approached Dr. Hackett with no improper motive, he would not have asked him to amend an affidavit for any purpose. Approaching an unrepresented witness to discuss changes to a document is not cautious or innocent but reckless. Rather, the evidence should have been addressed in cross-examination by his legal counsel.

**Reprisal against Dr. Hackett**

Section 7 of the Policy provides:

“The University prohibits reprisal or threats of reprisal against any member of the University community who makes use of this policy or participates in proceedings held under its jurisdiction. Any individual or body found to be making such reprisals or threats will be subject to disciplinary action.

Dr. Steiner wrote to Dr. Hackett suggesting his removal of the evidence “could have served as an important opening towards true reconciliation in the faculty.” The Tribunal accepts Dr. Hackett’s evidence that he felt Dr. Steiner’s request to alter his affidavit and the subsequent email exchange had “an intonation of intimidation” and contributed to his own feelings of being isolated, ridiculed, mocked and ostracized.

Dr. Hackett had already felt uncomfortable but not intimidated by Dr. Steiner’s request. Dr. Steiner testified that his email repeated what they had discussed in person. The email pushed the conduct from uncomfortable to intimidating. Dr. Steiner’s email only served to further alienate and intimidate another fellow faculty member, and further contributed to the poisoned work environment by blaming Dr. Hackett for not agreeing to something which would be important for faculty being able to reconcile their differences.

As such, the Tribunal finds that Dr. Steiner breached the Confidentiality Notice. Dr. Steiner engaged in negative behaviour, reprisal and retaliation against a person who had filed an affidavit.

**c) Conduct with Dr. Dooley****Summary Of Evidence And Submissions**

Dr. Dooley was a non-party witness called on April 22, 2012, and who asked to return to clarify his testimony on April 23, 2012.

Dr. Dooley testified on April 22, 2012, that he had heard of the term “G21” very recently from a faculty member and when asked the question “who was this member” he replied, “Dr. Peter Sutherland”. Dr. Dooley testified the conversation had occurred at a MUFA meeting but not in the context of the proceedings. In cross-examination, Dr. Dooley was asked about what he knew about the G21. Dr. Dooley referred to MUFA receiving a letter from a group that was referred to as the G21. Dr. Dooley omitted to mention that, in addition, Dr. Steiner had recently used the term in a discussion with him.

At his second appearance before the Tribunal, Dr. Dooley disclosed he had heard the term G21 from Dr. Steiner. Specifically Dr. Dooley stated “All I know, when George said the term G21, it rang in my mind “I’ve heard that somewhere before.” Dr. Dooley had answered “Peter Sutherland” instead of also identifying Dr. Steiner because he knew, through his daughter

and her fiancé (Dr. Steiner's son), about the negative impact "all of this" was having on Dr. Steiner's health. In fact, Dr. Dooley confirmed Dr. Steiner told him "you know I can't give you any details, but, in general terms, they're trying to paint the G21 as a conspiracy." Dr. Dooley assumed Dr. Steiner's reference to "they" was referring to the lawyers and witnesses for the other side. However, Dr. Steiner did not identify for Dr. Dooley who the term "they" referenced. Dr. Dooley could not remember the context of where he had heard the G21 term and asked Dr. Steiner. Dr. Steiner responded: "The group of senior business faculty opposed to the reappointment of Paul Bates." Dr. Dooley also specified that this conversation with Dr. Steiner had taken place "recently, about two weeks (ago)".

Dr. Steiner's evidence, in cross-examination, on May 23, 2012, confirmed he spoke to Dr. Dooley. However, Dr. Steiner's testimony differed from Dr. Dooley's in that he testified he had a conversation with Dr. Dooley "long before" the issues regarding the G21 were presented at the hearing. Upon repeated questioning Dr. Steiner was less definitive about the timing of the conversations with Dr. Dooley and stated "Well it was, I don't know, how long ago it was exactly, but I know that, that, I was, I was merely speculating at that point when I told him that, that these G21 issues are going to enter picture." Dr. Steiner further stated he did not feel he had spoken to Dr. Dooley "at length" about any evidence but that at the time he was merely speculating about something he felt was going to happen in the Hearing in the future. In his recollection Dr. Steiner stated that in those conversations, he had expressed some concern to Dr. Dooley about the G21.

### **Tribunal's Findings**

Dr. Dooley was called as a witness by the individual 003 Respondents. The statement "they're trying to paint the G21 as a conspiracy" was communicated after the commencement of the hearing and breached the Confidentiality Notice and the order excluding witnesses. The prohibition against witnesses conferring with one another was established with the exclusion of witness order at the commencement of the hearing.

The Tribunal preferred the evidence of Dr. Dooley who was a credible witness where it conflicted with Dr. Steiner's evidence. The most reliable evidence with respect to the timing of the conversation was provided by Dr. Dooley. The Tribunal is satisfied that the discussion took place after the hearing had commenced and after it ordered that witnesses be excluded. Therefore, Dr. Steiner disclosed information to Dr. Dooley about the evidence after the hearings commenced. Dr. Steiner's discussion with Dr. Dooley breached the exclusion of witness order as confirmed in the Witness Information Sheet dated March 22, 2012, and also breached the Confidentiality Notice.

The Tribunal generally gave Dr. Steiner's evidence little weight where no other reliable evidence corroborated his evidence, as a result of the breaches identified above and the further credibility issues identified in the Decision. The Tribunal will consider further sanctions for Dr. Steiner at the remedy hearing, after receiving submissions from counsel.

## VIII. THE 002 COMPLAINTS

### A) BRIEF OVERVIEW

The 002 harassment complaints were made by a group of faculty who generally allege that they were harassed contrary to the Policy because they individually or collectively challenged the decisions and actions of Mr. Paul Bates and/or of the University. Counsel for the Complainants in closing acknowledged possessing the burden of proof to establish direct harassment by Dean Bates and that the University failed in its duties to take reasonable steps to address the harassment.

The 002 Complainants in closing submissions generally alleged that Mr. Bates attempted to manipulate DSB policies and improperly interfered in academic issues and decisions. Some Complainants expressed their opposition in writing, others by email, and others further by directly challenging Mr. Bates in person. The group was most vocal in opposition to Mr. Bates' second appointment as Dean. As a result, these Complainants submit they were subjected to harassment or a pattern of harassment over a number of years involving numerous incidents. The Complainants also allege that McMaster University administrators engaged in improper conduct that constitutes harassment.

An important element of the opposition to Mr. Bates' second appointment as Dean was the Performance Report (DSB-0762 and DSB-0292). This report was written collectively by the 002 Complainants (excluding Dr. Richardson) and other faculty members of the DSB in 2008. The Performance Report was an expression of opposition to the reappointment of Mr. Bates through detailed criticism of Mr. Bates' performance as Dean. The document included the following topics: Vision Deficit, Governance Deficit, Fundraising Deficit, and The Need for Due Diligence. The document called Mr. Bates' appointment as Dean, among many other things, a "mistake [that] must not be allowed to be repeated."<sup>17</sup>

The faculty who submitted the critical Performance Report came to identify themselves as the "G21" and be identified as such in correspondence submitted as evidence during the Tribunal proceedings. The G21 was a group who, as a collective, met to discuss strategy, drafted and submitted the Performance Report to President Peter George and the Dean's Selection Committee, and finally to the Board of Governors, corresponded with each other via email about the document and several other issues; communicated to the press in some cases; and "shared the common goal of trying to restore the school to a collegial environment."<sup>18</sup> The Complainants submit there is no crime in association, no breach of Policy for their expressing dissent and nothing sinister in working towards a common goal. As a result of their opposition to Mr. Bates, and to his second appointment as Dean, the 002 Complainants state that they were subjected to harassment.

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<sup>17</sup> Page 9 of DSB-0292.

<sup>18</sup> Closing submissions of Ms Milne.

Counsel for 002 Complainants asked the Tribunal to generally find the following events as bullying and harassing conduct in the context of this case:

1. Withholding faculty resources;
2. Cancelling programs, removing responsibilities, and allowing long-standing appointments to lapse without justification or explanation;
3. Failing to rehire a worthy and most qualified candidate;
4. Excluding program directors from meetings;
5. CP/M abuses;
6. Using authority to punish dissent;
7. Failing to advise of performance issues and withholding opportunities for the group.

The 002 Complainants submitted that the University failed to intervene and remedy this harassment despite having knowledge of the alleged events. In fact, the 002 Complainants submit that the University actually contributed to the harassment by creating, fostering, and fuelling a poisonous work environment.

The 002 Respondents denied that the actions and decisions made and taken during the deanship of Mr. Paul Bates constituted harassment. The Respondents stated that Mr. Bates and other related administration members, including the Provost, followed the relevant processes and policies “to the ‘T’” and decisions were made for proper business and academic reasons. Counsel for the Complainants disputed Mr. Bates’ evidence that he undertook legitimate management decisions that fell within his authority as Dean. The 002 Complainants asserted in closing that Mr. Bates’ conduct constituted harassment and not legitimate or even bad management decisions.

The 002 Respondents’ counsel submitted, “it is clear from the 002 Complainants’ counsel’s closing statement that the bad behaviour of the 002 Complainants (excluding Dr. Richardson) and the individual 003 Respondents is still continuing to this present day”. The 002 Respondents’ counsel suggested: “These four Complainants take misinformation and then pile on and run with it. They did it with the performance report. They continued throughout the course of this Hearing despite being provided with unchallenged *bona fide* evidence of the reasons for decisions made by Dean Bates or the University”. The 002 Respondents’ counsel suggested that the closing by 002 Complainants’ counsel was further evidence that they “still don’t get it”. Respondents’ counsel suggested that the four Complainants (excluding Dr. Richardson) have acted in bad faith. “How do we deal with a poisoned work environment in that school when the evidence is clear that they still don’t get it?” was a question posed to the Tribunal to ponder.

The 002 Respondents also asserted that the Performance Report and the ensuing events recklessly and wrongfully impugned the reputation of Mr. Bates, who carried out his duties in accordance with University policies and procedures. The 002 Respondents submitted that the G21 utilized misinformation and disseminated it in the DSB and beyond. The Performance Report, they state, was drafted in bad faith, and lacked due diligence. The 002 Respondents allege that the facts of the Performance Report were not checked for accuracy and this was

confirmed by several authors of the Performance Report, including 002 Complainants and non-party witnesses, during their testimony at the Hearing. The 002 Respondents countered that the G21 improperly engaged in block voting, improperly went to the press, and also politicized the T&P process. In the words of counsel for the 002 Respondents, “they just don’t get it” especially given the evidence of the inappropriate behaviours, disclosed in the evidence concerning the 003 Complaints. The 002 Respondents submitted that the claim against Mr. Bates and the University is frivolous and should be dismissed. Respondents’ counsel provided a summary document on the G21 activities and a list of documents referred to in closing argument for 002 and 003 which are appended to this Decision as Appendix F and Appendix G.

**B) THE ALLEGATIONS**

The formal complaints in the 002 Matter were filed and particularized (DSB-0001). The allegations which were pursued in evidence can be briefly and generally summarized as follows:

**i. Complaint of Dr. Joe Rose**

Dr. Rose pursued two complaints of harassment against Mr. Bates and McMaster University:

1. Mr. Bates' outburst at a Faculty Council meeting was harassment and reprisal; and
2. Mr. Bates and McMaster University knew about the Facebook page that mentioned Dr. Rose's name and did not remedy it.

**ii. Complaint of Dr. Bill Richardson**

Dr. Richardson pursued two complaints of harassment, commencing in 2006, against Mr. Bates and McMaster University:

1. Mr. Bates refused to appoint Dr. Richardson as a Sessional Lecturer in 2010; and
2. The University breached an undertaking to Dr. Richardson not to discuss the issues involving the 2006 grievance.

**iii. Complaint of Dr. Chris Bart**

Dr. Bart pursued four complaints of harassment against Mr. Bates and McMaster University:

1. The removal of Dr. Bart from some of the Director's College duties in 2005 and 2006 was harassment;
2. The suppression of information regarding the CBoC's position on Dr. Bart's involvement in the DC in 2010 and 2011 was harassment;
3. The events following the Area Chair meeting in 2007 were harassing; and
4. Mr. Bates manipulated Dr. Bart's CP/M score, in reprisal for his opposition to Mr. Bates.

**iv. Complaint of Dr. Wayne Taylor**

Dr. Taylor pursued five complaints of harassment, commencing in 2006, against Mr. Bates and McMaster University:

1. Dr. Taylor was the target of a campaign of harassment, commencing in 2006, for his opposition to Mr. Bates;
2. Dr. Taylor was demoted and professionally demeaned, through his removal from HLI by Mr. Bates;
3. Mr. Bates communicated to Dr. Taylor in a way that was callous;
4. Mr. Bates manipulated Dr. Taylor's CP/M rating, in reprisal for his opposition to Mr. Bates; and
5. Dr. Taylor was demoted and professionally demeaned, through his removal from HSM by Mr. Bates;

**v. Complaint of Dr. Devashish Pujari**

Dr. Pujari pursued six complaints of harassment against Mr. Bates and McMaster University:

1. Mr. Bates personally intimidated Dr. Pujari on five occasions;
2. Mr. Bates used Dr. Kleinschmidt to harass Dr. Pujari on three occasions;
3. The University failed to properly investigate Dr. Pujari's complaint of harassment and intimidation by Dr. Kleinschmidt;
4. Mr. Bates interfered with the resource and CLA allocation of the SML/HSM area as reprisal for Dr. Pujari's opposition to Mr. Bates;
5. Mr. Bates arbitrarily applied the CP/M process against Dr. Pujari as a reprisal for Dr. Pujari's opposition to Mr. Bates; and
6. The discipline handed down by the University to the Area Chairs, by the Provost, as a result of their opposition to the Burlington expansion, was improper.

**vi. General Complaints against McMaster University by all 002 Complainants**

The 002 Complainants also made general harassment claims against McMaster University alleging:

1. The University's decision, through the Provost, to sanction four of the Area Chairs of the DSB before the Faculty Council vote regarding the expansion of the DSB to Burlington, and the subsequent removal of the discipline letters, was administrative intimidation done to exert pressure on the Faculty to obtain approval of the expansion;
2. The Provost performed a flawed investigation of the incident between Dr. Pujari and Dr. Kleinschmidt, misapplied the Policy, and breached the Statement of Ethics. The Provost also continued to misapply the policy for other DSB faculty members regarding alleged harassment;
3. McMaster University failed to remedy what it knew to be a poisoned work environment in the DSB; and
4. McMaster University and HRES delayed the investigation of the harassment complaints. The subsequent investigation was tainted by the Provost, and was biased in favour of Mr. Paul Bates and the 003 Complainants.

**C) THE 002 COMPLAINTS: SUMMARY OF FINDINGS BY THE TRIBUNAL**

The Tribunal makes its findings having reviewed all of the evidence. The Complainants' counsel (Ms Milne) provided summaries to support the allegations of the 002 Complainants, cross referencing relevant documents for the various events, which the Tribunal reviewed and found helpful. That document is appended at Appendix H. In addition, Ms Milne submitted a timeline of material facts and dates that are appended as Appendix I. Similarly, Mr. Avraam provided a schedule of relevant exhibits for each of the issues, which is attached to this Decision at Appendix J. These appendices refer to relevant documents and time lines related to the 002 Complaints.

As stated, the parties filed supporting affidavits that provided detailed factual background to the allegations. As a result, we need not repeat in detail all of the evidence in this Decision. This Decision provides an overview of the material allegations for which the Tribunal provides its findings and reasons. Credibility findings necessary to a specific conclusion are identified.

The Tribunal finds that the weight of the evidence provided confirms that Mr. Bates did not individually harass any of the Complainants in U/SHAD 002. Mr. Bates' managerial decisions and conduct did not constitute harassment. In the case law provided (*U.F.C.W. of B.C., Local 1518 v. 55369 BC Ltd.*) "supervisors have a right to be wrong provided they act in good faith and not for an improper purpose", therefore whether the Tribunal agrees with any specific decision of Mr. Bates as Dean is not for the Tribunal to determine. The Tribunal accepts that there were *bona fide* explanations provided in the evidence, which either justified decisions or confirmed that certain decisions could have been approached differently or perhaps were a mistake. In 002, we are satisfied that, on balance, the explanations given in evidence by Mr. Paul Bates were *bona fide*. Further, the Tribunal finds that Mr. Bates was a credible witness and his management decisions identified in the allegations of 002 were not tainted by ulterior motives so as to constitute harassment or intimidation contrary to the Policy. The Tribunal does not accept that it is more likely than not that any decision by Mr. Bates intended to or did in fact constitute harassment or intimidation prohibited by the Policy.

We have considered the conduct of Mr. Bates and by extension that of the University with respect to the DSB work/academic environment. As stated we are satisfied that direct harassment has not been established contrary to the Policy. In hindsight, decisions could certainly have been better communicated. While a poisoned workplace (discussed later in this Decision) has been found, the Tribunal finds that Mr. Bates neither instigated nor exacerbated this difficult workplace environment by engaging in any harassment of the individual Complainants. The 002 Complainants had access to appropriate processes to address grievances concerning decisions by administration through complaint procedures available under various University Policies. Faculty can also access MUFA's assistance when filing grievances. In fact, the evidence confirms that grievances were filed and settled in some cases. Normally, it is not the Tribunal's role to adjudicate grievances properly filed under other procedures or settlements reached between faculty and Administration. Further, the Tribunal accepts that grievances may be adversarial within accepted legal norms without constituting harassment. Our jurisdiction can include whether there was any harassing or discriminatory conduct associated with these

processes without necessarily revisiting the merits of the dispute. The Tribunal deferred to processes unless objective evidence established harassment.

The evidence confirms an unfortunate level of anxiety for faculty in the DSB. Working styles and personality problems existed amongst a large number of individuals in the Faculty. There is no doubt that adversarial feelings existed. The DSB was divided into groups strongly supportive of Mr. Bates or opposed to him, especially when his leadership was associated with change or new initiatives such as the expansion of the DSB to Burlington. The Tribunal is satisfied that whether or not the University or Mr. Bates' decisions were correct (and we need not decide), they did not engage in conduct which would constitute a breach of the Policy. The 002 Complainants' concerns in some instances appear self-serving, and contradictory given the Complainants' own conduct (except Dr. Richardson) at issue in the 003 Complaint. The 002 Complainants certainly contributed to the unacceptable poisoned work/academic environment at the DSB, albeit to varying degrees.

The Tribunal accepts that the historical divisions, administrative structure and individual personalities created a difficult workplace in the DSB prior to Mr. Bates' appointment as Dean. Mr. Bates was appointed as Dean of the DSB with the understanding that he would require academic support for Faculty processes but with a mandate to implement strategic changes in direction. The University has a procedural framework for expressing dissent within accepted norms. It is acknowledged in case law and in the administrative policy and hierarchy of the University that operational decisions may have to be made by management notwithstanding dissenting views, which may or may not be correct. The mandate to move forward with the Burlington expansion and the subsequent divisions within the Faculty unfortunately exacerbated existing problems. There can be negative personal consequences arising from operational decisions that are not harassing or tainted by conduct proscribed by the Policy or the law. The Tribunal has found that University administration exercised the right to make decisions that were viewed as unpopular or difficult but did not harass the individuals who opposed those decisions.

Processes were available to challenge decisions by the administration. The public attempts by 002 Complainants to oppose decisions had generally failed. In the absence of reliable evidence of conduct constituting harassment or discrimination under the Policy, the Tribunal deferred to decisions made under other relevant processes, understanding the importance of closure and the need to move forward. The 002 Complainants allege that difficult working conditions and relations were the result of their active opposition to the Dean's second appointment. Decisions made by Mr. Bates were allegedly designed to drive faculty from a position or it was alleged that Mr. Bates removed 002 Complainants from positions of responsibility in order to harass and intimidate. The Tribunal finds these allegations to be unfounded.

In an environment of mistrust and lack of collegiality in the DSB, it seems that some faculty members felt justified in expressing their dissatisfaction in a manner that is not representative of a healthy academic/workplace. There was strong resistance to change and a propensity to negatively affect working conditions for individuals not seen as "Mac guys" as defined by the 002 Complainants. Individual faculty and groups of faculty have a right and

responsibility to express their dissent where they disagree with management decisions. However, *bona fide* reasons cannot be used as a guise to justify harassment.

The Tribunal has found that the 002 Complainants have not established on the evidence harassment under the Policy. This section will review the specific complaints and provide the Tribunal's disposition for each of the individual complaints. The Tribunal acknowledges that timeline issues were identified by the Respondents as a defence against certain allegations. The Tribunal is not prepared to accept timeline defences, which may otherwise be relevant, since the allegations against Mr. Bates have been dismissed on the merits. Allegations and findings in the 002 Complaint are, however, relevant to the poisoned academic workplace environment identified by the Tribunal in this Decision. Therefore, the Tribunal has exercised its discretion because of the poisoned academic/work environment to address and consider all the evidence submitted by the parties.

**D) COMPLAINT OF DR. JOE ROSE**

Dr. Isik Zeytinoglu, Dr. Catherine Connelly, Dr. Khalid Nainar, Dr. James Tiessen and Dr. Vishwanath Baba testified in support of Dr. Rose's claims. Neither Dr. Zeytinoglu nor Dr. Nainar was found to be a credible witness by the Tribunal and as such, their evidence was given little weight when assessing Dr. Rose's claims. Dr. Rose's concerns are set out at paragraphs 70 to 76 of the Complaint (DSB-0001) and in his Affidavit (DSB-2126). Mr. Mark Scattalon and Mr. Vishal Tiwari gave evidence supporting Mr. Bates and McMaster University. The Tribunal does not find the evidence establishes that Mr. Bates harassed Dr. Rose. Further the Tribunal finds that each of the complaints submitted by Dr. Rose against Mr. Bates appears to have been primarily fuelled by a lack of complete information on the part of Dr. Rose. The process of disclosure and submission of affidavit evidence during the hearing revealed facts and circumstances that highlighted the lack of harassment. The Tribunal feels that the specific complaints of Dr. Rose are an excellent example of a situation that was not appropriately bundled into a group complaint and would have benefitted from a mediation process that included facilitated discussion of the full scope of events for all parties involved prior to advancing to a formal written complaint under the Policy.

**i. Mr. Bates' outburst at a Faculty Council meeting was harassment and a reprisal****Summary Of Evidence And Submissions**

At a DSB Faculty Council meeting in November 2009, Mr. Bates publicly rebuked Dr. Rose in front of 50-60 faculty, staff and students. The subject being discussed by Faculty Council was the pending Teaching Assistants ("TAs") strike. Mr. Bates reported that the University was planning to implement an 'Intention to Work' form. TAs intending to work (and thus receiving regular pay rather than strike pay) would be required to complete the form, obtain their supervising professor's signature on the form, and deliver the form to the Dean's office. Some members of Faculty Council, including Dr. Rose, found this process to be "distasteful and coercive from a labour relations perspective." (DSB-2126, at para. 41).

Dr. Rose reminded Mr. Bates that strike pay was "very low", and so "this should not be a major concern to the University." (DSB-2126, at para. 41). Dr. Rose stated that Mr. Bates then said, in a condescending tone, "I would have thought you would have known better, as you are supposed to be the Labour Relations specialist. If you had taken the time to look into this, you would have learned that TAs are entitled to \$200/week." (DSB-2126, at para. 42). Dr. Rose acknowledged that Mr. Bates "attempt[ed] to apologize" after making this statement. Dr. Rose suggested that he felt the apology was "insincere and gratuitous". The apology was made in the presence of the faculty attending the meeting. Dr. Rose did not say anything further in response to Mr. Bates. (DSB-2126, at para. 43). There is no dispute that the incident occurred.

002 Complainants' counsel submitted that Dr. Rose was personally and directly attacked by Mr. Bates in front of the Faculty Council. Paragraphs 40 and 48 of Dr. Rose's Affidavit describe that event. For Dr. Rose, Mr. Bates' statement came out of nowhere. He was shocked,

belittled, humiliated, and embarrassed, not only by the manner in which Mr. Bates spoke to him but also the condescending tone used in front of staff, faculty, and students. Dr. Rose described it as being shell-shocked. Dr. Catherine Connelly confirmed that at some point in the meeting, seemingly out of the blue, Mr. Bates became very angry. Dr. Connelly confirmed that this normally did not happen in Faculty Council meetings and she described the members as a well-mannered group during meetings.

002 Complainants' counsel stated that Mr. Bates apologized to Dr. Rose, acknowledging that he knew that what he had said was demeaning. However, 002 Complainants' counsel stressed that the case law affirms that even one singular incident, if serious enough, can be found to be harassment. It is not a requirement that there be a course of conduct in order to fall within the harassment definition. 002 Complainants' counsel submitted that the comments, Mr. Bates' tone, and the fact that the interaction took place in front of the Faculty, coupled with the admission that Mr. Bates knew the comments to be demeaning and therefore, unwelcome is dispositive. In 002 Complainants' counsel's submission, this incident constitutes harassment.

It was alleged by Dr. Rose that Mr. Bates' rebuke was harassment and a reprisal against Dr. Rose for his opposition to the Dean. Dr. Rose had resigned from the Area Chair Selection Committee after he believed that Mr. Bates had interfered with the appointment of the Area Chair in the spring of 2008. Dr. Rose was a signatory to the "Performance Report" in the fall of 2008, which was critical of Mr. Bates. Dr. Rose also posted his concerns on MUFAGab and met with the President concerning the Mr. Bates. Dr. Rose also appeared before the Selection Committee for a Dean of Business and spoke against Mr. Bates' second appointment. Dr. Rose also alleges that Mr. Bates misapplied the T&P process for Dr. Head and Dr. Flynn while Dr. Rose was a member of the Faculty T&P Committee. It was alleged that as a result, Mr. Bates' dealings with Dr. Rose were subsequently harassing and a reprisal against him for acting, speaking or writing in opposition to the Dean.

002 Respondents' counsel stressed the admission made by Dr. Rose that Mr. Bates' immediate apology is exactly what you want somebody to do when they make a mistake. Mr. Bates accepted his responsibility for what he did and he apologized. Everybody knew at the Faculty Council meeting that Mr. Bates and Dr. Head were messengers about actions taken by central administration in preparation for an anticipated TA strike. This was a decision made by the Provost's Office, Human Resources Services and the President rather than by Mr. Bates. The Respondents pointed out that Mr. Bates was being attacked at the meeting for being a messenger, and also acknowledged that this did not justify his comments. However, in the context of the Complainants' treatment of Mr. Bates, there was no breach of Policy for this isolated exchange for which Mr. Bates apologized.

002 Respondents' counsel further highlighted in his submissions that there is no evidence of any violation of process including issues raised concerning the Area Chair matter. It was submitted Dr. Rose knew that somebody nominated Dr. Medcof from his Area and Dr. Rose wrongly believed it was Mr. Bates. The evidence confirmed Dr. Baba nominated Dr. Medcof. Dr. Zeytinoglu submitted in her affidavit that she believed that Dr. Rose nominated her to be Area Chair in the winter term of 2008 (DSB 2124). Dr. Rose went on to testify that although he had intended to nominate Dr. Zeytinoglu, once he found out that there was another nomination,

he went to Dr. Zeytinoglu and asked whether she still wanted to be nominated and she said no. As such, the suggested violation of process is unfounded. Counsel submitted that was just another example of how the 002 Complainants' suspicions about and criticisms of Mr. Bates were generally unreasonable and with the weight of evidence presented were found to have little foundation of fact.

### **Tribunal's Findings**

The Tribunal finds that harassment by Mr. Bates was not established. Dr. Rose and Mr. Bates both presented as credible witnesses and material points related to this allegation were in agreement when presented by Mr. Bates, Dr. Rose, and non-party witness Dr. Connelly. Mr. Bates admitted that he made inappropriate statements to Dr. Rose at the Faculty Council meeting. It was a single event that was demeaning and unwelcome, done in front of other faculty members, and involved a strong tone. However, it was followed shortly after by an equally public apology on the part of Mr. Bates. The isolated conduct was not sufficiently egregious or the type of communication intended to be prohibited under the policy having regard to academic freedom and freedom of speech principles. The Tribunal is satisfied that disagreements can be harsh without necessarily constituting harassment under the Policy. Furthermore, the purpose of the *Code* and the Policy is not to police every comment, nor does a person's hurt or upset feelings about a situation necessarily mean there has been a breach of the Policy.

Moreover, Dr. Rose is a senior tenured faculty member. Dr. Rose would have no objective reason to be concerned about the comment, given Mr. Bates' apology. During his testimony, he accepted that it was appropriate for Mr. Bates to apologize. Mr. Bates' remarks were an admitted lapse of judgement made in a highly charged environment. Dr. Rose's criticisms of Mr. Bates were numerous, in some cases public and at least equally harsh. The Tribunal is concerned that the discussion became personalized. However, the Tribunal does not feel it was egregious nor is there objective evidence that Dr. Rose was vulnerable to or a victim of a reprisal on the evidence provided and accepted by the Tribunal.

While Mr. Bates failed in this instance to be respectful and collegial, the Tribunal generally is satisfied that this incident should not be viewed as harassment and is especially concerned that such a view would be inconsistent with freedom of speech in an academic environment to censure this type of discourse. Mr. Bates was only the messenger delivering a decision by the University to Faculty Council and not the decision maker. Mr. Bates was prepared to do the right thing by immediately apologizing. The objective evidence, in fact, establishes Mr. Bates appears not to have been motivated by reprisal or vengeance, despite Dr. Rose's suspicions. We are not prepared to rely upon speculative evidence. The evidence generally established that Mr. Bates avoided confrontations even when it may reasonably have been expected that he might have asserted his authority as Dean.

- ii. **Mr. Bates and McMaster University knew about the Facebook page that mentioned Dr. Rose's name and did not remedy it**

### **Summary of Evidence and Submissions**

In April 2010, Dr. Khalid Nainar told Dr. Rose about a page on the social networking site "Facebook" entitled "The Root of DeGroot," which was linked to the DSB Facebook page. Dr. Rose, Dr. Bart, Dr. Steiner, and Dr. Nainar were identified and mentioned on the Facebook page as having engaged in harassment in the DSB. Mr. Bates was Dean at the time the Facebook page was active. Dr. Rose alleges that Mr. Bates and the University were slow to deal with the removal of the site that listed Dr. Rose as one of the alleged bullies in the DSB.

002 Respondents' counsel stressed there is absolutely no evidence that Mr. Bates had anything to do with the public criticisms of the four academics, including Dr. Rose, on the Facebook page. Students have a right to free expression, which was acknowledged by witnesses, including Dr. Nainar. Dr. Nainar was in touch with Mr. Komlen to seek assistance from HRES. However, until reading Mr. Mark Scattalon's Affidavit, Dr. Nainar had assumed that HRES had taken steps to have the link removed and was not aware that it was removed due to Mr. Bates' constructive intervention, which was established in the evidence. Mr. Scattalon's evidence corroborated Mr. Bates' evidence. Further corroborated evidence showed that Mr. Bates encouraged the students to stop the planned rally and the poster campaign in addition to taking the offensive pages down. Mr. Bates acknowledged that the students were expressing loyalty to him but felt that what they wrote was inappropriate or wrong.

### **Tribunal's Findings**

The Tribunal accepts that Mr. Bates is not responsible for the students' conduct and there was no evidence to suggest otherwise. Mr. Mark Scattalon's evidence was credible and corroborated Mr. Bates' evidence. The Tribunal finds Mr. Bates was not responsible for Dr. Rose's name appearing on the Facebook page. The Facebook page was authored, maintained, and administered by DSB students who supported Mr. Bates' second appointment and Mr. Bates was not involved in any aspect of authorship, maintenance or administration of the postings. When Mr. Bates discovered the page and the plan of the students who prepared the page, it was he who asked them to take the page down, remove posters from the school, and cancel the student event in support of him. The Tribunal therefore finds no harassment or breach of the Policy has been established by the Complainant.

**E) COMPLAINT OF DR. BILL RICHARDSON**

Dr. Giri Kanagaretnam, Dr. Khalid Nainar, Dr. Lilian Chan, and Dr. Mohamed Shehata were called as witnesses to establish Dr. Richardson's complaint. Dr. Chan and Dr. Nainar were not found to be credible witnesses by the Tribunal. Dr. Nainar's demeanour and inconsistent responses during questioning by counsel for both the Complainants and Respondents as well as the Tribunal are the primary reasons for discounting him as a credible witness. Specifically, the Tribunal was not confident in both the veracity and accuracy of the responses provided by Dr. Nainar and observed that Dr. Nainar was particularly influenced by his relationship to specific parties. Similarly Dr. Chan was not considered to be a reliable witness due to the lack of reliability of the responses and the fact that the lens through which she viewed events appeared to be clouded by her relationship with individuals. A specific example of this is her testimony with respect to a tenure and promotion meeting concerning Dr. Head. When asked by counsel for the Complainants how she felt about the extended period of questioning by Dr. Steiner, Dr. Chan said that "He must have some basis for the questioning which for him are relevant", however when asked what she thought when Dr. Harnish expressed that he did not think the questioning was relevant she simply thought Dr. Harnish was talking for too long. Dr. Chan's testimony was riddled with similar inconsistencies in rationale and fact.

Dr. Richardson's concerns are set out between paragraphs 60 and 69 in his Complaint (DSB-0001) and in his Affidavit (DSB-2135). In his Affidavit, Dr. Richardson identified concerns including events in 2006 when his contractually limited appointment to teach in the DSB was not renewed by Mr. Bates beyond June 2006; Mr. Bates' refusal to consider a contract renewal for Dr. Richardson is alleged to have been in breach of University policy; and other related conduct. In response, Mr. Bates, Dr. Head, and Ms Cossa all gave evidence in support of McMaster University and Mr. Bates.

The Tribunal finds that the evidence does not establish Mr. Bates harassed Dr. Richardson or otherwise acted in breach of the policy. Further, Dr. Richardson grieved the decision not to renew his CLA. We find the pith and substance of Dr. Richardson's complaints concerning the student complaints, his CP/M scores and the decision concerning the CLA renewal were addressed by a prior signed agreement that resulted from this grievance submitted by Dr. Richardson in 2006. Notwithstanding, the Tribunal has assessed the evidence and our findings are provided below in order to understand the context leading up to the alleged harassment identified by Dr. Richardson after his settlement in which he released the University from further claims. As with the complaints of Dr. Rose, the Tribunal feels the specific complaints of Dr. Richardson should not have been bundled into a group complaint and as such, as standalone complaints would have been dismissed under the Policy for timeliness and/or because of principles of issue estoppel or *res judicata*.

**i. Mr. Bates refused to appoint Dr. Richardson as a Sessional Lecturer in 2010****Summary of Evidence and Submissions**

002 Complainants' counsel affirmed Dr. Richardson's complaint is against both Mr. Bates and the University for the pattern of treatment that culminated in 2010 when a request for him to be appointed to teach as a sessional lecturer in the DSB, as requested by Dr. Lilian Chan, was refused. It was stipulated by counsel that Dr. Richardson did not intend to re-litigate the events of 2006 when his CLA was not renewed. Rather, background evidence was tendered for context and in support of the contention that Dr. Richardson was harassed contrary to the Policy. Dr. Richardson alleges that Mr. Bates personally prevented the hiring of Dr. Richardson in 2010 and did not provide lawful justification for refusing to appoint him at that time. Rather, the allegation is that the reasons for the decision were unjustified and contrary to the Policy. Dr. Richardson had the support of the Area Chair (Dr. Chan) and possessed the requisite qualifications for the position. 002 Complainants' counsel submitted that the background dispute from 2006, the suggestion of student complaints against Dr. Richardson, and Dr. Richardson's previous attempts to obtain a CLA through the grievance procedure which resolved in 2007, led to Dr. Richardson being harassed post-settlement or otherwise dealt with in a manner contrary to the Policy.

The Tribunal was asked to consider Mr. Bates' testimony in which he confirmed that the five students' complaints informed his view in 2006 that Dr. Richardson's CLA should not be renewed at that time. 002 Complainants' counsel submitted that the Dean's office never actually assessed the validity of the students' complaints after they were received. Mr. Bates testified that once he sent the complaints to Dr. Head he had no further involvement. Dr. Head confirmed she did not meet with any of the student complainants nor did she inform herself about the issues by speaking with the teaching assistant mentioned in one of the complaints nor did she speak to the Area Chair about the pass/fail issue related to the course outline.

002 Complainants' counsel further submitted that Dr. Chan identified Dr. Richardson as the right person to be given the sessional lecturer position. Other faculty also spoke highly of Dr. Richardson's teaching skills. In spite of all that, Dr. Chan's request to hire Dr. Richardson in 2010 was turned down. 002 Complainants' counsel stated that while the evidence confirms Dr. Medcof made the decision to deny Dr. Richardson a CLA in 2010, he acted on the information received from both Mr. Bates and Dr. Head. The allegation was that Mr. Bates' comments were based upon unrelated and unsubstantiated allegations against Dr. Richardson from a completely different course four years earlier. Mr. Bates' comments were unwelcome to Dr. Richardson when Mr. Bates suggested to Dr. Medcof that he did not think it was a good idea to hire Dr. Richardson as a sessional lecturer and by suggesting he should speak to Dr. Head. This is evidence of harassment against Dr. Richardson in the 002 Complainants' counsel submission because Dr. Medcof likely acted on information received from Mr. Bates.

002 Respondents' counsel submitted that the background evidence was irrelevant and inadmissible. During cross-examination, Dr. Richardson confirmed that the only issue he was pursuing in his complaint was the denial of the 2010-11 sessional lecturer appointment. In any event, the 002 Respondents countered that the background evidence does not support a claim of

harassment or breach of the Policy. 002 Respondents' counsel further submitted that the University policy addresses the rights of its retired faculty members and these policies were properly applied to Dr. Richardson. The 002 Respondents' position is that any disagreements were simply about management decisions and these do not constitute harassment.

The Tribunal was also reminded of the time limit objections raised by the 002 Respondents under the Policy. 002 Respondents' counsel submitted that Dr. Richardson should not be allowed to resuscitate issues or re-litigate matters which were subject to a prior settlement and release. The release is comprehensive and can be found at DSB-1280. 002 Respondents' counsel pointed the Tribunal to jurisprudence in support of their position that the release is a full answer to this current complaint about events up to the date of the release.

002 Respondents' counsel further submitted that the decision to appoint or not appoint Dr. Richardson as a sessional lecturer in 2010 was not Mr. Bates' decision. The evidence confirms that in the fall of 2010, Dr. Medcof approached Mr. Bates to ask him about the possibility of granting Dr. Richardson an appointment. Mr. Bates advised Dr. Medcof that he did not believe this was a good idea but referred him to Dr. Head to obtain a further opinion. Mr. Bates had a right to make this comment with respect to Dr. Richardson's hiring as a sessional lecturer when asked by Dr. Medcof. The Tribunal has uncontradicted evidence from Dr. Head and Mr. Bates. 002 Respondents' counsel suggested that the Complainant should have summonsed Dr. Medcof to testify and identify the reasons for his decision.

The evidence confirms Dr. Richardson returned to the DSB on July 1, 2004, on a two year CLA as a Professor in the Accounting and Financial Management Services Area. During Dr. Richardson's 2004-2006 CLA, Mr. Bates was made aware that some undergraduate students had complained Dr. Richardson had spoken to them in a disrespectful and derogatory manner in class. There were complaints regarding his teaching methods, grading, and lack of organization. Dr. Head made inquiries but Dr. Richardson declined to meet with her. Mr. Bates was informed that Dr. Richardson was unwilling to meet with Dr. Head to address the complaints. Mr. Bates did not participate further in addressing the students' complaints. Dr. Richardson's behaviour in response to Dr. Head's efforts informed Mr. Bates' views of Dr. Richardson when he considered whether Dr. Richardson's CLA should be renewed. However, the evidence established that the Provost at the time, Dr. Ken Norrie, advised that the budget did not support an additional CLA after June 30, 2006, and Dr. Richardson's CLA was allowed to lapse.

Dr. Richardson was advised of the decision to let the CLA lapse. Dr. Richardson requested a meeting with Mr. Bates. Dr. Richardson arrived at the meeting accompanied by Dr. Nainar, Dr. Chan and Dr. Kanagaretnam, who insisted on Dr. Richardson's reappointment as a CLA. The student concerns were not raised by either Mr. Bates or Dr. Richardson at this meeting. After the meeting, Dr. Richardson grieved the decision not to renew his CLA appointment.

Mr. Bates' decision concerning granting Dr. Richardson another CLA was supported by the President, Dr. George, and the Provost, Dr. Norrie. A settlement was identified. The Provost, Dr. Norrie, upheld the decision not to renew the CLA but determined that Dr. Richardson should be offered compensation to resolve the grievance. Concerns about the

student complaints and the CP/M scores were considered. At the end of this process, Dr. Richardson agreed to a final settlement and signed a Release in exchange for lawful consideration.

### **Tribunal's Findings**

The Tribunal finds Dr. Richardson was an uncooperative and sometimes unreliable witness. In his demeanour and substance of his responses were indications that Dr. Richardson was highly offended by the failure to renew his original CLA in 2006. His testimony indicated he harbours some distain for introductory level students and his argumentative reply to Dr. Head's original inquiry related to the alleged student complaints was disproportionate and uncollegial. The Tribunal believes that all interactions with Mr. Bates were seen through this emotional and biased lens by Dr. Richardson and that lens resulted in him attributing improper motives to Mr. Bates when they simply did not exist.

The Tribunal finds that the reliable evidence did not establish that the subsequent failure to appoint Dr. Richardson as a sessional lecturer in 2010 constituted harassment by Mr. Bates. The decision maker, Dr. Medcof, did not provide evidence. The onus was on the 002 Complainants to establish that Mr. Bates breached the Policy. The Tribunal is not prepared to make any adverse inference concerning what, if any, impact Mr. Bates' comment to Dr. Medcof had on his decision. Furthermore, sessional lecture appointments are not guaranteed. Management can consider prior actions in the decision-making process and the evidence did not establish a breach of the settlement or Release. In addition, there is no evidence that Dr. Medcof's decision was tainted or influenced by the discussion with Mr. Bates or by any discussion with Dr. Head.

The Tribunal also finds the portion of the complaint related to the merits of the students' allegations was delegated to Dr. Head. The Tribunal finds that the handling of the student complaints is not grounds for the individual harassment alleged by Dr. Richardson against Mr. Bates. The University did not confirm the merits of the student complaints involving Dr. Richardson. However, this issue was resolved by the settlement and the Release. As such, no determination was necessary since the grievance was settled.

- ii. **Mr. Bates breached an undertaking to Dr. Richardson not to discuss the issues involving the 2006 grievance**

### **Summary of Evidence and Submissions**

Dr. Richardson submitted that Mr. Bates harassed him by breaching a term of the settlement between the Complainant and the University in 2007 regarding confidentiality by sharing information relating to Dr. Richardson's 2006 grievance settled with Dr. Medcof.

002 Respondents' counsel relied upon the Release (DSB-1280) and the scope of the undertaking in DSB-1279. In response to the suggestion that Mr. Bates harassed Dr. Richardson

by sharing information with Dr. Medcof, it was pointed out that in addition to there being no evidence of any breach, such an allegation was not part of the Complaint which was filed. DSB-1279 confirms Dr. Richardson's file was closed and the comments, correspondence or evaluations contained in the file would not be released or communicated. Mr. Bates may have suggested to Dr. Medcof that "I wouldn't do it" when discussing Dr. Richardson's hire but there is no evidence that any comments, correspondence or evaluations from the file were released. Neither Mr. Bates nor the University undertook not to make any decision in the future concerning Dr. Richardson. As such, there is no evidence Mr. Bates breached any contractual undertaking or obligation to Dr. Richardson nor is there any evidence of harassment or reprisal in the 002 Respondents' submission.

### **Tribunal's Findings**

The Tribunal finds that there is no evidence Mr. Bates breached any undertaking or term of the settlement even if the Tribunal assumes it has jurisdiction to consider this allegation. The Tribunal does not find the evidence establishes that Mr. Bates, in responding to Dr. Medcof's inquiry related to hiring Dr. Richardson in 2010, harassed Dr. Richardson or engaged in a reprisal under the Policy. Whether the merits of the students' complaints were valid is not an issue the Tribunal needs to decide. However, the existence of students' complaints was confirmed by the evidence, including that of Dr. Head and Ms Rita Cossa. The existence of the complaints was a fact informing Mr. Bates' view of Dr. Richardson. Mr. Bates was not precluded under the Policy from making the comment identified in the evidence to Dr. Medcof under the circumstances.

Alternatively, the Tribunal does not feel Mr. Bates' conduct, even if we had concluded that it was in breach of the settlement or Release, constituted harassment or a breach of the Policy.

**F) COMPLAINT OF DR. CHRIS BART**

Dr. Bart's concerns are set out at paragraphs 27 to 36 of the Complaint (DSB-0001) and in his Affidavit (DSB-2121). Dr. Bernadette Lynn, Dr. Vishwanath Baba, Mr. David Weiner, Mr. Bill Swirsky, Dr. Ken Deal, and Mr. Stephen Wiseman testified in support of Dr. Bart. Mr. Bates, Dr. Head, Mr. Courtney Pratt and Dr. Flynn provided relevant evidence in response to Dr. Bart's allegations.

Briefly, Dr. Bart's Affidavit identifies the background to his complaint and the basis for his harassment allegations against Mr. Bates concerning his treatment with respect to the Director's College (DC). Issues generally concerned administrative responsibilities, financial management matters, and Dr. Bart's diminishing role in the DC up until 2011. Dr. Bart identified various harassing incidents from 2007 to 2011 and further alleges reprisal by Mr. Bates. In addition, the Affidavit outlines the alleged effects of Mr. Bates' harassment and vexatious treatment on Dr. Bart.

The Tribunal finds the evidence does not establish Mr. Bates harassed Dr. Bart or that Dr. Bart was a victim of reprisal. The Tribunal also determined Dr. Bart was not a credible witness. In reaching this conclusion, the Tribunal considered all of the evidence including Dr. Bart's testimony and having observed his demeanour as a witness. We have serious doubt about the reliability of Dr. Bart's testimony where it was not confirmed or consistent with other evidence. Specific examples of the lack of internal consistency in Dr. Bart's testimony include his lack of perception of his own aggressive demeanor in situations in which other reliable witnesses have corroborated reports of aggressive behaviour. At one point during his testimony Dr. Bart was refuting that he could have leaned across a table aggressively during a meeting and at the same point was observed by the Tribunal to be exhibiting the exact same behaviour. At numerous points during the hearing Dr. Bart was observed aggressively shaking his head and appeared highly agitated while listening to the testimony of other witnesses. The Tribunal does not accept Dr. Bart's evidence as reliable where it conflicted with other credible evidence including that provided by Mr. Bates and Dr. Head.

The Tribunal addresses the primary concerns, which were the focus of the 002 Complainants' closing submissions as follows.

i. **Issues which arose at the Director's College and Dr. Bart's reduced responsibilities**

**Summary of Evidence and Submissions**

Dr. Bart claimed that Mr. Bates engaged in harassing conduct to remove him as Principal of the Director's College ("DC") commencing in 2005, highlighted by the decisions to move the DC from the DSB to the Royal Botanical Gardens ("RBG"), and further, to move the DC to the Conference Board of Canada ("CBoC") in Ottawa in 2006. Dr. Bart's counsel submitted that his role on the management committee was nullified following the move to Ottawa. Dr. Bart claimed Mr. Bates harassed him in his lack of communication of the plans to move the DC and

that Mr. Bates deliberately distanced Dr. Bart from DC decisions. Dr. Bart alleged that Mr. Bates did not discuss issues with him, including Dr. Bart's stipend; complaints regarding an incident at the Whiteoaks Conference Centre; complaints about Dr. Bart's alleged abuse of staff; and that the CBoC had considered exiting the joint venture agreement with McMaster University. Furthermore, Mr. Bates assumed the lead as the main McMaster representative on the new governance committee for the DC which did not include Dr. Bart. Dr. Bart alleged that this unilateral removal of his significant responsibilities and administrative involvement over time with the DC were harassing and bullying, and that it resulted in significant personal and professional embarrassment.

002 Complainants' counsel referenced the memo dated December 27, 2007 (DSB-0176) identifying at least four issues that Mr. Bates never discussed with Dr. Bart. Dr. Bart's position is that he was unaware of these concerns until being provided with the productions during the hearing process. Issues included Dr. Bart's stipend, the alleged complaints received about Dr. Bart regarding an incident at the Whiteoaks Conference Centre and that the Conference Board of Canada had already considered pulling out of the joint venture by December 2007.

002 Complainants' counsel challenged Mr. Bates' credibility when he explained that he avoided difficult discussions with Dr. Bart concerning issues such as his stipend, which 002 Complainants' counsel characterized as unbelievable. Specifically, Mr. Bates suggested that he made a memo to file but was not comfortable dealing with these issues with Dr. Bart directly or in writing. 002 Complainants' counsel suggested withholding such information from a direct report suggests either the issues were not of any import or they were deliberately kept from Dr. Bart so they could be used as justification for some future action being planned but which was not yet initiated. 002 Complainants' counsel suggested that if Mr. Bates is believed and that these events were not fabrications, then the latter explanation is the more likely one: Mr. Bates wanted to use these issues against Dr. Bart in the future and such conduct is vexatious. If identified concerns were serious enough to maintain a private journal and to support the decision to remove Dr. Bart's responsibilities from governance at the Director's College, then they were certainly important enough to require Mr. Bates to bring them to the attention of Dr. Bart. The allegation is that this conduct can only be explained as harassment.

Furthermore, Dr. Bart's counsel challenged Mr. Bates' attempts to justify the decision to change the governance model. Mr. Bates' testimony that he had a conversation with Dr. Bart about the governance decision is disputed by Dr. Bart. Dr. Bart maintained that no such conversation ever took place. Dr. Bart's counsel noted that Mr. Bates could not recall specific dates for conversations and submitted there were no discussions about the move to Ottawa. In his submission, Mr. Bates suggested "it was not his management style to do things without informing people." 002 Complainants' counsel reiterates that her clients allege the opposite and it was precisely because Mr. Bates made decisions without their input and that his actions constituted harassment.

In addition, 002 Complainants' counsel submitted that the financial viability of the Director's College was never discussed with Dr. Bart as a significant issue. The Director's College's profitability was established through the financial statements filed. It may not have been as profitable as the Conference Board of Canada wished. However, there was ample

opportunity for Mr. Bates to ask Dr. Bart about the financial statements and particularly about his expenses. This was not done. Rather, Mr. Bates again avoided having discussions with Dr. Bart. It is conceded by Dr. Bart that the Director's College may have successfully reduced expenses under the governance model that was introduced. However, it was pointed out there had been little change in the revenues after the change in the governance structure. 002 Complainants' counsel submitted that Mr. Bates' justification was therefore weak and asked the Tribunal to find that his motivation was to harass Dr. Bart.

002 Respondents' counsel submitted that Dr. Bart knew that the Conference Board of Canada was a joint venture partner. However, Dr. Bart did not initially recognize that Mr. Bates could not make unilateral decisions concerning the Director's College given the joint venture arrangement. Dr. Bart eventually conceded this point under cross-examination. Furthermore, the evidence that CBoC wanted to move from the management committee structure to a new governance model was uncontradicted. 002 Respondents' counsel reiterated that Mr. Bates' evidence was not challenged on material points. Dr. Bart is still at the Director's College and no evidence was called to rebut the documentary and *vive voce* evidence that is consistent with or corroborates Mr. Bates' evidence.

002 Respondents' counsel submitted that the joint venture agreement was initially for a five year period. It was only renewed for one-year terms thereafter and the reduction in term length was at the request the Conference Board of Canada, in part, due to Dr. Bart's deteriorating relationship with the CBoC. The documentary evidence confirms the Conference Board of Canada was reluctant to commit themselves to a long-term relationship until identified issues, including concerns with the role of Dr. Bart, were resolved to their satisfaction. The CBoC issues were reasonably managed by Mr. Bates. As a result, by December 22, 2010, Ms Anne Golden (CBoC President and Chief Executive Officer) confirmed with President Deane that the CBoC was prepared to consider a multi-year renewal, since the DC was less reliant on Dr. Bart. 002 Respondents' counsel directed the Tribunal's specific attention to Ms Golden's two letters in which she identified concerns, at DSB-0149 and DSB-0147.

002 Respondents' counsel submitted that Dr. Bart was the author of his own demise with respect to his diminished role at the Director's College. For example, 002 Respondents' counsel agreed that while the DC revenues generally levelled off, profits rose as a result of the Governance Committee's managing the expenses at the Directors College. Mr. Bates' evidence was clear that his concern was Dr. Bart's role in expense management. Acting upon governance issues in collaboration with a joint venture partner whose concerns preclude Dr. Bart's continued involvement in governance (but not his academic role) is not harassment. Rather, these decisions reflect sound financial oversight and business practices. 002 Respondents' counsel submission highlighted Dr. Bart's lack of credibility and contrasted it to the fact that Mr. Bates addressed issues with appropriate confidentiality, respecting the wishes of the University's joint venture partner. On the other hand, Dr. Bart did not demonstrate a desire to treat these matters in confidence.

The 002 Respondents argued that although Dr. Bart has complained about specific decisions and the lack of communication of these decisions, it is instructive to consider his own conduct and communications with staff when making operational decisions at the Director's

College. For example, Dr. Bart suggested that he did not discuss information with Dr. Flynn respecting another partner's wishes. Yet Dr. Bart alleged that Mr. Bates' managerial decisions should be characterized as harassment. Furthermore, Dr. Bart's conduct in challenging Mr. Bates and his authority as Dean was consistently aggressive. For example, 002 Respondents' counsel pointed out how Dr. Bart attempted to embarrass and humiliate the Dean by parking in his reserved parking spot in front of the DSB. The Tribunal was referred to the testimony of Ms Patty Wiebe, a retired administrative assistant who otherwise held Dr. Bart in high regard. Ms Wiebe directly contradicted Dr. Bart's evidence concerning the parking spot incident.

002 Respondents' counsel reiterated that Mr. Bates' evidence was reliable and should be accepted. 002 Respondents' counsel contrasted Mr. Bates' conduct with that of Dr. Bart. At a June 2007 ML/HSM area meeting, Dr. Bart and Dr. Taylor were openly critical of Mr. Bates. However, Dr. Bart acknowledged that Mr. Bates did not rebuke him immediately after being made aware of the criticisms. Rather, he asked Dr. Bart to give him a chance and suggested to him that his criticisms were premature. Mr. Bates did the right thing. Conversely, the evidence in the 003 Complaint confirms that Dr. Bart did not.

In addition, the Tribunal was asked to consider the unfounded allegations at paragraph 70 and 71 of DSB-2121 wherein Dr. Bart makes serious and unsubstantiated claims of breaches of fiduciary duties against a third party, relying on hearsay and having failed to check the facts. 002 Respondents' counsel submitted that Dr. Bart never lets facts get in the way of a good story and that Dr. Bart asserts aggressive positions which serve his own personal interests without regard to others. Furthermore, Dr. Bart, in paragraph 60 of his Affidavit, suggested "I did not begin a campaign to ensure that Bates would not be reappointed." Dr. Bart acknowledged he was approached and "agreed to work with a group of my colleagues to prepare and present a united voice of opposition. There was no 'campaign' engineered on my part" (see paragraph 63, Dr. Bart's Affidavit). 002 Respondents' counsel submitted that the evidence confirms that this assertion is false. Dr. Bart's own conduct is contradictory to his complaints against Mr. Bates.

02 Respondents' counsel also identified the time limit issues under the Policy and the 002 Complainants' failure to establish in the evidentiary record any continuing course of conduct that might justify the delay in filing a complaint.

### **Tribunal's Findings**

Timeline issues are not addressed for reasons provided earlier. As such, the Tribunal provides its findings.

The Tribunal's role is not to assess the wisdom of changes instituted in the governance model at the Director's College unless it concludes that the evidence establishes harassment or reprisal. The evidence does not. Dr. Bart's role in governance decisions was, in fact, diminished and discontinued, but the alleged conduct did not constitute harassment or breach of the Policy. The Tribunal is satisfied that such changes fell within the purview of the University and Mr. Bates. The Tribunal finds that Dr. Bart could be excluded from joint venture decisions and that in doing so, the line was not crossed to trigger harassment protections under the Policy.

The Tribunal finds that no harassment or reprisal has been established as alleged, concerning the Director's College issues and how they were handled or not addressed. The Tribunal finds that reliable evidence concerning the White Oaks Spa complaints is set out at paragraph 107 of Mr. Bates' Affidavit. Further, the Tribunal accepts the evidence concerning the teaching stipend issue at paragraphs 108 to 110 of Mr. Bates' Affidavit.

The Tribunal accepts that Mr. Bates was reluctant to deal with some issues because he was fearful of how Dr. Bart might react, given Dr. Bart's propensity to become confrontational and aggressive. When difficult issues arose, Dr. Bart's aggressive and confrontational style was reasonably viewed by Mr. Bates as an obstacle to constructive and respectful dialogue. Recognizing the importance of the DC to the DSB, Mr. Bates elected to manage the conflict by addressing the CBoC's concerns rather than debate or assess the merits of these concerns. Dr. Bart's personal interests were secondary to the interests of the Director's College. However, in the Tribunal's view, the decision to manage the joint venture in this manner does not constitute harassment. Furthermore, the conduct is reasonably interpreted both as resulting from and contributing to the poisoned work/academic environment at the DSB but did not rise to the level required to constitute a breach of the Policy on the part of Mr. Bates.

The Tribunal feels certain that alleged incidents were mischaracterized by Dr. Bart, and this mischaracterization led some witnesses to address issues without full knowledge or information. For example, Mr. Bates and the CBoC's concern focused on Dr. Bart's lack of attention to expenses, oversight and governance. The issue was not whether the Director's College "was not making any money" or "was not profitable" as raised in Mr. Stephen Wiseman's Affidavit. Rather, issues were related to budget and controlling expenditures, especially those which had not been budgeted. The Tribunal highlights the admission by Mr. Wiseman under cross-examination that he was not aware of the joint venture agreement with CBoC, he was not aware that the academic part of the DC was remaining at the McMaster site with Dr. Bart's guidance, and finally admitted he was expressing his views on the changes in the governance of the DC as a citizen, not as a fully informed member of the Governance Committee. There were reasonable concerns about a lack of independent oversight concerning expenditures and Dr. Bart's level of stipend, given University norms. Mr. Bates acknowledged that, in hindsight, he should have addressed these issues but was reluctant to do so because of Dr. Bart's aggressive and confrontational style. The Tribunal accepts Mr. Bates' evidence with respect to the reasons for his admitted failure to specifically address certain concerns with Dr. Bart in an open and expedient manner. The Tribunal does not find in the circumstances that Mr. Bates' decision not to discuss some issues with Dr. Bart constituted harassment.

The Tribunal accepts that Mr. Bates, in the special circumstances of this case and in the context of the environment at the DSB, was uncomfortable with Dr. Bart's aggressive and confrontational style and, as a result, was reluctant to deal with issues that one might expect to be addressed by a person in a position of authority. The Tribunal accepts Mr. Bates' explanations regarding his inclination to avoid direct conflict where possible. The Tribunal finds that Mr. Bates often exhibited a reluctance to exercise his authority with senior faculty, preferring a deferential approach, especially on academic issues. In fact, the tribunal accepts evidence that Mr. Bates was under the impression that it was a condition of his employment to be deferential to senior faculty in academic matters. This belief was supported by the creation of the Associate

Dean Academic Position at the outset of his appointment. The Tribunal in the circumstances does not believe that Mr. Bates' failure to communicate with Dr. Bart concerning identified issues is a reprisal contrary to the Policy.

As a result, the Tribunal has accepted Mr. Bates' evidence as credible and reliable in its account of: Director's College issues related to the complaints from the White Oaks Spa; teaching stipends; complaints from the Conference Board of Canada; the transfer of the Director's College Administration to the Royal Botanical Gardens; the removal of administrative functions from Dr. Bart; the January 2010 meeting and parking spot issues. Mr. Bates' evidence is corroborated by the documentary or *viva voce* evidence. The operational and business considerations undertaken by Mr. Bates and the environment under which he had to make decisions satisfies the Tribunal that his conduct did not constitute harassment of Dr. Bart.

The Tribunal accepts that Dr. Bart played a pivotal role in the establishment of the Director's College. Dr. Bart invested significant time and energy in the formation of the Director's College and is to be commended. The Tribunal heard evidence that Dr. Bart is a highly regarded instructor and is passionate about his beliefs. The Tribunal observed Dr. Bart has a commanding presence and speaks his mind. The testimony of Dr. Bernadette Lynn, Dr. Baba, Dr. Deal and Mr. Bill Swirsky corroborated his positive attributes. Mr. Bates also acknowledged Dr. Bart's strengths in these areas. Mr. Bates' evidence was that he believed and continues to believe Dr. Bart "excels in the classroom" and that he should be "the academic face" of the Director's College. The evidence confirmed, in fact, that Dr. Bart continued to hold the title of Founder, Principal and Lead Professor of the Director's College despite governance changes implemented by the joint venture partners.

Dr. Bart was an unsuccessful candidate for Dean and stated he felt uncomfortable with the selection process. Dr. Bart testified he felt mistreated during the selection process when Mr. Bates was first appointed as Dean. Dr. Bart temporarily found solace by focusing his efforts on the Director's College. Dr. Bart felt undermined by Mr. Bates after he became Dean. Unfortunately, some of Dr. Bart's strengths become weaknesses when considered within the context of the decision making structure at the University. The Tribunal finds Dr. Bart's disenchantment with the University and its processes likely exacerbated his suspicions, his strongly held views about Mr. Bates, and his propensity to express those views in a passionate and aggressive manner. The Tribunal believes that Dr. Bart would be uncomfortable with any changes in the governance model that would diminish his role and influence, no matter what processes were undertaken, given his strong attachment to the Director's College.

The Tribunal has also considered the context of what was currently happening at the DSB when assessing whether there could have been better communication between parties. The lack of communication of the plans (jointly between McMaster and the CBoC) to move the Director's College away from McMaster, and the subsequent reduction of Dr. Bart's role in the governance of the Director's College, indicate that Mr. Bates employed a management style which does not emphasize open, clear and timely communication. As will be addressed in this Decision, it is the Tribunal's opinion that poor communication, issue avoidance and the seeking of comfort and support from likeminded colleagues was a by-product of a poisoned work environment, resulting in lost opportunities for open, clear and timely communication. However, the Tribunal believes

that these events are not evidence of individual harassment or a breach of the Policy on the part of Mr. Bates.

Mr. Bates' management style can be criticized insofar as he avoided dealing with Dr. Bart on issues that might normally be expected to be discussed. However, the Tribunal is not prepared to micromanage issues with the benefit of hindsight. Decisions were made and issues avoided in the context of the DSB's toxic environment. The environment at the DSB does not reflect the Tribunal members' individual experiences or the collegial norms we have observed at our respective Faculties at the University. The Tribunal is not prepared to speculate whether a different management style would have resulted in better outcomes especially since the general experience of the Deans at the DSB has proven challenging. As Dr. Bernadette Lynn testified, in her view the DSB "eats its Deans" and previous Deans all experienced stressful challenges managing the DSB despite their various visions for the Faculty. Dr. Lynn communicated her comment to Mr. Bates. The Tribunal also finds that Dr. Bart and Dr. Taylor effectively declared "war" on Mr. Bates in the summer of 2007, thereby minimizing any ability for constructive dialogue. As such, the conduct by Mr. Bates was considered to have "resulted from" and "contributed to" the poisoned work/academic environment but did not rise to the level where Mr. Bates breached the Policy.

ii. **Further reprisal events following the Area Chair meeting in 2007**

**Summary of Evidence and Submissions**

Dr. Bart claimed he was the victim of other reprisals after the Area Chair meeting in the summer of 2007 in which he and Dr. Taylor publicly criticized Mr. Bates in front of other Area members. Further, Dr. Bart alleged these reprisals also took place because of Dr. Bart's opposition to Mr. Bates' second appointment as Dean. First, Mr. Bates failed to support Dr. Bart with respect to the allegations made by Ms Golden of the CBoC in November 2007 and January 2008. Second, Dr. Bart claimed his CP/M score was adversely affected for the years 2008, 2009, and 2010.

**Ms Anne Golden Allegations**

002 Complainants' counsel also addressed the letter of complaint from Ms Golden concerning the incident in November of 2007. It was submitted that Dr. Bart did not believe his comments at the Director's College dinner were in any way inappropriate, nor did he intend to embarrass the Director's College, the Conference Board or Ms Golden. Dr. Bart disagreed with Ms Golden's assessment of his comments. 002 Complainants' counsel submitted that Dr. Bart had a right to an investigation. Dr. Bart was ultimately required by Mr. Bates to send a note to Ms Golden apologizing for what she or others may have found to be inappropriate comments.

002 Complainants' counsel submitted that this incident is important for two reasons. First, Mr. Bates in December 2007 and January 2008 appeared to have no difficulty convening meetings with and discussing this particular issue with Dr. Bart. Yet in his Affidavit, he

suggested that he was not comfortable discussing Dr. Bart's stipend with him. It was submitted that this explanation does not make sense if we were to believe Mr. Bates' position that the incident in November 2007 marked the beginning of the deterioration of the relationship between the Conference Board of Canada and the University. If so, why did Dr. Bart not know about the particulars of the concerns until the productions made under this legal proceeding?

002 Respondents' counsel reaffirmed that Dr. Bart is the author of his own misfortune with respect to the relationship with the Conference Board of Canada. It was submitted that the Tribunal need not look any further than the way he dealt with Ms Golden in November 2007. Rather than accept responsibility, Dr. Bart, reflective of his personality and his conduct at issue in 003, sought to blame others or, worse, inflict retribution when dissatisfied with decisions made by others in positions of authority.

002 Respondents' counsel noted that both the Complaint and Dr. Bart's Affidavit attempted to leave the Tribunal with the impression that Mr. Bates had acted in an arbitrary fashion without following proper processes. 002 Respondents' counsel highlighted Dr. Bart's Affidavit at paragraphs 56 and 57 and his statement that "*Bates took it upon himself to conduct a review following which he demanded that I send a written apology to Ms Golden and the Conference Board*". 002 Respondents' counsel stressed that Dr. Bart was questioned by him about the process Mr. Bates followed concerning the November 2007 issues with Ms Golden. Dr. Bart admitted that Mr. Bates conducted a proper investigation without preconceived notions. In cross-examination, Dr. Bart confirmed that the process was exactly the one he would have expected an administrator to follow.

### **Tribunal's Findings**

The Tribunal finds there are no grounds for individual harassment or reprisal on the part of Mr. Bates with respect to the handling of the "Anne Golden" complaint. The Tribunal finds the evidence established that legitimate concerns were addressed in a manner which does not raise any concerns. In fact, Mr. Bates' explanations are reasonable and his investigation of Ms Golden's concerns was proper, as admitted by Dr. Bart in his cross-examination. The Tribunal accepts Mr. Bates' evidence, generally and specifically his evidence concerning the complaint from CBoC set out at paragraphs 111 to 119 of Mr. Bates' Affidavit.

### **iii. Mr. Bates manipulated Dr. Bart's CP/M score, in reprisal for his opposition to the Dean**

#### **Summary of Evidence and Submissions**

Dr. Bart stated that Mr. Bates manipulated his CP/M scores in the years 2008, 2009, 2010, and 2011 as a reprisal for his opposition to the second appointment of Mr. Bates, as well as his opposition to the Burlington project. Dr. Bart said he received an A+ for the service component in 2005, and an A in 2007, despite the fact that his duties with the Directors College were being removed and the College moved to Ottawa. In the years that followed, Dr. Bart

stated that Mr. Bates downgraded the service component of the CP/M after Dr. Bart spoke out on the Burlington Project, events following the Area Chair Meeting as mentioned above, and the release of the Performance Report to which Dr. Bart was a signatory. After an intervention by the Area Chair in 2010, the service score increased. In his own words, Dr. Bart stated that “[i]f my leadership and administrative actions were judged to be so egregious, then it is fair to assume that my service rating for that same period of time would have been severely and adversely affected.” (DSB-2121 at para. 73). After Mr. Bates resigned as Dean, Dr. Bart stated that the CP/M portion for service increased.

002 Respondent’s counsel reiterated that the CP/M evidence does not establish a reprisal, asking the Tribunal to accept Mr. Bates’ evidence as credible and reliable.

### **Tribunal’s Findings**

The Tribunal finds that none of Mr. Bates’ actions related to Dr. Bart’s CP/M scores or the process involved in awarding those scores constituted individual harassment on the part of Mr. Bates. The Tribunal accepts Mr. Bates’ evidence set out in paragraphs 212 to 222 of his affidavit addressing CP/M matters. The Tribunal is satisfied that Mr. Bates implemented a new rating system whereby a CP/M rating of B+ meant faculty met expectations and a higher rating could be achieved only if a faculty member exceeded expectations. The Tribunal accepts Mr. Bates’ evidence concerning the CP/M process and his involvement not only in response to allegations made by Dr. Bart but also those alleged by Dr. Taylor and Dr. Pujari.

Dr. Bart’s CP/M never indicated that he did not meet “expectations”. The Tribunal does not accept Dr. Bart’s characterization that his meeting of these expectations was inconsistent with the alleged issues attributed to him that arose at the Directors College. Rather, the Tribunal finds it is consistent with Mr. Bates’ conduct in seeking to avoid handling matters in a manner which may have led to direct confrontation with Dr. Bart. Furthermore, under University policy, Dr. Bart had access to the Review Committee in any dispute concerning his CP/M scores. The Tribunal also refers to the testimony of Dr. Bart in which he stated that in partial compensation for his work at the DC he was receiving course relief ranging between 2 to 0.5 courses was also compensation over and above his salary associated with the weekends he worked at the DC. Such compensation for the weekend work at the Director’s College would be considered consulting work and as such the Tribunal considers that this would not be eligible for consideration under the service component of the CP/M scheme. These points further support our decision that there was no instance of harassment in Mr. Bates actions related to Dr. Bart’s CP/M scores.

iv. **The suppression of information regarding the CBoC's position on Dr. Bart's involvement in 2010 and 2011.**

**Summary of Evidence and Submissions**

Dr. Bart further alleged harassment regarding two incidents in January 2010 and February 2011, wherein Mr. Bates further alienated Dr. Bart and withheld important information regarding the CBoC's intention to limit its involvement and reliance on Dr. Bart. 002 Complainants' counsel stated that Mr. Bates did nothing to bring the concerns of the CBoC to the attention of Dr. Bart. Dr. Bart stated that Mr. Bates told the Associate Dean, Dr. Head, not to tell Dr. Bart about the impending review of the DC.

002 Complainants' counsel submitted that the suppression of information about the Conference Board's ultimatum regarding Dr. Bart's continued involvement with the Director's College, including the events of 2010 and 2011, constituted further harassment and reprisal. The meeting in January 2010 and the 2011 appointment allegedly illustrate the extent to which Mr. Bates intended to alienate Dr. Bart from the Director's College by withholding important information concerning his future role. It was submitted that Dr. Bart's professional reputation was intimately linked to the Director's College. Even if Ms Golden's remarks to President George and to Mr. Bates are accepted, that the Conference Board wished to limit its involvement and reliance on Dr. Bart, the fact is that Mr. Bates did nothing to communicate those concerns to Dr. Bart. Rather, he was quite prepared to go along with it despite his independent obligation as Dr. Bart's Dean and the University representative. Dr. Bart felt Mr. Bates facilitated the Conference Board's wishes and never went to bat for Dr. Bart or offered to take steps to repair Dr. Bart's allegedly strained relationship with Ms Golden.

It was pointed out by 002 Complainants' counsel that Dr. Head admitted that she was told by Mr. Bates not to tell Dr. Bart about the impending review and the rationale was based on timing. Mr. Bates' justification that he withheld information from Dr. Bart because of timing was challenged. The fact the review was deliberately kept from Dr. Bart was identified as an act of harassment and reprisal. When Dr. Bart ultimately did learn about the planned review in December 2010, he was forced to write to Mr. Bates and President George to ascertain his status and role at the Director's College.

002 Respondents' counsel referred the Tribunal to the non-party evidence provided by Mr. Courtney Pratt. Mr. Pratt confirmed the Conference Board of Canada's concerns about the Director's College and specifically about Dr. Bart. Mr. Pratt provided the only direct evidence of what happened at the January 2010 meeting and testified to its purpose. Mr. Pratt's testimony is balanced. He did not fully support the Conference Board of Canada's views. However, he was clear that given the Conference Board of Canada's concerns with Dr. Bart, it was inappropriate for Dr. Bart to be present at the meeting. Mr. Pratt and Ms Golden had talked about that decision. Furthermore, there is uncontradicted evidence that the Conference Board of Canada did not want Mr. Bates to deal with Dr. Bart on major issues that were being discussed. This was a decision made or insisted upon by the joint venture partner and was not Mr. Bates' sole managerial decision.

002 Respondents' counsel reiterated that Mr. Bates in his testimony gave credit on the academic side where it was due to Dr. Bart. Dr. Bart was relieved of governance responsibilities where he necessarily would have to work directly with the Conference Board of Canada who had expressed concerns. The University wanted the joint venture partnership to continue. Therefore, Dr. Bart was utilized where he would be most beneficial to the Director's College, capitalizing upon his academic strengths, while the University addressed the concerns held by its joint venture partner.

### **Tribunal's Findings**

The Tribunal finds that none of Mr. Bates' actions with respect to the planning and implementation of the review of the Director's college were inappropriate and that these actions did not constitute individual harassment on the part of Mr. Bates. Mr. Pratt's evidence was reliable and corroborated Mr. Bates' explanations on material points. As stated in the previous section, these decisions could have been communicated in a more open and timely manner. However, the evidence reflects a management style not prohibited by law and one that, in the Tribunal's view, did not cross the line to constitute harassment.

The Tribunal feels that the Dean should have informed Dr. Bart, despite the CBoC's concerns and wishes as a joint venture partner, given Dr. Bart's prominent role in the DC and that is lack of timely and effective communication on this matter contributed to the poisoned workplace at the DSB. Furthermore, Mr. Bates was advised by President Deane to inform Dr. Bart of the CBoC's intention. Dr. Bart suggested that he would have been more accepting of his removal from the Director's College had he been privy to this information. In most circumstances, this would be the expected response of a faculty member to difficult decisions that affect them. However, absent a finding of harassment, this is a speculative exercise not within the Tribunal's jurisdiction, and which we need not specifically address. Rather, the Tribunal feels this is but one example of the numerous examples of how the poisoned work/academic environment adversely influenced the judgment exercised by some faculty at the DSB, including the Dean. However, the Tribunal is not satisfied that individual harassment or reprisal under the Policy has been established by Dr. Bart. Furthermore, the Tribunal is satisfied that Mr. Bates' conduct did not rise to the level associated with a breach in the Policy.

**G) COMPLAINT OF DR. WAYNE TAYLOR**

Dr. Pujari, Mr. Peter Brenders, and Dr. Jim Tiessen testified in support of Dr. Taylor's claims. Dr. Taylor's concerns are set out at paragraphs 94 to 103 of his Complaint (DSB-0001) and in his Affidavit (DSB-2134). Ms Kim MacDonald, and Mr. Chris Hurley gave evidence in support of Mr. Bates and McMaster University, and Mr. Bates gave evidence in support of McMaster University

In his Affidavit, Dr. Taylor provided the background to his complaint and identified the basis for his harassment complaint which involved conduct related to the Health Leadership Institute (HLI); his breach of contract grievance; his experiences with the Health Services Management (HSM) program; mould concerns in his office at the DSB; course relief and CP/M issues. The impact of the harassment on Dr. Taylor is identified in his Affidavit and was considered by the Tribunal (except for the portion struck on consent).

The Tribunal finds the evidence does not establish that Mr. Bates harassed Dr. Taylor in any of the instances identified. The Tribunal also found that Dr. Taylor was not a credible witness, having considered all of the evidence, including Dr. Taylor's testimony and having observed his demeanour. Further, the Tribunal found Dr. Taylor breached the Confidentiality Order and as such jeopardized the integrity of the hearing process. The Tribunal does not accept Dr. Taylor's evidence as reliable where it conflicted with the evidence of Mr. Bates, Ms MacDonald and Mr. Hurley. The Tribunal lacked confidence in both the veracity and the reliability of the testimony of Dr. Taylor. Examples of inconsistent and misleading testimony by Dr. Taylor are listed in detail in the findings of the Tribunal however, we wish to highlight some instances of particular concern at the outset. Dr. Taylor submitted in his affidavit evidence, in his primary testimony, in cross-examination and questioning by the Tribunal that he was not simply unaware of any financial issues at the HLI, but he went so far as to suggest that Mr. Bates and Ms MacDonald had inappropriately altered the financial statements to inflate losses. One of the disputed line items in the financial statements was the cost of rent for the HLI offices at the RGB. Dr. Taylor steadfastly claimed he was under the impression that because no official lease had been signed that he thought the HLI was not paying rent to the RGB. The Tribunal points to DSB-807 and DSB-809 as memo's written by Dr. Taylor in 2008 that highlight his knowledge of the rent costs at the RGB as part of his justification for his request to move the HLI to University Avenue. This misrepresentation of events and self-serving view of the facts is but one example of the lack of credibility displayed by Dr. Taylor during these proceedings. The Tribunal also found Dr. Taylor to be exceptionally evasive under questioning and determined to present a self-serving representation of events. For example, during cross-examination Dr. Taylor was asked if he had received an email (DSB-303). He replied that he had not as the text of DSB-303 was not in the original format of the email yet was verbatim the content of the original email as it had been copied and pasted into another document. When the Tribunal Chair asked Dr. Taylor if he had received an email with the same or similar wording he replied "yes".

The Tribunal addresses the primary concerns, which were the focus of the 002 Complainants' closing submissions as follows.

i. **Was Dr. Taylor the target of a campaign of harassment, commencing in 2006, for his opposition to Mr. Bates?**

**Summary of Evidence and Submissions**

Dr. Taylor's counsel submitted he became the target of harassment by Mr. Bates, and this harassment was also permitted by the University. Dr. Taylor acknowledged that when Mr. Bates began his tenure as Dean at the DSB their relationship was a positive one. Ms Cossa commented on the good relationship between Dr. Taylor and Mr. Bates in those early years. Unfortunately, that positive working relationship began to deteriorate in 2006. Dr. Taylor alleged that the relationship deteriorated and he became the target of a continuing harassment and reprisal campaign by Mr. Bates that commenced in 2006. Dr. Taylor's counsel stressed the following concerns to support her submissions:

1. Mr. Bates demoted and professionally demeaned Dr. Taylor by removing him from his Health Leadership Institute (HLI) role and ultimately as director of the HSM when his appointment ceased in 2009. Examples included Mr. Bates making Dr. Taylor report to a staff member (Mr. Gord Arbeau) from Mr. Bates' office, thereby negatively affecting Dr. Taylor's stature. Furthermore, a \$100,000 grant was inexplicably returned to Dr. Taylor at Mr. Bates' request. In addition, Mr. Bates communicated unilateral changes in a callous and vexatious manner without regard for Dr. Taylor's reputation at the DSB or with external partners, sponsors, staff, or alumni of the HSM.
2. Mr. Bates invoked closure after Dr. Taylor spoke at the Fall 2007 Faculty meeting called to discuss the Burlington expansion.
3. Mr. Bates' office deliberately delayed and thwarted the assistance of the Environmental and Occupational Health Support Services Office to remediate a problem of mould in Dr. Taylor's office, despite many requests.
4. Mr. Bates interfered with Dr. Taylor's CP/M rankings in 2008 and 2009.
5. The Provost did not select Dr. Taylor as a member of the Dean Selection Committee because he signed the Performance Report, despite his being nominated by his Area.
6. Dr. Taylor stated he underwent differential treatment for having been a part of the complaint process, in two ways: first, Dr. Randall, whom Dr. Taylor described as "a supporter (or someone he needed to gain support of) of Mr. Bates" was selected as Dr. Taylor's replacement as Director of HSM; and second, Dr. Randall was given preferential terms and teaching relief, while Dr. Taylor "continues to have to beg for reasonable relief to complete significant research projects."

002 Complainants' counsel suggested the evidence confirmed that the aforementioned decisions were a result of Dr. Taylor having:

1. Filed a grievance against Mr. Bates in the spring of 2007;
2. Been a vocal opponent to Mr. Bates' Deanship which became clear at the Area handover meeting in the summer of 2007;
3. Signed the performance report in 2008; and
4. Pushed back against Mr. Bates for criticizing Dr. Taylor's decision to have his wife provide assistance at the HLI.

002 Respondents' counsel generally submitted that the disposition of Dr. Taylor's complaints is clear since no harassment was established by the evidence. Furthermore, 002 Respondents' counsel submitted that it is their belief Dr. Taylor was not a credible witness and was observed to have breached the Tribunal's Confidentiality Order. 002 Respondents' counsel's main submissions in response to issues are referenced by the Tribunal when dealing with Dr. Taylor's allegations as identified below.

### **Tribunal's Findings**

The Tribunal finds the evidence did not establish that Mr. Bates launched a campaign of harassment commencing in 2006 or engaged in any reprisal against Dr. Taylor. Specific credibility issues arising from Dr. Taylor's testimony are identified if necessary in the Tribunal findings below with respect to the material harassment allegations which we have summarized. However, the Tribunal notes that Dr. Taylor's credibility was not determinative in dismissing his 002 Complaint. The evidence did not support any findings of harassment as alleged by Dr. Taylor in the 002 Complaint. Dr. Taylor's evidence was often speculative. Dr. Taylor's evidence was not corroborated on material points that would be necessary to establish harassment. In any event, the Tribunal has serious doubts about the credibility of Dr. Taylor's testimony when it was not confirmed or supported by other evidence and particularly where it was in conflict with other reliable evidence. In addition, the Tribunal notes that Dr. Taylor breached the Tribunal's Confidentiality Order.

#### **ii. Was Dr. Taylor harassed when he was removed from HLI by Mr. Bates?**

### **Summary of Evidence and Submissions**

The Tribunal received detailed evidence concerning issues relevant to the HLI and Dr. Taylor's activities for which we provide a brief summary of material issues that were the focus of the parties' submissions.

### HLI Issues

Dr. Taylor testified that the Health Leadership Institute (“HLI”) was performing well and profitably while he was the Director. Dr. Taylor suggested that problems with the budget, expenses, human resources issues, and issues with his performance as Director were not communicated to him or were not valid. Specifically, Dr. Taylor suggested that neither Mr. Bates nor anyone from his office communicated any issues to him concerning the HLI budget, expenses, human resources issues, or performance from around February 2005 through to the summer of 2006 when Dr. Taylor testified that he and Mr. Bates met regularly. Dr. Taylor testified that in the fall and winter of 2006 the HLI was doing well and moving forward. However, meetings with Mr. Bates became less regular over time. As such, Dr. Taylor also submitted that Mr. Bates decided to remove him as Director without lawful justification.

002 Respondents’ counsel submitted that Mr. Bates and Ms McDonald testified that there were regular meetings with Dr. Taylor, confirming that concerns regarding the HLI’s financial situation were discussed. Ms McDonald testified that the monthly financial statements were prepared for the HLI; these statements disclosed the HLI’s poor financial performance.

002 Respondents’ counsel submitted that in two years, the HLI was approximately \$1 million in debt (approximately \$250,000.00 in seed money and \$750,000.00 in operating losses). Mr. Bates, working with Ms MacDonald, intervened to address the financial situation. This is a proper management decision. The evidence showed they were keeping Dr. Taylor apprised of the situation and he was involved.

002 Respondents’ counsel challenged Dr. Taylor’s credibility. For example, Dr. Taylor said he never saw prior financial statements. Furthermore, despite being confronted during the hearing with clear documentary evidence, Dr. Taylor did not back away from his allegation that Mr. Bates manipulated the HLI books so that it would appear that the HLI was not making money. Dr. Taylor went further and suggested that Ms MacDonald, who is a chartered accountant, also participated in the scheme. Dr. Taylor’s explanation that he could operate the institute without paying rent because he did not have a signed lease is not credible. 002 Respondents’ counsel stressed the absurdity of Dr. Taylor’s claim that the HLI did not have to identify rent obligations as an expense.

### The Disney Program

Dr. Taylor testified the Disney Program was a significant source of revenue for the HLI in the first few years, which is confirmed in the financial statements. 002 Complainants’ counsel challenged Mr. Bates’ explanation that the Disney programs were suspended because they had run their course. 002 Complainants’ counsel suggested this position is contradicted by the Disney Program subsequently being brought back in 2012 after Dr. Taylor’s removal. 002 Complainants’ counsel suggested this is but one of Mr. Bates’ decisions affecting Dr. Taylor which were tainted or demonstrate an intention to harass rather than being a *bona fide* business decision.

The Disney Program issue was addressed briefly by 002 Respondents' counsel. It was submitted that the market for the Disney Program had become saturated. Further courses were put on hold until demand warranted that the Program be offered. The Disney Program was reintroduced when enrolment justified offering it. There was no evidence to suggest that harassment tainted this decision by administration. Mr. Bates and Ms McDonald's evidence was uncontradicted.

### **HR Issues with Dr. Taylor's Wife**

The Tribunal finds there was not a material evidentiary dispute concerning the issue with Dr. Taylor's wife, which can be summarized as follows. A complaint about Dr. Taylor's wife was raised by the HLI staff. Dr. Taylor met with Mr. Bates. Dr. Taylor explained during his evidence-in-chief that his wife attended at the HLI in November of 2006 to perform administrative tasks such as stuffing envelopes. Dr. Taylor discussed the complaint with Mr. Bates and promised to address the concern. Dr. Taylor's email on November 9, 2006 (DSB-2326) sought further guidance from Mr. Bates. Mr. Bates did not respond on this issue, nor was it raised further in a subsequent November 23, 2006, meeting. 002 Complainants' counsel submitted, that shortly thereafter Mr. Bates made the decision to remove Dr. Taylor from the HLI. However, Dr. Taylor was not told for many months.

### **The Removal of Dr. Taylor from HLI**

On November 10, 2006, shortly after the incident involving Dr. Taylor's wife, Mr. Bates wrote to Dr. McNutt, the acting Provost and to Mr. Murray Lapp, Director of Employee and Labour Relations, suggesting that Dr. Taylor needed to take a leave, whether medical or otherwise, because he was under a significant amount of stress due to the under performance of the HLI. Dr. Taylor's counsel submitted he never expressed those feelings to Mr. Bates, who admitted during cross-examination that this suggestion was simply his personal observation. In the memo (DSB-0327), Mr. Bates concluded that he wishes to proceed with Dr. Taylor's removal and hire a director of education who will be responsible for developing strategy regarding the HLI. Mr. Bates observed that this was a delicate situation that needed immediate resolution. 002 Complainants' counsel submitted that the memo is dispositive. As of November 10, 2006, Mr. Bates had decided to remove Dr. Taylor from the HLI. This memo also calls into question Dr. Taylor's leadership. Mr. Bates' attempts to explain that decision in terms of his concern for Dr. Taylor's health is an attempt to cover his real motivations, according to 002 Complainants' counsel.

In addition, the Tribunal was provided with evidence concerning various incidents involving Dr. Taylor, including a grievance not pursued by Dr. Taylor concerning payment sought for a disputed lecture; Dr. Taylor's contracting with Pharmaceutical Research Manufacturers of America ("PhRMA") to engage in a research project without complying with University Policy regarding third party contracts or ensuring that the research proposal underwent mandatory review by the University's Research Ethics Board; HLI operational and collective agreement issues; and the scope of Mr. Gord Arbeau's role concerning HLI. The HLI continued to operate through the summer of 2007. HLI oversight was eventually carried out by a

staff member, Mr. Arbeau, who became responsible for, amongst other things, executive education, contracts, expenditures, and ensuring that research policy processes were followed after concerns arose. Dr. Taylor's and Mr. Bates' testimony regarding subsequent events is similar. The two of them met after the RBG lease was terminated. Mr. Bates told Dr. Taylor, "We are going in different directions".

### **Area Chair Handover Meeting**

Dr. James Tiessen, in his Affidavit in support of Dr. Taylor, confirmed he was in attendance at the handover meeting of the HSM/SML Area in the summer of 2007. He confirmed that Dr. Bart and Dr. Taylor described their issues with Mr. Bates. During the ensuing discussion, either Dr. Bart or Dr. Taylor confirmed that they planned to be vocal in their opposition to Mr. Bates should he put his name forward for a second term as Dean. In his Affidavit at paragraph 11, Dr. Tiessen confirmed that there was a discussion amongst faculty members "centred around Bart and Taylor's somewhat consistent stories and their belief that Bates' actions were inexcusable and non-collegial, not appropriate for a Dean of the DSB". In paragraph 12, Dr. Tiessen goes on to describe his understanding of how he subsequently expressed his concerns to other colleagues that someone had told the Dean about Dr. Bart and Dr. Taylor's statements. Dr. Tiessen raised general concerns about the ability to speak freely without "fear of retribution". Dr. Tiessen's evidence did not refer to any instances of actual reprisal.

002 Complainants' counsel identified that Dr. Taylor and Mr. Bates met following the Area Chair handover meeting in the summer of 2007. It is submitted that Mr. Bates allegedly rebuked Dr. Taylor for his comments. 002 Respondents' counsel stressed that Dr. Bart testified that Mr. Bates did not rebuke him when he met with him. Rather, Mr. Bates, after the Area meeting, asked Dr. Bart to not come to any premature conclusions and to "give him a chance". 002 Respondents' counsel suggested to the Tribunal there was no evidence that the discussion with Dr. Taylor and Mr. Bates was any different.

### **Mould**

002 Complainants' counsel did not specifically address the mould issue further in her closing submissions.

Respondents' counsel submitted that Mr. Chris Hurley confirmed there was no mould problem when he went to look at the office and that Dr. Taylor had options to deal with the problem, such as reporting his concerns directly to Environmental and Occupational Health Support Services. Dr. Taylor complained against the Dean even though the evidence established the Dean had no involvement in this issue. The evidence confirmed Mr. Hurley was dealing with Ms Amanda Shanks at the Dean's office. Mr. Avraam submitted that according to Dr. Taylor, "you've got to go after the Dean because he's harassing if something goes awry in the Dean's office". Mr. Hurley confirmed in his testimony that there was not a mould problem in Dr. Taylor's office

### **Tribunal's Findings**

The Tribunal finds that none of Mr. Bates' actions, including the review of Dr. Taylor's conduct, constituted harassment on the part of Mr. Bates. The Tribunal does not find that Dr. Taylor was harassed in any of the interactions identified, whether the alleged conduct is viewed as an individual incident or as a course of conduct. The Tribunal is satisfied that Mr. Bates had *bona fide* reasons to address concerns with Dr. Taylor. The Tribunal generally accepts the evidence of Mr. Bates. The incidents involving Dr. Taylor were established by the evidence as particularized in Mr. Bates' Affidavit at paragraphs 158 to 166. The Tribunal is not prepared to accept that Mr. Bates' attempts to address issues with Dr. Taylor were not genuine or within his rights as a member of management. As such, the Tribunal finds that Mr. Bates' actions related to Dr. Taylor's removal from the HLI were not harassing in nature.

Furthermore, we find there was financial justification for the actions of the Dean with respect to the HLI. Ms MacDonald was a credible and reliable witness and the Tribunal accepts her evidence. The Tribunal also finds that the most reliable evidence confirms Dr. Taylor received these financial reports through the University's network and was provided every reasonable opportunity to be aware of the financial situation of the HLI through his own financial proposals as well as meetings with Ms MacDonald and Mr. Bates.

The Tribunal is not satisfied there was any harassment or breach of Policy with respect to Dr. Taylor's allegations concerning the Disney Program; the issues identified concerning Dr. Taylor's wife; or his concerns about mould. These allegations are without merit in the Tribunal's view. These decisions were under the purview of management. Furthermore, for example, faculty receives mandatory health and safety training and should be familiar with processes available to address issues. The mould issue is an example of the frivolous and trite nature of some of the complaints in the Tribunal's view. The evidence did not establish that harassment or reprisal tainted those decisions. Mr. Bates' conduct was not harassment or discrimination contrary to the Policy as alleged.

The Tribunal feels that HLI decisions could have been communicated and conducted in a more transparent, timely and collegial manner. The Tribunal is concerned that the hesitancy or absence of communication may be reflective of the culture at the DSB and once again contributed to the poisoned workplace at the DSB. An aversion to direct communications is likely attributable to the DSB culture which makes resolution, healing and reconciliation more challenging. The Tribunal addresses our concerns in this Decision when we review the allegations against the University and the presence of a poisoned work/academic environment. However, the Tribunal is satisfied that while Mr. Bates' conduct resulted from and contributed to the poisoned work/academic environment it did not breach the Policy.

In addition, the Tribunal also finds there was no reprisal by Mr. Bates arising from either Dr. Bart's or Dr. Taylor's comments at the Area handover meeting. The Tribunal finds that Dr. Tiessen's concerns about retribution were speculative based upon the limited information he was provided with. There is no reliable evidence corroborating the allegation that Mr. Bates rebuked Dr. Taylor for his comments. Rather, we find that Dr. Taylor's suggestion is not credible or established by the evidence. Furthermore, the Tribunal is satisfied that in fact, Dr. Bart and

Dr. Taylor's motivations were suspect as detailed in the 003 Complaint. The issue is not academic freedom and freedom of speech, as suggested by 002 Complainants' counsel. Rather, Dr. Taylor's and Dr. Bart's comments constituted an escalation by two individuals who had declared "war" on Mr. Bates. The Tribunal will address the resultant incidents related to the declaration of war in more detail when we address the 003 Complaints.

- iii. **Was the decision not to renew Dr. Taylor's role at HSM an act of harassment or a reprisal? Did Mr. Bates communicate with Dr. Taylor in a way that was callous concerning the HSM and as such, engage in harassment?**

### **Summary of Evidence and Submissions**

002 Complainants' counsel submitted that the decision not to renew Dr. Taylor's role at the HSM is the most glaring example of reprisal and harassment following Dr. Taylor's vocal opposition to Mr. Bates' second appointment (see DSB-0834). In September 2009, after 23 years of service at the HSM, Dr. Taylor was not reappointed to the role as Director. Dr. Taylor states that a performance review of his directorship was not performed. Furthermore, Mr. Bates did not advise Dr. Taylor of any concerns during his directorship. In addition, Dr. Taylor was not given an opportunity to apply for re-appointment nor was he provided with any explanation from Mr. Bates regarding the decision not to re-appoint him. No formal announcement was made regarding this decision. Dr. Deal testified the HSM was a very successful program with good enrolment. Supportive alumni, such as Mr. Peter Brenders, also testified to Dr. Taylor's contributions.

002 Complainants' counsel explained that the closure of the HLI and, in particular, the way that closure was handled by Mr. Bates were both personally and professionally embarrassing for Dr. Taylor. As a result, Dr. Taylor did not hide his opposition to Mr. Bates. Several events following the decision to close the HLI office added to Dr. Taylor's growing dissatisfaction with Mr. Bates as Dean. The PhRMA issue, the April 2007 grievance, and the October 2007 email Mr. Bates circulated to the entire DSB faculty criticizing Dr. Taylor's management of the HLI were referenced. In December 2008, Dr. Taylor made a submission to the Dean's Selection Committee opposing Mr. Bates' second appointment. Dr. Taylor was a signatory to the Performance Report.

As a result, Dr. Taylor stated that Mr. Bates' manner of communicating Dr. Taylor's unilateral removal from the HSM was callous and vexatious, and done without regard for Dr. Taylor or his reputation at the DSB with external partners, sponsors, staff, or alumni of the HSM due to Mr. Bates seeking reprisal.

002 Complainants' counsel suggested Mr. Bates attempted to lay blame elsewhere and distance himself from this decision, by suggesting that Dr. Medcof actually made the decision. Mr. Bates also suggested that he believed the decision was made because Dr. Longo, Dr. Randall, and Dr. Wakefield were doing the vast majority of the work at the HSM. 002 Complainants' counsel asked the Tribunal not to accept these explanations.

002 Respondent's counsel submitted that the evidence confirmed that Mr. Bates was not involved in the decision not to appoint Dr. Taylor as Director of the HSM Program which was dealt with by Dr. Medcof. Further, there is no evidence of any communication by Mr. Bates to Dr. Taylor concerning the HSM that was harassing. Dr. Ken Deal's testimony confirmed he was absent on an administrative leave during the relevant timeframes. As such, the evidence is uncontradicted that Dr. Medcof made the decision. Dr. Taylor's evidence is speculative and not corroborated. Dr. Taylor was described as the author of his own misfortune, and that view is confirmed by the various incidents established in the evidence and by Dr. Taylor's self-serving characterization of and explanations for his own conduct.

### **Tribunal's Findings**

The Tribunal finds the decision not to renew Dr. Taylor's role at the HSM was an administrative decision for which the evidence does not establish either reprisal or harassment by Mr. Bates. The Tribunal finds that Mr. Bates' communications with Dr. Taylor were not harassing. Rather, the lack of communication, as previously stated, was likely a by-product of the poisoned DSB culture which was made more challenging when Dr. Taylor voluntarily disengaged himself from most of his duties and roles in the DSB after his removal from the HLI.

Dr. Taylor's contract with the HSM expired in September 2009. The best practise would have been to advise Dr. Taylor that the contract would not be renewed. The Tribunal is satisfied that Dr. Taylor received no notice, nor any reasonable explanation why the contract was not being renewed. Mr. Bates confirmed he never spoke to Dr. Taylor about this issue and there is no evidence of any communication by Mr. Bates with Dr. Taylor which was harassing. The Tribunal finds there are no grounds for finding individual harassment on the part of Mr. Bates with respect to the handling of Dr. Taylor's removal from the HSM and accepts that this was Dr. Medcof's decision.

- iv. **Did Mr. Bates manipulate Dr. Taylor's CP/M rating and was this a reprisal for his opposition to Mr. Bates?**

### **Summary of Evidence and Submissions**

Dr. Taylor attributed the change in his CP/M scores to reprisal for opposing Mr. Bates during his deanship. It was alleged that Mr. Bates lowered Dr. Taylor's CP/M, similar to Dr. Bart's and Dr. Pujari's, to punish him for his negative views and for his participation and signature on the Performance Report. It was reprisal and indicative of a pattern of harassment that Mr. Bates started against Dr. Taylor back in 2006. Dr. Taylor alleges that Mr. Bates marked down his CP/M, while alleging that Dr. Flynn's and Dr. Bontis' CP/Ms were improperly raised. During CP/M meetings with Mr. Bates and Dr. Head, the conversations were, in Dr. Taylor's view, unnecessarily argumentative. The meetings with Area members unduly focused on the reduction of Dr. Taylor's scores.

Dr. Taylor stated that once Mr. Bates left his role as Dean, his CP/M increased. Dr. Taylor's CP/M went from an average PAR of 1.5 from 1996-2005 to an average PAR of 0.60 from 2006-2010 in 2008 and 2009. In 2011, after Mr. Bates left the DSB, his CP/M PAR went back up to 1.25. Mr. Bates lowered the service ranking provided by the Area first in 2008 from an A- to a B+ and again in 2009 from an A to a B+. Dr. Taylor had already filed a grievance that he had been removed by the HLI and his opposition to Dean Bates was well known. Dr. Taylor's counsel suggested the numbers speak for themselves and this must be more than a coincidence.

002 Respondent's counsel submitted there is no evidence that Mr. Bates abused the CP/M process to punish any faculty member, including Dr. Taylor. Dr. Taylor reported to Mr. Bates only in relation to the HLI. Dr. Taylor's CP/M score was averaged out with the CP/M score submitted by Dr. Taylor's Area Chair. University policy specifically contemplates a collaborative and consultative process which is what happened in Dr. Taylor's case. The CP/M evaluations for each faculty member had to take into consideration that the DSB could not exceed the fixed pool of merit points allotted to it by the University. After an initial determination, Mr. Bates engaged in a collaborative and consultative process to increase Dr. Taylor's score. Despite the increase, Mr. Bates is still accused of harassing Dr. Taylor. Mr. Bates' uncontradicted evidence was that a B+ was given to those who met expectations under the process he introduced when he became Dean. Dr. Taylor, like Dr. Pujari and Dr. Bart, never received a mark below B+ during Mr. Bates' tenure. Furthermore, Section 10 of the applicable Policy allowed Dr. Taylor to request that a Review Committee review the awarded CP/M, which he never did.

### **Tribunal's Findings**

Numerous issues arise with respect to the CP/M. However, the Tribunal is not satisfied that the CP/M score awarded to Dr. Taylor constituted harassment or was a reprisal contrary to the Policy. The Tribunal finds the appropriate avenue for any dispute concerning the CP/M scores was to a Review Committee in accordance with University Policy. An appeal was not initiated by Dr. Taylor. We are not prepared to find Dr. Taylor was harassed or suffered a reprisal by being assigned CP/M scores over which Mr. Bates did not have exclusive decision-making authority. The evidence does not support this conclusion. Indeed, the evidence supports that Dr. Taylor voluntarily disengaged himself from most of his duties and roles in the DSB in response to his removal from the HLI. Despite this, Dr. Taylor was identified as meeting expectations by Mr. Bates.

**H) COMPLAINT OF DR. DEVASHISH PUJARI**

Dr. Ken Deal, Dr. Lilian Chan, Dr. Trevor Chamberlain, Dr. John Miltenberg, and Dr. William Weisner were called as witnesses in support of Dr. Pujari's claims. Dr. Pujari's concerns are set out at paragraphs 37 to 59 of his Complaint (DSB-0001) and in his Affidavit (DSB-2123). Neither Dr. Chamberlain nor Dr. Chan was found to be a credible witness, and their evidence was given no weight to support Dr. Pujari's complaints unless corroborated by other reliable evidence. Mr. Bates testified, and McMaster University called Dr. Ilene Busch-Vishniac (the Provost) and Dr. Elko Kleinschmidt as responding witnesses.

The Tribunal notes that Dr. Pujari became a Complainant after Mr. Milé Komlen, the Director of HRES, asked him to be interviewed by an investigator working in his office. As Dr. Pujari identifies in paragraph 4 of his Affidavit, his portion of the group complaint relates to harassing actions and behaviours by Mr. Bates and others in the University who "in my opinion" contributed to the harassment he experienced from Mr. Bates or failed to mitigate the harassment when given the opportunity to do so. Dr. Pujari identified three general areas of concern:

1. Intimidation at the time of the Burlington vote (from the Provost, Mr. Bates and Dr. Kleinschmidt under the direction of Mr. Bates);
2. Unwarranted interference with the Area's resources (including failure to allocate needed tenure-track resources, interference with T&P of the Area, and complicating, misleading and stalling the approval process of CLAs to teaching-track positions); and
3. Reducing and/or providing unexplained lower CP/M for "me and others in my area (Dr. Chris Bart and Dr. Wayne Taylor) as a result of our speaking out against Burlington and an opposition to Bates' reappointment as Dean for a second term".

The Tribunal finds that the evidence does not establish that Mr. Bates harassed Dr. Pujari. The Tribunal accepts Dr. Pujari's description of the overwhelming distress which he feels he experienced commencing in 2007. However, the Tribunal is not satisfied that the objective evidence supports Dr. Pujari's opinions or conclusions that he was intimidated or harassed either by Mr. Bates or the University, or that he has established that either Mr. Bates or the University were responsible for the stress he experienced.

The Tribunal addresses the primary concerns which were the focus of the 002 Complainants' closing submissions as follows.

**i. Mr. Bates personally intimidated Dr. Pujari****Summary of Evidence and Submissions**

Dr. Pujari outlined the intimidation he perceived or experienced from Mr. Bates at the time of the Burlington vote including the particulars provided at paragraphs 17 to 21 of his

Affidavit as well as within paragraphs 5 to 16 of his Affidavit where he also addresses intimidation by the Provost. Dr. Pujari, amongst other things, stated that Mr. Bates personally harassed him in the following ways:

- a. After the Faculty Council meeting of September 26, 2007, in Dr. Pujari's office, where Mr. Bates said to Dr. Pujari, "If the Burlington plan goes through, I will promise you 11 new faculty." These comments, and Mr. Bates' presence, were unsettling for Dr. Pujari. Further, the Provost seemed to be promising resources only if faculty voted to support the Burlington expansion in her comments to Faculty Council.
- b. In an email dated October 22, 2007 (DSB-0684), Mr. Bates wrote: "The letter does request a meeting of the Area Chairs with me prior to our Faculty meeting on October 25<sup>th</sup>. This meeting will not take place. This matter will be addressed at Faculty Council."
- c. In late October 2007, when Mr. Bates barged into Dr. Pujari's office, pointed his finger at him, and threatened Dr. Pujari for having circulated an email dated October 23, 2007, regarding the Area Chairs' concerns about the Burlington expansion vote. Mr. Bates was aggressive, wagging his finger, and said "you shouldn't have sent it," and "Ashish, you will have a meeting, but not the meeting you think you are going to have." Several days later, the Provost disciplined Dr. Pujari for having sent the letter.
- d. On December 18, 2007, Mr. Bates arrived at Dr. Pujari's office door, only minutes after a meeting with Dr. Kleinschmidt, as Dr. Pujari was preparing to call the MUFA office. Mr. Bates said to Dr. Pujari, "when the dust settles everything will be fine." Dr. Pujari stated that Mr. Bates arrival at his door "suggested [that] he was watching my office and knew precisely when Kleinschmidt had been to see me." (DSB-2123 at para. 32).
- e. On December 19, 2007, Dr. Pujari had a meeting with Dr. David Hitchcock, the MUFA Grievance Officer, to discuss the intimidation he was experiencing. Dr. Pujari was in the Student Centre, having a coffee, when Mr. Bates "suddenly arrived and sat down beside him in the Student Centre... across campus." Dr. Pujari had "cause to believe that [Mr. Bates] was following [him] or watching [his] whereabouts". (DSB-2123 at para. 34). Dr. Pujari felt that this interaction with Mr. Bates was disingenuous.

002 Complainants' counsel submitted that the Provost and Mr. Bates were working together to ensure the approval of the Burlington initiative. Counsel submitted that the Burlington initiative provides context to understand the harassment and intimidation suffered by Dr. Pujari. The Area Chair discipline can only be properly understood in this context. 002 Complainants' counsel directed the Tribunal to evidence which suggests Mr. Bates, at least tangentially, was involved with the Provost's discipline of the Area Chairs in October and November of 2007. Dr. Pujari's complaint regarding the Area Chair issue is with the University

being responsible for the Provost's conduct as one of the directing minds. The Provost testified she decided to discipline the Area Chairs with Mr. Bates' knowledge and she kept him informed of what was going on during subsequent meetings while Mr. Bates tried to distance himself from the Provost's actions with the Area Chairs in Complainants' counsel's submission.

Ms Milne submitted that the Area Chair discipline should not be considered in a vacuum and added the following to provide context for the Tribunal to consider concerning the Burlington issue:

- a. The satellite campus concept had been in the works for many years prior to the Ron Joyce Centre becoming a reality. Initially, three Faculties were to be involved. However, at the end, only the business school expanded its operations to Burlington.
- b. The evidence confirms that this was a highly publicized initiative. The significant media coverage concerning the planned Burlington expansion included articles dating back to January 2006.
- c. There were at least two external reviews done with respect to the satellite campus option. First, in November 2006 and again in September 2007.
- d. At the first Faculty Council meeting in September 2007, a motion passed confirming that prior to the Burlington issue going to Faculty as a whole, Faculty Council would receive a copy of the external review and business plan with proposed academic programs for further discussion, referral and recommendation.
- e. The Dean had established an *ad hoc* Committee under his direction by the fall of 2007 including faculty members Dr. Milena Head, Dr. Pat Wakefield, Dr. Khaled Hassanein, Dr. Terry Flynn, Dr. Nick Bontis, Dr. Jim Tiessen and Dr. Naresh Agarwal.
- f. The Provost initially had reservations about the Burlington campus which she expressed to Dr. McNutt as late as August 30, 2007. However, less than one month later at the Faculty Council meeting, the Provost supported Mr. Bates and the plan moving forward.
- g. The five Area Chairs not members of the *ad hoc* Committee expressed an interest in meeting with the external review team to share their views in early September 2007. Only at the eleventh hour were they were invited to participate.

002 Complainants' counsel suggested that the above provides relevant context to properly understand why the Provost's disciplined Dr. Pujari and the other Area Chairs. The University had a short window within which to get the Burlington initiative passed. It was further submitted the Provost was on a full court press to ensure the initiative was approved

002 Respondents' counsel requested the Tribunal draw the opposite inferences and submitted that the reliable evidence and context does not support Dr. Pujari's allegations. Credibility issues were identified with respect to the positions asserted by Dr. Pujari. Furthermore, Respondents' counsel challenged Dr. Pujari's subjective interpretation and the characterization of facts which, in his submission, cannot objectively be viewed as harassment. For example, when Dr. Pujari was promised faculty, it was part of the opportunity provided by the Burlington expansion. It was not a threat; it was merely the reality of having access to greater resources which the Burlington expansion provided.

002 Respondents' counsel submitted that Mr. Bates followed approved processes including respecting established Faculty Council processes. Others, including Dr. Pujari, wanted to change those processes or were unhappy with the results of the processes. Furthermore, the Provost's and Dr. Kleinschmidt's conduct is not evidence that Mr. Bates harassed Dr. Pujari based upon the evidence before the Tribunal. On the other hand, Mr. Bates' evidence is corroborated or is credible. Dr. Pujari's suspicions are merely speculation not corroborated or supported by the objective evidence before the Tribunal.

### **Tribunal's Findings**

The Tribunal finds the evidence does not establish that Mr. Bates harassed Dr. Pujari. The Tribunal has reviewed the incidents claimed by Dr. Pujari as harassing and/or intimidating and is not satisfied the evidence established individual harassment by Mr. Bates.

The Tribunal, having considered all of the evidence, believes that Dr. Pujari's complaints and the background concerning how and why he decided to file a complaint are instructive. The Tribunal has determined Dr. Pujari was experiencing an increasing amount of personal and professional distress during his time as Area Chair. We have based this conclusion on the content, timing and tone of Dr. Pujari's email communications, testimony of both party and non-party witnesses and Dr. Pujari's demeanor and testimony during the hearing. This increasing and elevated level of distress experienced by Dr. Pujari is relevant and of concern. The Tribunal has interpreted events in the context of the increasingly toxic environment at the DSB. In June 2007, Dr. Pujari convened his first Area meeting as Chair and during that meeting Drs. Taylor and Bart figuratively and effectively declared war on Mr. Bates. The Tribunal believes Dr. Pujari was generally a reluctant participant in the group identified as the G21 and as a first time Area Chair was often influenced by the opinions and actions of senior members of his Area and Faculty including members of the G21. Unfortunately, we believe that Dr. Pujari's perceptions of events were often informed by his underlying distress which, in turn, likely impacted his ability to fulfill his role as Area Chair and his ability to differentiate his responsibilities as an administrator from his role as a G21 member.

The passage of time brings Dr. Pujari's perceptions into doubt. His explanations for decisions in some circumstances appear self-serving and contradictory and in some cases his responses to specific questions and recollection of specific events changed throughout his testimony and cross-examination. For example, we note Dr. Pujari's Affidavit at paragraph 16 where he addresses the December 17, 2007, meeting wherein faculty were asked to vote on the expansion to Burlington. Dr. Pujari, in his Affidavit, suggested the vote was in favour, "albeit

marginally”. The actual vote was carried 35 in favour, 17 opposed and four abstentions, adopting the motion “that the Faculty of Business supports the opportunity for expansion to the City of Burlington, based on the planning principles and concepts as outlined in the “Degroote School of Business – Business Plan for Expansion” dated January 2007, as endorsed by the External Review Committee.

Dr. Pujari voted against the expansion motion on December 17, 2007, but suggested his vote against was a matter he struggled with because Mr. Bates directly and indirectly intimidated him and because of the pressures put on him by the Provost’s discipline letter. However, the reliable evidence viewed objectively suggests that reasonable processes were utilized to make participants comfortable on December 17, 2007. Prior to the vote, Dean Bates explained the vote would be conducted by a written (secret) ballot. That amendment to normal voting processes was duly moved, seconded and approved prior to the Burlington motion being submitted to a secret ballot vote. However, Dr. Pujari somehow feels he was jeopardizing his career at McMaster by voting against the expansion on December 17, 2007 even though it was by secret ballot vote.

In addition, the Tribunal has considered the evidence and the minutes of the December 17, 2007, meeting found at DSB-0035. Objectively viewed, a respectful but firm debate took place on the merits. Dr. Pujari himself does not seem to have directly participated in the discussion. Arguments for and against the Burlington expansion opportunity were exchanged. Mr. Bates proposed that the members extend the meeting by 30 minutes to facilitate further discussion when the allotted time for discussion was coming to a close. That motion was approved and further discussion took place, including a proposed amendment to the original motion moved by Dr. Steiner; Dr. Steiner’s motion was defeated. As stated, the original motion was voted upon by secret ballot and carried.

The evidence established the expansion of the DSB to the Burlington campus was intended to facilitate the growth of the Ph.D. and MBA programs; increase the DSB’s faculty complement by 10 or 11 (excluding replacing retirees); and to expand the DSB’s presence in the Burlington area. The Tribunal accepts that these objectives were legitimate goals by administration which unfortunately divided the faculty at the DSB and were met with suspicion. Certain tenured faculty of the DSB opposed the Burlington expansion. Dr. Pujari was one of five Area Chairs to raise their concerns. On or about October 11, 2007, these five Area Chairs requested a meeting to discuss the proposed Burlington expansion. These five Area Chairs sat on Faculty Council along with one additional Area Chair and three Program Directors. Mr. Bates, in the Tribunal’s view could, as he elected to do, decline to meet with the five Area Chairs as this was a matter being dealt with by Faculty Council and it was proper to insist on the presence of all participants with respect to this issue. The Tribunal also notes that Faculty Council had already met in September 2007. This issue was in active discussion and the Area Chairs attempted to introduce another process.

The Tribunal finds that lobbying was going on by both sides seeking support for or against the Burlington move. Dr. Pujari described Mr. Bates’ statement promising 11 new faculty as unsettling to him. Dr. Pujari’s perception cannot be reconciled with the evidence, including documentary evidence submitted to the Tribunal. Dr. Pujari was unable to believe

statements proven in evidence as *bona fide*. This may be a result of the stress he was experiencing and perhaps of feeling overwhelmed by the responsibilities attendant to being Area Chair. Dr. Pujari's perception that the 11 new faculty promised seemed to be a conditional one requiring Dr. Pujari's vote and support for the Burlington initiative has not been established by the evidence. The expansion to Burlington was a strategy to support the growth in faculty. It was therefore conditional but not because it was a threat. There is no objective evidence that Dr. Pujari's vote was subject to intimidation or harassment, as will be discussed.

The Tribunal further notes that Dr. Pujari's impression was that Mr. Bates was making promises to him, attempting to justify the Burlington expansion. Again, the Tribunal finds that these promises with respect to faculty were a publicly known justification for the move and we would reasonably expect the Dean to attempt to gather support for such an important decision in any Faculty. The Tribunal finds no evidence that Mr. Bates attempted "to strong arm" or "bribe" Dr. Pujari or inappropriately have him adopt his view. That Mr. Bates had a discussion with Dr. Pujari after the latter made his concerns known at Faculty Council, in the Tribunal's view, is nothing other than an attempt by the Dean to address an important issue with an Area Chair. Dr. Pujari needed to address operational and administrative issues, including those where there may have been disagreement to fulfill his responsibilities as Area Chair. The increasing divisiveness within the DSB likely did not help. In the Tribunal's view, the discipline of the five Area Chairs, in hindsight, likely led to Dr. Pujari believing that his suspicions with respect to Mr. Bates' motivations were correct. However, on the objective evidence, the Tribunal finds that Dr. Pujari's suspicions or allegations are without merit. Rather, in the Tribunal's view, these suspicions impaired Dr. Pujari's judgment. Dr. Pujari's ability to be objective, and to make sound and unbiased managerial decisions as an Area Chair, is further addressed in the 003 Complaint.

In this context, the Tribunal finds nothing harassing about Mr. Bates' email dated October 22, 2007, (DSB-0684) in which he declined a meeting with the five Area Chairs prior to the full Faculty meeting on October 25, 2007, where issues would be once again addressed. In addition to the October 22, 2007, email, the Tribunal finds that Dr. Pujari was advised in person by Mr. Bates on October 23, 2007, that the matter could be discussed further on October 25, 2007 at the Faculty Council meeting. While the discussion was unscheduled, the Tribunal does not accept that there was anything harassing about the discussion on October 23, 2007.

The October 23, 2007 email and accompanying relevant documents (DSB-0685) were sent to faculty members by the five Area Chairs, including Dr. Pujari, outlining their perceived issues with the Burlington proposal. The Tribunal accepts Mr. Bates' evidence that the letter was meant to undermine his authority and credibility, and the process of discussing this matter at Faculty Council was unilaterally changed by sending the letter to all faculty members. The Tribunal accepts that the letter clearly exhibited that five Area Chairs did not support the Burlington expansion and that these individuals had leadership roles at the DSB. Mr. Bates believes that the letter was insubordinate, given the partisan nature of the communication.

Mr. Bates advised the Provost of the five Area Chairs' request explaining that he intended to deal with the matter at the November 1, 2007, Faculty Council meeting (see DSB-0808). Prior to the November 1, 2007, Faculty Council meeting, the Provost met with the five

Area Chairs to address their behaviour, which she found inconsistent with their responsibilities as Area Chairs. The Provost's rationale was outlined in the letter provided to each of the Area Chairs on October 31, 2007 (copies of relevant documents can be found at DSB-0687).

In response, the five Area Chairs filed a grievance requesting that the letters be removed from their files. The *Faculty General Grievance Procedure* was invoked but the matter never proceeded to a hearing after the Provost wrote to the five Area Chairs on January 3, 2008 advising them that she was no longer convinced that she could attribute problems solely to the five Area Chairs based upon what she observed at the Faculty-wide meeting of the DSB on December 17, 2007 (relevant documents can be found at DSB-0048 and DSB-0027).

In the context of this tense environment at the DSB and in the midst of the grievances filed by the five Area Chairs, including Dr. Pujari, the Tribunal believes that Dr. Pujari's ability to engage in objective conversations was affected. The Tribunal accepts that on December 18, 2007, after Dr. Kleinschmidt had been sent to meet with Dr. Pujari, Mr. Bates went to Dr. Pujari's office and spoke directly to him. The Tribunal believes that in doing so, Mr. Bates made a sincere gesture of reconciliation to Dr. Pujari and that when Mr. Bates told him "when the dust settles everything will be fine" it was an attempt to salvage a relationship which had, prior to the fall of 2007, been amicable and productive. The Tribunal will deal with Dr. Kleinschmidt's role shortly but believes that Dr. Pujari's subjective impressions that Mr. Bates "was watching my office" and attributing only the worst of intentions to otherwise reasonable discussions resulted in him having an unfounded view of whether he was being harassed by Mr. Bates.

The Tribunal accepts that Dr. Pujari felt extreme pressure and distress during the latter half of 2007 and thereafter. The "us-versus-them" mentality permeating the DSB likely did not fit comfortably with Dr. Pujari's values. The Tribunal believes Dr. Pujari found himself in a position where he had made difficult and troubling choices. Ultimately, he chose sides. With the benefit of all the evidence, the Tribunal finds Dr. Pujari as Area Chair was in a very uncomfortable position because he had to balance his conflicting responsibilities as Area Chair with the G21 objectives, which we address in the 003 Complaint. These choices led him to view with suspicion his interactions with Mr. Bates. As such, the Tribunal finds Dr. Pujari attributes unfounded motivations to decisions by or discussions he had with Mr. Bates.

The Tribunal believes the deterioration in the relationship between Dr. Pujari and Mr. Bates was a consequence of what the Tribunal has identified as a poisoned work/academic environment but was not due to any individual harassment by Mr. Bates. Viewed objectively, the Tribunal does not find harassment is established on the evidence, recognizing the context and DSB environment which exacerbated Dr. Pujari's suspicions and likely contributed to how he felt.

**ii. Mr. Bates used Dr. Kleinschmidt to harass Dr. Pujari****Summary of Evidence and Submissions**

Dr. Pujari alleged that Mr. Bates used Dr. Kleinschmidt as a conduit to harass and bully Dr. Pujari, allegations which are detailed in his Affidavit commencing at paragraph 22 to 52.

Briefly, Dr. Pujari alleged that, on December 7, 2007, Dr. Kleinschmidt visited Dr. Pujari and told him “he had happened to meet someone in ‘top management’ who had told him that my career would stall and suffer and that there would be a black mark against my name at McMaster University” because “the top administrator had said to him that the administration had taken a very negative view of my having signed the letter to the Dean (the October 11<sup>th</sup> letter).” Dr. Kleinschmidt refused to identify the “top administrator” for Dr. Pujari. Dr. Pujari told Dr. Kleinschmidt that he would not write a letter to retract his earlier request for a meeting with the Dean. Dr. Kleinschmidt then asked Dr. Pujari to maintain the conversation in confidence.

Dr. Pujari stated that on December 10, 2007, he was again visited by Dr. Kleinschmidt in his office. Dr. Kleinschmidt closed his door and said he had again spoken to the “top administrator” and had told the administrator that Dr. Pujari would not write a letter distancing himself from the other Area Chairs. Dr. Kleinschmidt then said the “top administrator” had said that Dr. Pujari could stand up at the Faculty meeting regarding the Burlington expansion vote and say that he supported the expansion, even though he felt the process was not satisfactory. On December 17, Dr. Kleinschmidt replied to an email from Dr. Pujari.

Dr. Pujari submitted that Dr. Kleinschmidt would follow up with Mr. Bates after these meetings, and that Mr. Bates told Dr. Kleinschmidt not to tell Dr. Pujari who was producing the messages and sending Dr. Kleinschmidt. Dr. Pujari alleged the treatment he suffered in December 2007 and January 2008 was an egregious form of bullying, harassment and intimidation.

002 Respondents’ counsel submitted there is no evidence Mr. Bates asked or directed Dr. Kleinschmidt to intimidate or harass Dr. Pujari. Rather, Dr. Head’s evidence confirms that Mr. Bates discussed concerns with her that he felt Dr. Pujari was being negatively influenced by faculty who we now know are G21 members. Prior to that, Mr. Bates and Dr. Pujari had a good working relationship. Mr. Bates wanted that good relationship to continue. Mr. Bates simply asked a respected senior faculty member, Dr. Kleinschmidt to see if he could act as a facilitator to repair the relationship as a gesture of goodwill. This evidence is corroborated and consistent with what the Tribunal heard from Mr. Bates, Dr. Head and Dr. Kleinschmidt.

002 Respondents’ counsel indicated that Dr. Kleinschmidt was a credible witness who testified Mr. Bates never told him or suggested to him to do anything which could be interpreted as intimidating Dr. Pujari. 002 Respondents’ counsel submitted that Dr. Kleinschmidt should be believed that he did not do anything to harass or intimidate Dr. Pujari. In any event, Dr. Kleinschmidt’s discussions cannot be Mr. Bates’ individual responsibility based on the evidence. Further, as confirmed in Dr. Pujari’s own Affidavit at paragraph 48, there was a meeting on January 23, 2008, with Dr. Kleinschmidt and Mr. Bates. At that meeting, Mr. Bates and

Dr. Pujari shook hands. After Mr. Bates left, Dr. Kleinschmidt is alleged to have asked Dr. Pujari whether he was going to get a lawyer involved in response to which Dr. Pujari said he was shocked. There appeared to Mr. Bates to have been a resolution of the matter by the shaking of hands. Dr. Kleinschmidt also thought the matter was resolved. 002 Respondents' counsel submitted that Dr. Pujari knew in early 2008 that if the matter had not been resolved, he could file a complaint, and he did not. There continues to be a disagreement as Dr. Pujari in his complaint requires Mr. Bates to concede that he has unfettered academic freedom as an Area Chair, notwithstanding the terms for Area Chairs.

### **Tribunal's Findings**

The Tribunal notes in Dr. Pujari's own Affidavit, the issue at hand was identified as inappropriate conduct by Dr. Kleinschmidt not inappropriate conduct by Mr. Bates. The evidence confirms Mr. Bates spoke to Dr. Kleinschmidt and encouraged him to speak to Dr. Pujari about issues within the DSB. This request, in and of itself, does not constitute individual harassment by Mr. Bates. The private conversations between Dr. Kleinschmidt and Dr. Pujari are at issue. The Tribunal accepts that Dr. Pujari, not knowing the full facts, could have subjectively interpreted Dr. Kleinschmidt's interventions on behalf of "a top administrator" as harassing. However, the Tribunal is not prepared to find this perception is objective proof of harassment. The Tribunal finds Dr. Kleinschmidt is a credible witness who corroborated Mr. Bates' evidence. Dr. Kleinschmidt served as a messenger and attempted to act as a friend and colleague. Further, the Tribunal accepts Dr. Kleinschmidt's evidence as reliable and does not accept that he said anything to Dr. Pujari privately or otherwise as alleged which would constitute harassment or be considered as intimidation.

Supplementary Procedural Order #3 resulted in Dr. Kleinschmidt being removed as an individual Respondent with respect to Dr. Pujari's claims. In the Supplementary Order, the Complaint against Dr. Kleinschmidt was dismissed for want of disclosing a *prima facie* case of harassment under the Policy. It was determined that there is no *prima facie* case of harassment against Dr. Kleinschmidt in his personal capacity. Having considered the evidence, the Tribunal cannot in the circumstances find any harassment by Mr. Bates within the ambit of any request made of Dr. Kleinschmidt by Mr. Bates. The Tribunal accepts Dr. Kleinschmidt's evidence with respect to his interactions with Dr. Pujari and the precise conversations which took place and prefers Dr. Kleinschmidt's evidence to Dr. Pujari's where there was conflict. As such, Dr. Pujari has failed to establish on a balance of probabilities that Mr. Bates harassed him on any of the grounds identified in his complaint.

### **iii. The University's failure to properly investigate Dr. Pujari's complaint of harassment and intimidation by Dr. Kleinschmidt**

#### **Summary of Evidence and Submissions**

The particulars of Dr. Pujari's concerns were identified in paragraphs 35 to 46 of his Affidavit as well as in the testimony provided to the Tribunal. Dr. Pujari, following the advice of

Dr. David Hitchcock (MUFA), brought his concerns about Dr. Kleinschmidt to the Provost. Following Dr. Hitchcock's advice, Dr. Pujari had an emergency meeting with the Provost on December 19, 2007 (one day after the five Area Chairs had seen the Provost about their grievance). On December 19, 2007, Dr. Pujari advised the Provost of the threats and intimidation by Dr. Kleinschmidt. During this first meeting, Dr. Pujari did not share Dr. Kleinschmidt's name with the Provost. Dr. Pujari suggested the Provost's initial opinion was the matter should be pursued through the faculty grievance route but that later she suggested she had misspoken and directed Dr. Pujari to the HRES Office. Email communications are found at DSB-0697 which include Dr. Hitchcock's email. HRES was contacted by Dr. Hitchcock on Dr. Pujari's behalf but declined to take on the matter.

Dr. Pujari alleged that the University failed to investigate Dr. Pujari's claims of harassment and intimidation. When the University did investigate the claims, Dr. Pujari stated that the investigation was flawed. As well, the University's inaction was claimed to be a failure to ensure a workplace free of harassment. Counsel for Dr. Pujari identified this as the "most glaring example of the University's failure" and its inability to provide a healthy work environment. The Tribunal was referred to paragraph 17 of the Supreme Court of Canada's decision in *Robichaud v. Canada* which states:

*"Hence, I would conclude that the statute contemplates the imposition of liability on employers for all acts of their employees "in the course of employment", interpreted in the purposive fashion outlined earlier as being in some way related or associated with the employment. It is unnecessary to attach any label to this type of liability; it is purely statutory. However, it serves a purpose somewhat similar to that of vicarious liability in tort, by placing responsibility for an organization on those who control it and are in a position to take effective remedial action to remove undesirable conditions."*

In addition, the Tribunal was asked to consider paragraphs 60 and 62 from *Stamos v. Annuity 18 CCEL (3d) 117* where the Ontario Superior Court of Justice set out:

*"An employer owes a duty to its employees to treat them fairly, with civility, decency, respect and dignity. An employer who subjects employees to treatment that renders competent performance of their work impossible or continued employee employment intolerable exposes itself to an action for constructive dismissal. Where the employers' treatment of the employee is of sufficient severity and effect, it will be characterized as an unjustified repudiation of the employment contract. Whether such treatment is viewed as a breach of a specified fundamental implied term of the relationship (see, for example Lloyd v. Imperial Parking Ltd., [1996] A.J. No. 1087 (Alta. Q.B.), and Sheppard v. Sobeys Inc., [1997] N.J. No. 78 (Nfld. C.A.)), or as a repudiation of the entire employment relationship (see Shah v. Xerox Canada Ltd., [2000] O.J. No. 849 (Ont. C.A.)), the result is the same. The employee is entitled to treat the employment contract as at an end, and to recover at least damages in lieu of reasonable notice.*

...

*Not only is an employer obliged not to treat an employee in a manner that renders competent work performance impossible or continued employment intolerable. An employer has a broader responsibility to ensure that the work environment does not otherwise become so hostile, embarrassing or forbidding as to have the same effect. As Chadwich J. put it in Robinson v. Royal Canadian Mint, [1992] O.J. No. 2270 (Ont. Gen. Div.), aff'd [1997] O.J. No. 1996 (Ont. C.A.), an employer owes a duty "to see that the work atmosphere is conducive to the well being of its employees." An employer's failure to prevent the harassment of an employee by co-employees is an obvious breach of this duty, and has been held to be capable of amounting to constructive dismissal (see Sheppard v. Sobeys Inc., at para. 25.)"*

Dr. Pujari stated that the Provost's investigation was flawed for the following reasons:

- a. The Provost prejudged Dr. Pujari's version of the facts.
- b. The Provost was unsure under which policy Dr. Pujari's claims should be investigated.
- c. The Provost initially proposed that Dr. Pujari's harassment claims should be a faculty grievance. She later directed Dr. Pujari to HRES.
- d. The Provost was never the proper individual to investigate Dr. Pujari's claims, given that HRES administers the Policy and the Provost was involved in a grievance with Dr. Pujari.
- e. The Provost "found humor" in the fact that Dr. Pujari trusted her to investigate his claims of harassment.
- f. The Provost's communications (in meetings and in emails) were inappropriate according to Dr. Pujari and led to the failure to properly investigate the claims.

002 Respondents' counsel submitted there was no failure to properly investigate Dr. Pujari's complaint of harassment and intimidation by Dr. Kleinschmidt. The issue was considered by the Provost when brought to her attention by Dr. Pujari and Dr. Hitchcock. 002 Respondents' counsel suggested the Provost's letter reflects exactly what the evidence before the Tribunal established. Mr. Bates is not identified in the letter because of the Provost's concern that it would be disclosed throughout the DSB, making the environment worse. 002 Respondents' counsel submitted the Provost's fears were legitimate as we have seen from the evidence. Further, Dr. Pujari failed to file or pursue a timely complaint either individually against the Provost (which he never did) or against Mr. Bates concerning the alleged harassment.

### **Tribunal's Findings**

The Tribunal has considered the evidence and determines no harassment has been established against Dr. Pujari by the Provost and by extension, the University. The issue as presented to the Provost was addressed, albeit in hindsight, arguably in a perfunctory fashion. However, Dr. Pujari counselled by Dr. Hitchcock, decided to seek assistance from the Provost. At no time, did Dr. Pujari or Dr. Hitchcock identify that the Provost should not consider Dr. Pujari's claims or address his concerns or raise the grievance as an issue. The Tribunal notes that the letter to the five Area Chairs was sent on January 3, 2008 (DSB-0027). The Provost subsequently considered Dr. Pujari's concerns with respect to the conduct by Dr. Kleinschmidt.

The Provost met with Dr. Pujari when the University re-opened in January 2008 asking that he send details of his concerns. On January 11, 2008, accompanied by Dr. Hitchcock, Dr. Pujari met with the Provost during which time he identified Dr. Kleinschmidt by name after the Provost said she would not otherwise be able to assist him. Dr. McNutt, Special Advisor to the Provost, was also present at the meeting and suggested there must have been a misunderstanding after hearing Dr. Pujari's description of the incidents of intimidation and threats that he faced from Dr. Kleinschmidt. On January 15, 2008, the Provost was provided with details of the intimidation and threats in a document prepared by Dr. Pujari for the Provost (DSB-0700).

In his Affidavit at paragraph 43, Dr. Pujari suggests he was very surprised the Provost had a meeting with him during which he suggested she had determined the matter was a big misunderstanding. Dr. Pujari suggested that he was surprised the Provost had done the review herself, given what he described as a strained relationship as a result of the ongoing grievance. Dr. Pujari at paragraph 44 of his Affidavit claims the Provost suggested that perhaps he could go on a six month leave if he was having health issues or was "clinically depressed". Dr. Pujari's suggested he responded in disbelief, stating that the only stress caused was the uncertainty of the Dr. Kleinschmidt issue and the discipline letter in his file from her. The Tribunal finds that given Dr. Pujari's own description of his feelings of vulnerability and stress, these signs were likely apparent to others, including Mr. Bates, who expressed concern. The Provost's suggested leave of absence is properly interpreted as motivated by compassion rather than the perceived threat and intimidation which Dr. Pujari may have subjectively felt.

On January 31, 2008, the Provost delivered to Dr. Pujari a written summary of her review (DSB-0737). While Dr. Pujari was not satisfied with the Provost's determinations or discussions with him, the Tribunal is not prepared to find that he was harassed. Rather, Dr. Pujari had options available to him at that time to address the issues and he chose not to pursue those in a timely fashion despite having the assistance of a MUFA representative. We accept that Dr. Pujari found himself in a very stressful environment and felt his concerns were not being accepted. However, in the Tribunal's view, the Provost did not directly harass Dr. Pujari. In addition, the Provost has not been named as an individual respondent in this Complaint nor was a timely complaint filed against her.

The Tribunal reiterates its concerns that some of Dr. Pujari's perceptions may have been tainted by the passage of time. Dr. Pujari's interpretation of information produced during the course of the litigation in some circumstances perhaps explains his suspicions. The Tribunal

notes that Dr. Pujari only became a Complainant after he met with an investigator from HRES. The Tribunal feels the structure of this process and the grouping of complainants, impaired Dr. Pujari's willingness to view events objectively. The Tribunal finds the pressures and distress Dr. Pujari experienced were not established by the evidence to be exclusively attributable to the alleged conduct by Mr. Bates and the Provost. In any event, the conduct confirmed by the evidence does not constitute harassment breaching the Policy.

The Tribunal, however, finds certain acts by the Provost contributed to the poisoned academic/work environment including the University's failure to effectively address Dr. Pujari's concerns. Conduct of concern include the Provost prejudging Dr. Pujari's comments, not taking clear and deliberate actions in the inquiry stage of investigation and her lack of intimate knowledge of the Policy. Further, finding humour that Dr. Pujari trusted her (albeit contextually the Tribunal does not find the comment to support any inference of malice or improper intent) is unfortunate, given that the Tribunal feels the stress felt by Dr. Pujari was real and apparent as observed even by the Provost. As a result, the Tribunal feels that a breach of the Policy was established against the University which is liable for conduct which we feel contributed to the poisoned work/academic environment and in this instance rose to a level that breached the Policy.

- iv. **The discipline handed down by the University to the Area Chairs, as a result of their opposition to the Burlington expansion, was improper**

#### **Summary of Evidence and Submissions**

002 Complainants' counsel's position was that the discipline of the Area Chairs (referenced in the Complaint at paragraphs 18, 19 and 45 (DSB-0001)) was known to be unwelcome and was unjustified on the merits. It was submitted that the discipline was intended to have a chilling effect on any negative discussion concerning the Burlington expansion and to intimidate Dr. Pujari. 002 Complainants' counsel referred to the testimony received from other Area Chairs involved in the discipline issue as well as from the Provost and Mr. Bates.

002 Complainants' counsel submitted that by October, the five Area Chairs were obviously concerned, if not with the plan for the Burlington expansion itself, then with the process that was used. 002 Counsel characterized the process as a means to ensure the approval of the Burlington expansion. 002 Complainants' counsel suggested Mr. Bates' testimony was unbelievable in that he did not recall any discussions with the Provost about the discipline of Area Chairs, suggesting it was unknown to him at the time. The purpose of the Area Chairs' October 11, 2007, letter was primarily to request a meeting and to gain access to information required to provide the faculty with a clear and complete picture in order to make an informed decision. It was submitted that the underlying motive emerged that the Provost, acting as a representative of the University, was harassing these individuals, which is confirmed if one scrutinizes the Provost's emails. The Provost's email to the President at DSB-061 reveals the whole plan. 002 Complainants' counsel asked that the Tribunal accept the discipline was all part of Mr. Bates' and the Provost's plan to end any negative feedback or opposition to the Burlington expansion.

002 Respondents' counsel submitted that the evidence established that the Provost viewed the Area Chairs' conduct as an act of defiance which was creating an unhealthy work environment based upon the information she received from the faculty. The action in response to receiving this information (i.e. issuing letters of discipline) was exclusively the Provost's decision. The suggestion of a conspiracy or a course of conduct involving Mr. Bates is mere speculation and not supported by the admissible or relevant evidence.

002 Respondents' counsel further addressed the merits of the discipline. While the University has its own special processes and governance structure, it was submitted that there has to be a semblance of a management structure for which the Area Chairs play an integral role. Referencing the evidence of Dr. Hassanein and Dr. Head, 002 Respondents' counsel submitted that there was a right to have disagreement within the management structure. However, management disagreements should be private for the good of the institution. As an Area Chair, if the Dean disagrees with your point of view, you do not lead a public revolt. 002 Respondents' counsel referenced DSB-2528 which is an article by Dr. Hitchcock where he makes an analogy to cabinet solidarity. Dr. Pujari asserts that he has unfettered academic freedom that extends to unfettered freedom of expression and action as a manager. This was not the view even of MUFA; as Dr. Dooley testified, it was not a black and white issue. Rather, the discipline on the evidence was rendered in good faith. The merits of the issuance of the letters of discipline were properly addressed through University processes established to deal with such disputes in an efficient, orderly fashion under the grievance procedure.

### **Tribunal's Findings**

In the Tribunal's view, the Provost had a right to discipline the Area Chairs and provided reasonable explanations why she did so. The Area Chairs had the right to challenge the Provost's decision under the grievance procedure. Such discipline on its merits could have been and likely should have been addressed in a hearing under the grievance procedure. There is a basis for the Provost's actions because the Area Chairs were arguably insubordinate and their letter contributed to an unhealthy environment for faculty members. The Area Chairs publicly aired a disagreement in the top ranks of the DSB. The Provost's interpretation is arguably supported by the terms of reference for department chairs (DSB-0086). The Tribunal need not address the merits or whether the grievance would have been successful. In the Tribunal's view, the discipline of the Area Chairs was not an independent act of harassment but rather an exercise of management's rights. The jurisprudence suggests that management has a right to be wrong in its decisions and being wrong does not necessarily constitute harassment. The Tribunal is faced with the grievor's own conduct and failure to pursue the grievance to a hearing and is not prepared to further investigate or determine the merits of the discipline itself and need only be satisfied that there was no breach of policy as alleged.

In addition, in her letter dated January 3, 2008, the Provost confirmed she identified broader problems at the DSB. Issues were not solely attributable to the five Area Chairs. The Provost offered to remove the letter of reprimand from the personnel files of the five Area Chairs and asked them to work with Mr. Bates. The Provost made it clear to the Area Chairs that they had every right to disagree with Mr. Bates but such disagreement should be private. Further,

Area Chairs were advised that decisions utilizing appropriate processes must be accepted even if they disagreed. These grievances were not pursued to a hearing under the *Faculty General Grievance Procedure* (DSB-0086). If matters do not proceed to the hearing stage, grievances are deemed to be resolved to the grievor's satisfaction under the grievance procedure.

The Tribunal accepts that Dr. Pujari's interpretation of the events should be considered in light of the coincident timing of his receipt of a letter of discipline from the Provost. The Tribunal does agree with Dr. Pujari that the discipline handed down by the University to the Area Chairs would be known to be unwelcome and may have had a chilling effect on any negative banter on the Burlington expansion. Furthermore, we accept Dr. Pujari's position that less drastic steps may have been taken prior to the Provost's issuance and eventual removal of the letters of discipline. There is, however, no evidence this discipline was conducted or engineered in any way by Mr. Bates, and as such, is not an act of individual harassment on his part. Further, the Tribunal finds the actions of the Area Chairs leading up to the discipline, and the actions of the Provost in response, are indicative of a poisoned workplace. As such, these findings can be considered in conjunction with our finding of a poisoned academic/work environment.

v. **Mr. Bates interfered with the resource and CLA allocation of the SML/HSM area as reprisal for Dr. Pujari's opposition to Mr. Bates**

**Summary of Evidence and Submissions**

Dr. Pujari submitted that Mr. Bates interfered with his duties as Area Chair to bring more teaching staff to his Area. Dr. Pujari claimed Mr. Bates made several promises and assurances that the SML/HSM Area would receive tenure-track faculty resources, on the condition that Dr. Pujari would support the Burlington expansion. Dr. Pujari's evidence with respect to alleged unwarranted interference with the Area resources is primarily set out and addressed in paragraphs 53 and 60 of his Affidavit where he specifically addresses tenure-track faculty resources and in paragraph 61 to 92 of his Affidavit where he addresses teaching-track (CLA) resources. He then goes on to describe the subsequent backlash by CLAs and the impact on his workload as a result of alleged violations of the Policy by Mr. Bates.

In May 2007, Mr. Bates circulated the selection criteria and performance expectations of teaching-track positions in the DSB at a Faculty Council meeting. The teaching-track position process was further affirmed in October 2007 by Mr. Bates. Dr. Pujari wrote an email to Mr. Bates and the Associate Dean, Dr. Milena Head, and asked for clarification on the matter. Mr. Bates replied and indicated that a cap on teaching professor positions was "subject to approval. This is because there may be budget implications... The first step is to agree on which of our current CLA's should be considered for conversion..." (DSB-0683) Further emails were exchanged between Dr. Pujari and Mr. Bates, where Dr. Pujari states that Mr. Bates appeared to suggest that there was some opportunity for Area Chairs to recommend a particular CLA for hiring or conversion. Dr. Pujari submitted a request for eleven (11) tenure-track positions and two (2) teaching-track positions for the SML/HSM Area which was ultimately not granted by Mr. Bates. According to Dr. Pujari, Mr. Bates rejected this request because of the exclusion of

the Area Chairs from Burlington campus planning discussion and Dr. Pujari's dissent against the Burlington project.

002 Complainants' counsel, in closing submissions, focused the Tribunal's attention on the CLA conversion process and the numerous discussions and emails that Dr. Pujari had with the Dean's office concerning the conversion of CLAs including those with Dr. Head. 002 Complainants' counsel noted that both Dr. Head and Mr. Bates inappropriately blamed Dr. Pujari by suggesting he was not applying Policy or seemed incapable of understanding process. 002 Complainants' counsel described the intense pressure Dr. Pujari felt, which is corroborated by the many documents before the Tribunal on the issue, particularly those from the Dean's office in 2007 and 2008 when Dr. Pujari was asked to pick CLAs for conversion despite his policy concerns. In addition to the significant workload that this introduced to Dr. Pujari, the fallout was his becoming a Respondent in the 003 Complaint. Similarly, the issue of resource allocation to his Area is raised by Dr. Pujari as an example of Mr. Bates' reprisal against him. Submissions were also heard with respect to the nature and availability of resources, all of which are found in the aforementioned Affidavit of Dr. Pujari.

In response, 002 Respondents' counsel stated that the evidentiary record is clear there was no withholding of resources. Dr. Deal's evidence confirmed the Area had resource challenges going back to the late 1990's in terms of tenure-track faculty. New faculty in fact got approved only because the Burlington expansion was passed. Ten new faculty hires were added. Dr. Pujari's Area was the largest benefactor at the DSB. The Complainants' response that the Area is still under staffed is irrelevant. Dr. Hassanein explained why he felt Dr. Pujari's analysis was flawed including that he had to consider the number of Ph.D. students, the graduate students, the number of teaching-track positions and CLAs in each Area. Ultimately, the evidence is clear that the vast majority of tenure-track appointments were given to Dr. Pujari's area.

002 Respondents' counsel submitted that there is no evidence Mr. Bates engaged in any inappropriate conduct. Mr. Bates was new to the University and did not have an academic background. Mr. Bates in good faith attempted to understand Dr. Pujari's process concerns. Dr. Head testified that in May 2007, the management group was new to their roles and were "all trying to work through the process". Concurrent with the Burlington expansion are discussions about teaching-track conversions. However, by February 2008, Dr. Pujari wanted nothing to do with converting CLAs. Dr. Pujari admitted in cross-examination that in February 2008, he was negotiating to gain tenure-track positions at the expense of his CLAs. In 003, Dr. Pujari's counsel suggested there is nothing wrong with this strategy. In 002, Dr. Pujari provided other explanations that cannot be reconciled. 002 Respondents' counsel submitted the two Affidavits submitted by Dr. Pujari are at odds concerning the CLA conversion issue.

002 Respondents' counsel submitted further that there was no linkage between CLAs and tenure-track based upon the evidentiary record. MUFA's involvement corroborates Mr. Bates' explanation. Any delay was ultimately Dr. Pujari's responsibility because he stubbornly resisted or treated with suspicion any suggestion about how these resource issues could be addressed. Eventually, what happened with respect to tenure-track faculty members and CLA conversions was exactly what Mr. Bates suggested was going to happen early on. Yet, even as of February

2008, Dr. Pujari still had absolutely no interest in converting CLAs (see DSB-0705). 002 Respondents' counsel submitted that the CLAs were upset with Dr. Pujari and complained for good reason, as we have seen from the evidence. 002 Respondents' counsel submitted that Dr. Pujari is "the author of his own demise". Respondents' counsel submitted that during his cross-examination and Dr. Pujari admitted that "I was negotiating for tenure-track faculty at the expense of my CLAs". 002 Respondents' counsel's submission was that this was precisely the problem. This was not a process issue or disagreement as characterized by Dr. Pujari.

### **Tribunal's Findings**

The Tribunal finds that Mr. Bates did not withhold or redirect resources away from the SML/HSM Area in an act of individual harassment or reprisal against Dr. Pujari. The Tribunal was persuaded by evidence provided by Mr. Bates and other witnesses that indicated the resource allocation decisions followed full participation of representation from all Areas and was a justifiable management decision. The Tribunal accepts Mr. Bates' evidence as credible and reliable, including his testimony and Affidavit evidence including his evidence found at paragraphs 40 to 93 of his Affidavit.

- vi. **Mr. Bates' arbitrary application of the CP/M process against Dr. Pujari as a reprisal for Dr. Pujari's opposition to Mr. Bates**

### **Summary of Evidence and Submissions**

Dr. Pujari addressed his concerns in paragraphs 105 to 112 of his Affidavit and in his evidence. Dr. Pujari suggested as Area Chair he would provide the Area Committee's recommendations to Mr. Bates for all of his Area faculty members. Dr. Pujari suggested these recommendations were rarely questioned or revised by previous Deans. Dr. Pujari submitted that Mr. Bates altered the CP/M for faculty members who were supportive of the Dean, and punished those who were opposed.

Specifically, Dr. Pujari pointed to Dr. Taylor, Dr. Bart, and himself as faculty members who had signed the Performance Report and were subsequently punished, while Dr. Bontis and Dr. Longo were allegedly awarded higher CP/M scores. Dr. Pujari submitted Mr. Bates marked down Dr. Pujari's CP/M, while raising the CP/M of Dr. Flynn, Dr. Bontis and Dr. Longo as a result of their perceived support of Mr. Bates. Dr. Pujari also noted that no 003 Complainant had their CP/M reduced.

Regarding a meeting on March 24, 2010, with Mr. Bates and Dr. Head to discuss the 2009 CP/M, Dr. Pujari stated that the conversations were argumentative and at times, did not focus on other faculty members' CP/M scores, but solely his and Dr. Bart's. Dr. Pujari's service ranking was lowered to A- and Dr. Bart's to B+. This was done, according to Dr. Pujari, in reprisal for his opposing Mr. Bates. In 2011, in Mr. Bates' last year as Dean, after it was announced that he was leaving, he gave both Dr. Pujari and Dr. Bart B+ for their 2010 CP/M service score.

**Tribunal's Findings**

The Tribunal finds the evidence does not support Dr. Pujari's allegation that Mr. Bates manipulated or harassed him in the initial assignment, review or final awarding of his CP/M. The Tribunal does not find any objective or reliable evidence for Dr. Pujari's allegations concerning Mr. Bates raising CP/M scores for Dr. Flynn, Dr. Bontis and Dr. Longo because of perceived support for Mr. Bates. The Tribunal finds Dr. Pujari's concern is unsubstantiated speculation. The evidence confirms that Mr. Bates, after receiving Dr. Pujari's further submissions, returned Dr. Bart's and Dr. Pujari's 2009 CP/M scores to the Area's recommended level, as confirmed by Dr. Pujari. Furthermore, the Tribunal accepts that the B+ in 2011 for the 2010 academic year for Dr. Bart and Dr. Pujari was consistent with the revised grade introduced by Mr. Bates confirming they had met expectations.

## IX. THE 003 COMPLAINTS

### A) BRIEF OVERVIEW

#### i. 003 Complainants' Submissions

The Complaints in the 003 Matter were pursued by four tenured and tenure-track faculty, three CLAs, and one staff member of the DSB. The 003 Complainants asserted that six tenured faculty members in the DSB engaged in harassment, intimidation, bullying, and discrimination. The 003 Complainants generally asserted that they were targeted because of a bias against applied academic research and industry experience, and/or their perceived or actual collaboration with or support of Mr. Paul Bates as Dean. Many of the 003 003 Complainants were vulnerable by virtue of their untenured status, status as a staff member, and/or their contractual position with the University. As such, the 003 Complainants identified a power imbalance between the two groups.

A primary focus for some of the 003 Complainants involved allegations about individual 003 Respondents' conduct improperly tainting the processes involved in converting CLAs to teaching-track appointments, and the T&P process. Certain 003 Complainants alleged that processes related to their appointment, renewal, conversion or promotion were tainted by bias, interference, and improper considerations resulting in harassment and discrimination under the Policy. Furthermore, the alleged harassing behaviour included name-calling; the use of war imagery and an "us versus them" attitude against perceived Dean Bates supporters; anger and outbursts in meetings; vexatious questioning in meetings; administrative insubordination and condescension; and bullying and antagonistic behaviour. In addition, it was alleged that University processes were abused and/or used as a medium to engage in harassment, discrimination and intimidation. It was also alleged that individual 003 Respondents made explicit or subtle threats or undertook efforts individually or in concert to undermine the 003 Complainants' careers and job security and excluded them from opportunities within the DSB.

003 Complainants' counsel provided the Tribunal with a list of relevant documents submitted as evidence to support submissions that the 003 Complainants have been treated contrary to the Policy (appended as Appendix K). Furthermore, the Complainants submitted the 003 Complaints without knowledge of the full scope of the individual 003 Respondents' activities which subsequently became known as a result of the documentary productions directed under the hearing process. It was submitted that communications amongst the G21, or between particular members of the G21, were contrary to the Policy and/or provide context for the individual 003 Respondents' harassing behaviours during the CLA conversion and T&P processes.

**ii. Individual 003 Respondents' Submissions**

The individual 003 Respondents argued that the evidence brought forward did not support the allegations. In their defence, the individual 003 Respondents referred to each of their individual histories of good character. It was submitted that the evidence confirmed there were only legitimate or expected disagreements permitted under the Area, Faculty, T&P and other relevant University policies. It was submitted that the allegations of harassment and bullying were simply negative assumptions being read into otherwise innocuous situations.

Counsel for the individual 003 Respondents submitted that appointment, renewal and T&P cases were always addressed on the individual merits of each case. Legitimate concerns were identified about candidates' qualifications and no candidate was treated unfairly or contrary to the Policy, in the submission of the individual 003 Respondents. Furthermore, it was submitted that the individual 003 Respondents' evidence confirmed that legitimate and normal disagreements about the merits of the cases arose and any improper conduct or harassment concerning CLA conversion, reappointment and T&P processes was denied. It was suggested that the Policy cannot be contravened if legitimate concerns were raised. Academic freedom and freedom of association were relied upon as legitimizing principles, thereby providing a full defence against the allegations.

The individual 003 Respondents acknowledged they were part of a group known as the "G21", as referenced above. It was submitted that the individual 003 Respondents' testimony should be accepted, including that the G21 was not an organized group or collective, did not have any effect beyond the common goal to express opposition to the second appointment of Dean Bates and that the G21 did not treat the 003 Complainants contrary to the Policy. Individual 003 Respondents' counsel argued that who individuals associated with and how they expressed themselves with likeminded colleagues at the DSB are protected under principles of academic freedom and freedom of association. The conduct in dispute includes legitimate debate, disagreement and concerns related to the merits of various issues. The individual 003 Respondents disputed that the evidence established any breach of the Policy. On the contrary, the individual 003 Respondents submitted that the evidence established bona fide concerns or questions were raised with the 003 Complainants who allege bias and harassment in their CLA conversion or T&P processes.

The individual 003 Respondents submitted that the Tribunal should not confuse difficult and critical discussion or inquiry with harassment. It was suggested that the 003 Complainants' allegations should be rejected on the basis of their potentially negative implications with respect to the T&P processes. The importance of persistent questioning during these processes to clarify matters and to ascertain facts necessary for committees to make informed decisions was emphasized. The individual 003 Respondents submitted that a harassment and/or discrimination finding would create a chilling effect on faculty serving on committees and be detrimental to the University.

In contrast, it was submitted by counsel for the individual 003 Respondents that Dr. Ray was dealt with contrary to the Policy. Counsel submitted that Dr. Ray's Counter-Complaint established that Dr. Detlor harassed, intimidated and bullied him and that by abusing his powers

as Ph.D. Director Dr. Detlor interfered and created conflict with Dr. Ray's students by disseminating false information and interfering with the graduate student supervisory process in a harassing manner.

The 003 Respondent University's submissions have been summarized in the relevant section of our decision addressing the 002 Complaints commencing at page 306 and need not be repeated. The University's submissions are also further summarized when the Tribunal addresses the poisoned academic/work environment raised in the 002 and 003 Complaints later in this decision. Furthermore, the Respondent University's submissions concerning an alleged direct breach of the Policy will be identified separately when the Tribunal addresses Ms Linda Stockton's Complaint at page 207.

**B) THE ALLEGATIONS**

The formal Complaints in the 003 Matter were filed and particularized (DSB-0002). The primary allegations can be briefly and generally summarized as follows:

**i. Complaint of Ms Carolyn Colwell**

Ms Colwell pursued complaints of harassment against Dr. Ray and Dr. Pujari alleging:

- a) Dr. Ray communicated with her in a harassing way;
- b) Dr. Ray and Dr. Pujari undertook retaliatory conduct against Ms Colwell.

**ii. Complaint of Dr. Brian Detlor**

Dr. Detlor pursued complaints of harassment against Dr. Steiner and Dr. Ray including allegations that:

- a) Dr. Steiner shunned and harassed him;
- b) Dr. Ray communicated with him in a harassing way.

**iii. Counter Complaint of Dr. Sourav Ray against Dr. Brian Detlor**

Dr. Ray submitted a Counter-Complaint on August 12, 2011, with leave, pursuant to Supplementary Procedural Order # 3 dated October 7, 2011. Dr. Ray generally claimed that Dr. Detlor engaged in a consistent pattern of harassment, intimidation, and bullying in several ways, which led to the physical, psychological, and professional suffering of Dr. Ray. Dr. Detlor is alleged to have, *inter alia*, abused his power as the Ph.D. Director, interfered with Dr. Ray's students, created conflict for Dr. Ray, and disseminated false information. The Counter-Complaint essentially outlined the following incidents where harassment occurred:

- a) Announcements of DSB Student Admission;
- b) Course Selection Form Issue in September 2010;
- c) Student Transcript Issue in January 2011;
- d) Ph.D. Operating Committee;
- e) Marketing Ph.D. Applications;
- f) Other general allegations.

**iv. Complaint of Dr. Milena Head**

Dr. Head raised harassment allegations against Dr. Steiner including the following:

- a) Dr. Steiner's conduct in March 2006 relating to an information privacy issue was embarrassing and harassing;
- b) Dr. Steiner retaliated against Dr. Head as a result of her perceived association and collaboration with Mr. Bates, and for not being named as Ph.D. Director;
- c) Dr. Steiner's conduct towards Dr. Head with regards to her T&P promotion consideration was harassing.

**v. Complaint of Ms Linda Stockton**

Ms Stockton pursued complaints of harassment against Dr. Steiner, Dr. Pujari, Dr. Rose, and Dr. Bart, alleging:

- a) Dr. Rose deliberately embarrassed and exposed Ms Stockton on MUFAgab thereby breaching the Policy;
- b) Dr. Steiner raised his voice and berated Ms Stockton thereby breaching the Policy;
- c) Dr. Pujari contributed to the harassment of Ms Stockton.

**vi. Complaints of Ms Linda Stockton, Mr. Peter Vilks and Ms Rita Cossa**

The three CLAs, Ms Stockton, Mr. Vilks, and Ms Cossa, also pursued complaints of harassment against Dr. Pujari, Dr. Ray, Dr. Bart and Dr. Taylor. Generally, the three CLAs alleged that the individual 003 Respondents made explicit and subtle threats to the security of their positions; undertook harassing, bullying, and intimidating conduct against them; undertook efforts to undermine their careers and security within the DSB; and undertook undue scrutiny in the appointment, conversion and Tenure and Promotion Policy processes related to their careers at the DSB. As well, the CLAs stated they were excluded from opportunities within the DSB. These exclusions were designed to advance the personal interests of Dr. Pujari, Dr. Ray and Dr. Taylor at the expense of the career progress of the CLA's.

**vii. Complaint of Dr. Terry Flynn**

Dr. Flynn alleged harassment and reprisal due to his perceived support of Dean Bates, including:

- a) Dr. Taylor's conduct and comments harassed Dr. Flynn;
- b) Dr. Bart's conduct and comments harassed Dr. Flynn;
- c) Dr. Pujari harassed Dr. Flynn;
- d) Dr. Flynn's three-year review for renewal was discriminatory and harassing.

**viii. Complaint of Dr. Chris Longo**

Dr. Longo pursued complaints of harassment resulting from his perceived support of Dean Bates, and his involvement in the Selection Committee for a Dean of Business alleging:

- a) He was blacklisted and harassed by faculty members of the DSB;
- b) He was harassed in his first and second T&P considerations

**ix. General Complaints against McMaster University by all 003 003 Complainants**

The allegations against the University are fully set out in the Complaints. Essentially, the poisoned academic/work environment at the DSB and the University's resultant general responsibility under the Policy were placed at issue by the 003 Complainants.

**C) THE G21 DOCUMENTARY DISCLOSURE ISSUE**

Briefly, the Tribunal heard evidence in the 002 Complaint first. During that process, some witnesses called by the 002 Complainants, including Drs. Weisner, Nainar, Chan and Zeytinoglu, described an informal group, which was eventually identified as the G21. In response to the Chair's specific questions, the Tribunal was initially advised by Drs. Rose, Nainar and Zeytinoglu that the G21 activities ceased by May 2009 when the Board of Governors confirmed Mr. Bates' second appointment. Subsequently, Dr. Chamberlain's email to the G21 was produced on day 11 of the hearing, on April 13, 2012, when Dr. Hassanein testified and disclosed that he had received the email on April 7, 2010, after it was inadvertently sent to him by Dr. Chamberlain (DSB-2523). Late productions confirmed that the G21 group activities continued well after Mr. Bates' appointment for a second term.

The additional relevant productions related to the G21 were disclosed by the individual 003 Respondents after April 13, 2012. As such, not all arguably relevant documentation had been produced despite pre-hearing production orders and the Tribunal's reaffirmation of our production orders, as well as reminders to counsel and all parties of continuing obligations to produce arguably relevant documents in the parties' possession.

In Supplementary Procedural Order #5 (dated December 5, 2011) we listed the following orders related to Oath/Affirmation/Production Directives:

- *Legal counsel will make his/her client(s) aware of their disclosure obligations and that each party will swear an oath or affirmation affirming he/she has produced all arguably relevant documents within their custody, care and control;*
- *The Tribunal reiterates each party's responsibility to produce all arguably relevant documents and confirms this is a continuing obligation despite timelines. Proceedings are in-camera and information disclosed will be utilized for lawful purposes only.*
- *Dr. Pujari's production obligation includes:*
  - *Documents in his custody, care or control relating to either Dr. Terry Flynn and Dr. Christopher Longo concerning the Tenure and Promotion ("T&P"), aspects of their respective complaints against Dr. Pujari;*

In Supplementary Procedural Order #6 (dated December 14, 2011) we further emphasized the importance of documentary disclosure in the following directives:

- *the Respondents in U/SHAD-003 will produce any remaining documents in their possession that have not already been produced on or before December 19, 2011;*
- *the 003 Complainants in U/SHAD-002 will produce all documents requested by the Respondents on or before January 6, 2012;*
- *on or before December 19, 2011, all of the Respondents in U/SHAD-003 will serve and file a document that confirms that counsel have advised their clients of their production obligations as outlined in the Procedural Order #5, and that*

*their clients have confirmed to their counsel that they have produced all arguably relevant documents.*

On April 13, 2012, after being informed of the email sent apparently in error from Dr. Chamberlain to Dr. Hassanein, the Tribunal reaffirmed all arguably relevant emails from January 2009 forward were to be disclosed. On April 26, 2012, and May 8, 2012, the parties were also directed to provide a list identifying which individual party was responsible for the productions provided (appended at Appendices “K”, “L” and “M”).

The Tribunal considered this late disclosure of relevant documents when making our findings and when assessing the reliability of the related testimony. For example, a number of 002 Complaint witnesses testified prior to all relevant G21 productions being known to all parties. Some witness testified again later in the hearing related to the 003 Complaints and were therefore cross-examined on the new G21 productions. The Tribunal assessed both the reliability and credibility of the testimony and considered all of the evidence in the context of the timing of the disclosure.

Counsel made detailed submissions in both the 002 and 003 Complaints with regards to the relevance, existence and purpose of the G21. The late disclosure of G21 emails and related documents during the consolidated hearing became a focus of submissions by the parties. Submissions from counsel can be briefly summarized as follows.

**i. Counsel Submissions**

***In defence of the G21***

On behalf of Drs. Bart, Pujari, Rose, and Taylor as 003 Complainants in the 002 Matter, Ms Milne stated that the G21 was a group of 21 DSB tenured faculty members who signed the Performance Report opposing the appointment of Mr. Bates as Dean of the DSB for a second term, wrote emails to one another, communicated to the press, and shared the common goal of trying to restore the DSB to a collegial environment. Their efforts included recommending that the G21 members make efforts to attend Faculty meetings and vote, explaining how the voting procedure at the University works, and trying to ensure that they play a significant role in the decision making in their school.

On behalf of Drs. Bart, Pujari, Ray, Rose, and Steiner as Respondents in the 003 Matter, Mr. Fletcher and Mr. Hopkins called the G21 a “smoke screen” and likened it to “an attractive distractor for a wrong answer on a multiple choice exam.” Counsel called the G21’s actions and correspondence legitimate and normal dialogue among faculty colleagues on the merits of various issues, including tenure and promotion, mentoring by an Area Chair of candidates for renewal and tenure, hiring tenure-track faculty over the new teaching-track position, the types of questions that are relevant to a T&P case and the manner in which they should be asked, and what the proper tone of a T&P meeting ought to be.

Mr. Fletcher submitted that some G21 members were indifferent to the actions of the G21. As examples of this attitude, Dr. Yuan testified he did not know how he was added to the G21+ list and he did not ask the G21 to stop sending him emails because he believed his colleagues had the right to send him such emails. Dr. Charupat stated he ignored and deleted the G21 emails when he received them and said he normally deletes emails by just looking at the sender's name.

Mr. Fletcher stated that Drs. Zeytinoglu, Chan, and Kwan all testified that the emails sent by the G21 were appropriate. However, Mr. Hopkins asked the Tribunal not to consider emails and actions of non-parties to the proceedings when making findings of fact as to what occurred in the context of their clients' actions. Mr. Fletcher stated that the G21 was not an organized and concerted group, and not all G21 members were active members.

With regards to the impact of the G21 on the T&P process, counsel made various submissions. Mr. Fletcher and Mr. Hopkins directed the Tribunal to Dr. Bart's testimony, in which he stated that the G21 membership had no bearing whatsoever on how he voted in the T&P cases. Mr. Fletcher stated that all of his clients voted on T&P decisions based on the individual merits of the cases, and that opposition to Mr. Bates did not play a part in how they voted. The Tribunal was also directed to Dr. Yuan's evidence, in which he said Dr. Steiner's questions during T&P considerations were appropriate because if the presenter has a close connection to the candidate, they may be biased. Therefore, the witness believed the questioning was legitimate.

Mr. Fletcher further stated the G21 was being used as a smoke screen by the 003 Complainants and the University to attribute less weight to the evidence of the individual 003 Respondents (excluding McMaster University) and their supporting witnesses, simply because they were members of a mass email or signatories to the Performance Report.

Mr. Collins, who represented Dr. Taylor in the 003 Complaint, submitted that none of the emails his client sent were "vexatious or at least intended to be vexatious in their content". Mr. Collins stressed these emails were never intended to be received by the 003 Complainants nor were these emails a course of conduct because they were not repeated. In his submission, there was no evidence of Dr. Taylor harassing anyone directly through email and only two brief conversations with Ms Cossa and Dr. Flynn are in issue.

### **In opposition to the G21**

Mr. Avraam, counsel for McMaster University, submitted that the G21 was a group that engaged in intimidation, ridiculed and punished those who were actual or perceived Dean Bates supporters, attempted to improperly influence student leaders and student expressions of support for Dean Bates, went to the press, and drafted the Performance Report. Counsel for McMaster University stated that the Performance Report was drafted by the G21 in bad faith, with misinformation, and without due diligence or fact checking.

Mr. Avraam drew attention to several areas of sworn testimony of G21 members. He reminded the Tribunal that Drs. Rose, Nainer and Zeytinoglu testified that the G21's activities

stopped by May 2009 (when the Board of Governors confirmed Mr. Bates' second appointment), but the evidence indicates that the G21 continued to exist well after May 2009.

Mr. Avraam reminded the Tribunal of Dr. Bart's testimony, in which he said he relied solely on Dr. Taylor's opinion and no one else's for the section of the Performance Report relating to the HLI. Regarding misinformation about Mr. Bates' performance at Charles Schwab, Mr. Avraam cross-examined members of the G21 and asked whether they knew "the other side of the story" to which all replied that they did not. Dr. Zeytinoglu testified that "G21 members don't do anything wrong... our colleagues wouldn't do that." Mr. Avraam pointed to Dr. Kwan's testimony that he was concerned about whether the Performance Report was going to be leaked to the public, because he did not want supporters of Mr. Bates to correct the mistakes in it. Where the Performance Report discusses CLA conversion, counsel stated that it does not make mention of Dr. Pujari's strategy to obtain tenure-track resources at the expense of CLAs, although he did admit in cross-examination that part of his strategic plan for the Area was to obtain tenure-track positions in preference to teaching-track positions. Where the Performance Report discusses the lack of new tenure-track resources coming to the DSB, Mr. Avraam stated that the resources were in fact being delivered to the DSB. Mr. Avraam reminded the Tribunal of Dr. Kwan's statement regarding the problems of the Performance Report: "Should I lose sleep over this?" Mr. Avraam also pointed to Mr. Vilks' testimony that the results of the MUFA vote on the Dean's second appointment were posted in the DSB and other buildings. Mr. Avraam also highlighted a statement made by one of the more active members of the G21, Dr. Trevor Chamberlain: "Desperate times call for desperate measures."

Mr. Avraam disagreed with the suggestion that the T&P process is broken at McMaster University. Rather, it was submitted that the evidence shows the T&P process is not broken due to a failure in the policies and procedures but only broken in 2009 and 2010 at the DSB because of the inappropriate conduct of some members of the G21.

Counsel for the 003 Complainants also made lengthy submissions regarding the G21. He stated that the G21 members disregarded their obligation to disclose a conflict of interest due to their membership in the G21, as well as its actions and communications. This conflict of interest, it was submitted, extended into the tenure and promotion and CLA conversion processes. Counsel also reviewed several areas in which the G21 created an appearance of bias.

Mr. Heeney, counsel for the 003 Complainants, submitted that the G21 operated on the notion that anyone who does not approve of or support the conduct of the G21 was therefore an enemy of the G21. Such a sentiment contributed to the appearance of bias on the part of the G21. As discussed elsewhere in this Decision, Mr. Heeney submitted that Dr. Bart, Dr. Steiner, Dr. Taylor, Dr. Rose, and Dr. Pujari were all involved in emails saying negative and disparaging things about the 003 Complainants and their perceived support for Dean Bates. Characterizations like "storm troopers", "secret deals", and trying to "stack" the various University committees to make sure that the G21 was able to "take the faculty back" equates to social distancing and exclusion.

Both Mr. Avraam and Mr. Heeney criticized the G21 for engaging in "block voting"; the circulation by G21 members of instructions for methods of voting exclusively for candidates

from within the G21 for McMaster committees. In an email sent by Dr. Chamberlain on March 24, 2009 (DSB-2601), he states that the “Gang of Four” Area Chairs had “agreed to the following nomination to the various positions for which we today received ballots. ... By agreeing on candidates, the (four) chairs felt that vote splitting among people whom we collectively could agree on would be minimized.” In a reply dated March 26, 2009 (DSB-2603), Dr. Nainar states: “Given the Peter Vilks posting [asking faculty to be respectful and not refer to the Dean using a lowercase d as in “dean”] this morning on MUFAGAB, please ensure that you and others you know vote and vote in the direction that would ensure we take the school back in due course.” In a contemporaneous email in response to Mr. Vilks’ request sent on March 26, 2009 (DSB-2090), Dr. Pujari emails the Gang of Four as well as Dr. Steiner, and writes “3. Concept of respect: one cannot demand respect and trust, one has to earn it. The vote of 36-6 showed that the `d’ean lost both respect and trust. If Peter still wants to discuss the vote, let’s oblige him ... Ashish” (all formatting in original).

In another email dated April 30, 2009 (DSB-2571), Dr. Pujari congratulated the G21 for electing the G21 members to various McMaster committees. He stated, “Thank you to all for their efforts and congratulations to all the winners. We have successfully taken our first step towards taking back our school” (emphasis in original). This email was sent right before Dr. Longo and Dr. Flynn started preparing their T&P dossiers for submission to the HLM/SML Area T&P Committee chaired by Dr. Pujari. Mr. Heeney asked the Tribunal to consider who the G21 was taking back the school from. He suggested the G21 was taking back the school from Dean Bates and from people that the G21 perceived to be Dean Bates supporters.

In an email dated August 17, 2009 (DSB-2576), Dr. Pujari wrote “As we have proven in recent faculty elections, we successfully took back this school in small but informed ways. Once again, it is time to exercise our freedoms and vote in the forthcoming ballot.” Dr. Chamberlain responds to the G21, “T&P is an important committee, one whose recommendations should set the tone for the academic standing of our Faculty.” These emails were sent weeks before the cases of Dr. Flynn and Dr. Longo were considered for tenure and promotion at both the Area and Faculty level. Mr. Heeney submitted that the G21 was deliberately trying to stack committees with people who did not support Dean Bates in order to remove actual or perceived Dean Bates supporters from the DSB.

In another email dated September 15, 2009 (DSB-2662), counsel suggested that Dr. Kwan was bragging about the fact that the G21 has taken control of T&P, and that Dean Bates cannot go to Senate without bringing a G21 member. Dr. Kwan wrote:

“All 6 elected members [of the Faculty T&P committee] are from G21; they include George [Dr. Steiner], Joe [Dr. Rose], Lilian [Dr. Chan], Narat [Dr. Charupat], Toru [Dr. Yoshikawa], and me. What is significant is that one of these 6 elected members will always be there when the dean presents the faculty T&P cases at SCA meetings. ... Willi [Dr. Wiesner] is now on the SCA. Having one-third of G21 on the faculty T&P committee and beyond is a significant step in our collective effort to reduce political interference in the T&P process.”

Counsel for the 003 Complainants, Mr. Heeney and Mr. Rousseau, submitted that the G21's strategy was to deal with people who supported the Dean and stop the Dean's influence and ability to protect his perceived supporters. For example, Mr. Heeney reminded the Tribunal that Dr. Longo testified he was mistreated at the Faculty T&P Committee meeting, as did Dr. Randall and Dr. Flynn.

Mr. Heeney stated that the G21's strategy to go to the media was tainted by improper motives. For example, Dr. Taylor stated in an email written to the G21 on January 13 2009 (DSB-1613), "if we 'threaten' Peter, Paul and Ilene then we must be prepared to go public if they call our bluff. I can think of plenty of hyperbole to sell to the media (which is not interested in the facts anymore anyways)." The individual testimony of Drs. Chamberlain, Bart, Chamberlain, Kwan and Nainar further suggested or implied that they did not care about Mr. Bates' reputation when the media became involved. It was also submitted that some G21 members testified that involving the media was an appropriate action to take while others stated it was not appropriate.

Furthermore, some G21 members spoke to students regarding issues in the DSB. Mr. Heeney stated that Dr. Pujari gave contradictory evidence in that regard. Dr. Pujari said it was inappropriate to contact students and denied speaking to Mr. Vishal Tiwari (MSU President). However, Mr. Tiwari testified that Dr. Pujari had given him a business card and invited him to call him.

The Tribunal acknowledges that counsel only summarized their positions in closing. The Tribunal was asked to consider the entire evidentiary record including the G21 emails and related relevant documents. The Tribunal confirms that in making our findings we have considered the full evidentiary record.

**D) THE 003 COMPLAINTS: SUMMARY OF FINDINGS BY THE TRIBUNAL****i. Analytical Framework for the Tribunal's Findings**

The Tribunal has interpreted the Policy in the 003 Complaint under three general but distinct scenarios. As reviewed earlier in this decision, both direct and adverse effect harassment constitute conduct that breaches the Policy. In the 003 Complaint, the Tribunal has further expanded upon how we applied an analytical framework to distinguish between isolated or repeated conduct that rose to the level of direct harassment and isolated or persistent conduct that resulted in a hostile and poisoned work environment when we applied adverse effect harassment legal principles. This analytical framework was applied, where relevant. It also allowed the Tribunal to clarify how the principles of academic freedom and freedom of speech should be considered when we determined which conduct crossed the line and breached the Policy. Furthermore, this framework was followed in an effort to assist the parties, and particularly the s, when they make their further submissions on appropriate remedies for the Policy breaches we have identified.

Therefore, the following considerations guided the Tribunal when we assessed the evidence to support our findings in the three general scenarios we have identified below.

First, where an employee alleged a Policy breach arising from interactions with a faculty member the Tribunal focused upon whether the evidence confirmed the necessary power imbalance between the complainant and the respondent. When the preconditions for harassment under the Policy and jurisprudence were otherwise supported by reliable evidence, a breach was identified if the isolated or repeated vexatious conduct or comment rose to the level where a reasonable person would objectively conclude that a vulnerable individual had been harassed, subjected to an unwelcome hostile work environment, or otherwise dealt with contrary to the Policy. In this scenario, the Tribunal was not likely convinced that academic freedom and freedom of speech would provide reasonable cause or excuse for the vexatious conduct or comment.

Second, where the conduct or comment in question occurred between faculty members, the threshold required to constitute harassment or breach of the Policy was elevated if there was no objective or apparent vulnerability or power imbalance. In these situations, the Tribunal was prepared to accept that principles of academic freedom and freedom of speech could be relied upon to establish reasonable cause or excuse even if the conduct was considered to be vexatious. In that regard, vigorous debate and disagreement is valued in a university setting. As such, the conduct or comment may perhaps even be vexatious in some circumstances without breaching the Policy. The Tribunal balanced these various factors, recognizing that these rights and considerations are not absolute. Furthermore, the Tribunal required the 003 Complainants to identify or indicate that the behaviour was unwelcome unless it would have been unreasonable to do so in the circumstances. Otherwise, even vexatious conduct or comment may not have crossed the line if it were an isolated incident. However said conduct could rise to the level of direct harassment because of its persistent or repetitive nature or if it resulted in a poisoned academic/work environment for a complainant which could not be accepted under the Policy.

Third, the Tribunal also addressed conduct between faculty members where the evidence established that a complainant was vulnerable, particularly while being reviewed under established University tenure and promotion processes. The Policy affirms that all “persons entrusted with authority by the University have a particular obligation to ensure that there is no misuse of that authority in any action or relationship”. The Policy and the Faculty Code of Conduct confirm the expectations for faculty. Tenured faculty should reasonably be expected to act in good faith, reflecting the privileges acquired with, and the importance of tenure in an academic setting. The Tribunal considered the Policy’s Statement Of Principles to determine whether it was more likely than not that certain decisions were undertaken in a manner which was vexatious and without reasonable cause or excuse, even if, on the surface, the conduct may appear to be legitimate. If the conduct was persistent, even if it was not obviously vexatious, whether in isolation or cumulatively, then a breach of the Policy could be found. Furthermore, if conduct could negatively impact employment, including job security and promotion, or if it created a hostile work environment it could result in the Policy being breached especially if the Tribunal found processes were manipulated to serve personal agendas or where there was a failure to act in good faith. A high level of deference to the principles of academic freedom and freedom of speech was determined not to be appropriate if the comment or conduct did not reflect and in some cases contradicted University values as confirmed by the Policy. In that regard, private remarks within a select group or evidence of individual or group vindictive strategies or retribution were relied upon to assess conduct. Reasonable direct or adverse inferences which established motive or explained decisions were also relied upon if supported by reliable evidence. Therefore, principles of academic freedom and freedom of speech were given less weight if the vexatious comment or conduct was not open and it impacted a complainant’s reasonable expectations in employment.

## ii. Credibility Considerations

Furthermore, the Tribunal applied the principles identified in the jurisprudence we canvassed earlier in this decision when making credibility findings. As a result, the Tribunal identified credibility issues with each of Drs. Taylor, Bart, Steiner, Ray and Pujari, and some non-party witnesses whose evidence was determined to be not reliable where in dispute and in circumstances when their testimony was contradicted by other admissible evidence. The Tribunal observed each of these witnesses’ personal demeanor when testifying and in some cases identified that their demeanor and similar fact evidence of their behaviours contributed to the Tribunal’s credibility findings, in addition to the reasons specified in this decision. Therefore, the Tribunal preferred other reliable evidence if a finding otherwise required the Tribunal to accept Drs. Taylor, Bart, Steiner, Ray and/or Pujari’s uncorroborated testimony concerning their disputed conduct and/or communication with any of the 003 Complainants, most of whom the Tribunal found to be generally credible witnesses. In some instances the Tribunal has identified some concerns with the credibility of the evidence provided by Ms Stockton as identified in that section of the Decision.

### iii. General Findings

The Tribunal has generally identified the scope of acceptable interactions at the University under the Policy. In the 003 Complaint, the Tribunal had to address the propriety of comment or conduct in different settings. Where and how the disputed conduct or comment arose was often relevant to the Tribunal's findings when balancing Policy requirements, while protecting the principles of freedom of speech and academic freedom. For example, comment or conduct during open Faculty or other meetings was more easily assessed relying upon principles of academic freedom. Absent a power imbalance or objective vulnerability, the Tribunal was not prepared to consider harsh or critical debate and dialogue as harassment unless egregious. If the victim could reasonably have expressed that the conduct or comment was unwelcome they should have done so in a timely manner absent vulnerability or reasonable justification. However, if the vexatious conduct or comment persisted, was unwelcome, made without reasonable cause or excuse and/or expressed covertly, it was identified as a breach of the Policy where it created a negative and/or hostile working environment for a Complainant. The Tribunal was very concerned about conduct when there was a vulnerability and/or power imbalance. As such, the Tribunal closely reviewed conduct or comment impacting tenure, promotion and conversion processes. The Tribunal found academic freedom was not an appropriate defence where the explanation was unreasonable for conduct or comment which the Tribunal determined breached the Policy.

As academic colleagues, the Tribunal values the rigorous nature of the multi-staged evaluation, decision and appeal process in the Tenure and Promotion Policy. The University's processes serve important objectives including: ensuring the quality, quantity and impact of contributions of faculty members, permitting evaluation of faculty by those most familiar with research disciplines as well as maintaining Faculty and University wide equity in expectations, and monitoring and adjusting to changing demands with respect to workload, expectations and academic success. Faculty member behaviours, especially with respect to the CLA conversion process and the Tenure and Promotion process at the University, must be transparent and *bona fide*. Processes must be principled, not tainted by vindictive considerations and must be perceived to be fair.

The Tribunal is well aware of the importance of academic freedom. The democratic governance model of the University is premised on principles of free expression and association. However, academic freedom cannot and should not be used as a shield for inappropriate, unprofessional and/or harassing behavior whether by individuals or groups. In a civilized society, and especially at a university which leads and upholds the virtues of freedom of expression, there can be vigorous debate and high standards without intimidation, belittling, bullying, and insults. We have made findings for the specific allegations brought before us (detailed below) where we have identified a breach of the Policy by an individual 003 Respondent. In many cases we have judged that the behavior of the individual 003 Respondents did not constitute direct harassment or reprisal contrary to the Policy. However, in some cases we found that the Policy was breached when conduct and behaviour established by the evidence resulted in a poisoned academic/work environment, which all parties identified as existing at the DSB. If isolated, a comment or conduct was at least, initially, required to be egregious when being assessed by the Tribunal. If not egregious, an isolated comment or conduct could still be

found to violate the Policy if the Tribunal determined the comment or conduct was part of a course of behaviour proscribed by the Policy.

The Tribunal's concern in some of these Complaints was not whether an individual was ultimately converted to teaching-track or denied tenure, promotion and/or renewal; rather, the Tribunal's focus was whether participants in the process were harassed or otherwise treated contrary to the Policy. The Tribunal does not have any concerns about vigorous debate and close scrutiny concerning standards of performance for teaching, service and research. The Tribunal's findings against individual 003 Respondents in no way diminishes the importance of academic freedom and freedom of speech and does not indicate a systemic problem or weakness in the policies governing T&P at McMaster University. Rather, our findings of breaches of the Policy recognize that certain comment or conduct, if the evidence and inferences were reliable and reasonable, can breach the Policy while not undermining the principles of academic freedom and freedom of association.

The Tribunal required objective evidence establishing intimidation, harassment and/or reprisal given our concern for academic freedom. Therefore, while conduct and comment, in some cases, were found to constitute direct harassment and reprisal, the Tribunal recognizes that similar comment or conduct in other contexts or between individuals in another situation (ie no power imbalance, no vulnerable situation) may be appropriate and not breach the Policy. The Tribunal also recognizes that some alleged comment or conduct, while inappropriate and unprofessional, did not rise to the level of a breach of the Policy or that there was insufficient objective evidence to establish the conduct. Individually, in concert and/or cumulatively, the comment and conduct which the Tribunal identified as a concern were found to breach the Policy and resulted in a poisoned work/academic environment at the DSB. The poisoned work/academic environment clearly needs to be remedied.

Therefore, the Tribunal, in some circumstances, concluded that processes were tainted by harassment or manipulated to further personal vendettas and G21 interests rather than to serve the interests of the University and its stakeholders. Poisoned workplace behaviours affecting tenure and promotion are a grave assault on the basic foundation of academic freedom at McMaster University, in the Tribunal's view. Therefore, while the Tribunal had especially difficult challenges determining whether University T&P processes were being utilized in good faith or whether otherwise legitimate questions were raised or conduct undertaken to harass Tenure and Promotion candidates, we are confident the Tribunal's decision has drawn the line appropriately based upon the reliable evidence considered.

**iv. The Poisoned Work/Academic Environment at the DSB**

Appended to this decision is a general factual chronology identifying when relevant events occurred and providing further context for the Tribunal's findings (Appendix O). The Tribunal finds that the event timelines interconnecting various 003 Complainants, Respondents and non-party witnesses are critical to understand the context of the numerous allegations of harassing conduct or comment. In order to fully understand the Tribunal's findings that the Policy was breached, the Tribunal will generally set out material evidence we believe provides

necessary context to understand the harassment and poisoned work/academic environment we have identified as breaches of the Policy.

To summarize the Tribunal's findings with respect to the chronology of arguably relevant events, Mr. Bates joined the DSB as Dean in 2004. Dr. Pujari was appointed Area Chair July 1, 2007, for the first time. Prior to Dr. Pujari's appointment, various incidents involving Drs. Bart, Taylor and Richardson had already occurred. Further, as will be addressed in reviewing each of the 003 Complaints, Dr. Detlor was appointed Director of the Ph.D. Program in July 2006 and Dr. Steiner's issues with Dr. Detlor took place in 2005 and 2006, as did some incidents involving Dr. Steiner and Dr. Head. By June 30, 2006, the Tribunal finds in our Decision that Dr. Steiner harassed and attempted to intimidate Dr. Head including telling her in an aggressive manner, while visibly agitated, that "You shit on people and it will come back to bite you."

The Tribunal finds that during Mr. Bates' first term as Dean in the DSB (2005-2009), the lines progressively hardened between the Dean's supporters and those opposed to him, with the environment becoming increasingly toxic. Within the group opposing the Dean, there generally appears to have been both active and passive participants. The evidence confirmed that some individuals had personal grievances or held strong feelings towards, and concerns about, the Dean. The Tribunal has no concerns with faculty having issues with a Dean. However, in some cases, persons sought vindication or revenge for perceived slights and/or initiated active strategies to take control of the DSB back from the Dean and his supporters in a manner which the Tribunal feels crossed the line and thereby violated the Policy.

The Tribunal's concern is with the activities of the G21 and the conduct or comment of the individuals in the group who are named as individual Respondents in 003 and not whether a group formed to oppose the Dean. Conduct and comments disparaging or negatively impacting the security of other faculty members in vulnerable positions and undermining T&P processes are unacceptable and go beyond the scope of free speech and association in a university environment. The Tribunal finds it troubling that no member of the G21 who testified, appeared to have raised concerns about the serious allegations and disparaging remarks being communicated within the group or asked to be removed from the email list. Even with the advantage of hindsight and access to documents through disclosure, many G21 members were reluctant to indicate that the communications and actions of the G21 had been inappropriate. Rather, the Tribunal observed a repeated indifference by many of the G21 witnesses (both party and non-party) concerning the impact that strategies and comments shared privately had, or might have had, on the DSB or on persons perceived to be Mr. Bates' supporters. The Tribunal has found that some of these internal communications breached the Policy and exacerbated the poisoned work/academic environment at the DSB and in some of the situations identified also resulted in direct harassment or breached the Policy in their contributions to the poisoned work environment.

The Tribunal notes negative issues identified about the Dean and his perceived supporters often appeared to be accepted without question by members of the G21. Individuals in the DSB chose sides when asked, often supporting long term colleagues who had informed them of concerns about Mr. Bates and his supporters, and these individuals were seemingly unconcerned about whether allegations were real, embellished or even false. This lack of critical appraisal

and verification of information by more passive members of the G21 may perhaps be explained by the general level of dissatisfaction with the direction of the DSB amongst such faculty who came to be referred to as the G21 and later the G21+.

Furthermore, there appears to have been little willingness to express dissent within the G21 group. For example, non-party witnesses, testifying after the disclosure of the G21 group's emails and having already submitted affidavits, were challenged on their involvement with the G21 or about testimony provided prior to the full disclosure. It appears that it became difficult for individuals working in the DSB to remain neutral with respect to their support for or opposition to the appointment of Mr. Bates for a second term as Dean of the DSB. Many witnesses simply suggested that they ignored and/or deleted emails, or denied personal involvement when confronted with the comments, conduct or strategies identified by those sending and responding to G21 group emails. Furthermore, these witnesses' demeanour may also suggest that within the G21 group there were members likely reluctant to distance themselves from the G21 because of the "us versus them" attitudes and the demand for solidarity as the group attempted to take back their school from the Dean.

As stated, from the outset of his appointment in July 2007, Dr. Pujari found himself as an Area Chair for the first time in the SML/HSM Area of the DSB in an increasingly toxic environment. Certain active members of the G21 in his Area, namely Drs. Taylor and Bart, were vocal and aggressive and were clear in their intentions and expectations of others. Dr. Pujari was introduced as the incoming Area Chair at the SML/HSM Area meeting on June 25, 2007. At the end of that meeting after the completion of the formal agenda, Drs. Taylor and Bart vocalized their opposition to Mr. Bates in front of other Area faculty. As background to that opposition, Dr. Bart had been informed on August 1, 2006, that the Directors College governance structure was changing and on March 1, 2007, Dr. Taylor was informed that the HLI was moving from the RBG. This expressed opposition to Mr. Bates led Dr. Flynn, because of what he perceived to be Drs. Taylor and Bart's intimidating manner at the meeting, to disclose their comments and conduct to Mr. Bates. As will be outlined, both Drs. Bart and Taylor subsequently engaged in harassment, intimidation and reprisal, commencing with attempts to identify the "mole" who told Mr. Bates about their comments. The Tribunal accepts Ms Cossa' evidence that Dr. Taylor told her that "we knew who did it, the person has been dealt with, and will continue to be dealt with", when he suggested to her that the CLAs should stay out of it.

In September 2007 an external review team evaluated the plans for the Burlington Expansion and met briefly with the five Area Chairs during their site visit. On September 26, 2007, there was a Faculty Council meeting and a motion related to the Burlington expansion. On September 27, 2007, Mr. Bates promised Dr. Pujari that the Burlington expansion plan would provide resources and throughout October communications continued between Dr. Pujari and Mr. Bates about the allocation of teaching-track positions and their link to the Burlington expansion plan. In early October four Area Chairs, including Dr. Pujari, requested a meeting with Mr. Bates about the Burlington Expansion. Mr. Bates refused to meet and indicated the issue would be addressed at the October 25, 2007, Faculty meeting. Dr. Pujari and four other Area Chairs were disciplined by the Provost on October 31, 2007 (DSB-0687), for their actions in opposition to the Burlington expansion plan. The Tribunal accepts that Dr. Pujari was feeling harassed himself in the fall of 2007. Feeling harassed and under pressure, Dr. Pujari was still

required to fulfill important managerial duties as Area Chair. The evidence suggests that the Burlington expansion and the teaching-track impasse were major challenges for him. The Tribunal finds that his focus on “process” was not constructive and became a significant distraction for Dr. Pujari. In November 2007 the Area Chairs submitted a grievance against the Provost for her handling of their opposition to the Burlington plans, the Burlington plans were discussed at a Faculty meeting, and in December 2007 Dr. Pujari had a number of conversations with Dr. Kleinschmidt about which “side” of the debate he was on. On December 17, 2007, the Burlington expansion plan was approved at a Faculty meeting. Meanwhile Dr. Bart was required to issue an apology to a member of the Conference Board of Canada for his actions at a Directors College event and the Provost investigated Dr. Pujari’s concerns about being intimidated by Dr. Kleinschmidt. On January 3, 2007, the Provost removed the letters of discipline from the files of the four Area Chairs and they withdrew their grievance. On February 5, 15, and 26, 2008, Mr. Bates requested Dr. Pujari’s recommendations for CLA conversions to teaching-track appointments as soon as possible. Dr. Pujari was resistant, citing “process” concerns. As disclosed in the evidence, some CLAs were increasingly subjected to comments by Dr. Pujari which some individuals found offensive during meetings in the first half of 2008.

In July 2008, the Directors College was moved to Ottawa. The earliest G21 email provided to the Tribunal, dated September 20, 2008, was circulated by Dr. Nainar to Drs. Bart, Steiner, Pujari, Chamberlain, Chan and Zeytinoglu, addressing the Performance Report. Expressions of concern with the Dean and his real and perceived supporters became covert and the debate was not inclusive. That the G21’s strategizing was private and covert was the antithesis of academic freedom. Communications were controlled and limited to those who could be trusted rather than inviting debate. The Tribunal finds only likeminded persons were given access to the developing G21 strategies and that this resulted in an increasingly toxic working environment for the DSB, and adversely impacted some individual 003 Complainants in breach of the Policy. The Tribunal finds the suggestions by the individual 003 Respondents and some non-party witnesses that participation in the G21 activities was limited to select tenured faculty because of concerns about the vulnerability of those not having tenure are self-serving and disingenuous. Rather, the Tribunal finds recruitment to the G21 was strategic. Individuals attempted to “rally the troops”, reflecting the G21’s own war analogies. Strategy meetings were held in addition to group emails by members of the G21. For example, Dr. Zeytinoglu suggested that the group had the support of the “silent majority”. Dr. Pujari expressed fears about how he might include his experiences “without facing the wrath of this bully either here or in the court”.

During the spring and early summer of 2008 there was increasing pressure on Dr. Pujari from the five CLA’s in the SML/HSM Area for information on the process being used to determine who would be converted from CLA to teaching-track appointments. A meeting had been held on June 11, 2008 with the CLA’s, MUFA, Mr. Bates, Dr. Pujari and Dr. Deal, where the members of the Area T&P Committee were directed to select CLA’s for conversion. On the same day the first version of the Performance Report was circulated (September 20, 2008), Dr. Pujari held an Area meeting to discuss CLA conversion to teaching-track. Dr. Hupfer indicated there were no criteria used for the process of selecting Mr. Malik and Mr. Ryder and not Ms Cossa, Ms Stockton or Mr. Vilks for conversion. The remaining CLA’s (Stockton, Cossa, and Vilks) were informed they would not be converted and they all requested oral and written rationales for the decision.

In October 2008, Dr. Bart met with President George concerning Mr. Bates' second appointment. That same month Dr. Chamberlain's email (DSB-1683) to Drs. Bart, Taylor, Pujari, Steiner, Rose alleged "...Chris Longo-untenured; reported "secret deal" with the Dean's Office." Strategies and responses to the Dean's Selection Committee, in the context of these serious allegations and suspicions, ensued amongst members of the G21. In DSB-1922 Dr. Kwan identified the momentum behind the Performance Report. Furthermore, Dr. Kwan affirmed that the draft was only be shown to those the group thought had the potential to join and sign the document, understanding it to be "For Your Eyes Only", making an analogy to the James Bond movie. In DSB-1990 Dr. Taylor wrote "be wary of Maureen Hupfer" in reference to earlier suggestions that she should be asked if she is willing to sign the Performance Report. Drs. Bart and Rose made submissions to the Dean's Selection Committee and the signed Performance Report was sent by Dr. Rose to the University President and the Provost (DSB-0766) on or about December 10, 2008.

Concurrent with the preparation of the Performance Report in the fall of 2008, issues arose with respect to the 003 Complainants feeling harassed, including Dr. Pujari's discussion with Mr. Vilks, Ms Cossa and Ms Stockton, concerning their unsuccessful conversion to teaching-track faculty status. Furthermore, the incident after the December 11, 2008, MUFA meeting discussing plans for an upcoming confidence vote (concerning Mr. Bates' second appointment) wherein Ms Stockton alleged that Dr. Steiner approached her in anger, raising his voice while his face was "red with rage, his fists... clenched and teeth...clenched". Shortly thereafter, in January 2009, Dr. Flynn alleged Dr. Pujari became visibly angry at him during an Area meeting and also attempted to discredit and embarrass him.

Tensions and tactics of the G21 intensified after the delivery of the Performance Report. Dr. Taylor, in an email to the G21 dated January 13, 2009 (DSB-1613), suggested, "If we 'threaten' Peter, Paul and Ilene then we must be prepared to go public if they call our bluff. I can think of plenty of hyperbole to sell to the media (which is not interested in facts anymore anyways.)" In DSB-1634 Dr. Chamberlain's email directed to Drs. Taylor, Bart and Pujari asked whether Dr. Longo was part "of the unholy alliance as well?" Dr. Taylor replied "To the best of my knowledge, [Dr. Longo] is 100% behind Bates." Further strategy meetings were scheduled and Dr. Chamberlain wrote to Drs. Bart, Taylor and Pujari only, asking "Where does Peter Vilks stand on the dean's reappointment. I have it on good authority that he spoke to the Provost today." On January 13, 2009, Dr. Taylor responded to the G21 in an email (DSB-1634) that "To the best of my knowledge he is 100% behind Bates. Flynn, Bontis and Vilks are Bates' stormtroopers."

On January 25, 2009, Dr. Bart identified in an email to the G21 that "Yes... not much... interesting news, however, is that the *Globe and Mail* is on Paul's trail-someone apparently leaked some version of the Gang's letter to them..." (DSB-1907). The MUFAgag post issues arose in February 2009, related to Dr. Rose, Ms Stockton and the Provost (DSB-0440, 0768, 0436, 0770, 0773 and 1256). On February 25, 2009, DSB-1557 and 1558 Dr. Taylor identified Dr. Flynn as the organizer of efforts to have Mr. Bates reappointed as Dean. Dr. Taylor wrote "Terry's probably going to orchestrate this-he's not great but he does get dirty (his old Liberal training) so prepare for more. Dr. Bart utilized the "war" analogy suggesting "The real 'war' has now begun...are ready (sic) are we up for it?" In DSB-1508 Dr. Bart, writing to the G21

suggested, “Stockton’s letter over MUFAGAB was clearly not under her authorship-especially given the statistics she cites... Bates has probably hired a PR ‘crisis management’ firm to orchestrate his public image for reappointment.” Dr. Shehata suggested “we should intensify the pressure from all directions.” In DSB-1516, 1517, 1518, 1519 and 1521, Drs. Shehata, Pujari, Nainar and Kwan address the voting system being used in a student poll to gauge support for the second appointment of Dean Bates and how the voting system could be corrupted. Dr. Shehata suggested “all means of fighting are allowed and Dr. Kwan confirms he successfully voted 5 times using different computers” further explaining how this was done by others deleting information from their computers between registering votes. The Tribunal determined that the testimony from faculty members involved in these exchanges was not credible and that they were disingenuous when they stated that they were not trying to register negative notes in an effort to dilute student support but were just pointing out weakness in the process.

The G21 continued to meet in March 2009 and the Tribunal received evidence that Dr. Zeytinoglu (DSB-1667) disclosed to the G21 the *in camera* Senate vote from the previous day concerning Mr. Bates’ second appointment. Dr. Nainar emailed the G21 in DSB-1760 and 1762, on March 15, 2009, calling for a further meeting to plan the group’s strategies for the upcoming Board of Governor’s meeting on May 7, 2009. Dr. Nainar wrote “For starters, all G21 and others of the same persuasion should be ‘present’ at the Faculty meetings. As well, should follow parliamentary traditions have an assigned ‘whip’ person. The role of this person would be to ‘monitor’ memberships and ‘voting’ integrity” (DSB-1762).

Dr. Chamberlain on March 24, 2009, sent an email to a larger group now referred to as the G21+ referring to a “gang of four” which included Dr. Pujari (DSB-2601). On March 26, 2009, Dr. Nainar referenced Mr. Vilks in DSB 2603, and stated the G21 vote was intended to ensure the group “take the School back in due course.” On April 21, 2009, Dr. Pujari emailed the G21 congratulating the recent faculty election winners and emphasized, “we have successfully taken our first step towards taking back our School.”

On or about May 19, 2009, Mr. Vilks emailed Dr. Pujari with concerns about Dr. Taylor’s ‘middle of the road poster’ (DSB -0457). Dr. Pujari replied by email stating “By your own admission, you are not the one who seems to have taken the ‘middle road’ (in the context of either taking a position to oppose some tactics or in favour of tactics), so the posting doesn’t seem directed towards you...Either one of them can be interpreted differently because context is either not known, not explicitly stated, or not clear.” The poster put up by Dr. Taylor on his office door has a picture of a transport truck with the following text: “Those who take the middle of the road...get run over.”

The Tribunal also heard evidence concerning Dr. Taylor’s other workplace posters. Posters submitted in evidence are set out in DSB-0456, DSB-1356 to DSB-1368. The Tribunal has no issue with the submission that posters can be a valid exercise of academic freedom and freedom of speech. However, in the context of the poisoned work/academic environment and in the midst of the G21 activities with T&P and career decisions underway, the Tribunal finds that a number of posters in addition to the aforementioned ‘middle of the road’ poster breached the Policy. The Tribunal identifies the following statements on posters which we find breached the Policy. A picture of a slinky on a poster states “some people are like slinkies ... not really good

for anything ... but they still bring a smile to your face when you push them down a flight of stairs". In addition, another poster states: "I didn't say it was your fault; I said I was going to blame you." Another poster stated, "only fools and dead people never change their minds". Furthermore, in context, the Tribunal accepts that many of the posters attached as an appendix (Appendix P) appear to be provocative even if they did not rise to the level that breached the Policy directly. The Tribunal is not prepared to find these other posters submitted in evidence breached the Policy given the evidentiary record. However, the Tribunal is satisfied the posters generally corroborate the 'us versus them' divisions and reflected adversarial G21 strategies including those identified by Dr. Taylor in emails.

Furthermore, Dr. Bart's specific conversations and statements corroborate the Tribunal's concerns about bias affecting T&P decisions at the DSB and certain individuals being harassed. The Tribunal accepts evidence from Dr. Randall that after his case had passed through Area and Faculty T&P, Dr. Bart came to speak with him. During the conversation, Dr. Bart, referring to the T&P process stated, "Do you know why you had trouble?" to which Dr. Randall replied "I thought it was because of my area of research". Dr. Bart replied to Dr. Randall, "no, it was a fuck you vote". Furthermore, Dr. Bart made a statement to Dr. Flynn that he was "on the wrong team" (DSB-2098, paragraph 25, page 5) which is consistent with the Tribunal's conclusions that University processes were tainted and utilized to harass.

The Tribunal accepts Dr. Pujari's testimony that he was under increasing stress that affected his personal well-being. The Tribunal, having observed Dr. Pujari's demeanor and considering his testimony, including numerous inconsistencies in this explanation of events, finds that it is more likely than not that Dr. Pujari's distress is understandable because he was torn between balancing his responsibilities as a new Area Chair with having to choose sides. Conduct and comment involving Dr. Pujari directly and indirectly are addressed in both the 002 and 003 Complaints. Of particular concern are the decisions made and/or not made by Dr. Pujari, who was aware of the increasing animus exhibited by Drs. Bart, Taylor and Steiner and some non-parties (subsequently discovered to be active participants of the G21) not only toward the Dean but towards his supporters or perceived supporters, some of whom were members of the HSM/SML Area under Dr. Pujari's leadership. Dr. Pujari also became, in the examples outlined, an active participant in the G21 emails, discussing strategies or receiving emails maligning members of his Area for whom T&P and position conversion decisions needed to be made. The Tribunal finds the Policy was breached when this personal animus affected 003 Complainants in their employment involving CLA conversion, reappointment and T&P processes. The Tribunal has found that Dr. Pujari breached the Policy when we had reliable evidence that he chose to participate in discussions disparaging of the 003 Complainants or by his inaction when he looked the other way or was wilfully blind to harassing and intimidating conduct and reprisal for which he had knowledge.

Mr. Bates' second term as Dean took effect July 1, 2009 and tensions in the DSB did not ease. Around the same time, Dr. Taylor's directorship of the HSM concluded after 23 years. Drs. Pujari, Steiner, Chamberlain and others exchanged emails addressing how they might get G21 members elected to the Senate. During June and July 2009, Drs. Longo and Flynn prepared their dossiers for renewal, tenure and promotion under Dr. Pujari's guidance. In September 2009, the HSM Area T&P Committee met and Dr. Longo was denied tenure and Dr. Flynn was denied

renewal at both the initial and reconsideration meetings. On September 16, 2009, Dr. Taylor emailed Dr. Pujari (DSB-1335) stating “re Flynn and Longo, I know there are no proxy votes... neither has earned the privilege of staying at Mac”. In the Area reconsideration meeting on September 22, 2009, Dr. Bart stated that those who vote in favour of Dr. Flynn’s dossier should have their names recorded and publicized and that “You must vote no” regarding Dr. Longo’s consideration for tenure. Issues also arose concerning the actions of some members of the DSB Faculty T&P Committee related to meetings for Drs. Head, Longo and Flynn. On October 5, 2009, Dr. Steiner aggressively questioned Dr. Flynn in the Faculty T&P Committee meeting. On October 19, 2009, Dr. Steiner harshly questioned Dr. Longo’s dossier. In November 2009 Dr. Steiner questioned Dr. Head at length related to her consideration for promotion. At the Senate Committee on Appointments, Dr. Steiner explained his concern with Dr. Longo’s dossier as “partly a formatting problem, but it was also partly a problem with absolute honesty.” This was due to Dr. Steiner’s belief that some of Dr. Longo grants were described as “applied for,” some were instances where he was planning to be a “collaborator” on the grant, but no grant had actually resulted in any research funds, or subsequent research papers, for him. (DSB-1289).

In parallel events, in DSB-2643, Dr. Nainar sent an email on October 20, 2009, to Drs. Bart, Rose, Pujari, Steiner, Kwan, Chan, Zeytinoglu, Abad, and Chamberlain. He encouraged the G21 members to “‘show up’ in ‘full force’” to a DSB Faculty meeting in order to postpone a vote on a motion, which would allow the G21 additional time to pass a separate motion. Dr. Pujari then replied, stating his complete agreement. In DSB-2652, Dr. Kwan wrote on October 27, 2009, to the G21 and complained of the “sudden appearance” of ex-officio members in crucial meetings, including one Graduate Curriculum and Policy meeting where a proposal by Dr. Detlor for a new first year computer science course was being considered. Dr. Kwan then encouraged G21 members to attend the meeting.

In the process of Dr. Head’s consideration for promotion to Professor, on December 11, 2009, Dr. Steiner questioned Dr. Head for at least 90 minutes during her appearance at a Faculty T&P meeting concerning an administrative process issue that occurred during her appointment as Associate Dean. On November 30, 2009, Dr. Pujari emailed Ms Stockton suggesting racism in her interactions involving a colleague, Dr. Hongjin Zhu, (DSB-0736) and on December 22, 2009, Dr. Flynn was notified that he was relieved of his duties at the Director’s College.

On February 3, 2010, Ms Colwell emailed Mr. Bates to identify that she was being harassed by Dr. Ray (DSB-2467). On March 25, 2010, the Komlen Report was released by HRES to the University. March 28, 2010, PACDSB commenced its review of the DSB. On April 7, 2010, Dr. Chamberlain emailed the G21, inadvertently including Dr. Hassanein, wherein he outlined G21 voting strategies concerning elections for Graduate Council, Senate and Faculty Council.

In DSB-2540, Dr. Chamberlain wrote to the G21+ on May 7, 2010, and stated “I also don’t like the idea of a junta [PACDSB] running the Faculty, to whomever it is charged with reporting.” He continued, writing:

“The more I think about this, the more I am persuaded that the Administration has taken what was originally a problem (ie Mile’s report) and turned it into an

opportunity. I don't believe that Peter George could care less whether bullying has occurred in our Faculty or who has been bullied. The fact that Bates' cronies were the likely complainants this time around would not make any difference to Peter. ... I suspect the junta's role is ultimately to ensure a major donor's [Mr. Michael DeGroot] preferences are satisfied."

Dr. Wiesner replied in agreement with Dr. Chamberlain and stated:

"...I suspect Mile was sent and used... to 'create a crisis' (whether he realized it or not). The justification for the Group Conflict Policy and the junta are the allegations of harassment. However, to date, there is no evidence that there is any genuine intention to investigate or deal with the allegations (presumably because PB [Paul Bates] would be identified as a perpetrator). The only measures being taken are to seize control of the administration of the School. It seems to me that the allegations were a pretext."

Dr. Rose replied to the G21+ and posits that "one might argue there is a plan (and it may have been the plan all along) to eliminate Areas and Chairs (oops, did Nick let the cat out of the bag) and centralize control over the faculty by a select few disciples." On May 7, 2010, Dr. Rose emailed the G21 concerning the PACDSB, suggesting, "I also don't like the idea of a Junta running the faculty."

On or about May 20, 2010, concerns were raised by some CLAs regarding Dr. Pujari's statements about "retailers of information", "intellectual deficit", "community college" and his reference to a "drawer full of resumes". On May 25, 2010, Dr. Longo submitted a list of 15 potential external referees for his second tenure and promotion consideration. On May 26, 2010, Dr. Pujari emailed Dr. Longo suggesting that his copying Ms Pat Fraser and the Associate Dean is a "serious matter of governance and chain of communication" (DSB-2459). On June 7, 2010, Dr. Longo objected to Dr. Pujari's denial of 14 of the 15 submitted potential external referees and the selection of other referees. In June to August 2010, Ms Newton's fact-finding report related to Ms Colwell's Complaint about Dr. Ray was released and Dr. Ray vigorously responded to the report. Various allegations of harassment and retaliation involving Drs. Ray, Pujari, Detlor and Ms Colwell transpired in August, September, and October 2010.

In the fall of 2010 issues were also identified concerning Dr. Richardson not being appointed as a sessional lecturer, Mr. Scattalon's Facebook page being removed and Ms Golden's letter to President Deane concerning Dr. Bart, all of which are addressed in the 002 Complaint. On September 18, 2010, the Area T&P Committee chaired by Dr. Pujari met on a Saturday and voted against Dr. Longo's T&P case. On September 27, 2010, before the Area T&P reconsideration meeting, Dr. Taylor attempted to exclude Drs. Bontis and Deal from attending the meeting. On October 1, 2010, the Area T&P Committee voted against Dr. Longo's reconsideration for tenure and promotion. On October 29, 2010, the Faculty T&P Committee also voted against granting tenure and in November and December of 2010 the SCA voted in favour of granting tenure to Dr. Longo. Furthermore, on November 24, 2010, Dr. Pujari emailed Mr. Komlen, denying he had a conflict of interest concerning T&P and ultimately did not accept

Mr. Komlen's advice to remove himself from the discussions related to the reappointment of the CLAs in his Area, who had submitted a complaint against him and initiated mediation processes (DSB-1110). On December 15, 2010, the PACDSB released its Report to the President. Mr. Bates resigned as Dean on February 28, 2011. The 002 and 003 Complaints (dated March 31, 2011) were filed on April 1, 2011.

Having considered the evidence in its entirety, including the above findings, the Tribunal is satisfied that it is more likely than not that the comment and conduct of Drs. Bart, Taylor Steiner, Pujari, Ray, and Rose in issue are understood and explained by events that were unfolding at the DSB. The Tribunal has found that decisions, conduct and comment were influenced and can be reliably explained by events at the DSB. In some cases, if there was reliable evidence, the Tribunal concluded that comment or conduct met the legal and Policy definitions for harassment and further established intimidation and reprisal. The evidence, if reliable, in some cases also led the Tribunal to find or draw reasonable inferences to conclude that conduct breached the Policy, despite the Tribunal also accepting, for example, that concerns raised, especially involving T&P processes, may have otherwise been reasonable but for improper motivation revealed or reasonably inferred from the reliable documentary evidence and the testimony of the witnesses.

As stated, all parties conceded that the evidence confirmed a poisoned work/academic environment contrary to the Policy. The dispute at its core relates to who was responsible for contributions to and who were the victims of this poisoned work/academic environment. The Tribunal finds that the above summarized conduct and the events considered in context constituted a continuing poisoned work/academic environment since at least 2006, which breached the Policy. Furthermore, this poisoned workplace finding allows the Tribunal to address and make findings concerning all of the individual allegations for which reliable and admissible evidence established breaches of the Policy. The Tribunal has concluded, using the analytical framework outlined previously, that Policy breaches have been established by the evidence against each of the individual Respondents in the 003 Complaint to varying degrees for some of the allegations. Individual findings where the individual 003 Respondents each breached the Policy are further addressed in the remainder of the decision.

v. **Individual 003 Respondents Breaches of the Policy**

**Background Findings**

Breaches of the Policy have been established in some instances against all the individual 003 Respondents. The Tribunal finds that each individual 003 Respondent's conduct led to a finding that the Policy was breached, albeit with varying levels of responsibility and seriousness of breaches being established. The appropriate remedy for the breach of the Policy by each individual 003 Respondent will be addressed at the continuation of this hearing.

Harassment is demeaning to human dignity and is unacceptable in a healthy work environment where scholarly pursuit may flourish. Harassment is incompatible with standards of professional ethics and with behaviour appropriate to an institution of higher learning. The

Policy confirms proscribed behaviour is unacceptable against any member of the University community and strives to create an environment free from such behaviour. The Tribunal finds that generally the evidence established the individual 003 Respondents acted in concert or individually and engaged in conduct or comment which breached the Policy.

The Tribunal finds the general dissatisfaction by some DSB faculty with the Dean was initially specific to Mr. Bates and contained. Dissatisfaction gradually expanded so that individuals who were perceived supporters of the Dean were targeted and treated contrary to the Policy. The victims' identity varied and depended upon the relationship between the Complainant and the Respondent and the specific details of the circumstances surrounding the events being considered. However, the evidence established the strategies were consistently applied by, and known to, Drs. Taylor, Bart, Steiner and Pujari and to a lesser extent Dr. Rose and Ray, whose own direct or indirect involvement, conduct or comment breached the Policy.

The individual 003 Respondents, to varying degrees, in the Tribunal's view engaged in a course of vexatious comment or conduct. Furthermore, the comment or conduct was made without reasonable cause or excuse. The G21 emails confirm that strategies were discussed and implemented and resulted in direct and indirect harassment. The Tribunal finds Drs. Steiner, Taylor, Bart, Pujari, and Rose, who were members of the G21, engaged in a course of vexatious conduct or comment. On an objective basis, the conduct or failure to act in the circumstances would reasonably be known to be unwelcome. Where there was direct participation as identified in the decision, it is the Tribunal's view that the evidence established the conduct was severe enough to be found to be harassing.

The Tribunal finds that Drs. Pujari, Steiner, Bart and Taylor's conduct was often tainted by bias with respect to their interactions with perceived supporters of Mr. Bates. As a result, the Tribunal has concluded that, on balance, processes undertaken in some instances were motivated by improper considerations in breach of the Policy. The Tribunal finds the reliable evidence provided us with a context to understand and conclude that it was more likely than not that conduct was motivated by intentions to harass, intimidate or commit reprisals. Drs. Bart, Taylor, Steiner and Pujari violated the trust placed in them as faculty members to protect the sanctity of the T&P process. The Tribunal accepts that these processes are sacrosanct in a University and must not be tainted by improper motives or irrelevant personal agendas. University process especially must not be used as vehicles for harassment and reprisal. In fact, it is most important in cases that are marginal or less definitive in terms of the decision to grant or deny tenure, permanence and/or promotion, that the T&P processes involve no reasonable apprehension of bias.

Some individual 003 Respondents acknowledged in testimony that some emails sent by G21 members were inappropriate. At the same time, the explanations and excuses proffered by the individual 003 Respondents for their behaviour were not reasonable and therefore constituted harassment under the Policy. In some instances, individual 003 Respondents claimed academic freedom to establish a reasonable cause or excuse. As we have stated, academic freedom is not a licence to harass. Faculty members are capable of expressing their opinions and opposition in a way that is not vexatious and unwelcome. In other instances, confidentiality, or suggestions persons acted within the guidelines of how they interpreted a particular policy was relied upon as

a defense. However, the Tribunal does not accept the individual 003 Respondents explanations or excuses as reasonable and in fact found them often to be self-serving where we have identified breaches of the Policy.

The Tribunal finds Dr. Bart, Dr. Taylor, Dr. Steiner and Dr. Pujari were active participants in the G21 and acted upon the group's collective goal of waging "war" against Mr. Bates and "taking the school back." The Tribunal is satisfied there was reliable evidence to establish on a balance of probabilities that some conduct or comment harassed individuals who filed Complaints, and/or their conduct and/or comments resulted in or created a poisoned work/academic environment.

The Tribunal finds the evidence did not establish that Dr. Rose committed direct harassment as alleged in the 003 Complaint. However, Dr. Rose contributed to a poisoned workplace through his conduct and/or failure to act, for which the Tribunal finds he breached the Policy.

The Complaints against Dr. Ray did not include allegations of impropriety relating to membership and conduct as a member of the G21. Dr. Ray was not a member of the original G21. Dr. Ray was a member of the G21+ after being awarded tenure effective July 1, 2009. The Tribunal finds no sufficient link was established in the evidence between Dr. Ray's conduct and the G21+ for which a breach of the Policy was established. Therefore, Dr. Ray's conduct and comment was assessed independently of the G21 emails and group conduct and comment. However, the Tribunal did find Dr. Ray breached the Policy as a result of his own conduct or comment towards Ms Carolyn Colwell, as well as his actions in submitting a Counter-Complaint against Dr. Detlor for the reasons outlined in this decision.

### **The Harassment Analysis Under the Policy**

Power imbalances were identified in both the 002 and 003 Complaints. However, it was only in the 003 Complaint that the reliable and admissible evidence supported findings that the Policy was breached by an individual. In this regard, the Tribunal relied upon the definition of harassment established in the Policy in meeting our findings.

Section 11 of the Policy states: "Harassment means engagement in a course of vexatious comments or conduct that is known or ought reasonably to be known, to be unwelcome. "Vexatious" comment or conduct is comment or conduct made without reasonable cause or excuse."

In many instances conduct or comment, looked at in isolation, did not necessarily rise to the level of "vexatious comment or conduct" that ought reasonably to be known to be unwelcome. The Tribunal determined that isolated incidents should at least initially be assessed under an egregious analysis, unless reliable evidence established a course of conduct that was known or ought reasonably be known as unwelcome. However, a vexatious and unwelcome comment need not necessarily be repeated to amount to harassment under the *Ontario Human Rights Code (Prestressed Systems Inc. v. L.I.U.N.A., Local 625, 2005 CarswellOnt 8315 (Arbitrator Snow))*. Rather the word "course" indicates that:

“it is permissible to examine otherwise isolated comments or conduct occurring over a period of time; that is, each comment or conduct need not be vexatious and unwelcome on its own, but rather the entirety of the comment or conduct, that is the “course” must be viewed. Adjudicators are directed to look at and assess the totality, or “course” of comment or conduct, whether that be one comment or several.”

Therefore a single comment or action may be considered harassing, if it is objectively vexatious and/or unwelcome if supported by the evidence. Under the Policy, the Tribunal does not have to find that conduct is egregious in isolation if the totality of comments or conduct is objectively determined to be unwelcome and vexatious and the evidence establishes a “course” of proscribed conduct which breaches the Policy. The Tribunal found the necessary evidence existed in the 003 Complaints to establish a course of conduct given the poisoned workplace was generally identified by all parties as unacceptable under the Policy.

Furthermore, harassment includes both subjective and objective components. An objective approach is taken in considering how the impugned behaviour would generally be perceived by a third party. The perspective of the person being harassed must also be considered. However, this subjective consideration is not dispositive. From the perspective of a reasonable victim, the incidents must be considered either serious or persistent in nature, to the extent that the Respondents can be found to have engaged “in a course of vexatious comment or conduct”. Harassment can be characterized by repetitive acts or a cluster of harassing acts rather than by a single offending act. The more serious the conduct the less need there is for it to be repeated. Conversely, the less serious it is, the greater the need to demonstrate its persistence in order to create a hostile academic/work environment and for the harassment to be established.

The Tribunal was careful to require objective evidence to establish a breach of the Policy. This was especially important where legitimate concerns were arguably raised or identified in any University process which the Tribunal found to be tainted by harassment, reprisal or conduct which otherwise breached the Policy. Such findings do not adversely affect academic freedom and freedom of speech values. Furthermore, the Tribunal is satisfied that the reliable evidence established knowledge of group activities which were implemented by individual(s), separately or in concert, resulted in direct or adverse effect harassment of the 003 Complainants by Drs. Taylor, Bart, Steiner, Pujari and Rose. The acquiescence amongst members of the G21 allowed harassment of the 003 Complainants to take place in the DSB. The conduct and proposed conduct was inappropriate, yet no G21 member including Drs. Bart, Taylor, Steiner, Pujari or Rose objected to it.

The Tribunal would not have been concerned if accused faculty had only, in good faith, engaged in pointed criticism to protect high standards for renewal, promotion and ultimately tenure. Faculties are meant to be collegial and respectful of dissenting views. However, legitimate academic and professional questions and concerns can be critical and were raised under the T&P processes with respect to the processes involving Drs. Flynn and Longo. We accept there were legitimate concerns with the tenure and promotion dossiers presented by each of those candidates. Certain cases could objectively be considered marginal and of course

denied. However, even legitimate questions or concerns can constitute harassment if the manner in which those concerns and questions are presented is contrary to the Policy or the law. The Tribunal finds the Policy and its objectives require us to also ensure University processes are not tainted by personal and group vendettas or vindictiveness and by ulterior motives in breach of the Policy. The Tribunal has concluded in the “unique” circumstances of the evidence before us that, in fact, the line was crossed where we have determined an individual 003 Respondent breached the Policy.

As stated, individual 003 Respondents testified they were merely exercising academic privileges including freedom of speech and association when they engaged in conduct or comment which has been identified as a breach of the Policy. These freedoms are valued rights, are recognized in the jurisprudence, and must be reasonably protected. However, the Tribunal notes the individual 003 Respondents as members of the G21 and subsequently the G21+ exercised these rights secretly in groups sharing strategies, comments and conduct only with colleagues who were perceived as likeminded and who these individuals felt could be trusted. Communication was selective and extensive disclosure was avoided. Tenure offers significant protections to our colleagues to express vigorous dissent. A dispute with the Dean personally by expressing opposition through the exercise of academic freedom is not a concern for the Tribunal. However, comments or conduct which harass, intimidate and retaliate against perceived supporters of the Dean who are in vulnerable positions with respect to employment, tenure and promotion are unacceptable. Rather, in some cases Drs. Bart, Taylor, Steiner and Pujari employed strategies which resulted in conduct or comments which the Tribunal has found harassed, intimidated and retaliated against supporters of Mr. Bates or perceived supporters, who are the 003 Complainants.

Individuals have a right to be assessed and judged on the merits of their work. The Policy was breached when individuals were harassed, intimidated or retaliated against because of their perceived association with Mr. Bates or not being perceived as “Mac guys” as described in Dr. Rose’s testimony. Faculty should be respectful of disparate views and perspectives. Conduct in accordance with the highest standards reflecting the Policy’s values is not unreasonable to expect. In the circumstances of this case, Drs. Bart, Steiner, Taylor, Pujari and Rose collectively and individually expressed self-serving views defining expectations for those perceived as the Dean’s supporters or who were otherwise not thought to be “Mac guys”, in their opinion. Their group or individual bias and conduct led to the 003 Complainants being treated contrary to the Policy. Engagement in comment or conduct which is harassing, intimidating and retaliatory against individual(s) who are not like minded, or perceived to be, or who are mistreated so that individuals can retaliate against the Dean is unacceptable.

**“The ends justifies the means” mentality of the G21**

The Tribunal was particularly concerned by the “ends justify the means” mentality exhibited and confirmed by the testimony of persons who were part of the G21 email list. The indifference and at times reckless disregard for facts was generally acceptable to the group if the goals and objectives of the G21 and its agenda were strengthened. Faculty members perceived to be Dean Bates’ supporters were not asked to comment on or sign the Performance Report. The Tribunal was satisfied the individual 003 Respondents all had a common goal of “taking back

their school” from persons they did not view to be “Mac guys”. Ensuring that Mr. Bates’ perceived supporters would not feel welcomed or progress in their careers at the University became an acceptable strategy without any evidence of dissent from members of the G21. The 003 Complainants were the victims of the individual 003 Respondents’ dissatisfaction with the Dean and decisions impacting the DSB which were viewed as unacceptable to members of the G21. The individual 003 Respondents’ conduct, comments and/or condoning the conduct or comments of others through inaction are unacceptable and in the Tribunal’s view breached the Policy.

The G21 adopted an “ends justifies the means” mentality in the group as demonstrated by some of its active participants’ comment, conduct and implementation of suggested strategies. Consistent with the war analogies, active G21 members attempted to “rally the troops” to undertake activities to fulfill the goal of “taking the school back”. G21 members who may not have been active, nevertheless received the group emails. The Tribunal received no evidence that members asked to be removed from the G21 or objected to the comments or conduct. Some G21 members reluctantly conceded under oath that certain comment, conduct and strategies were inappropriate.

### **Timely Objection to the Harassment**

The manifestations of inappropriate conduct that the Tribunal considered in its assessment were not always overt or communicated verbally, or in writing, to the knowledge of the 003 Complainants. For the most part the 003 Complainants often felt they were being treated inappropriately. However, in some instances, not knowing or absent proof of ulterior motives, their concerns were not easily articulated and/or would not be reasonably apparent to a third party. For example, aggressive research questions and scrutiny during T&P Committee processes may be proper and can result in a candidate feeling uncomfortable or subjectively harassed without the Policy being breached. Individuals found themselves in a poisoned work/academic environment. Therefore, conduct or comment was not always clearly or easily identified as being the result of harassing conduct or comment, rather than critical peer review. The test is objective rather than subjective when applying the Policy. It would be reasonable to presume good faith of faculty exercising academic freedom when screening individuals if a candidate raised concerns with a third party about difficult questions posed arguably within the ambit of a committee’s scholarly mandate.

Frequent and persistent taunting by a person in authority is obviously not acceptable behaviour and is contrary to the Policy. The Tribunal has found certain conduct and comment by Drs. Taylor, Bart, Steiner, and Pujari were unwelcome and vexatious and breached the Policy. That the conduct and comment violated the Policy was known or ought reasonably should have been known to them. For example, as will be discussed, that conduct included Dr. Taylor’s “middle of the road” and “Slinkies” posters; Dr. Bart’s statements in Dr. Flynn’s T&P consideration, Dr. Bart’s email about Ms Stockton’s MUFAGab post; Dr. Steiner’s treatment of Dr. Head in her T&P consideration for promotion; and Dr. Pujari’s failure to recuse himself from the career discussions related to the CLAs. However, coercion or compulsion may be overt or subtle. An objective standard of reasonableness was applied when reviewing the conduct of the

individual 003 Respondents, both as to its offensiveness and whether a harassing and/or negative condition of work was created contrary to the Policy.

On the facts of this case, the Tribunal finds immediate objection to allegedly harassing conduct need not be a precondition to a finding of harassment (*Palmer v. Starwood Hotel and Resort*, 2010 HRTO 2188 (CanLII)). The Tribunal is of the opinion that the failure to immediately report unwelcome conduct did not nullify a claim of harassment in the circumstances of the 003 Complaint given the poisoned work/academic environment. The “ought to have known” reference in the definition recognizes an objective reasonableness standard should be utilized when assessing responsibility. Appreciating the offensiveness of certain behaviours does not rest entirely with the complainant (*Cuff v. Gypsy Restaurant (1987)*, CHRR D/3972 (Ont. Bd. Inq.)).

Therefore, the Tribunal accepts that the 003 Complainants did not always expressly indicate disapproval of conduct in a timely manner. However, the Tribunal accepts this as reasonable in the circumstances, given that some 003 Complainants were in vulnerable employment positions and others were unaware of the extent of the background activities. For example, affected individuals were unaware of disparaging remarks shared privately amongst the G21 at the same time members of the G21 were participating on committees under the T&P Policy or debating, and in the case of Dr. Pujari, impacting CLA conversion issues.

The objective and reliable evidence disclosed a breach of the Policy on a balance of probabilities. The victims were not always fully aware of the extent and nature of the insults or hostility as evidenced in this case in the group emails by the G21 and G21+. For example, we have reviewed internal group emails which provide context when interpreting conduct. The fears and allegations expressed by the 003 Complainants were in some cases corroborated by the documents disclosed through the hearing process. G21 members sent group emails disparaging some perceived Mr. Bates supporters. By consequence or design, many faculty members being disparaged were vulnerable, due to their untenured or contractual status. The 003 Complainants continued to work in the DSB and continued to have interactions with the individual 003 Respondents. In addition, while they felt victimized, the 003 Complainants were unaware of the full scope and extent of what was occurring. Their suspicions were confirmed by the disclosure of several G21 emails in the course of this hearing.

As such, the Tribunal, where appropriate, made reasonable inferences concerning motivations for decisions or conduct which breached the Policy, relying upon documentary and *viva voce* reliable evidence.. The Tribunal’s findings result from the hostility or attitude of Drs. Pujari, Bart, Taylor, and Steiner and to a lesser extent Dr. Rose who, because of their tenured positions and the trust placed in them by the University, could adversely affect a 003 Complainant. The ultimate test is whether the Policy was breached. A breach can still arise if the proscribed behaviour adversely affects the individual even if, for example, the candidate ultimately, despite being harassed, obtains promotion or tenure. It is possible that the outcome in terms of career may be positive for an individual, yet they can still be harassed during the process of achieving that outcome. The Tribunal is satisfied, in part because of the G21 emails and the related conduct and comment, that the poisonous workplace was primarily the result of the conduct of Drs. Bart, Taylor, Steiner, and Pujari and to a lesser extent Dr. Rose, who also

breached the Policy with respect to some allegations raised by the 003 Complainants. The resultant poisoned work/academic environment is unacceptable and in breach of the Policy.

vi. **The University's Responsibility for the Individual Respondents Conduct**

The Tribunal believes the evidence in the 003 Complaint does not establish any direct harassment or discrimination by the University on an objective and reasonableness standard. There is no strict liability for harassment unless conducted by persons who might be properly characterized as the directing mind of the University or if the University did not reasonably respond to issues known at the relevant time. Direct harassment findings against a University requires knowledge on the part of the University. In the Tribunal's view, the University reacted reasonably to address the alleged harassment as issues reasonably became known and understood.

The 003 Complainants' counsel also maintained, in closing submissions, that his clients were also victims of discrimination. If so, the University would have direct and strict liability for the individual 003 Respondents' breach of the Policy under the Code if a prohibited statutory ground was in issue. Limited jurisprudence was submitted for the Tribunal's consideration to support the discrimination allegations.

Briefly, a Complainant must establish a *prima facie* case of discrimination on the balance of probabilities. If established, the evidentiary burden shifts to the Respondent to provide legitimate, credible reasons for its treatment of a Complainant or to rely on an exception or justification in the *Code*. If the Respondent is able to do this, then the burden rests with the Complainant to prove on the balance of probabilities that this explanation is false. The legal burden remains with the Complainant at all times: *Ontario (Human Rights Comm.) v. Simpsons-Sears Ltd.* (1985), 7 CHRR D/3102 (S.C.C.); *Entrop v. Imperial Oil Ltd.*, (2000), 37 CHRR D/481 (Ont.C.A.).

The Tribunal finds that discrimination has not been established by the evidence under the jurisprudence we have considered. The 003 Complainants' submissions did not satisfy the Tribunal that the evidence established a nexus between the 003 Complainants' allegations and any prohibited ground proscribed by the *Code*. The Tribunal finds no evidence of discrimination "because of" differential treatment based upon a prohibited ground under the *Code*. Therefore, the Tribunal does not find that any of the 003 Complainants have discharged the onus to establish that they were discriminated against contrary to the *Human Rights Code*.

Furthermore, the University's Policy also prohibits discrimination because of political belief: membership or non-membership in a political organization. If any feature of employment becomes reasonably dependent on accepting a point of view held by a member of the administration or tenured faculty, then the interaction may become a condition of employment. However, even if the G21's conduct falls within the term "political organization", the G21 was not identified in the original 003 Complaint as a political organization to support discrimination allegations. The Tribunal does not believe it has jurisdiction to rectify the 003 Complaint to find discrimination because of this particular ground. In any event, any adverse

treatment suffered by the 003 Complainants is in our view subsumed under the Tribunal's poisoned work/academic environment findings, making this issue moot.

**vii. Concluding General Comments**

The Tribunal considered all of the numerous allegations raised in the 003 Complaint. The Tribunal provides additional individual findings to further explain why and where a breach of the Policy was found to be established by the evidence against an individual 003 Respondent. The Tribunal will provide further reasons why an individual breach might not have constituted harassment or discrimination for those allegations which were the focus of submissions by the parties in closing submissions. Otherwise, the remaining allegations identified in the Complaints have been dismissed by the Tribunal where we were not satisfied that the allegations raised a *prima facie* breach of the Policy or where allegations of discrimination, harassment or reprisal were not established by the admissible and reliable evidence. The Tribunal received extensive closing submissions in the 003 Complaints and will touch on them briefly but not repeat them in further detail, except as may be necessary or to highlight the different interpretations asserted by the parties.

As discussed, both direct and adverse effect harassment constituted a breach of the Policy. However, the appropriate sanction and remedy may vary for identified breaches including those arising under the three general scenarios we have identified. For the purposes of the remedy submissions, the Tribunal felt we needed to distinguish the different levels of participation by individual 003 Respondents whom we found to have breached the Policy. Furthermore, the poisoned academic/work environment, as stated earlier, was generally attributed to the conduct or comment of others by each of the parties. The Tribunal found breaches of the Policy for comment or conduct which "resulted in" a poisoned work/academic environment whether or not a poisoned environment already existed. This is distinct from our findings where conduct was found to have "contributed to" a poisoned work/academic environment where we did not always find a breach of the Policy or conduct which "resulted from" a poisoned work/academic environment where we found the Policy was not breached.

**E) COMPLAINT OF MS CAROLYN COLWELL**

Ms Colwell's allegations are set out at paragraphs 105-116 of her Complaint (DSB-0002) and in her affidavit at DSB-2101. Dr. Detlor, Dr. Head, and a non-party witness, Ms Carole Stevens, testified for Ms Colwell. Dr. Ray's affidavit (DSB-2295), as well as Dr. Pujari's affidavit (DSB-2291) was supplemented by their testimony. Dr. Agarwal testified as a non-party witness for Dr. Ray and Dr. Pujari.

The Tribunal finds that Dr. Ray directly harassed Ms Colwell when he engaged in a repeated pattern of unwelcome and vexatious comment and conduct in breach of the Policy with a staff member who was in a vulnerable position.

The Tribunal finds that there are insufficient grounds on the evidence to find that Dr. Pujari directly harassed Ms Colwell. The Tribunal finds, however, that Dr. Pujari's conduct involving Ms Colwell breached the Policy because his persistent and vexatious conduct created an unacceptable negative working environment for Ms Colwell and resulted in a poisoned work environment at the DSB.

**i. Dr. Ray's Communication and Conduct with Ms Colwell****Summary of Evidence and Submissions**

Ms Colwell was the Administrative Coordinator at the DSB and worked for Dr. Detlor when he was the Ph.D. Director. During this period there was growth in the Ph.D. Program in the DSB into new Areas. In 2008, the DSB received applications for doctoral studies in Marketing. However, the Marketing Area had not yet been established so the applications were sent to the IS Area. The newly established Marketing Area admitted its first doctoral student into the Program in 2010. Prior to 2010, Dr. Ray had served on graduate student supervisory committees in other fields but had not been a primary Ph.D. supervisor. In January 2010 Ms Colwell forwarded the list of Marketing Ph.D. applications to Dr. Toru Yoshikawa as well as to the faculty in the Marketing Area. Dr. Yoshikawa from the HR Area had, prior to the events of January 2010, indicated that he would like to supervise Ph.D. students and might want to supervise one of the Marketing Ph.D. applicants.

**Dr. Ray's Telephone Call to Ms Colwell**

Ms Colwell testified that on January 28, 2010, Dr. Ray contacted her by telephone. Dr. Ray was very upset because she gave Dr. Yoshikawa Marketing Ph.D. applications to review. Ms Colwell alleged that Dr. Ray raised his voice, spoke over her, said she had "been around long enough to know about politics," that she was "causing problems" within the department, and that she should have "known better." Ms Colwell testified that she tried to end this telephone call numerous times but Dr. Ray continued to berate her and made it clear that what she had done was inappropriate.

Ms Carole Stevens testified and confirmed that Ms Colwell came into her office after the phone call with Dr. Ray and was “agitated and shaky.” Ms Colwell was close to tears and was upset. Ms Stevens stated that she was worried about Ms Colwell as she had not previously seen her that emotional. Ms Stevens testified she observed that Ms Colwell used to be confident. However, after this phone call she became “very tentative,” and was occasionally close to tears. In the months after this incident Ms Stevens saw Ms Colwell “shrink into herself.”

Dr. Ray testified that Ms Colwell was combative over the phone. Dr. Ray described his own tone as firm and emphatic. Dr. Ray admitted that the phone call was the first substantive phone call he had with Ms Colwell. He had limited interaction with Ms Colwell before the phone call. In his affidavit (DSB-2295), Dr. Ray denied making the statements that Ms Colwell alleges he made during the phone call. However, he did admit he stated that her actions “‘could cause problems in decision making’, which could adversely affect a student’s admission chances.” (at para. 88). Dr. Ray stated that he “politely but firmly stated that her actions were inappropriate” (at para. 90) and explained why her actions were contradictory to his wishes. Dr. Ray stated that Ms Colwell should have known that Dr. Yoshikawa was not a member of the Marketing Area and thus should not have received the Ph.D. applications. He denied raising his voice and speaking in a derogatory and condescending tone.

### **The Newton Fact-Finding Report**

Ms Colwell decided to not involve her labour union and chose instead to address her concerns informally with management. Ms Colwell met with several administrators, including the Dean, to raise concerns about Dr. Ray’s conduct. The Dean contacted Ms Lisa Newton, the Associate Director, Employee/Labour Relations (Legal), Human Resources Services, to conduct a fact-finding report. The 11-page report was dated June 13, 2010, and was submitted as an exhibit (DSB-0516 and DSB-1197, hereafter referred to as the “Newton Report”). Ms Newton interviewed both Ms Colwell and Dr. Ray. The Newton Report generally concluded that (1) Ms Colwell accurately described the incident between Dr. Ray and herself; (2) the facts of the incident did not warrant further action; and (3) the telephone exchange “appears to be representative of the dysfunctional work environment” as found in the HRES Audit of the DSB.

### **Dr. Ray’s Alleged Retaliation in Response**

On August 5, 2010, Dr. Ray sent an email (DSB-0516) to the Dean and Ms Newton, and copied Ms Colwell, Dr. John Weaver ( Professor and Chairman of the Faculty Grievance Review Panel), and the three members of the PACDSB. Dr. Ray enclosed a 2-page cover letter and a 28-page copy of the Newton Report which contained his own added commentary. The cover letter outlined the reasons for which he believed the Newton Report was invalid, how the process in which the investigation took place was invalid, and a list of six examples of “the locus of dysfunctionality, unrelated to [his] interactions with Ms Colwell.” At the end of the letter, he stated that “the only way this episode will come to an end is a complete redaction of this entire report.”

Dr. Ray's comments on the Newton Report used red capital letters and were interspersed throughout the document. Bold font and yellow highlighting were also used for emphasis. Dr. Ray's personal comments were in capital letters. Some of Dr. Ray's comments were as follows (excerpts include the Newton Report statements he was replying to):

...FROM WHERE I STAND, I SEE THAT MY RIGHTS TO NATURAL JUSTICE WERE NOT RESPECTED; THAT I WAS NOT GIVEN FULL INFORMATION ABOUT THE SCOPE OF THIS EFFORT; THAT I WAS EFFECTIVELY SUBJECTED TO AN ENTRAPMENT EFFORT.

IF THE DEAN'S OFFICE OR MS. NEWTON WERE NOT AWARE OF THE FACULTY POLICIES EARLIER, THAT IS A CATASTROPHIC FAILURE OF GOVERNANCE AND DERELECTION OF DUTIES. IF ON THE OTHER HAND, THEY WERE AWARE OF IT AND CHOSE TO IGNORE THEM, THAT IS EVEN WORSE AND I CAN ONLY SURMISE THIS WAS AN EFFORT TO CYNICALLY INTIMIDATE AND HARASS ME.

...  
I CAN ONLY CALL [the Newton Report] A FLAGRANT MISUSE OF AUTHORITY TO INTIMIDATE AND HARASS ME OR PERHAPS FOR OTHER PURPOSES NOT GERMANE TO MY INTERACTIONS WITH MS. COLWELL. AS SUCH THIS HAS MUCH LARGER IMPLICATIONS FOR THE FACULTY AT LARGE AT THE WHOLE UNIVERSITY.

...  
COMMUNICATIONS WERE ALWAYS SENT TO THE PHD DIRECTOR DR. BRIAN DETLOR. ANY "ACADEMIC" DECISION ON THIS IS MOST APPROPRIATELY TAKEN BY HIM AS THE ACADEMIC PERSON IN CHARGE OF THE PHD PROGRAM. IN HER POSITION AS THE ADMINISTRATIVE COORDINATOR, MS. COLWELL HAS NO BUSINESS MAKING ACADEMIC DECISIONS. IF SHE DID THAT IN THIS CASE SHE WAS CLEARLY OVERREACHING HER AUTHORITY. IF NOT, THEN UNBENOWNST TO THOSE OF US INVOLVED IN THE PHD PROGRAM, THE PHD DIRECTOR MAY HAVE ENTRUSTED AN ACADEMIC DECISION [sic] TO HER – WHICH WOULD ALSO BE A VERY WRONG ACTION.

...  
THIS IS AN ACADEMIC DECISION – NOT BE TAKEN LIGHTLY OR ACTED UPON CAVALIERLY BY SOMEONE ENTRUSTED WITH AN ADMINISTRATIVE FUNCTION... I HAVE MORE COMMENTS ON THIS GOVERNANCE FAILURE LATER.

...

“Dr. Ray told Ms Colwell that her having given the Ph.D applications to Dr. Yoshikawa to review was causing Dr. Ray a great deal of difficulty.”

NO – THAT IS NOT ACCURATE. THE PROPER PHRASE WOULD BE – “COULD CAUSE PROBLEMS AND DIFFICULTY IN DECISION MAKING.” I FAIL TO SEE HOW THIS WOULD CAUSE PROBLEMS FOR ME PERSONALLY. THERE IS NOTHING PERSONAL AT STAKE HERE.

...

Ms. Colwell indicated that this was not the first time Dr. Ray had shouted to speak over her during a conversation. Ms. Colwell also indicated that she is aware of other staff members besides herself who have been upset by the way Dr. Ray speaks to them (some to the point of tears), but without their permission to do so, Ms Colwell declined to identify these staff members.

THIS IS A PREPOSTEROUS LIE AND A HIGHLY DEFAMATORY INSINUATION!

...

3. The January 28, 2010 Telephone Conversation from Ms Colwell’s Perspective

HOPEFULLY, “MS COLWELL’S PERSPECTIVE” IS ONLY A TYPO IN THE ABOVE LINE.

After Dr. Ray sent his commentary on the Newton Report, Ms Colwell said she was fearful there would be reprisal as a result of her having complained. Ms Colwell alleged that Dr. Ray’s conduct in relation to the Newton Report was harassing. She perceived Dr. Ray’s use of all capital letters and red font as a sign of anger and aggression. The evidence showed that Dr. Ray further copied the email to Dr. John Weaver and the three PACDSB members, all of whom were not copied when Ms Newton released her Report.

Counsel for Dr. Ray noted that his email was sent to Ms Newton (and Mr. Bates), attaching the cover letter and edited Newton Report. The response by Dr. Ray was only copied to Ms Colwell. Dr. Ray testified the red font was a result of the “track changes” function of Microsoft Word. As such, the red font was not intended to be used in a harassing manner. Dr. Ray noted his cover letter accompanying his edited version of the Newton Report was written in a normal-sized font. Dr. Ray testified that he did not “shout” at Ms Newton by using capital letters. Rather, he was merely trying to differentiate his comments from the original text. When asked on cross-examination whether he would make the same comments in person, Dr. Ray stated “if people say something that is a preposterous lie and a defamatory insinuation, then yes.”

As well, Ms Colwell testified that Dr. Ray refused to mediate the issues of communication identified in the Newton Report with her. Dr. Ray stated that he did attempt to bring closure to the issue and engage in mediation on five separate occasions, but HRES was not

responsive to his emails (para. 101-4). Dr. Ray did not believe there was any urgency and in any event would have been able to devote time for a potential mediation after his research leave concluded in June 2011. Dr. Ray testified that he understood the Newton Report concluded no further action was warranted and that the Dean agreed. Therefore, he had believed that there was closure on the issue until the formal Complaint was filed against him.

### **Tribunal's Findings**

The Tribunal finds Dr. Ray's treatment of Ms Colwell breached the Policy. Dr. Ray engaged in a course of vexatious conduct that he knew or ought reasonably should have known to be unwelcome, which was made without reasonable cause or excuse starting with his phone call to Ms Colwell in January of 2010. The Tribunal would have found the call to be an isolated incident which was not egregious if the phone call issue was resolved with the Newton Report. Dr. Ray may not have appreciated the offensiveness of his communication nor may he have been reasonably aware of Ms Colwell's reaction during and immediately after the call. However, despite becoming fully aware of Ms Colwell's concerns about the phone call, Dr. Ray took issue not only with the process, (which he was entitled to do) but also continued to dispute Ms Colwell's description of the call.

Dr. Ray's conduct and comment rose to the level of harassment when he was not prepared to move forward after the Newton Report. Dr. Ray had an opportunity to reflect upon the telephone conversation having become aware of Ms Colwell's reasonable concerns. Dr. Ray engaged in further conduct which he knew or ought reasonably should have known to be unwelcome rather than move forward despite his admission that he understood that the Dean agreed that no further action was warranted. Dr. Ray may have had legitimate concerns with the Newton Report. However, his response was unreasonable because he harassed Ms Colwell further when Dr. Ray's legitimate concerns were with the process. The Tribunal finds that with the release of the Newton Report, Dr. Ray continued his pattern of insults which were sufficiently vexatious to be regarded as a prohibited condition of employment, because it created a negative and unreasonable work environment for Ms Colwell. The Tribunal found Ms Colwell was credible and her evidence is preferred and accepted when contradicted by Dr. Ray's uncorroborated testimony. The Tribunal observed Dr. Ray in his testimony and feel he may not realize how his own communication tendencies may reasonably be interpreted as unnecessarily aggressive and provocative which would lead some persons to feel harassed when viewed objectively.

The Tribunal does not find that Dr. Ray's refusal to mediate was further harassment of Ms Colwell. Dr. Ray did participate in the interview process that led to the Newton Report. The Tribunal was presented with evidence that showed Dr. Ray attempted to contact Mr. Komlen. The Tribunal finds the process in managing this matter was not a ground upon which Dr. Ray can be held responsible under the Policy.

**ii. Dr. Ray and Dr. Pujari undertook retaliatory conduct against Ms Colwell.****Summary of Evidence and Submissions****Accusations of Retaliation**

Ms Colwell alleged Dr. Pujari also participated in a course of retaliatory and inappropriate conduct after the release of the Newton Report on June 13, 2010. Furthermore, Ms Colwell alleged Drs. Ray and Pujari accused Ms Colwell of inappropriately interfering in Ph.D. Program-related issues and attempted to have some responsibilities taken away from her. In addition, Drs. Pujari and Ray allegedly refused to comply with her requests, circumvented her, and acted in a rude or aggressive manner.

In September 2010, Dr. Pujari completed a course selection form for two students, and submitted them to Ms Colwell. Dr. Detlor pointed out errors on the forms to Dr. Pujari and Dr. Ray, copying Ms Colwell. Dr. Detlor also mentioned some students were concerned about an economics course. Dr. Ray replied to Dr. Detlor's email, but did not copy Ms Colwell (DSB-0525). However, Ms Colwell characterized this email as "aggressive" in her testimony. Ms Colwell suggested Dr. Ray excluded her by sending the response to Dr. Detlor and other faculty members when it involved her. Dr. Detlor replied to Dr. Ray's email copying Ms Colwell (DSB-0526). Dr. Ray's reply (DSB-0528) did not copy Ms Colwell and included the following: "I find an overlap of administrative and academic roles undesirable." Ms Colwell also characterized this email as "aggressive" and suggested that Dr. Ray believes she and Dr. Detlor were "overstepping their administrative boundaries and infringing on Dr. Ray and Dr. Pujari's academic oversight of their students" (para. 59 of her affidavit).

Dr. Detlor replied to Dr. Ray and Dr. Pujari directing any further queries to Ms Colwell (DSB-0529). Ms Colwell added her remarks in a subsequent email (DSB-0530). Dr. Ray then sent another email to Dr. Detlor and did not copy Ms Colwell, but copied five other DSB faculty members. In that email, he used the word 'dysfunctional' when referring to the counseling that Ph.D. students receive from the Ph.D. Office (DSB-0532). Ms Colwell suggested this email was "highly insulting and inappropriate." Ms Colwell stated that Dr. Ray continued to exclude her, but included others, in important emails containing student information. Ms Colwell alleged Dr. Ray's decision to include others in the email chain was "an attempt to publicly attack the Administration of the Ph.D. Program and the reputation of those associated with it (myself and Dr. Detlor)" (para. 63 of her affidavit).

**Tribunal's Findings**

The Tribunal finds that the aforementioned email exchanges did not breach the Policy. The Tribunal feels the issues were managed poorly by Drs. Pujari, Ray and Detlor. These individuals had the right to disagree or be critical of each other in the emails exchanged with one another. Dr. Ray did not copy Ms Colwell who was brought into the dispute by Dr. Detlor. These disagreements concerned structure and expressed strong opinions but were not vexatious.

Ms Colwell had the support of Dr. Detlor. The Tribunal finds that in the circumstances there was no objective power imbalance causing us to have concerns that the Policy was breached.

iii. **Attempts to Remove Ms Colwell's Responsibilities**

**Summary of Evidence and Submissions**

Ms Colwell alleged that Dr. Ray took steps to have the responsibility of congratulating successful Ph.D. candidates removed from her duties. Ms Colwell testified that she had regularly sent out invitations to parties interested in observing students defend their theses and congratulating a student on a successful defence (DSB-0558 and DSB-0567).

In an email to Dr. Medcof dated September 14, 2010 (DSB-1215), Dr. Ray responded to one of Ms Colwell's congratulatory emails. In the email, he stated that since the thesis defence is one of the most important achievements in a student's academic life, the email should come from the "appropriate authority." This email conversation is also the subject of Dr. Detlor's claims against Dr. Ray, and Dr. Ray's Counter-Complaint against Dr. Detlor. The entirety of this particular email conversation is summarized in Appendix Q of the decision. In the email at DSB-1215, Dr. Ray wrote:

"Over the last year or so I have seen these announcements being made by the administrative secretary rather than the PhD Director, which in my opinion misses an opportunity to exhibit that we care for these graduates at the highest levels of the administrative hierarchy. ... the PhD Director would not even send out congratulatory notes to incoming PhD students, leaving the job to be done in first person by the administrative secretary ... This in my books, exhibited a similar lack of care. Or perhaps Brian Detlor is so busy that he does not have the time to send out congratulatory notices to PhD students either on the way in, or on the way out!"

Dr. Ray then suggested that the Associate Dean or Area Chair send out the congratulatory emails. Dr. Ray repeated his request to Dr. Medcof in an email dated November 29, 2010 (DSB-0560). Dr. Medcof stated, in an email dated December 1, 2010, that Dr. Ray may have a point and asked to discuss the issue with Dr. Detlor.

Ms Colwell stated that Dr. Ray's emails were demeaning and demoralizing, and felt like an attack. Ms Colwell has continued to send out similar emails, and she stated that she has not received any other complaints from other faculty members regarding the practice.

Dr. Ray stated that his belief that Dr. Detlor ought to send the congratulatory emails was not meant to remove any of Ms Colwell's duties nor an attempt to harass her. Dr. Ray believed that since his opinion was supported by Dr. Medcof, it was an objective sentiment and not a retaliation against Ms Colwell.

Dr. Ray testified that in March 2010, he had contacted the members of the Ph.D. Operating Committee requesting that admission offer letters should be signed by Dr. Detlor as Ph.D. Director, not Ms Colwell. Dr. Yuan agreed with this proposal (DSB-1187). In response, Dr. Detlor emailed Dr. Ray, and copied Ms Colwell, stating that Ms Colwell had developed a rapport with students and the letters should continue to be signed by her. Dr. Ray then further explained his position to Dr. Detlor (DSB-1189). Dr. Ray stated that it was Dr. Detlor's decision to include Ms Colwell in this instance which created a situation that unnecessarily led to conflict between himself and Ms Colwell. Dr. Ray testified that his research leave commenced in July 2010 and he had little direct subsequent interaction with Ms Colwell.

### **Tribunal's Findings**

The Tribunal finds that the Policy was not breached by Dr. Ray for these events. The Tribunal accepts that Ms Colwell subjectively felt demeaned and demoralized which is understandable given the poisoned work/academic environment at the DSB. However, the Tribunal does not believe the reliable evidence viewed objectively establishes a breach of the Policy by Dr. Ray for these specific issues. The Tribunal accepts Dr. Ray's suggestions were directed to Dr. Detlor and the communications are not prohibited by the Policy.

#### **iv. Refusals to Comply with Requests**

##### **Summary of Evidence and Submissions**

Ms Colwell alleged that both Drs. Ray and Pujari also intentionally delayed, refused, or failed to complete certain tasks connected to Ms Colwell's work.

Ms Colwell testified that Dr. Pujari ignored her emails about orientation packages in August 2010, and thus she had to unnecessarily follow up with him.

In another instance, Ms Colwell asked Dr. Ray and Dr. Pujari for current course outlines. Dr. Ray did not send Ms Colwell the information as requested. Dr. Agarwal then contacted Dr. Ray, at which point Dr. Ray sent the course outlines late. Dr. Pujari did not provide a course outline despite numerous follow-ups, voicemails, and an email (DSB-0566).

Dr. Agarwal testified that Dr. Ray explained his reasons for his delay responding to Ms Colwell. Dr. Agarwal advised Dr. Ray that informing Ms Colwell that he would not be able to send the information to her would be perceived in a negative fashion since they were already involved in what he called a grievance. He described Dr. Ray as being very cautious, very discreet and careful about sharing information about the grievance. For example, Dr. Ray would use "Ph.D. Office" instead of using Ms Colwell's name. Dr. Ray stated that he did not communicate with Ms Colwell because he knew she had filed a complaint against him.

After Dr. Pujari submitted a course selection form for a student, in September 2010, Ms Colwell replied and offered comments about how that student may proceed. Ms Colwell

testified that Dr. Pujari's reply (DSB-0543) was terse, rude, accused Ms Colwell of overstepping her bounds, and belittled her knowledge.

Ms Colwell alleged that in October 2010, Dr. Ray questioned the authority of the Ph.D. Office emails, in an "unpleasant and demanding tone." The emails (DSB-2063) concerned scholarship applications for Ph.D. students. After another staff member explained the policy, Dr. Ray suggested that the Ph.D. Office, including Ms Colwell, did not give sufficient notice for the completion of the applications. Ms Colwell stated this is untrue. Dr. Ray continued to challenge the Ph.D. Office staff's knowledge of policy and procedure, which Ms Colwell testified contributed to the harassment.

Ms Colwell alleged she experienced further harassment from Dr. Ray in January 2011. There was an issue involving one of Dr. Ray's Ph.D. students who failed an economics course. Dr. Detlor, as Ph.D. Director, advised the Registrar's Office that the economics course was taken as an "Extra Credit" course and therefore the course would be removed from the transcript. After Dr. Detlor informed Dr. Ray of this, Dr. Ray sent a "bizarre, angry" email to Dr. Detlor claiming that "all the decisions you took and implemented here are wrong" and that there was "serious dysfunctionism at the Ph.D. office" (DSB-0577). Ms Colwell stated she felt uncomfortable, intimidated and hopeless when she read the email.

Ms Colwell stated that another persistent issue for Dr. Ray and Dr. Pujari was their failure to submit Ph.D. application rankings to her. Ms Colwell identified two instances where this occurred. On January 26, 2011, Ms Colwell asked all faculty to submit their ranking sheets by February 7, followed by a reminder email on February 4. On January 27, 2011, Dr. Pujari sent an email (DSB-1129) to Area members informing them they would send a single ranking to the Ph.D. Office which they would prepare at their meeting, and that he would not be sending his individual ranking.

In an email on February 4, 2011 (DSB-0582), Dr. Ray stated he "[saw] no good reasons to send my rankings to the Ph.D. office." Ms Colwell testified this was contrary to the standard practice where Ms Colwell prepared the summation of the rankings for each Area prior to their discussions. On February 9, 2011, after having discussed the issue with Dr. Medcof and being referred to DSB Faculty policy, Dr. Pujari advised his Area members that they indeed should send their individual rankings to the Ph.D. Office (DSB-0585). Dr. Ray later replied he was not aware of that document but that "its existence does not make the process any more useful of course." He later defers to the policy and closes his email with "Halcyon days...! :-)."

As a result, Ms Colwell received the rankings after the February 7 deadline. Dr. Ray did not submit any rankings.

On February 11, 2011, the day of the Area meeting, Dr. Pujari sent an email to Ms Colwell, copying Drs. Detlor and Medcof, and asked for the summated scores (DSB-0590). Ms Colwell alleged this email was a deliberate attempt to make it appear to the Director and Associate Dean that she was not fulfilling her duties, to undermine her work, and to damage her professional reputation.

For the second round of Ph.D. applications, Ms Colwell stated that Dr. Pujari and Dr. Ray had not submitted their individual rankings to her by the deadline. Dr. Pujari ultimately submitted his rankings one day late, and Dr. Ray did not submit his rankings to the Ph.D. Office.

In response, Dr. Ray called the ranking of Ph.D. candidates a flawed process. Dr. Ray explained he had previously informed his colleagues of his concerns, as evidenced by an email dated February 1, 2010 (DSB-1182). Dr. Ray testified his actions were not retaliatory because his belief that the process was flawed predated Ms Colwell's Complaint. He also felt that since there are so few Ph.D. supervisors in the Marketing Area, and few applicants, the issue of sending rankings to be collated by the Ph.D. Office before discussions was moot. Dr. Ray felt that the individual rankings not being provided would not negatively affect any outcome since the Marketing Area itself would finalize and send a list with the final rankings to the Ph.D. Office. Dr. Ray was not aware if the need for ranking without having the discussion among Area members was a matter of policy, nor was he aware of any specific requirement or formal obligation with respect to ranking the applicants.

Dr. Pujari testified that he and Dr. Ray were the only two faculty who were supervising students in the Marketing Area. In addition, Dr. Pujari stated that Marketing faculty members told him it would be difficult to rank candidates because he and Dr. Ray would essentially make the decisions given they talked to some of the prospective applicants. Dr. Pujari stated that he was pressed for time and determined that it would be prudent to simply perform the rankings and then discuss them in the meeting. Under cross-examination Dr. Pujari confirmed Dr. Medcof advised him of the necessity to submit his rankings, but he did not think it was necessary so he decided he was not going to do it. In response to questioning from the Tribunal, he said that Ms Colwell needed the buy-in of other faculty members to do her job. Dr. Pujari denied that his actions contributed to the appearance that Ms Colwell was not doing her job properly, since Ms Colwell was not disciplined.

Ms Colwell outlined several other instances where Dr. Pujari or Dr. Ray refused Ms Colwell's requests. Dr. Ray informed Ms Colwell on March 28, 2011, that his annual supervisory committee meeting report would not be submitted by the deadline of April 1. Dr. Pujari also informed Ms Colwell on April 1, 2011, that he would not be submitting his report by the deadline and did not identify when he would be able to submit the report.

On April 7, 2011, Ms Colwell emailed Dr. Pujari (DSB-0604) asking for research assistant or scholarship payments to be made to students over the summer. Dr. Pujari replied only to Ms Redford, another staff member of the Ph.D. Office, and excluded Ms Colwell.

On May 26, 2011, Ms Colwell asked Ph.D. supervisors for their computer needs for their incoming students by June 3. Dr. Ray replied on June 3 stating he would not decide until speaking with his student. Dr. Pujari replied on June 11, 2011.

On May 19, 2011, Ms Colwell wrote to Dr. Pujari asking if there were any changes to the course calendar for Ph.D. course offerings for the next year. She sent a follow up email on May 26, 2011. On that day, Dr. Pujari replied (DSB-1152) stating he did not have time to respond, but would respond the following week. Ms Colwell felt that his response would not

require a large time commitment and that information should be readily available to Area Chairs. Other Area Chairs were quick to respond to Ms Colwell's request.

In the summer of 2011, Ms Colwell attempted to obtain a course outline from faculty. Ms Colwell stated that Dr. Ray communicated through Dr. Agarwal that he would not be able to provide his outline. Ms Colwell took this as an indication that Dr. Ray would now not communicate directly with her, but through a third party. Ultimately, Dr. Ray provided the outline to Dr. Agarwal, who forwarded the outline to Ms Colwell (DSB-0639) on September 8, 2011, after classes had started.

Ms Colwell stated that Dr. Pujari and Dr. Ray were the only two faculty members who consistently failed to respond to her requests on time. She stated that these events caused her stress and anxiety.

Ms Colwell commented on the environment of the DSB testifying: "It's very challenging, particularly from a staff point of view. Staff feel caught in the middle. They don't have any opportunity to close doors... you can't isolate yourself." Ms Colwell stated that she could not avoid finding it an "unhealthy environment."

Dr. Ray stated that while he is often late in submitting important documents and picking up his daughter at daycare, none of those instances of tardiness are meant to intimidate or harass anyone. It may be an oversight, he says, but not retaliation. Dr. Pujari stated that he has a multitude of demands on his professional and personal time, and as such, he regrets that it is an unfortunate reality that Ms Colwell and others have experienced delays with him.

Dr. Ray stated he had informed Ms Colwell that, in his opinion, the annual supervisory committee meeting ought to be held after the second term, so that grades from the second term would be reviewed. He stated that not only did he not refuse to hold the meetings, but rather he was clear about his intention to hold the meetings.

### **Tribunal's Findings**

The Tribunal finds Dr. Ray directly harassed Ms Colwell when he retaliated against her for raising concerns about his comments and conduct with her in the workplace. The Tribunal finds that in breach of the Policy, Dr. Ray undertook a pattern of retaliatory conduct against Ms Colwell that materially and without reasonable cause impaired her ability to complete tasks assigned to her. Dr. Ray continued this pattern of harassing behavior despite being directed otherwise and in the Tribunal's view these actions were vindictive. Again, Dr. Ray continued to engage in a pattern of conduct and comment which rose to the level of harassment prohibited under the Policy. Cumulatively, Dr. Ray's conduct towards Ms Colwell was vexatious and should be regarded as a prohibited condition of employment for its unreasonable impact upon Ms Colwell and the resultant negative working environment.

Dr. Ray, as a first time Ph.D. supervisor in 2010, should have been reasonably deferential to more senior faculty (Dr. Detlor) and staff (Ms Colwell) with respect to procedures related to graduate supervision or at least should have been respectful of different opinions.

Rather, Dr. Ray unreasonably interfered with Ms Colwell discharging tasks previously assigned to her and undermined her ability to fulfill her duties. The fact that Ms Colwell is a staff member in no way diminishes her capabilities and knowledge with respect to the administration of the Ph.D. Programs at the DSB. The Tribunal finds that in many cases, Dr. Ray's testimony about the related events was self-serving. Where there was a factual dispute the Tribunal preferred and relied upon the evidence of Ms Colwell and Dr. Detlor rather than any uncorroborated testimony from Drs. Ray and Pujari.

The Tribunal finds, however, that there is insufficient evidence to establish Dr. Pujari harassed Ms Colwell. The Tribunal accepts the explanation that Dr. Pujari as Area Chair was struggling with the application of policies and procedures for the first doctoral students in the Marketing Area. While Dr. Pujari's actions appeared uncooperative at times, there was no reliable evidence of vexatious comment or conduct resulting in direct harassment when applying an objective standard. However, in considering the most reliable evidence and the timing of the events in question, the Tribunal finds that Dr. Pujari's conduct and comment with Ms Colwell resulted in the poisoned work/academic environment findings we have identified and thereby breached the Policy.

**F) COMPLAINT OF DR. BRIAN DETLOR**

Dr. Detlor's Complaint is set out at paragraphs 99-104 of his Complaint (DSB-0002) and particularized in his affidavit at DSB-2103. Dr. Head, Dr. Hassanein, and Ms Colwell testified in support of Dr. Detlor's claims. The Respondents to Dr. Detlor's Complaint were Drs. Steiner and Dr. Ray, both of whom submitted affidavits and testified in response (Dr. Steiner at DSB-2293 and Dr. Ray at DSB-2295). The individual 003 Respondents called Drs. Agarwal, Hassini, Parlar, Miltenberg, Wesolowsky, and Yuan as witnesses. Dr. Connelly also provided testimony to the Tribunal for this matter.

The Tribunal finds the evidence did not establish that Drs. Steiner and Ray's isolated conduct or comment directly harassed Dr. Detlor, who did not express that it was unwelcome for each of the isolated and distinct incidents raised. Though the conduct negatively impacted Dr. Detlor, it did not support a finding of direct personal harassment of Dr. Detlor because there was no objective power imbalance or vulnerability, and the events did not rise to the level required to find direct harassment for an isolated event in the Tribunal's view.

However, Dr. Steiner's conduct and comment breached the Policy when it became vexatious and persistent without cause or excuse and thereby resulted in a poisoned workplace due to his vindictive behaviour. The evidence established that what was originally Dr. Steiner's expression of his personal disdain towards Dr. Detlor crossed the line and breached the Policy and was also considered a breach of the Policy when the conduct became repetitive retaliatory and vexatious. Furthermore, Dr. Steiner's conduct became vindictive and retaliatory towards Dr. Detlor who he perceived to be aligned with Mr. Bates (who was also personally disliked by Dr. Steiner). The Tribunal finds that viewed in context, Dr. Steiner's conduct could not simply be accepted as a personality conflict due to the objective evidence establishing a hostile work environment for Dr. Detlor whose ability to perform his job was negatively impacted.

The personal vexatious nature of Dr. Ray's conduct with Dr. Detlor contributed to a hostile work environment but in the context only of Dr. Detlor's Complaint did not cross the line to breach the Policy. The Tribunal felt some of the mitigating factors to this decision were that this was an open dispute between faculty members, where the necessary power imbalance we observed in other sections of the Complaint, was not present. The Tribunal felt that it was reasonable to expect that Dr. Detlor should have made it clear to Dr. Ray that his conduct and comment for both himself and with respect to Ms Colwell was unwelcome. Dr. Detlor did not do so until he filed his Complaint. As discussed in the section addressing Dr. Ray's Counter-Complaint, the Policy was subsequently breached when Dr. Ray's vexatious conduct continued in the submission of his Counter -Complaint. The reasons for these findings are outlined below.

**i. Did Dr. Steiner harass Dr. Detlor?****Summary of Evidence and Submissions**

Dr. Detlor joined the MS/IS Area, of which Dr. Steiner was a part, in 2000. Dr. Detlor submitted that Dr. Steiner was generally opposed to faculty working in the Information Systems

(IS) field and favoured faculty in his field, Management Science (MS). Dr. Detlor alleged Dr. Steiner's antagonistic behaviour towards him became worse after the appointment of Mr. Bates as Dean, as detailed in the allegations below.

**Dr. Detlor's Focus Group Report**

On April 8, 2005, Dr. Detlor co-authored, with his Ph.D. student, a report from a focus group study of students evaluating their experience with the Ph.D. Program in the DSB (DSB-0394). Dr. Detlor submitted that the primary purpose in running the focus group was for his Ph.D. student to gain experience with some specialized software used for analyzing group feedback. At paragraph 30 of his affidavit, Dr. Detlor stated that "forwarding recommendations or concerns made by students in the focus group to others in the School of Business as a point of discussion for how to improve the Program was very much a secondary purpose." Furthermore, Dr. Detlor clarified at paragraph 32 of his affidavit that the dissemination of the focus group report was to "serve as a catalyst for discussion to improve the Ph.D. Program, since there appeared to be a number of concerns among the students". In contrast, Dr. Steiner interpreted Dr. Detlor's report as a personal slight and as an attack on the Ph.D. Program. Dr. Steiner characterized Dr. Detlor's explanation as "camouflage" and further suggested that Dr. Detlor's focus group report was "motivated by [his] 'not-so-hidden' agenda" at paragraph 28 of his affidavit (DSB-2293).

Dr. Steiner and Dr. Agarwal prepared a two-page letter (DSB-0395) in response to the report which was sent on April 14, 2005, to all recipients of the original report: Dr. Detlor, Mr. Bates, Dr. Bernadette Lynne, Dr. Head, Ms Colwell, and the Dean of Graduate Studies, excluding all graduate students, but also including the two Area Chairs who were part of the Ph.D. Program at the time. The response reviewed Dr. Detlor's focus group report and detailed a number of concerns. Drs. Steiner and Agarwal wrote that the focus group report was deficient and created unrealistic expectations and perceptions of the Ph.D. Program because the report was based on the input of too few students, did not comply with research ethics policy and did not separate the MS/S and HR fields within the Ph.D. Program. In their reply, Drs. Steiner and Agarwal also stated that the timing of the report was unfortunate because the Ph.D. Program was currently being reviewed by the OCGS and the report might cause "unnecessary noise". Drs. Steiner and Agarwal forwarded the email and the whole report to the respective Area Chairs "as they are an interested party as far as the Ph.D. program is concerned." Dr. Detlor claimed that this response embarrassed him and contributed to the harassment. Dr. Head's evidence was she felt Dr. Steiner and Dr. Agarwal's letter was "curt and highly critical" (DSB-2106 at para. 19).

Dr. Detlor replied to the letter on April 14, 2005 (DSB-0396) and explained that the focus group session was a quality assurance exercise for the Ph.D. Program, which did not require research ethics approval. He also wrote the exercise would not be classified as research by the McMaster Research Ethics Board since it had no research questions or hypotheses and there was no plan to publish the results. Dr. Head called Dr. Detlor's response a "kindly toned email" (DSB-2106 at para. 19). Dr. Detlor testified he later apologized to Dr. Steiner in a face-to-face meeting for not seeking permission from the Ph.D. Coordinators, including Dr. Steiner, in advance of conducting the focus group or circulating the report (DSB-2103 at para. 40).

Dr. Steiner did not approve of the focus group report. He characterized the report in the following ways in his affidavit:

“unsolicited... completely uncommissioned... executed without the knowledge of the PhD Coordinators... without any knowledge or approval of the department... contrary to research and protocol and completely non-collegial... done without any approval from the McMaster Research Ethics Board... an unprecedented intrusion into the PhD student space... motivated by Dr. Detlor’s ‘not-so-hidden’ agenda... lacking in clear methodology... full of offensive and unsubstantiated condemnations... [done with] no authorization to perform any quality assurance assessment of the PhD program... violated the tenets of professional protocol” (DSB-2293 at paras. 28 and 31).

Dr. Steiner testified that Dr. Detlor’s response of April 14, 2005, was sarcastic and condescending. Dr. Steiner denied that Dr. Detlor subsequently apologized to him, stating that he “never apologized to me and I never had a one-on-one meeting with Dr. Detlor after his Report. This claim of apology is also completely inconsistent with his continuous [sic] aggressive disposition” (DSB-2293 at para. 32).

The timing of the report was problematic for Dr. Steiner and Dr. Agarwal. Dr. Agarwal testified that the timing was problematic because the report was released when the Ph.D. expansion was just getting underway, the Program was up for review at the OCGS, and the OCGS reviewers’ visit was scheduled. In Dr. Agarwal’s words, “the timing of Dr. Detlor’s report created unnecessary noise.” Dr. Agarwal denied the co-signed letter was intended as a personal attack. He also denied that Dr. Detlor apologized to him.

Counsel for Dr. Steiner submitted that the response was not meant to harass, embarrass, or humiliate Dr. Detlor. In support of the submission that Drs. Steiner and Agarwal’s response to the focus group report was responsible and entirely justified in the circumstances, counsel pointed to the testimony of Dr. Miltenburg, who agreed that Dr. Agarwal “and others” had a right to be embarrassed by Dr. Detlor’s actions. Counsel further stated that there is no evidence for the Tribunal to find that either Dr. Agarwal or Dr. Steiner knew or ought to have known that their response was unwelcome. Counsel stated that Drs. Agarwal and Steiner’s response was entirely justified in the circumstances.

### **Tribunal’s Findings**

The Tribunal finds that Dr. Steiner’s comment and conduct towards Dr. Detlor did not establish direct harassment when the incidents concerning the Focus Group are reviewed in isolation. The Tribunal finds that the comment or conduct involved an open disagreement. Furthermore, there was no objective power imbalance between them. Dr. Detlor was not in a vulnerable position having just been notified of his successful consideration for tenure in December 2004, effective July 1, 2005.

The Tribunal finds, however, that Dr. Steiner’s personal disdain for Dr. Detlor was clearly established at this stage. The issue is whether Dr. Steiner’s conduct objectively crossed

the line. The Tribunal finds Dr. Steiner did not breach the Policy in any of his conduct or comment identified up to the summer of 2005. The Tribunal believes that to find a breach for these alleged incidents would potentially be misinterpreted and have a chilling effect on vigorous debate and individuals feeling comfortable to express their views openly to colleagues. Open disagreement is preferable to colleagues expressing criticisms or disparaging colleagues privately or covertly. As we found in other 003 Complaints, private select group discussion disparaging other faculty can be poisonous in an academic/work environment.

The Tribunal accepts Dr. Detlor's evidence as credible and therefore does not accept Dr. Steiner's evidence that Dr. Detlor never apologized to him after his report. Dr. Detlor was a credible witness and we accept his evidence that he apologized to Dr. Steiner (see paragraph 40, Dr. Detlor's affidavit DSB-2103). Dr. Detlor never suggested that he apologized to Dr. Agarwal. Dr. Agarwal confirmed that Dr. Detlor did not apologize to him but further clarified that he did not perceive the issue as personal and that he did not feel he needed an apology.

## ii. Appointment to OCGS Appraisal Committee

### Summary of Evidence and Submissions

Dr. Detlor was appointed a member of the Ontario Council of Graduate Studies' (OCGS) Appraisal Committee from September 1, 2005, to August 31, 2007, and became its Chair from September 1 2007 to June 30, 2008. Dr. Detlor alleged Dr. Steiner believed Mr. Bates appointed Dr. Detlor to the provincial committee. Dr. Detlor stated that Dr. Head nominated him to the School of Graduate Studies and Dr. Laura Finsten, the Acting Dean of the School of Graduate Studies, nominated him to the OCGS.

At paragraph 34 of his affidavit (DSB-2293), Dr. Steiner states that:

"[Dr. Detlor] was nominated by Dr. Head to become a member of the Ontario Council of Graduate Studies Appraisal Committee... As far as I know, this nomination was not discussed anywhere in Faculty, was made in secret and was pushed through a mere 4-5 months after Dr. Detlor's [Focus Group] Report. However, until reviewing his affidavit, I assumed that it was Dean Bates who nominated him, as is the norm."

As such, Dr. Steiner's conduct and treatment of Dr. Detlor was alleged to be the result of Dr. Steiner's perception (albeit mistaken) that Mr. Bates nominated Dr. Detlor.

### Tribunal's Findings

The Tribunal finds no breach of the Policy has been established with respect to Dr. Detlor's appointment. Dr. Steiner's subsequent conduct with Dr. Detlor can be understood by his own mistaken perception, which he admittedly had until he reviewed Dr. Detlor's

affidavit. Furthermore, the evidence affirmed Dr. Steiner's continued disdain for Dr. Detlor which was aggravated by Dr. Steiner's view that Dr. Detlor was aligned with Mr. Bates.

iii. **Appointment as Ph.D. Director**

**Summary of Evidence and Submissions**

The Ph.D. Program was expanded from two fields to five in the DSB in March-July 2006. However, the two Ph.D. Program Coordinator roles were consolidated into one Director role. One of the Ph.D. Coordinator roles, prior to this consolidation, was held by Dr. Steiner. On July 1, 2006, Dr. Detlor was appointed as Ph.D. Director. In advance of the public announcement, Dr. Head informed Dr. Steiner of this decision, which prompted an exchange of words where Dr. Steiner allegedly told Dr. Head 'you shit on people and it will come back to bite you.' Dr. Detlor interpreted this as a "real threat" (DSB-2103 at para. 50). Dr. Detlor alleged Dr. Steiner harassed him because of his perceived support for Dean Bates. Dr. Steiner was a member of the G21, opposed the second appointment of Mr. Bates as Dean, and was a signatory to the Performance Report. As addressed, Dr. Steiner had already earlier wrongly assumed Dr. Detlor was nominated by Mr. Bates to the Ontario Council of Graduate Studies' Appraisal Committee.

Dr. Detlor alleged that Dr. Steiner constantly criticized the Ph.D. Program through emails and in meetings during Dr. Detlor's time as Director. It was submitted that this cumulative conduct crossed the line and breached the Policy.

For example, Dr. Detlor testified that Dr. Steiner was critical of the way the Ph.D. Program was run. One such issue was the administration of the Ph.D. comprehensive exams. The administration of the exams, approved by the Faculty of Business and in line with the School of Graduate Studies calendar, required a committee, separate from a student's supervisory committee, to be struck to administer a common comprehensive exam to all candidates. In-course students had the option of following the old rules or these new rules. On December 12, 2006, Dr. Steiner replied to an email from Dr. Norm Archer discussing the issue, copying Drs. Parlar, Wiesner, Agarwal, Wesolowsky, Hassini, Head, Hassanein, and Ms Colwell, regarding the comprehensive exams. Dr. Steiner wrote the following (DSB-0408):

"There is no SGS rule that requires that all students must write the same comprehensive exam. There are lots of programs at McMaster which administer separate exams for students. This includes programs with written exams and ALL programs with oral exams. So, this is a red herring, used by Brian Detlor to grab more power to emphasize the importance of his "high office". I am not aware of any student ever (over 27 years!) expressing any concern about the way comp. exams were administered. (Not even those MS students who failed.) So Brian Detlor should not lose any sleep over potential appeals regarding the administration of comp. exams by the old rules. On the other hand, changing the program requirements and structure for in-course students is a sure-fire way to create programs and grounds for appeals."

Dr. Detlor further pointed to a Graduate Council meeting in February 2007 where Dr. Steiner expressed his strong opposition to proposed changes to the Ph.D. Program. Dr. Detlor noted that Dr. Steiner's motion to prevent the changes did not pass. In another Faculty meeting, Dr. Steiner allegedly called Dr. Detlor's taking on the Director position "ambitious."

Dr. Detlor stated there was a constant criticism with regard to the Ph.D. Program from Dr. Steiner. After Dr. Detlor's first three-year term, he extended his term only for one more year, although he initially declined the extension. When asked to extend his directorship after the fourth year, Dr. Detlor declined and instead agreed to take on the position of Chair of the McMaster Research Ethics Board on July 1, 2011.

Dr. Steiner testified that Dr. Detlor's "intransigence" in administering the Ph.D. Program led to numerous disagreements among faculty members in the entire Ph.D. Program, which "eventually led to his removal" from the Ph.D. Director's position (DSB-2293 at para. 48d).

Dr. Steiner felt he was "abruptly" removed from his Ph.D. Coordinator position in 2006, but denied that his actions were in retaliation for not being named Ph.D. Director. He believed, as he made publically known, the elimination of the Ph.D. Coordinator positions and consolidation under a single Director was unworkable. He stated "prior to Dr. Detlor's approval and the approval of the necessary bylaw changes to create this new position, Dr. Detlor took control over the Ph.D. Program at DSB and started using an extremely heavy-handed approach in administering the Ph.D. Program" (DSB-2293 at para. 48). Dr. Steiner called Dr. Detlor's administering of the comprehensive exams "rigid," since he required all students to write the same exam in May of the second year of their studies, which differed from the traditional or long-established practice in the MS/IS Area and was in his opinion "impossible to implement" (DSB-2293 at para. 48a).

### **Tribunal's Findings**

The Tribunal accepts Dr. Detlor felt subjectively harassed. However, Dr. Steiner's conduct, assessed objectively, still did not meet the test for direct harassment for the incidents for which we received evidence related to Dr. Detlor's appointment as Ph.D. Director. The Tribunal will address the cumulative effect of Dr. Steiner's conduct and comment and how we have determined that it breached the Policy when it addresses the evidence in its entirety concerning Dr. Steiner's interactions with Dr. Detlor. In the interim, we address the allegations concerning an incident between Dr. Detlor and Dr. Steiner.

**iv. March 7, 2006 Area Meeting****Summary of Evidence and Submissions**

Dr. Detlor testified that Dr. Steiner and other faculty members verbally assaulted him during the March 7, 2006, Area meeting. Dr. Detlor submitted that, at the meeting, Dr. Steiner and other faculty members engaged in a “vitriolic verbal assault” on Dr. Detlor (DSB-2103 at para. 44).

The conflict at that meeting stemmed from an email exchange in the days leading up to the meeting. On March 3, 2006 (DSB-0399), Dr. Parlar, the Area Chair of MS/IS at the time, sent an email to the Area enclosing two files summarizing information from the Area members’ 2005 activity reports. The reports included *inter alia* such information as activity records, teaching evaluations and grant funds.

Dr. Detlor replied on March 4, 2006, to Dr. Parlar (DSB-0398), explaining his concerns that the disclosure of such private information about faculty members was improper. In that email Dr. Detlor also identified that he had a concern about an item on the agenda for an upcoming Area meeting. In the Area meeting, the supervisory committee reports for all Ph.D. students would be circulated and their progress would be discussed. Dr. Detlor identified to Dr. Parlar that he was concerned about the disclosure of the personal information of the students. Dr. Detlor concluded his email by suggesting that Dr. Parlar contact the Freedom of Information & Protection of Privacy Officer to “seek guidance on these matters”. Dr. Parlar replied on March 6, 2006, (DSB-0399) and rebutted both of Dr. Detlor’s privacy claims, concluding that he saw no problem with either the distribution of the summary faculty activity report information or MS/IS faculty reviewing supervisory committee reports. Dr. Detlor replied on March 6 and rebutted Dr. Parlar’s email, questioning the purpose of the disclosure, whether he received consent to disclose the personal information contained in the report and the necessity of the graduate student progress report review.

Dr. Detlor also emailed Dr. Hassanein, Dr. Head and Mr. Bates regarding this privacy issue. In informing Dr. Hassanein, Dr. Detlor mentioned that he was considering excusing himself from the meeting when the graduate student supervisory committee reports were raised at the meeting. Dr. Hassanein agreed with Dr. Detlor’s concerns in an email dated March 4, 2006 (DSB-0398). Dr. Head was in China during the email exchange however, she emailed Dr. Fred Hall, Dean of Graduate Studies, to obtain his guidance on the potential graduate student privacy issue. She forwarded Dr. Hall’s opinion to Dr. Parlar on the morning of March 7, 2006 (DSB-1263), recommending that he not include the review of the supervisory reports on the agenda.

Dr. Steiner suggested this issue was a big misunderstanding based on a misinterpretation of the rules. Dr. Steiner stated he called Dr. Hall and told him “all we were planning to do was to hold a Departmental review meeting of Ph.D. student progress” (DSB-2293 at para. 42).

On March 7, 2006, Dr. Hall emailed Mr. Bates, Dr. Steiner, Dr. Head, and three other university officials, stating that it was permissible for the meeting to proceed, advising that

someone review the documentation to ensure no confidential information (such as comments about medical status) was included. Dr. Hall acknowledged in the email that the policy needed clarification.

The meeting subsequently took place on March 7, 2006, and the review of the graduate student progress reports was item 4 on the agenda. Dr. Hassanein testified that he “did not get much value” out of the meeting, since faculty did not have a background on the issues. He stated that when this item was addressed, Dr. Detlor stood up and left the meeting. Dr. Hassanein felt that this was not inappropriate, because he felt Dr. Detlor was being singled out in a verbal attack.

Dr. Parlar testified that when the meeting reached item #4 on the agenda (graduate student progress) he turned the meeting over to Dr. Steiner who started his comments by explaining the developments and commenting on Dr. Detlor’s March 4, 2006, email. Dr. Steiner stated that when the meeting reached this item on the agenda, Dr. Detlor, who was unhappy about the meeting proceeding, “repeated his privacy concern, became very angry, his face turned red, jumped up and stormed out of the meeting and slammed the door behind him” (DSB-2293 at para. 43 and Dr. Steiner’s Response to the 003 Complaint, dated November 18, 2011 at para. 23). Dr. Steiner denied he acted inappropriately in the meeting, and stated that it was, in fact, Dr. Detlor’s conduct in the meeting which was unacceptable.

Dr. Steiner suggested this was the second time Dr. Detlor slammed the door after a meeting. Dr. Steiner alleged the first door-slamming incident occurred in the 2003-2004 academic year, where there was an issue regarding one of Dr. Detlor’s Ph.D. students. The student was apparently fast-tracked for admission and Dr. Detlor became his supervisor in the Fall of 2003. Dr. Steiner stated Dr. Parlar noticed that the student was listed on the Laurier School of Business website as a full-time lecturer, which was problematic since full-time students were allowed to work only 10 hours a week, according to Graduate Studies regulations. When the student’s file came up for review during the Annual Supervisory Meeting in the 2003-2004 academic year, Dr. Steiner stated he and Dr. Parlar inquired of Dr. Detlor whether he knew about his student’s teaching at Laurier. At that point, Dr. Detlor “denied this was the case, jumped up and stormed out of the meeting” (DSB-2293 at para. 25), slamming the door as he left.

Dr. Wesolowsky was at the March 7, 2006, Area meeting and observed Dr. Detlor becoming angry and abruptly leaving the room (DSB-2299 at para. 8). In his own words, he said “The Area decided that we would look at the information and Dr. Detlor suddenly stood up and left the room, and I heard the door slam very loudly.” Dr. Hassini stated in his affidavit that he witnessed Dr. Detlor become angry and storm out of the room in March 2006; however he did not mention a door slamming in his affidavit (DSB-2297 at para. 9). Dr. Yuan testified Dr. Detlor lost his temper and slammed the door on his way out the 2006 meeting. Dr. Yuan was also present at 2003 meeting and called Dr. Detlor’s “storm[ing] out of the meeting room” inappropriate, but did not mention a door slamming (DSB-2318 at paras. 9-11).

Dr. Hassanein was present at the first alleged door-slamming incident and testified it was a heated meeting. He stated it was not the first time that issue had been raised. Rather than

engage in a shouting match, Dr. Hassanein observed Dr. Detlor simply leave the meeting. Dr. Hassanein felt this was appropriate behaviour on Dr. Detlor's part. Dr. Hassanein called Dr. Detlor a cooperative, collaborative, and supportive colleague. He commended Dr. Detlor for his service to the University. He called Dr. Detlor friendly, easy-going, and "a joy to work with."

On cross-examination, Dr. Detlor stated that Dr. Steiner, Dr. Miltenberg, Dr. Abad, and Dr. Parlar would normally bully and belittle him in meetings, by raising their voices, miscommunicating their feelings, using angry tones, and using personal insults. Some examples provided by Dr. Detlor and supported by Dr. Hassanein, were accusations that he was "naive", that he had not been at the DSB long enough, his research is "wishy-washy", and that he "didn't know what he was talking about". Dr. Detlor agreed that the door slammed behind him when he left the March 2006 meeting, only because the door accidentally slipped when he left. He stated that the issue was resolved when he and Dr. Parlar met with Dean Bates some weeks after Dr. Detlor sent the March 8, 2006, email to discuss the March 7, 2006, Area meeting. Dr. Detlor viewed Dr. Steiner's allegation to be an attack on his character, which he stated is a violation of the Policy.

### **Tribunal's Findings**

The Tribunal did not receive sufficient evidence regarding the March 2006 MS/IS Area meeting to determine whether Dr. Detlor was directly harassed by Dr. Steiner at this meeting. We find that in these events, there was open discussion between faculty members with equal power, but that the conduct and the individual interpretation of the conduct is properly understood as "resulting from" the poisoned work/academic environment. The Tribunal notes this as an example where early intervention or use of University processes should have been engaged to address negative behaviours and outline expectations that conduct of faculty members should comply with the Policy.

The Tribunal finds that the March 7, 2006, Area meeting was tense. Dr. Detlor's testimony is accepted and credible and the Tribunal accepts he was subjectively feeling attacked. Having considered all submissions and evidence the Tribunal feels that although Dr. Steiner behaved in a rude and argumentative manner, this incident in isolation did not rise to the level of direct harassment against Dr. Detlor. Rather the Tribunal finds that the events of the March 7, 2006, Area meeting highlight the unfortunate workplace interactions that can result from the poisoned workplace environment.

Recollections concerning the door-slamming varied amongst Drs. Yuan, Wesolowsky, Hassini, and Steiner. Witnesses confirmed that Dr. Detlor had got up and left the meeting before it was complete. The Tribunal finds Dr. Detlor was upset and the door slammed. The Tribunal accepts Dr. Detlor's explanation that the door accidentally slipped when he left. The Tribunal in any event, finds that the slamming of the door is irrelevant as there is no Complaint filed against Dr. Detlor by Dr. Steiner. Similarly, the Tribunal makes no findings with respect to the evidence suggesting Dr. Detlor identified that in addition to Dr. Steiner that he was belittled and bullied by Drs. Miltenberg, Abad and Parlar who allegedly raised their voices and belittled him at meetings.

v. **Dr. Steiner shunned Dr. Detlor****Summary of Evidence and Submissions**

Dr. Detlor testified Dr. Steiner would routinely ignore and shun him and provided several examples. When Dr. Detlor would greet Dr. Steiner with a “Good morning” or “How are you?”, Dr. Steiner would not respond but merely glare at Dr. Detlor. In contrast, Dr. Detlor found Dr. Steiner was collegial with other faculty members. Dr. Detlor also would note Dr. Steiner taking the stairs if the two were waiting for an elevator to reach their offices on the fourth floor. Dr. Steiner became “physically agitated” in one instance, and decided to take the stairs to the fourth floor. When Dr. Detlor reached that floor, he viewed Dr. Steiner coming out of the stairwell with “an angry expression on his face and stomped away without speaking to [Dr. Detlor]” (DSB-2103 at para. 65). Dr. Detlor also noted when he passed Dr. Steiner when he was speaking with others such as Drs. Rose and Tiessen that he would greet Dr. Steiner and receive no response. In some situations, Dr. Detlor heard the conversation immediately stop and heard “derisive laughter erupting from the group” after he passed by.

Dr. Detlor’s evidence was that he moved his office from the fourth to second floor of the DSB, in order to avoid Dr. Steiner and the discomfort of being ignored or belittled by him.

On March 8, 2006, Dr. Detlor sent an email to Mr. Bates and Dr. Head, where he expressed his concerns surrounding Dr. Steiner (DSB-0397). Dr. Steiner was not copied and the evidence confirmed this email was unknown to Dr. Steiner at the time. In the email, Dr. Detlor wrote that he excused himself from the Area meeting the day before because he “could not tolerate the verbal abuse from George Steiner.” He further wrote:

“These incidents are indicative of the growing inappropriate behaviour that seems to be directed towards me. It is not a pleasant work environment to be in and I don’t think anyone should have to tolerate such uncollegial behaviour.

If you recall, I complained about George’s behaviour at last month’s area meeting. I know you took some action in speaking to the parties involved, but that appears to have been ineffective. Something else needs to be done. The situation up on the 4<sup>th</sup> floor is escalating, and I have grave concerns about where it will all end up. It is really getting worse.”

Dr. Steiner responded to the email after it was raised in the Complaint and he confirmed it was unknown to him in 2006. Dr. Steiner called Dr. Detlor’s email a “completely unacceptable and false description of what happened in the meeting.” Dr. Steiner decided that the only way he felt he could protect himself from what he alleged was Dr. Detlor’s harassment was to minimize interactions with him. Accordingly, Dr. Steiner stated that his behaviour with Dr. Detlor is the precise opposite of harassment, which he “firmly believes” was actually perpetrated by Dr. Detlor on numerous occasions (DSB-2293 at para. 45).

Dr. Steiner denied he shunned Dr. Detlor. In his own words, he stopped taking the elevator “approximately twelve years ago as a result of having gotten stuck. Climbing the stairs

also has the benefit of exercise. Moreover, the elevators at DSB are notoriously slow” (DSB-2293 at para. 36).

Dr. Steiner did not recall Dr. Detlor communicating to him in any acceptable manner. On the contrary, Dr. Steiner alleged Dr. Detlor’s aggressive behaviour continued after the release of his Focus Group report. In his own words, “Having been encouraged by ‘officialdom’, Dr. Detlor continued and even raised the noise level of his disruptive activities vis-à-vis the Ph.D. Program” and went on to outline three instances where Dr. Detlor’s “out of the blue” emails disrupted him (DSB-2293 at para. 37). Further, Dr. Steiner explained that since the MS/IS Area was split into its own Area, many IS faculty members moved their offices to the second floor.

### **Tribunal’s Findings**

The Tribunal accepts Dr. Detlor’s evidence that he felt shunned by Dr. Steiner. Furthermore, it is likely that Dr. Detlor would reasonably feel shunned given the poisoned work/academic environment which has been identified. However, Dr. Detlor’s honestly held subjective feelings are not dispositive and the Tribunal is required to apply an objective test. The Tribunal finds there was insufficient evidence to establish direct harassment by Dr. Steiner for the alleged incidents identified in this section.

The Tribunal accepts Dr. Detlor’s descriptions of being “shunned” and does not accept Dr. Steiner’s evidence wherein he suggested he minimized his interactions with Dr. Detlor to avoid being harassed and therefore he did not shun Dr. Detlor. We prefer the evidence of Dr. Detlor where it is contradicted by Dr. Steiner and find no reliable evidence that Dr. Detlor communicated with Dr. Steiner in an unacceptable manner. Clearly, there was personal animus between the two of them. The issue is whether Dr. Detlor being “shunned” breached the Policy. The Tribunal notes that Dr. Detlor’s Complaint was not acted upon in a timely fashion.

In the specific circumstances of these incidents identified by Dr. Detlor the Tribunal is prepared to accept that Dr. Steiner engaged in conduct which further contributed to the poisoned work/academic environment. However, the Tribunal is not satisfied that there was sufficient evidence to establish that even if Dr. Detlor was shunned that this conduct resulted in a poisoned work environment or breached the Policy for the incidents identified. Therefore, the incidents in 2006 were not a breach of the Policy. However, Dr. Steiner confirmed he minimized his subsequent interactions with Dr. Detlor and this evidence provides context for assessing Dr. Steiner’s continuing course of conduct.

#### **vi. Dr. Steiner’s Conduct with Respect to the New First Year Computer Science Course**

### **Summary of Evidence and Submissions**

Dr. Detlor alleged that Dr. Steiner improperly opposed Dr. Detlor’s introduction of a new first year Computer Science course COMP SCI 1BA3, unrelated to the Ph.D. Program. The

course was a required course for all first-year business students, but was taught by the Computing and Software Department.

Meetings with regards to the introduction of the course took place at the Committee level on September 24, 2009, and October 15, 2009; and at the Faculty level on October 29, 2009. Dr. Steiner opposed the course both at the Undergraduate Curriculum meetings and the Faculty of Business meeting. Dr. Detlor alleged Dr. Steiner only opposed the introduction of the course because Dr. Detlor brought forward the motion.

Dr. Hassanein, the Area Chair of the IS Area who was involved with the introduction of this course testified he was approached by Dr. Bontis to help bring the course to the IS Area. Dr. Hassanein and Dr. Bontis put together a proposal for the course to be administered by the IS Area. When the course was submitted by the Undergraduate Curriculum Committee for review, it was not well received. The Committee requested the proposal be revised after consultation with the different Areas of the DSB. Dr. Hassanein testified that the discussion included phrases like “the IS Area is trying to grab turf.” Dr. Detlor revised the proposal for the next meeting. The day before it was presented, the Associate Dean of Engineering, Dr. Ken Coley, entered into discussions to teach the course outside of the DSB for business students. As a result, the agenda item would be removed from the meeting. At the next Undergraduate Curriculum meeting, Dr. Hassanein stated that it “felt like the entire faculty mobilized against the IS Area.” He noted that some faculty were at the meeting who had not attended the meeting before, but were speaking against the computer science course motion which was previously removed and not debated. Dr. Hassanein did not recall which members spoke at the meeting.

At the next committee meeting, the computer science course proposal was re-submitted. Dean Bates and Dr. Head, as ex-officio members, attended the meeting. The Committee passed the motion approving the revised computer science course.

Dr. Steiner was a member of the Undergraduate Curriculum Committee in 2010 and felt the proposal was unreasonable, lacked the necessary resources, and was brought forward without the knowledge of the Department of Computing and Software. Dr. Steiner testified that it was his understanding that the normal protocol for a defeated motion was for it to be returned if two thirds of the committee agreed that it could be discussed in the next academic year. Dr. Steiner suggested he did not object to the proposal returning because he felt the other Committee members did not realize a protocol violation had occurred. Dr. Steiner stated Dr. Bontis knew of the protocol violation and apologized for what happened (The Tribunal notes that Dr. Bontis was not called as a witness by any party in the 003 Complaint, nor was his presence requested to be summonsed by the Tribunal.). Dr. Steiner was greatly surprised when he saw Dean Bates and Dr. Head attended the committee meeting as ex-officio members. He noted that neither made a comment at the meeting. He felt Mr. Bates and Dr. Head’s participation in the meeting was inappropriate because they had not been part of the original discussion and never had been to a meeting before, yet they voted on the issue.

In his affidavit, Dr. Steiner stated there was “uproar among some faculty at the DSB for Dean Bates and Dr. Head playing politics and interfering with the undergraduate curriculum.”

At the next Faculty meeting, Dr. Steiner stated Dr. Bontis made the motion to approve but explained that a:

“mutually acceptable arrangement had been reached with the Department of Computing and Software [to teach the course in that Department]... He proceeded to ask members to defeat his own motion. Thus, Dr. Detlor’s original proposal was defeated by a huge majority. While this may have been embarrassing for Dr. Detlor, I do not believe it constitutes harassment” (DSB-2293 at para. 48h).

It was submitted this “uproar” or “mobilization against the IS Area” occurred at the same time as the G21 were sending emails and encouraging G21 members to attend the DSB Faculty meeting to oppose the course. Dr. Kwan sent an email to the G21, including Dr. Steiner, on October 27, 2009 (DSB-2652), two days before the Faculty meeting where the computer course was discussed. The email stated:

“I have learned that, more recently, in an Undergraduate Curriculum Committee meeting attended by its usual members, a contentious motion to replace a first-year required course currently taught by the Computer Science Department with a new one, to be taught in-house here, was defeated for various valid reasons. However, in a subsequent meeting attended also by two ex-officio members [being Dean Bates and Associate Dean Head] to get the required votes, a repackaged motion (with exactly the same intention) was re-introduced. We all know the outcome; the motion was approved at the committee level.

The motion is now for approval at this week's faculty meeting. I agree with Khalid (with an "i" in his name, or an "eye" there for recognizing further threats to what is left of collegial governance at this institution). As every vote counts, our attendance of this week's faculty meeting is particularly crucial. It can set a proper tone for subsequent faculty meetings, as the stool (oops, sorry for the typo, I mean "school") with three pillars, following the lead of the current Gilmour Hall residents, is venturing deeper and deeper into uncharted territories. See you at the faculty meeting.”

Counsel for Dr. Steiner submitted his client was not the only faculty member opposed to the introduction of the course. In an email submitted as evidence at DSB-2422, the Associate Dean (Academic) of Engineering, Dr. Ken Coley, wrote to Dr. Head after being informed that the course failed to be approved at the September 24, 2009, meeting. Dean Coley wrote that he was happy to hear the course did not pass at the DSB level. Counsel also argued there were also various reasons for the opposition discussed at the meetings.

With regards to the G21 email above, counsel noted Dr. Steiner did not send the email, and that Dr. Steiner testified that other faculty members were more strongly opposed to the idea than he was.

### **Tribunal's Findings**

The Tribunal is not prepared to find there was sufficient evidence establishing a breach of the Policy by Dr. Steiner with respect to his conduct or comment involving Dr. Detlor concerning the first year Computer Science course.

#### **vii. Repetitive and Persistent Vexatious Conduct**

##### **Summary of Evidence and Submissions**

The Tribunal was also asked to consider whether Dr. Steiner's conduct breached the Policy as a result of its vexatious, persistent and repetitive nature which led to Dr. Detlor finding himself in a hostile work environment.

Dr. Steiner's affidavit (DSB-2293) refutes Dr. Detlor's Complaint and affidavit in great detail. Dr. Steiner went to great lengths to describe how Dr. Detlor's behaviour, actions, and correspondence, in his opinion, constitute harassment. Mr. Heeney, on behalf of Dr. Detlor, submitted that Dr. Steiner made several false allegations against Dr. Detlor. For example, at paragraph 48(i), Dr. Steiner stated in his affidavit that "I reject Dr. Detlor's claim that I had 'some pre-existing ill-will' towards him. As mentioned above, he was given, for example, supervisory privileges in the MS/S Ph.D. program much earlier than usual." Counsel for Dr. Detlor submitted that Dr. Steiner did not provide a sufficient explanation of how Dr. Detlor's obtaining of supervisory Ph.D. privileges would refute the allegation. At paragraph 23 (page 18) of Dr. Steiner's affidavit, Dr. Steiner stated that Dr. Detlor used his supervisory capacity over Ph.D. students to "try and impress on everybody... how much he acquired in 'new powers' [by] ... sending out unauthorized announcements about comprehensive exam results ... *always* behind my back." (formatting in original). Dr. Steiner stated that after Dr. Detlor "secretly" tried to schedule a proposal defence without notifying him on one occasion, Dr. Steiner tried to "politely warn him about the inappropriateness of [such] emails, but to no avail," citing DSB-1384 as evidence of such. However, DSB-1384 only contains one email from Dr. Steiner dated December 16, 2011, forwarding an email dated May 24, 2005 from Dr. Detlor regarding one student's successful comprehensive exam committee results, copied to Dr. Steiner. It was submitted that evidence of Dr. Detlor's "secret" action and Dr. Steiner's warning was not produced.

Counsel for Dr. Steiner submitted that Dr. Detlor's complaints do not meet the threshold for harassment. Furthermore, they argued that the comments are protected under the principles of academic freedom. It was submitted that Dr. Detlor was hyper-sensitive. In addition, Dr. Detlor did not tell Dr. Steiner how he felt during the Area meetings. Furthermore, Dr. Detlor did not tell other Area members that he felt they made inappropriate comments and that he felt harassed. However, as Dr. Steiner's counsel submitted, only Dr. Steiner was named as a Respondent. Counsel submitted that there is no evidence that supports a finding that Dr. Steiner engaged in vexatious comment or conduct. They further argued that even if that finding is made, Dr. Steiner had no reason to believe that it was unwelcome.

Drs. Parlar, Yuan, Abad, Wesolowsky, and Hassini generally felt that Dr. Steiner's issues with Dr. Detlor were not personal. Those witnesses generally testified that Dr. Steiner presents vocal and principled opinions during debates and discussions. While they acknowledged instances of heated discussions in some meetings, it was characterized as normal academic discourse. Dr. Wesolowsky added "I would think it unwise and slightly impolite, but that is as far as I would go. We have academic freedom. To me, that means you have a vigorous discussion and if your tongue slips once in a while, that doesn't mean you should be taken to court."

Dr. Connelly testified she has a good working relationship with Dr. Detlor who she described as mild-mannered, self-deprecating and shy. On cross-examination, counsel for Dr. Detlor asked Dr. Connelly if she had ever observed Dr. Detlor being treated inappropriately. Dr. Connelly replied "Yes, by Dr. Steiner and Dr. Ray." When counsel asked Dr. Connelly whether she had seen Dr. Detlor slam his fist on the table or slam a door, she appeared shocked and disagreed with the statement. When Dr. Detlor's counsel asked Ms Carole Stevens the same question, she replied in a surprised tone "Is this a joke?" and stated that she had not seen Dr. Detlor slam a door or pound his fist.

### **Tribunal's Findings**

The Tribunal heard the evidence from many witnesses concerning Dr. Steiner behaving aggressively in meetings. The Tribunal earlier found that Dr. Steiner's behavior was not collegial or friendly but did not constitute direct individual harassment of Dr. Detlor when the incidents involving Dr. Detlor were considered in isolation. Absent a power imbalance or vulnerability, the Tribunal is not prepared to find direct harassment despite what can reasonably be described as bullying tendencies exhibited by Dr. Steiner, which were corroborated by credible witnesses. The Tribunal found that Dr. Steiner was generally reluctant to move forward after decisions were made contrary to his opinions, or let go of issues where he felt the correct decision had not been made or the correct action had not been taken.

The Tribunal feels that more room must be given vigorous debate among participants of equal power and the exercise of academic freedom during Faculty meetings, even if harsh language is employed. In the instances identified, it was reasonable to expect, and incumbent on, Dr. Detlor to communicate to Dr. Steiner that his conduct and/or comment were unwelcome and that he was feeling harassed. There was a lack of vulnerability or power imbalance between Dr. Detlor and Dr. Steiner and the acceptable boundaries should have been communicated to Dr. Steiner. Absent a power imbalance or vulnerability, Dr. Detlor had an obligation to clearly express to Dr. Steiner that his comment, conduct and behaviour was unwelcome. If Dr. Detlor had, the Tribunal would have found Dr. Steiner's behaviour, if it persisted, to have directly harassed Dr. Detlor.

The Tribunal has considered the jurisprudence carefully to identify the proper threshold when vexatious conduct or comments in isolation becomes harassment because of its persistence and repetitiveness resulted in a hostile work environment which crossed the line. The Tribunal is satisfied that Dr. Steiner's conduct as a result of its persistence and repetitiveness, breached the Policy when it resulted in the poisoned work/academic environment despite the threshold for

direct harassment not being crossed with respect to Dr. Detlor personally. In addition to the incidents identified, Dr. Steiner's own evidence was relied upon to support the Tribunal's conclusion that Dr. Steiner breached the Policy where his conduct or comment resulted in a poisoned academic/work environment negatively affecting Dr. Detlor and others as identified in other sections of this Decision. In many instances, Dr. Steiner, in defending the concerns raised by Dr. Detlor, engaged in a pattern of insults both in his affidavit evidence and oral testimony, thereby satisfying the Tribunal that his interactions with Dr. Detlor were vindictive and as such should be regarded as a prohibited condition of employment because of the hostile and negative work environment it created for Dr. Detlor. Dr. Steiner was found to have belittled and targeted Dr. Detlor and the persistence and repetitive nature of this conduct crossed the line to create a negative working environment contrary to the Policy.

Many of Dr. Steiner's behaviours towards Dr. Detlor confirmed his apparent inclination to be accusatory and self-righteous in responding to issues. Dr. Steiner's behaviours towards Dr. Detlor following the release of the focus group report were inappropriate and contributed to our overall assessment of the pattern of behaviour exhibited by Dr. Steiner. The Tribunal found that Dr. Steiner has a history of raising "process" concerns to justify his comments and conduct but often, as revealed in the evidence, he seemed to act on presumptions and suspicions. For example, Dr. Steiner's mistaken belief that Mr. Bates had somehow appointed Dr. Detlor to the OCGS Committee was not evidence of unwelcome behaviour; however it did contribute to the poisoned work environment in the DSB in that it laid part of the foundation of Dr. Steiner's vexatious behaviour against Dr. Detlor.

Furthermore, the Tribunal found that Dr. Steiner's description of Dr. Detlor's conduct was, at times, embellished and not found to be the most reliable evidence when in dispute. In particular, Dr. Steiner's suggestion that Dr. Detlor's behaviour was inappropriate or harassing was determined to be self-serving and vindictive in the Tribunal's view based on observations of both individual's demeanour and testimony and weighing all of the most reliable evidence received.

Dr. Steiner's affidavit characterized Dr. Detlor's actions and pleadings using inflammatory language, calling Dr. Detlor's Complaint "trivial," and his affidavit "an 11-page litany of falsehoods" at (DSB-2293 at para. 23 on pg. 17). Dr. Steiner's testimony asserted accusations of wrongdoing against Dr. Detlor. Dr. Steiner alleged that Dr. Detlor engaged in "harassing, vexatious, and... unethical" conduct, which "intensified to unprecedented levels" when his tenure consideration was approved. After Dr. Detlor was named Ph.D. Director, Dr. Steiner stated that Dr. Detlor harassed and mistreated additional colleagues and students. Dr. Steiner felt that it was "somewhat unusual" for Dr. Detlor to obtain supervisory privileges as early as he did, in 2003. Dr. Steiner had hoped Dr. Detlor would approach him for help when he first received those privileges. However, Dr. Detlor apparently used that opportunity to "try to impress on everybody, including Ph.D. students, how much he acquired in 'new powers'" (DSB-2293 at para. 23 on pg.18). Interestingly, these early supervisory privileges were also used as evidence of Dr. Steiner's defence of the claim that he harboured 'some pre-existing ill-will' towards Dr. Detlor (DSB-2293 at para. 48i).

Furthermore, the Tribunal notes, for example, the differences between the approach of Dr. Agarwal, who we found to be a credible witness, and Dr. Steiner to the concerns which arose from the Focus Group Report. Dr. Agarwal raised his concerns and did not make the issue personal. Dr. Steiner, on the other hand, personalized the issue and consistent with the evidence we heard concerning his interactions with Dr. Detlor and others, refused to move on from objectively minor issues. Rather, his vindictiveness is a concern under the Policy. The Tribunal observed Dr. Steiner's demeanour as a witness and during the hearing exhibited aggressive tendencies when confronted with perspectives different from his own. For example, Dr. Steiner wrongly presumed that Mr. Bates nominated Dr. Detlor (see paragraph 34 of Dr. Steiner's affidavit) and this perception led to an increasingly tense relationship. Dr. Steiner, already upset with the Focus Group Report, personalized issues with Dr. Detlor. The Tribunal finds that Dr. Steiner's conduct against Dr. Detlor from the March 7, 2006 meeting onwards reflected vindictive behaviour. Dr. Detlor was berated, in part, because of his perceived relationship with Mr. Bates. Such conduct resulted in the poisoned work/academic environment in breach of the Policy.

Dr. Connelly is a tenured Associate Professor at the DSB but was not a member of the G21 who was called as a witness by Dr. Rose. Dr. Connelly was a credible witness and the Tribunal gave her testimony in matters that were in dispute substantial weight as we found it to be objective, reliable and consistent. Dr. Connelly recalled events with clarity and consistency, and she presented cogent and reliable evidence with regards to the environment in the DSB. Her statement under cross-examination, when asked whether she felt that Dr. Detlor had been treated inappropriately, garnered an immediate and unsolicited response of "Yes, by Dr. Steiner and Dr. Ray." This further affirms the Tribunal's confidence in our findings.

The Tribunal is satisfied that as a member of the G21 Dr. Steiner's conduct and comment targeted perceived supporters of Mr. Bates and in some situations crossed the line. The timing of his repetitive and vindictive comments or conduct involving Dr. Detlor resulted in the poisoned work/academic environment in breach of the Policy. Furthermore, Dr. Steiner's conduct also resulted in a hostile environment for a number of individuals including an employee (Ms Colwell) and faculty members found by the Tribunal to be in a vulnerable position (Dr. Head, Ms Stockton, Dr. Flynn and Dr. Longo).

viii. **Did Dr. Ray harass Dr. Detlor?**

**Summary of Evidence and Submissions**

Dr. Detlor alleged that Dr. Ray's emails to him on two occasions exhibited harassing and bullying behaviour which breached the Policy.

**Course Selection Issue**

In early September 2010, Dr. Detlor contacted Dr. Ray and Dr. Pujari regarding some potential problems with a course selection form for two of their students, including Mr. Saeed

Shekari. This complaint pertains to an email exchange which is summarized in a table found at Appendix Q of this Decision.

Briefly, in an email to Dr. Detlor dated September 3, 2010, Dr. Ray wrote, "I assure you, individually and collectively we have more than adequate understanding of our discipline. I hope you are not unknowingly interjecting between and counseling students in our disciplinary domain".

On September 4, 2010, Dr. Ray wrote: "I really do not see the point of any more discussion on [the requirement of Ph.D. students to take economics courses]... I value your opinions as a colleague from another discipline. Yet, I find an overlap of administrative and academic roles undesirable". It was noted by counsel for Dr. Detlor that Dr. Ray consistently copied Dr. Charupat on these emails, when he was not originally included on the emails.

Dr. Detlor believed Dr. Ray was making a clear point: Dr. Detlor was overstepping his administrative boundaries and infringing on Dr. Ray and Dr. Pujari's academic oversight of their students. Dr. Detlor found this to be "absurd" (DSB-2103 at para. 89). He felt it was within the mandate of Ph.D. directorship to ensure students select courses that match the requirements of the Graduate Calendar, and that the Director caution students in the taking courses where others have had great difficulty. Dr. Detlor stated the Ph.D. Director has an active role in course selection, as evidenced in the School of Graduate Studies Calendar, in the following excerpt (DSB-0644):

"A program of study will be chosen by the student with the approval of student's supervisor and the Ph.D. Director...Most of the courses and seminars will be taken within the School of Business. Where appropriate, and with the approval of the student's supervisor and the Ph.D. Director, courses from other departments within the University or from other universities may be taken..."

On September 4, 2010, Dr. Detlor wrote to Dr. Ray and Ms Colwell stating he would meet with Dr. Pujari to sort out the issue. Dr. Detlor also asked for Dr. Ray to consult Ms Colwell with any further questions (DSB-0529). Dr. Ray replied to the email and copied to Dr. Chamberlain, Dr. Charupat, Dr. Hassini, Dr. Parlar, and Dr. Pujari. Dr. Detlor stated the email, excerpted below, was an attack against him

"First, now I am VERY SURPRISED at your claim that you would have a better understanding of PhD student experiences in their courses than the disciplinary faculty including their supervisors and the field reps.

I am also concerned at the possibility that academic concerns by the phd students may not be filtering down to their supervisors and the disciplinary faculty who would be best positioned to address them. I hope you are passing on these [sic] information to the disciplinary field reps or chairs.

Importantly, I am now concerned that phd students may be getting feedback and counseling that may be contradictory to what they receive from their supervisor or

disciplinary faculty. I do hope I am wrong because that would be very dysfunctional.” (DSB 0532)

Dr. Detlor stated Dr. Ray was continuously broadcasting personal student information, despite his warnings to stop. Dr. Ray’s copying to other faculty members was also seen as an attack on Dr. Detlor.

In another email dated October 1, 2010, Dr. Ray continued to comment on the course selection form issue:

“In the course selection form for PhD students, it mentions: “all students are required to take between 6 and 12 courses and all courses must be completed within 20 months of starting the program.” –Please confirm that this is from the graduate calendar.

It further says in bold: “**It is recommended that students take a maximum of three courses per term.**” Could you please clarify where this recommendation came from and whether this is a grad school guideline? ...

Unless this is a formal requirement exercised university wide, I feel with this you are once again infringing on supervisory domains. This leads to conflicting expectations and potentially, conflicts between the student and the supervisor. Would you please consider take [sic] it out of the form?” (DSB 0548) (formatting in original).

### **Student Transcript Issue**

The student, Mr. Shekari, failed an economics course. However, it was listed as an EC course, denoting it was an extra credit course. For Dr. Detlor, this meant that there was no risk that the student would be forced to withdraw from the Program if he failed that course, and that the grade would not appear on his transcript.

On January 31, 2011, Dr. Ray sent the following email to Dr. Detlor regarding grades in Ph.D. courses:

“Brian, For the records [sic] – I am highly disappointed and surprised by your actions.

All the decisions you took and implemented here are wrong. These include not taking me into confidence early on about my student’s performance in his courses; advising the grad school on what grades are to be removed from his transcript; and advising my student on what courses are required for his research and training. These are wrong not only in their substantive content (lacks judgment and understanding of the discipline) but are also wrong in their violation of the integrity of organizational process (supervisor is the primary entity that

supervises the student on all academic matters). This reflects serious dysfunctionality at the Ph.D. office.

This incidence continues the pattern of interference in supervision you have engaged in from the very start of our program. With great disappointment, I notice now that your actions are causing potentially serious long term harm not only to the PhD program in Marketing but to the career prospects of individual students. I hope you will find some time to reflect on your actions and their impact, and how the damage caused may be repaired.

On another topic – you are almost always welcome to stop by my office for a chat. However, if you are unable to make an appointment earlier, please consider a soft or polite knock the next time you find my office door closed. I am unsure if you meant it that way, but the last time you were here (on Thursday) I found your knocking on the door rather aggressive, loud and disturbing. I am reasonably sure that the hinges of my office door are strong enough, but not a hundred percent confident that they can withstand repeated incidents like that.” (DSB 0577)

Dr. Detlor testified none of Dr. Ray’s complaints made sense to him. Dr. Detlor passed the student’s information on to Dr. Ray 48 hours after he received it, yet Dr. Ray complained that he had not been told about the student’s performance. Dr. Ray did not have a role in whether the grade was removed from the student’s transcript and there was no discretion involved in the decision. It was simply the result of compliance with a School of Graduate Studies policy. As well, Dr. Ray had signed his student’s original petition for the student to take the course as Extra credit on November 26, 2010. Dr. Detlor felt that his suggestion to the student to think twice about taking another economics course was prudent since he had failed one course already. Dr. Detlor felt all of his decisions were within the responsibilities of the Ph.D. Director. Dr. Detlor found Dr. Ray’s reference of “serious dysfunctionality” of the Ph.D. Office as highly offensive. Dr. Detlor also found Dr. Ray’s tone to be demeaning.

Counsel for Dr. Detlor submitted that Dr. Ray’s behaviour towards Dr. Detlor was harassing. Counsel noted for the Tribunal that the student in question was Dr. Ray’s first student and therefore he had little supervisory experience to draw on. On the other hand, Dr. Detlor had, at the time, numerous students for whom he was responsible and Dr. Detlor was trying to apply measures he thought were fair. Dr. Detlor became involved in Dr. Ray’s student’s academic affairs because, according to the Graduate Studies calendar, that is what he is supposed to do.

As a defence to the above claims, Dr. Ray asserted that Dr. Detlor was, in fact, harassing him in the above two instances. An elaboration of Dr. Ray’s Counter-Complaint is provided in the next section of the Decision.

### **Tribunal’s Findings**

The Tribunal accepts that Dr. Detlor was a credible witness who had legitimate concerns. Dr. Detlor’s subjective belief that Dr. Ray’s behaviour was not collegial and perhaps inappropriate is reasonable. However, the emails in our view do not cross the line and are

judged to be a valid exercise of free speech. Therefore, the Tribunal is not prepared to find the evidence has established a breach of the Policy. The emails were open and freely exchanged between two faculty members with no power imbalance and different views.

The Tribunal is familiar with the graduate student supervision processes. We find it is entirely reasonable that Dr. Detlor as Ph.D. Program Director would be involved in the process of course selection and listing of courses on the transcript and that the actions of Dr. Detlor in both of these instances were in line with the policies at the DSB and the School of Graduate Studies. We further find that the actions of Dr. Detlor were appropriate with respect to the scope of his role as Ph.D. Director and communicated appropriately to those concerned. With respect to the course selection process and the removal of the failed course from Mr. Shekari's transcript we relied upon the testimony of Dr. Agarwal, (who was the Ph.D. Coordinator in the HS Area prior to the formation of the single Ph.D. Director position). Dr. Agarwal agreed that it was standard procedure to code anything that was above the listed requirements for a Ph.D. Program as EC (extra credit). The Tribunal finds that Dr. Ray's responses to Dr. Detlor's decisions and communications were excessive. However, Dr. Ray's conduct did not reach the threshold for direct harassment under the Policy or the jurisprudence.

Dr. Ray expressed displeasure with some of Dr. Detlor's decisions, but did so directly to Dr. Detlor, which provided Dr. Detlor the opportunity to respond. This failure to speak to one another rather than through email highlights a recurring issue established in the evidence. In relying heavily on email communications, simple issues festered, which likely could have been easily addressed with a respectful conversation rather than by email where nuance and impact may not be apparent. The inability to respectfully communicate perhaps illustrates the need for an expeditious process where parties can seek the assistance of an arm's length colleague who might facilitate an informal resolution or at a minimum ensure that relevant information is shared. If unwelcome behaviour persists, then formal Complaints should be expeditiously pursued so that these personality clashes do not fester and impact the work/academic environment. Therefore, while we find Dr. Ray contributed to a poisoned work/academic environment, we do not find his conduct rose to the level which breached the Policy, that is, until we considered his actions in the filing of his Counter-Complaint against Dr. Detlor.

**G) COUNTER-COMPLAINT OF DR. SOURAV RAY AGAINST DR. BRIAN DETLOR**

Dr. Ray's complaints are set out at paragraphs 4-14 of his Counter-Complaint (DSB-2670) and are particularized in his affidavit (DSB-2117). He submitted his Counter-Complaint on August 12, 2011, with leave of the Tribunal, pursuant to Supplementary Procedural Order #3 dated October 7, 2011. Dr. Detlor submitted an affidavit in response to the Counter-Complaint, at DSB-2289.

The Tribunal received affidavits and heard testimony from witnesses called on Dr. Ray's behalf including Drs. Zeytinoglu, Charupat, Hassini, Deal, Ryder, Agarwal, Yuan, and Mr. Saeed Shekari. Witnesses in support of Dr. Detlor included Dr. Connelly, Dr. Head, Ms Colwell, Mr. Bates, and Ms Carole Stevens.

Dr. Ray's Complaint as clarified in his affidavit and closing submissions generally involves a number of alleged harassing events which can be summarized as follows: (1) the circumstances surrounding the DSB student admission announcements in March 2010, (2) Dr. Detlor's interference with Dr. Ray's Ph.D. student, Mr. Saeed Shekari commencing in September 2010 related to events involving the course selection form, (3) Mr. Shekari's student transcript issues in January 2011, (4) incidents involving the Ph.D. Operating Committee, and (5) incidents involving the Marketing Ph.D. Applications in January and February 2010.

Dr. Detlor denied all of Dr. Ray's allegations and claimed Dr. Ray's Complaint was frivolous, vexatious and without factual basis. The Counter-Complaint was submitted to be further evidence of retaliatory conduct in breach of the Policy.

The Tribunal has reviewed Dr. Ray's Counter-Complaint. The Tribunal finds Dr. Ray's Counter-Complaint is without merit and establishes no breach of the Policy by Dr. Detlor. Furthermore, the Tribunal finds the Counter-Complaint by Dr. Ray breached Section 70(e) of the Policy for the reasons provided.

**i. DSB Student Admission Announcements****Summary of Evidence and Submissions**

The Ph.D. Office at the DSB routinely sent letters, via email, to Ph.D. applicants informing them if their application had been accepted. They were signed by Ms Colwell in her role as Graduate Program Coordinator. One of Ms Colwell's emails was forwarded to Dr. Ray by a successful student on February 25, 2010. On March 2, 2010, Dr. Ray wrote to Dr. Detlor, copying Dr. Head, Dr. Connelly, Dr. Kanagaretnam, Dr. Abad, Dr. Yuan, and Dr. Charupat after receiving Ms Colwell's email. Dr. Ray felt that the letter should have been sent by Dr. Detlor, in his role as Ph.D. Director. He also questioned the contents which stated that the supervisor had been "assigned" to a student. Dr. Ray felt the wording should reflect that the faculty member had agreed to be a supervisor.

Dr. Detlor responded to Dr. Ray copying Ms Colwell in the reply along with the six other faculty members in an email dated March 2, 2010. Dr. Detlor explained that he had asked Ms Colwell to send the email before she went on holidays. Dr. Detlor felt it was appropriate for Ms Colwell to send the emails, since she routinely made efforts to build a personal rapport with applicants. Dr. Detlor agreed with Dr. Ray's suggested wording, but also noted that the School of Graduate Studies used similar language.

Dr. Ray replied to Dr. Detlor on March 2, 2010. He wrote that while he acknowledged Ms Colwell's personal rapport, he was "less sure about how that translates into acceptance probabilities." He continued to explain that the email contained important information on funding, supervisors, and deadlines. Dr. Ray still felt that Dr. Detlor should be sending the emails (DSB-1189) since the letter "carries some weight".

Dr. Yuan expressed that Dr. Ray's suggestion made sense (DSB-1187). Dr. Medcof later agreed and advised Dr. Detlor that the congratulatory note ought to come from him as Ph.D. Director (DSB-1219) after Dr. Ray informed him about his concerns.

Dr. Ray alleged this event led to him being harassed in the following ways:

- Dr. Detlor misused his position as Ph.D. Director to harass Dr. Ray by creating conflict between Dr. Ray and staff members.
- Dr. Detlor deliberately created unpleasant situations, which had the potential to lead to conflict between Dr. Ray and administrative staff in the Ph.D. Program by adding Ms Colwell to some of the emails.
- Dr. Detlor used Ms Colwell to undermine Dr. Ray's position and by deliberately compromising the admissions process thereby exhibiting behavior consistent with sustained antagonism.

### **Tribunal's Findings**

The Tribunal finds no breach of the Policy was established. Applying an objective standard, Dr. Ray's concerns are without merit. In the factual circumstances raised, none of the preconditions for a harassment finding are evident from an objective review of the evidence.

## **ii. Course Selection Form Issues in September 2010**

### **Summary of Evidence and Submissions**

In early September 2010, Dr. Detlor contacted Drs. Ray and Pujari regarding some problems he had identified with a course selection form for two of their students. This complaint pertains to an email exchange which is summarized in a table found at Appendix Q of this Decision.

As such, Dr. Ray suggests he was harassed by Dr. Detlor because *inter alia*:

- Dr. Detlor engaged in a concerted attempt to interfere with Dr. Ray's supervision over his Ph.D. student;
- Dr. Detlor deliberately created situations, which had the potential to lead to conflict between Dr. Ray and his Ph.D. student;
- Dr. Detlor improperly wanted to "unilaterally" revise the course selection form for Dr. Ray's student;
- Dr. Detlor deliberately acted contrary to established School of Graduate Studies Policy by seeking to interfere in Dr. Ray's Ph.D. student's planned coursework in an effort to demean Dr. Ray's supervisory role and authority;
- Dr. Detlor deliberately sought to impede Dr. Ray's ability to supervise by disseminating false information regarding Ph.D. students' complaints and unwillingness to take economics courses;
- Dr. Detlor deliberately sought to impede Dr. Ray's ability to supervise by disseminating misleading information stating Finance Ph.D. students were experiencing difficulty with Economics courses;
- Dr. Detlor deliberately sought to impede Dr. Ray's ability to supervise by disseminating misleading statements about graduate school rules regarding ability to re-design coursework;
- Dr. Detlor deliberately sought to impede Dr. Ray's ability to supervise by refusing to answer simple questions about limits on maximum number of courses per semester;
- Dr. Detlor misused his position as Ph.D. Director to harass Dr. Ray by creating situations fraught with potential for conflict between Dr. Ray and his Ph.D. student;
- Dr. Detlor misused his position as Ph.D. Director to harass Dr. Ray by creating arbitrary rules for the Ph.D. Program without consultation in order to shape academic discussions and communicating in a disparaging manner when Dr. Ray expressed dissent;
- Dr. Detlor contradicted the Student Handbook for Ph.D. Business students that course selection should follow the Program requirements and any deviation should be discussed with the supervisor and the Ph.D Director; and
- Dr. Detlor rejected a suggestion made by Dr. Ray, where Dr. Detlor wrote: "So that is not an option for you to consider."

### **Tribunal's Findings**

The Tribunal finds that Dr. Ray did not prove that Dr. Detlor harassed him in relation to any matter identified which involved Dr. Ray's student. The Tribunal finds that there is no objective or reliable evidence that Dr. Detlor abused his position to create conflict or that he created arbitrary rules in the Ph.D. Program. As Ph.D. Director, Dr. Detlor had general oversight responsibilities for staff, policy implementation, and for student satisfaction in the Ph.D. Program. Dr. Detlor pointed out errors or potential errors in a reasonable manner. Where Dr. Detlor felt he needed to take immediate action for the benefit of a student, he did so. The Tribunal finds that the evidence, reasonably interpreted, did not even come close to the threshold

required to establish harassment or a breach of the Policy. The Tribunal finds Dr. Detlor acted reasonably in carrying out his administrative responsibilities involving Dr. Ray's student for matters raised with the Tribunal.

Briefly, the email exchange contained 14 emails, most of them sent in the span of two days in early September 2010. Dr. Ray alleged that there were 12 harassing or unwelcome behaviours arising from those emails related to the course selection form. Dr. Detlor began the email exchange with a suggestion to Dr. Ray and Dr. Pujari. He closed the email asking for their input. The Tribunal finds that Dr. Ray's assertion that Dr. Detlor's behaviour was "heavy-handed" in this and other instances is not a reasonable interpretation.

The Tribunal also finds that Dr. Ray did not prove that Dr. Detlor deliberately disseminated misleading information. The Tribunal reviewed the School of Graduate Studies policies and the Student Handbook for Ph.D. Business students that were in place at the time of the events and found that Dr. Detlor did not deliberately or innocently breach the policies. Even so the evidence does not reasonably suggest that Dr. Detlor took any of his actions for the purpose of demeaning Dr. Ray. Dr. Ray made three claims that Dr. Detlor deliberately sought to impede Dr. Ray's ability to supervise his student by disseminating misleading information. Dr. Ray's claims were found to be speculative and not corroborated by the most reliable and credible evidence received. Dr. Detlor and Ms Colwell provided reliable and credible evidence that they had received feedback from some students, including Dr. Ray's student, that they were having difficulties with economics courses. The evidence confirmed Dr. Ray's student decided to skip a final exam without speaking to Dr. Ray or Dr. Detlor.

The Tribunal finds that Dr. Ray did not prove that his ability to supervise was impeded by Dr. Detlor deliberately refusing to answer what he characterized as simple questions. Dr. Detlor did admit that he decided not to reply further to Dr. Ray's emails, given that he felt that the emails were harassing. The Tribunal finds that Dr. Detlor's refusal to reply may have been misinterpreted by Dr. Ray but that Dr. Detlor's decision was not unreasonable given the escalating nature of his relationship with Dr. Ray.

### iii. **Student Transcript Issue in January 2011**

#### **Summary of Evidence and Submissions**

To summarize, Dr. Ray further alleged the transcript issue involving Mr. Shekari and resultant events led to Dr. Ray being harassed because:

- Dr. Detlor interfered with Dr. Ray's supervision over his Ph.D. student;
- Dr. Detlor harassed Dr. Ray by creating situations fraught with potential for conflict between Dr. Ray and his Ph.D. student;
- Dr. Detlor deliberately undermined Dr. Ray and interfered with his Ph.D. student's transcript without Dr. Ray's knowledge of approval;

- Dr. Detlor deliberately undermined Dr. Ray by providing course advice to Dr. Ray's Ph.D. student which Dr. Detlor knew was contrary to Dr. Ray's express instructions and preferences;
- Dr. Detlor exhibited behavior consistent with sustained antagonism including physical aggression illustrated by knocking loudly on Dr. Ray's door;
- Dr. Detlor abused his position as Ph.D. Director to harass and create conflict between Dr. Ray and staff members;
- Dr. Detlor harassed Dr. Ray by creating arbitrary rules for the Ph.D. Program without consultation negatively impacting academic discussions and communicating in a disparaging with Dr. Ray who had expressed dissent; and
- Dr. Detlor harassed Dr. Ray by seeking to strip legitimate disciplinary discretion over academic matters such as admissions, scholarships, coursework, annual performance reviews.

Mr. Shekari testified that when he was filling out his course registration form in September 2009 Ms Colwell advised him that Economics 721 and 761 courses should be listed as EC (extra course) courses, and not D (Doctorate courses) because they are not required courses and had been listed as "additional courses if required" on his course selection form that was signed by Dr. Pujari (on behalf of Dr. Ray) and Dr. Detlor. Mr. Shekari did not know that EC courses were not required courses as per the graduate studies rules. Mr. Shekari further testified that in the same discussion Ms Colwell said that if Mr. Shekari obtained a "good grade" on an EC course it would appear on his transcript which was 'good for [his] resume.'

In November 2010 Mr. Shekari became aware that he was not officially registered in Econ 721 or 761 and was informed that the original course registration form had been lost. Thus Mr. Shekari had to fill out a "Petition for Special Consideration" so that he could obtain credit for the economics courses. Mr. Shekari testified that although he felt this was strange, he did not say anything at the relevant time. Once again the Econ 721 and 761 courses were coded as EC on the submitted form. Mr. Shekari testified that at the time he fully expected to receive credit for his work in these EC courses since he was completing all the required course work. When Mr. Shekari approached Dr. Ray to sign the "Petition for Special Consideration" form where Econ 721 and 761 were listed as EC courses, Dr. Ray signed the form. Dr. Ray subsequently advised Mr. Shekari that he was not aware of the technical difference between coding of EC (extra-credit) versus D (doctorate) courses on a course selection form but suggested the Ph.D. Office would advise Dr. Shekari on the appropriate way to fill out the form.

Mr. Shekari testified he was advised by Ms Colwell that a high GPA would assist a student in obtaining a scholarship. She had also explained to him that if the student effectively failed a course, it would not appear on his transcript. If he did not fail a course, the mark he earned would appear on his transcript. According to Mr. Shekari, "this made it possible that a failure would actually result in a higher overall GPA" (DSB-2316 at para. 15). Mr. Shekari testified under cross-examination that no one, not Ms Colwell, Dr. Detlor, or Dr Ray told him to avoid the final exam. Without telling his supervisor, Mr. Shekari did not attend the final exam and he was assigned an F. Mr. Shekari testified that he regrets this decision in part because Dr. Ray informed him that having the Econ 721 course on his transcript highlights the nature and

quality of his graduate training. He also felt that he would not have been in that situation if the courses were not listed as extra courses in the first place.

On January 19, 2011, Dr. Detlor received an email from Ms Marsha Duncan (Student Records Clerk of the School of Graduate Studies) regarding the student's F grade. On the same day, Dr. Detlor replied and explained his understanding that it was an EC course and therefore should be removed from his transcript, as per SGS policy. The next day on January 20, 2011, Ms Duncan confirmed that the course was removed from the transcript. On January 21, 2011, Dr. Detlor emailed Mr. Shekari and Dr. Ray and informed them of the situation. He stated that because the course was listed as EC, SGS removed the failing grade as per the policy, and he quoted the policy. Had he not listed the course as EC, Dr. Detlor explained, it would have required administrative action by the DSB and SGS to remove the grade, as two failing grades result in formal withdrawal from the Program. Dr. Detlor closed the email by saying "Based on the above, you may wish to reconsider taking other Economics courses that are not part of your required Ph.D. program" (DSB-1228).

Dr. Ray expressed concern about his student's poor grades since such poor performance was "not consistent with [his] impression of his abilities." Dr. Ray approached Dr. Zeytinoglu, who was one of his student's professors, and asked her about the student's performance. Dr. Ray testified that "Dr. Zeytinoglu expressed surprise at Dr. Detlor's interference and mentioned that my student was doing fine." Dr. Ray testified that he also approached the professor of Econ 721, Dr. Seungin Han, about his student.

Dr. Ray also stated: (DSB-2117 at para. 33)

"I... was advised that my student decided not to write the final exam and deliberately chose to get an F grade under the assurance that the grade would be removed from his transcript. Apparently, he expected to get a B/B+ grade if he wrote the exam but was counselled by someone that not getting an A would somehow hurt his chances at getting scholarships. He did not advise me who provided him with this assurance, and I did not ask."

Dr. Ray was admittedly upset and responded to Dr. Detlor in an email dated January 31, 2011 (DSB-1228) and explained why he was "highly disappointed and surprised" by Dr. Detlor's "wrong" actions:

"Brian, For the records [sic] – I am highly disappointed and surprised by your actions.

All the decisions you took and implemented here are wrong. These include not taking me into confidence early on about my student's performance in his courses; advising the grad school on what grades are to be removed from his transcript; and advising my student on what courses are required for his research and training. These are wrong not only in their substantive content (lacks judgment and understanding of the discipline) but are also wrong in their violation

of the integrity of the organizational process (supervisor is the primary entity that supervises the student on all academic matters). This reflects serious dysfunctionality at the PhD office.

This incidence continues the pattern of interference in supervision you have engaged in from the very start of our program. With great disappointment, I notice now that your actions are causing potentially serious long term harm not only to the PhD program in Marketing but to the career prospects of individual students. I hope you will find some time to reflect on your actions and their impact, and how the damage caused may be repaired.

On another topic – you are almost always welcome to stop by my office for a chat. However, if you are unable to make an appointment earlier, please consider a soft or polite knock the next time you find my office door closed. I am unsure if you meant it that way, but the last time you were here (on Thursday) I found your knocking on the door rather aggressive, loud and disturbing. I am reasonably sure that the hinges of my office door are strong enough, but not a hundred percent confident that they can withstand repeated incidents like that.”

Dr. Ray was also upset that Dr. Detlor waited 48 hours to tell Dr. Ray that his student had failed, which was an unreasonable delay according to Dr. Ray.

Dr. Ray outlined his concerns to the Associate Dean on January 31, 2011 (DSB-1229) and April 7, 2011 (DSB-1237). Dr. Ray then followed up with the Acting Dean of the DSB, Dean McNutt, who replied to Dr. Ray on May 14, 2011 (DSB-1245). Dr. Ray explained his concerns in detail, offered general comments, and asked for assistance on the administrative issues he was having with Dr. Detlor. Dean McNutt’s response (DSB-1246) offered general advice to Dr. Ray that the Supervisor and Supervisory Committee have the responsibility for guiding the studies and research of their graduate student, within the appropriate guidelines. He also offered to set a meeting between the three to discuss the disagreements. Dr. Detlor’s term as Ph.D. Director expired on June 30, 2011, and he did not seek a further term. No meeting took place.

Dr. Ray also testified that the earlier door-knocking incident (referred to in DSB-1228) contributed to the harassment he endured. Dr. Ray was sure by the time he filed his Counter-Complaint that Dr. Detlor’s knock on his door was intended to harass him. Having read Ms Colwell’s affidavit, Dr. Ray accepted, that while Ms Colwell was present, he maintained his belief that the knock was not just “firm ... but loud, and to me, seemed aggressive” (DSB-2117, paragraph 61). Ms Colwell testified that she, not Dr. Detlor, knocked on Dr. Ray’s door when they attended at Dr. Ray’s office on January 27, 2011, to obtain a form. Ms Colwell testified her knock was firm but not aggressive, nor intended to be intimidating. In addition, the Tribunal heard evidence from Ms Colwell, Ms Stevens, Dr. Head, Dr. Connelly, and Mr. Bates all of whom testified that they have never witnessed Dr. Detlor act aggressively.

### **Tribunal's Findings**

The Tribunal finds Dr. Ray's claims were without merit, having reviewed all of the evidence. Where necessary due to conflict in the evidence the Tribunal accepted the evidence of Dr. Detlor, Dr. Connelly and Ms Colwell which we found to be the most reliable. The Tribunal observed Dr. Detlor during his testimony and found him to be a reliable witness. Dr. Detlor was observed presenting evidence in a straight-forward and credible manner that was consistent with the description of him provided by reliable non-party witnesses (Drs. Hupfer and Connelly) and generally corroborated by the tone and nature of his email communications. In contrast, Dr. Ray's evidence was inconsistent and contradictory in several places and was not found to be reliable by the Tribunal where it was in conflict with Dr. Detlor's evidence. The Tribunal prefers the evidence of Dr. Detlor where it conflicted with that of Dr. Ray absent other reliable evidence.

The Tribunal finds that Dr. Detlor did not undermine or interfere with Dr. Ray or abuse his position as Ph.D. Director. The Tribunal members, all of whom have supervised Ph.D. students at McMaster, further find that Dr. Detlor's conduct with respect to the academic progress and transcript with Mr. Shekari are entirely consistent with the responsibilities of a Ph.D. Director (or similar position) in other academic units on campus and reflect the accepted policies and procedures for Graduate Studies supervision and oversight.

Furthermore, the reliable and objective evidence did not establish that Dr. Detlor "exhibited behaviour consistent with sustained antagonism" or "physical aggression." Dr. Ray, at the time of the door-knocking wrongly assumed Dr. Detlor had knocked on his door which he also described as "rather aggressive, loud and disturbing". This led to Dr. Ray's own accusatory email on January 31, 2011 (DSB-0577). The evidence established that although Dr. Ray assumed it was Dr. Detlor who knocked on the door, it was, in fact, Ms Colwell. The Tribunal accepted Dr. Detlor's evidence that he did not and would not knock aggressively on Dr. Ray's door.

The Tribunal also heard evidence from non-party witnesses regarding Dr. Detlor's demeanour. As noted previously in this report, Dr. Connelly, a credible witness called on behalf of the 002 Complainants, described Dr. Detlor as mild-mannered, self-deprecating, shy, and a very nice person. When asked on cross-examination whether she had ever seen Dr. Detlor act inappropriately in a meeting, slam his fist on the table, or slam a door, she disagreed and was surprised that such an allegation had been made. In addition, in response to the question whether she had seen Dr. Detlor act inappropriately, Ms Carole Stevens said in a surprised tone, "Is this a joke?" implying that she had not seen Dr. Detlor act inappropriately at the DSB.

#### **iv. Ph.D. Operating Committee**

##### **Summary of Evidence and Submissions**

Dr. Ray was a member of the Ph.D. Operating Committee, as well as the Disciplinary Coordinator of the Marketing Ph.D. Program. Dr. Ray alleged that Dr. Detlor's actions with

regards to Dr. Ray's membership on the Ph.D. Operating Committee amounted to further harassment. Dr. Ray complained that:

- Dr. Detlor attempted to block Dr. Ray's reappointment as the Marketing representative to the Ph.D. Operating Committee because of his sustained antagonism towards Dr. Ray; and
- Dr. Detlor harassed Dr. Ray by creating an environment fraught with tension and conflict within the Ph.D. Operating Committee, which impeded Dr. Ray's ability to participate meaningfully.

### **Tribunal's Findings**

There was no reliable or admissible evidence of any conduct undertaken by Dr. Detlor to block Dr. Ray's appointment to any committee or position within the DSB. Rather, the reliable evidence suggests Dr. Detlor did not have any input concerning the decisions referenced by Dr. Ray. The Tribunal finds there is no evidence that Dr. Detlor's conduct or comment impeded Dr. Ray's participation in the workplace or created an inappropriate environment contrary to the Policy. Therefore, the Tribunal dismisses this claim by Dr. Ray.

## **v. Marketing Ph.D. Applications**

### **Summary of Evidence and Submissions**

Dr. Ray alleged that Dr. Detlor harassed him by creating confusion and potential conflict and used Ms Colwell to communicate misinformation. In his affidavit, Dr. Ray identified that he was a member of the Ph.D. Operating Committee, as well as the Disciplinary Coordinator of the new Marketing Ph.D. Program. He then noted the following:

“By email dated January 26 and February 1, 2010, Ms. Colwell had sent the files for all Marketing PhD applicants to Dr. Toru Yoshikawa. However, Dr. Yoshikawa was not a member of the Marketing Area and had no direct or indirect role in the Marketing PhD Program. This important distinction was well known to both Dr. Detlor and Ms Colwell based on several email communications going back to 2009, which I had repeatedly pointed out. In fact, it was Ms Colwell having improperly forwarded the applications which led to the telephone conversation, which is the crux of her complaint against me.”

Dr. Detlor did not know about this matter until after the fact. Nevertheless, Dr. Detlor testified that there is nothing wrong, in his view, with Ms Colwell sending the applications to Dr. Yoshikawa, who had a cross-appointment with the management of Organization Behaviour and Human Resources Area, and was a faculty member in the SML/HSM Area. Dr. Detlor testified he was unsure why Dr. Yoshikawa viewing applications would have caused Dr. Ray any stress.

### **Tribunal's Findings**

The Tribunal finds that Dr. Ray has not established that he was harassed by Dr. Detlor.

#### **vi. General Allegations of Harassment**

##### **Summary of Evidence and Submissions**

Dr. Ray also alleged all of the events summarized above, considered in their entirety, established a course of conduct which harassed him because:

- Dr. Detlor misused his position as Ph.D. Director to harass Dr. Ray by seeking to undermine legitimate discretion over academic matters such as admissions, scholarships, coursework, annual performance reviews;
- Dr. Detlor misused his position as Ph.D. Director to harass Dr. Ray by creating continuing conflict with Dr. Ray;
- Dr. Detlor harassed Dr. Ray by communicating in a rude, antagonistic, disparaging, dismissive and disrespectful tones, both verbally and in writing;
- Dr. Detlor's behaviour and treatment towards Dr. Ray exhibited blatant disregard for Dr. Ray's professional judgement, as well as personal and professional well-being.
- Dr. Detlor misused his position as Ph.D. Director to harass Dr. Ray by using Ph.D. Program staff (i.e. Ms Colwell).
- Dr. Detlor told Ms Colwell that it was Dr. Ray who tried to take away her responsibilities.

On behalf of Dr. Detlor, it was submitted that the Counter-Complaint was retaliatory and without merit in breach of the Policy.

### **Tribunal's Findings**

Dr. Ray's Counter-Complaint is dismissed in its entirety.

Furthermore, the Policy establishes that the filing and pursuit of a Counter-Complaint can be found to be a breach of the Policy (Section 70(e)). In the circumstances, the Tribunal finds Dr. Ray's Counter-Complaint was malicious, frivolous, vexatious and entirely without merit, thereby breaching the Policy. The Tribunal finds that there was no reasonable basis for Dr. Ray's harassment claims against Dr. Detlor. Having considered the evidence in its entirety, we have determined that it is more likely than not that Dr. Ray decided to make vexatious accusations and retaliate against Dr. Detlor for the complaints originally submitted against him on March 31, 2011. By operation of Section 70(e) of the Policy, we find that Dr. Ray's Counter-Complaint is in breach of the Policy.

Section 70(e) of the Policy provides:

If the Tribunal decides by a preponderance of reliable evidence that a complaint has been fraudulent, malicious, frivolous or vexatious, or is entirely without factual basis, the Tribunal hearing the original complaint will find that the complainant, as a result of the complaint, is in breach of this policy and will recommend to the President such sanction or remedy against the complainant as it feels is appropriate. Prior to finding that a complaint has been fraudulent, malicious, frivolous or vexatious or is entirely without factual basis, the Tribunal will advise the parties that it is considering making such a ruling and specifically invite submissions on this point.

It was Dr. Ray who the Tribunal finds filed a vindictive Counter-Complaint and who without reasonable cause created a hostile work environment as a result of his own vexatious conduct and comment. Dr. Ray's comment or conduct unnecessarily created and aggravated ongoing conflict and resulted in unfounded concerns being debated in a manner which were not collegial or respectful. The Tribunal finds the allegations by Dr. Ray to be unfounded concerning Dr. Detlor's alleged misuse of his authority and the responsibilities entrusted to him as Ph.D. Director. Rather than Dr. Detlor disseminating false information and deliberately creating unpleasant situations and conflict (which the Tribunal has found to be untrue), the Tribunal finds that the evidence confirmed that it was Dr. Ray who disseminated false information and engaged in conduct and comment which breached the Policy and created a poisoned work/academic environment.

The Tribunal finds Dr. Ray's Counter-Complaint was malicious, frivolous and vexatious. For example, Dr. Ray submits in paragraph 22a of his affidavit (DSB-2295) that his conduct was never personal (his emphasis) while engaging in persistent conduct and comment which was personal, inflammatory and derogatory towards Dr. Detlor. The Counter-Complaint was filed after Dr. Ray obtained tenure and his conduct became even more confrontational. The evidence confirmed that after Dr. Ray was granted tenure, he found himself increasingly aligned to a group of senior faculty (the G21) and joined the G21+ email distribution chain.

The Tribunal finds that Dr. Ray's Counter-Complaint was often convoluted, speculative and presumptive. Dr. Ray alleged approximately 26 different harassment claims for which he used the term "deliberately" (in ten different claims) and "potential to lead to conflict" (in four different claims). Some of the complaints are repetitive (see paragraphs 6, 12, and 14d). The Tribunal finds many of Dr. Ray's concerns including "an environment fraught with tension and conflict" originated not with improper conduct by Dr. Detlor or the Ph.D. Office, but resulted from Dr. Ray's own impulsive, inflammatory and often misinformed conduct. Dr. Ray, admittedly was not familiar with many of the procedures and practices at issue yet was indignant when his own views were not immediately accepted. In addition, Dr. Ray often made no reasonable inquiries before making serious allegations and the resultant conflict was therefore of his own creation in the Tribunal's view. The Tribunal finds the persistence of Dr. Ray's comments and conduct created a hostile work environment.

Furthermore, the Tribunal found Dr. Ray's evidence to be self-serving and defiant. Dr. Ray was at times condescending and was evasive during cross-examination. Additionally,

Dr. Ray routinely avoided questions and was argumentative in giving evidence. At one point, Dr. Ray shook his finger towards the Tribunal and raised his voice while stating that the complaint and hearing process has “taken away his time, personal space and money.” A sample of Dr. Ray’s testimony which formed a small part of the Tribunal’s concerns is provided in the following excerpt from the cross-examination of Dr. Ray by Mr. Heeney (Counsel for Dr. Detlor):

Mr. Heeney: If we could turn to, umm, 577. You went through this email in chief—

**Dr. Ray: Yeah, right.**

H: With your counsel. Fair to say, sir, you shouldn’t have sent this email?

**R: Whether I should have sent this email?**

H: Yeah.

**R: I was very upset at that time.**

H: I don’t doubt that.

**R: Yeah, I didn’t doubt it either, and I didn’t want to leave any doubts--**

H: You wanted to make sure he knew you were upset?

**R: Exactly. I wanted him to know exactly how I felt, having been at the receiving end of what I presumed has started in September 2010, where I had made myself very clear as to what it should --. And then I did not appreciate him, that is Dr. Detlor, writing back to my student, advising him of what sort of courses he should not take, knowing very well that these were completely opposite to my recommendations and my supervisory...advice to my student.**

H: And so your evidence is, you would resend this email again if you had the chance?

**R: If I was as upset as I was at that time, I cannot say whether I would send exactly this, but certainly I...I am telling him that I am highly disappointed and surprised...that those are literal facts. That all that the decision you took and implemented here are wrong. Those are exactly how I felt at that time. Those reflect exactly how I felt. These include not taking me into confidence earlier on about my student’s performance in his courses. There were 48 hours that he received the note from the grad school. He had fourt—He received it at 3pm. He sent off a response to the grad school at 5-something p.m. on the same day, telling them to take that course off, and**

**then the next day, or the day after, he writes to me. In his position, what I would have done is I would have immediately contacted the supervisor—**

H: That's not my question sir. My question was—

**R: I'm explaining why I'm upset.**

H: I didn't ask you why you were upset. I asked if you'd resend this email again if you had the chance.

**R: And I said that I will resend the— a similar email, not the exact email, if I was very upset, as upset.**

H: Okay. Because when you're upset, it's ok to send those kinds of emails?

**R: Are you inferring that this email... what, what about this email are you stating as...**

CHAIR: Sorry, this is not an opportunity for you to ask questions.

**R: Sorry, sorry. Yeah.**

H: I'll put it to you, sir, that this email is totally inappropriate.

**R: Which parts of it?**

H: "for the records I am highly disappointed and surprised by your actions—

**R: I mean, you—**

H: Let me finish my questions. Did you go and meet with Dr. Detlor before you sent this email?

**R: That option was taken away from me.**

H: You weren't able to get up out of your office and walk to Dr. Detlor's office and ask him about it?

**R: He had already sent a note to the graduate school, asking that my student's grade be removed, number one. He had already sent a note to my student saying that my supervisory advice to him went wrong. And at that point, I don't think...**

H: Sir, scroll down. He didn't say that your advice to your student was wrong. He said "you may wish to reconsider taking other economics courses that are not part of your required Ph.D. Program. So he's not saying "don't take the required

ones.” He’s saying “don’t take the courses that are not required.” He didn’t say your instructions are wrong. Where does he say that?

**R: You don’t see that there? I, I see that. I read that by saying, given the backdrop of the multiple emails and the copious detail in which I had explained why economics was necessary for my student, this is an extremely passive aggressive way of, of, of responding to me. This is an extremely passive aggressive manner in which he’s responding. He’s telling my student reconsider the other economics courses—**

H: No sir, that’s not what he’s saying. He’s saying reconsider economics courses that are not *required* for your Ph.D. Program.

**R: Yes, as far as I was concerned, I had required my student to take all the economics courses. And unbeknownst to me, between September and January, something happened when these became not required for his Program. EC courses are not required for a Ph.D. Program.**

H: He was still required to take the course, it was just coded as EC.

**R: I think you are, uhh, just talking about semantics here.**

H: Okay. If we could scroll back up. So when you say “this includes not taking me into confidence about my student’s performance,” you’re talking about the 48 hours earlier when Dr. Detlor found out about the information right?

**R: I am trying to remember... I certainly talking about the 48 hours earlier, because my, my, uh intention in saying that was: If I had known that my student had done badly in a course, I would have immediately talked to my student and asked him to talk with his economics supervisor. Mr. Heeney, you have to understand, that when my student goes out to the job market, it’s not good to have holes in his resume, in his transcript. It is not a matter of joke, I take it very seriously.**

H: Sir, he’s got no hole in his transcript.

**R: He has a hole now because “Microeconomics 1” does not appear on his transcript. I cannot explain to you how important that is. That’s an extremely negative signal. When he goes out and competes in the economics job market—**

H: Did you explain to your student the importance of taking that course?

**R: I did, right after this yes.**

H: Before that?

**R: Before that, I explained that to him.**

H: He elected not to write the exam, he elected not to write the exam without speaking to you. Correct?

**R: That he did.**

H: So you're upset with your student for not coming to you and not telling you that he was thinking about not writing the exam.

**R: I am actually much more upset at the Ph.D. Program, Mr. Heeney, because they are... I do not know how much more or what else could I have done to explain to any reasonable people in the Ph.D. Program, that these courses are important and required. After I do that, it is... you know, I mean, we don't monitor everything, you know. We depend on several of these things, uhh being done appropriately.**

H: Sir, you signed the add/drop form.

**R: I did, I said that.**

H: And if you had read the form properly—

**R: I didn't sign the add/drop. I, uhh, signed the special petition form.**

H: You signed that form, correct?

**R: Yeah**

H: And if you had read it properly, this problem wouldn't have existed, correct?

**R: If you're going to go down that road, the Graduate Calendar talks about D, EC and AUD. The Graduate Calendar does not talk about Doctorate or Extra Course or Audit course. They have special letters for it, E EC and AUD. And when, if they had written EC, it would have flagged my attention, because it was extra course, it was just a literal meaning that it's extra course over the required minimum. And I thought that was exactly what it was.**

H: You didn't look at the calendar, did you?

**R: Well, I mean, later on, I did.**

H: But you didn't when you signed the—

**R: Uh, yeah yeah, I didn't. I didn't.**

H: 644. or 645. No its 645. Page 3. Right there sir, EC.

**R: Yup**

H: Bracket extra course.

**R: Right. Its D and EC. It's indicated as extra course. The designation is EC. And the designation is D. And you see the explanation behind D, it's an explanation: "count toward doctoral degree requirements" That is not a course designation. Similarly—**

H: Sir, the course is "extra course"

**R: Yes, it is a—**

H: And this is the graduate calendar.

**R: (audibly sighs).**

H: Right?

**R: Yes it is.**

Furthermore, the Tribunal finds Dr. Ray asked Dr. Zeytinoglu to revise a signed affidavit. Dr. Ray did so after he realized certain allegations in his complaint which he had earlier conveyed to Dr. Zeytinoglu as a fact, would not be corroborated. Dr. Zeytinoglu relied upon false information from Dr. Ray when she expressed her opinions and concerns against Dr. Detlor in paragraph 5 of her original affidavit. The following was considered.

Dr. Zeytinoglu submitted two affidavits in advance of the hearing. A signed affidavit dated January 5, 2012 (DSB-2113) related to the 003 Matter was submitted on January 6, 2012. An unsigned affidavit (DSB-2300) from Dr. Zeytinoglu related to the 002 Matter was submitted on February 12, 2012. Dr. Zeytinoglu attended on March 25, 2012, as a witness to the 002 Matter, and appeared again on May 23, 2012, where she provided evidence to support Dr. Ray's Counter-Complaint arising from her signed affidavit dated January 6, 2012 (DSB-2113). In between, Dr. Ray testified on April 22 and 23, 2012.

On May 21, 2012, counsel for Dr. Ray presented a revised affidavit for Dr. Zeytinoglu (DSB-2113 [revised]) to opposing counsel. Dr. Ray's counsel requested permission to submit the revised affidavit to the Tribunal on May 22, 2012. The Tribunal had already identified credibility issues with both Dr. Ray and Dr. Zeytinoglu after observing each individual's demeanour when providing testimony, inconsistencies in their evidence and their general reluctance to be forthcoming when responding to questions. The revised affidavit contained

amendments to paragraph 5 and Dr. Zeytinoglu was required to address the issue in her testimony on May 23, 2012.

Paragraph 5 in the original signed affidavit (DSB-2113) states:

“As I recall, he told me that Dr. Detlor, as the PhD Coordinator, recommended the student not to take the final exam in another course and the student failed the final exam, and failed the course (or received such a low mark that it is essentially considered a failure grade). As I heard from Dr. Ray that Dr. Detlor said to the student that he can then take the course again and get a high mark, and with a high GPA he will be eligible for scholarships such as OGS. I was shocked to hear this because PhD Coordinators are not supposed to interfere with the students’ academic program in terms of course selection and progress in the course. That is the responsibility of the supervisor. PhD Coordinators can only advise the Supervisor, and only if such an advice is sought or if there are serious problems in the student’s progress in the programme. Moreover, a recommendation to not write an exam and get a failure mark to take the course again to raise marks is such an unheard suggestion in a PhD program I was shocked. A failure mark shows on the student’s transcript and it is permanent even if a student takes the course again. I said to Dr. Ray, ‘this is unheard of, who on earth can give such a recommendation to a student, does the PhD Coordinator not know the implications of his recommendations? He is ruining this student’s career. This is not acceptable. You should raise your concerns immediately. If not, and if you prefer, I can talk to Dr. Detlor and inform him that this is not a recommendation a good PhD Coordinator should give. This shows lack of competency on the side of the PhD Coordinator and the effects of this decision on the student are detrimental and permanent.’ I also conveyed to Dr. Ray that another professor had a similar experience with Dr. Detlor’s interference in his supervision and I recommended Dr. Ray to talk to this other professor. I did not follow this issue after the conversation that day. At the end of the semester the student received a very good mark in my team-taught course.”

Paragraph 5 in the revised Affidavit states:

“As I recall, he told me that he suspected that Dr. Detlor, as the PhD Coordinator, may have in effect, recommended that the student fail another course by not taking the final exam in it, and that the student failed the course (or received such a low mark that it is essentially considered a failure grade). As I heard from Dr. Ray that he suspected that Dr. Detlor may have gone around him and counseled the student to this effect and said with a high GPA the student will be eligible for scholarships such as OGS. I was shocked to hear this because PhD Coordinators are not supposed to interfere with the students’ academic program in terms of course selection and progress in the course. That is the responsibility of the supervisor. PhD Coordinators can only advise the Supervisor, and only if such an advice is sought or if there are serious problems in the student’s progress in the programme. Moreover, a recommendation to not write an exam and get a failure

mark to generate higher GPA is such an unheard suggestion in a PhD program I was shocked. A failure mark shows on the student's transcript and it is permanent even if a student takes the course again. Courses in the transcript also signal the quality of training for a PhD student when he/she goes out on the job market. I said to Dr. Ray, 'this is unheard of, who on earth can give such a recommendation to a student, does the PhD Coordinator not know the implications of his recommendations? He is ruining this student's career. This is not acceptable. You should raise your concerns immediately. If not, and if you prefer, I can talk to Dr. Detlor and inform him that this is not a recommendation a good PhD Coordinator should give. This shows lack of competency on the side of the PhD Coordinator and the effects of this decision on the student are detrimental and permanent.' I also conveyed to Dr. Ray that another professor had a similar experience with Dr. Detlor's interference in his supervision and I recommended Dr. Ray to talk to this other professor. I did not follow this issue after the conversation that day. At the end of the semester the student received a very good mark in my team-taught course."

The Tribunal finds Dr. Zeytinoglu's first affidavit (DSB-2113) submitted on January 6, 2012, accurately identified what Dr. Ray told her. On May 23, 2012, during her testimony Dr. Zeytinoglu confirmed with the Tribunal chair that she had read the original affidavit prior to signing (DSB-2113) and was aware at that time (January 5, 2012) that she was confirming the affidavit was true when she signed it. Dr. Zeytinoglu testified that paragraph 5 in the original signed affidavit accurately reflected her recollection of what Dr. Ray told her prior to Dr. Ray speaking with her. Dr. Ray admitted during cross-examination on April 23, 2012, that he approached Dr. Zeytinoglu after reading her affidavit. Dr. Ray testified he told Dr. Zeytinoglu that his suggestion that Dr. Detlor recommended the student not take the final exam was not accurate. Dr. Zeytinoglu testified that Dr. Ray approached her with this information no later than January 24, 2012.

The Tribunal finds Dr. Ray attempted to tamper with the evidence by approaching Dr. Zeytinoglu. The information originally conveyed by Dr. Ray was false and spreading that information was reckless or intentional. Dr. Zeytinoglu confirmed that her original affidavit was what she remembered Dr. Ray telling her when she signed the affidavit. Dr. Ray in his own affidavit at paragraph 55 confirmed he did not know who provided the assurance to his student but "I had my suspicions". Dr. Ray's testimony satisfies the Tribunal that he provided Dr. Zeytinoglu with false information initially to undermine Dr. Detlor's credibility with faculty. Mr. Shekari's affidavit confirmed what Dr. Ray had told Dr. Zeytinoglu (that Dr. Detlor had recommended to Mr. Shekari not to write the final exam in Econ 721) was false. In fact, the most reliable and consistent evidence suggests that Dr. Detlor did not contact the student nor did he recommend that the student not take the final exam. In January 2012, it is more likely than not that Dr. Ray realized that the version of events he conveyed to Dr. Zeytinoglu about Mr. Shekari (the student) would not be corroborated by his own student who was being called as a witness to support his Counter-Complaint. The Tribunal finds Dr. Ray conveyed false information about Dr. Detlor to a shared colleague and then attempted to alter evidence to support an unfounded and frivolous Counter-Complaint against Dr. Detlor.

The Tribunal finds that Dr. Ray's Counter-Complaint and his conduct impacting the hearing breached the Policy. Pursuant to s.70(e), the Tribunal will receive submissions at the remedy hearing from counsel concerning what sanction or remedy will be recommended to the President against Dr. Ray.

## H) COMPLAINT OF DR. MILENA HEAD

Dr. Head's Complaint is set out at paragraphs 44-56 of her Complaint (DSB-0002) and particularized in her affidavit (DSB-2106). Dr. Head's testimony was credible and supported by reliable evidence from Dr. Detlor, Dr. Harnish, Dr Hackett, Dr. Hassanein and Mr. Bates. Dr. Steiner responded to the allegations in his affidavit (DSB-2293) and testified. Drs. Hassini, Chan, Wesolowsky, Kwan, Tiessen, Miltenburg, Charupat and Rose provided evidence relevant to the issues in dispute.

Dr. Head's account of relevant events was corroborated by other credible witnesses. Her testimony was also supported by the documentary evidence where required. The Tribunal found that Dr. Steiner was not credible due to his demeanour and furthermore Dr. Steiner's evidence on certain matters was inconsistent and unreliable. The Tribunal preferred the evidence of Dr. Head where there was a factual dispute and there was no other credible or corroborating evidence. In addition, Dr. Steiner's allegations concerning Dr. Head's own conduct were found to be vindictive and often without merit.

The Tribunal finds that Dr. Steiner breached the Policy and harassed Dr. Head when he engaged in a course of vexatious conduct against Dr. Head culminating with his retaliatory actions as a member of the Faculty T&P Committee in the fall of 2009.

### i. Dr. Steiner's conduct in March 2006 harassed Dr. Head

#### Summary of Evidence and Submissions

Dr. Head alleged that initiatives she brought forward within the Faculty tended to be heavily criticized by Dr. Steiner. Dr. Steiner's negative behaviour towards her occurred both before and after Mr. Bates became Dean and after she was appointed as Associate Dean. In March of 2006, there was an issue related to concerns Dr. Detlor expressed to Dr. Parlar about privacy and access to private information. The issue concerned the release of the private information of Ph.D. students and the dissemination of copies of some Ph.D. students' supervisory meeting reports, at an Area meeting. It was Dr. Detlor's opinion that some of this information should not be disclosed at the Area meeting. However, Dr. Parlar felt that the information was already in the public domain and that it was a standard practice of the MS/IS Area to review the information on a yearly basis to provide oversight of doctoral student progress.

Several emails were exchanged between Drs. Detlor and Parlar. Dr. Detlor copied Dr. Head, Dr. Steiner (the Ph.D. Coordinator), and Mr. Bates on a later email, at which point Dr. Head, who was in China at the time, personally emailed Mr. Bates (DSB-2080) and Dr. Fred Hall, the Dean of Graduate Studies (DSB-2081), for further information. Dr. Hall was of the opinion that the information should not be released (DSB-0400) or discussed in the Area meeting.

Dr. Head summarized Dr. Hall's information in an email to Dr. Parlar on March 7, 2006 (DSB-2082). Subsequently, Dr. Steiner and Dr. Parlar brought forward complaints to Dr. Hall with regards to Dr. Head, specifically that her approach in handling the privacy issue was improper, she had misrepresented communications from Dr. Hall, and that she had publically stated that she intended to remove Dr. Steiner as a Coordinator of the Ph.D. Program. Dr. Hall informed Dr. Head of this information on March 24, 2006. Dr. Head testified that Dr. Steiner's allegations to Dr. Hall were false.

On March 26, 2006, Dr. Head emailed Dr. Steiner and Dr. Parlar (DSB-1428) and explained her actions. She wrote that she did not misrepresent information given to her by Dr. Hall and forwarded Dr. Hall's email to Drs. Steiner and Parlar to demonstrate that she had quoted Dr. Hall *verbatim*. She further explained in the email that "any comments I made about the Ph.D. Coordinator role were initial thoughts about a potential administrative structure and were not, in any way, geared towards you personally." Dr. Head expressed her disappointment and dismay to Drs. Steiner and Parlar in the email for the way the complaint was brought to Dr. Hall. Dr. Head testified that she received a response from Dr. Parlar but never received any reply on the issue from Dr. Steiner. Her testimony before the Tribunal was that she felt it was Dr. Steiner's intention was to embarrass and harass her, rather than try to resolve the issues at hand.

Dr. Steiner relied upon emails (DSB-2080 and DSB-2081) sent by Dr. Head to Mr. Bates and Dr. Hall as evidence that Dr. Head interfered with and aggravated the dispute arising from the emails. Dr. Steiner further stated in his affidavit that Dr. Hall and Mr. Bates' involvement over email escalated the dispute (para. 71a-c). Dr. Steiner's motivation for contacting Dr. Hall about Dr. Head was, in his words, because:

"...Dr. Detlor was out of control and Dr. Head was helping him by trying to force the cancellation of the required PhD review meeting. By involving Dean Hall and Associate Dean Goellnicht, Graduate Registrar, Mr. J. Scime and Dean Bates, Drs. Head and Detlor created a very negative image and atmosphere for the MS/IS Area." (at para. 71 of his affidavit.)

Dr. Steiner later elaborates:

"I do not understand why everybody appeared to be eager to contribute to the troubles, when a simple original e-mail from Dr. Detlor or Dr. Head to me could have cleared up the whole misunderstanding, which of course was stirred up by Dr. Detlor's baseless privacy concern for the meeting in question; Dr. Parlar and I contacted Dean Hall in order to prevent similar miscommunications in the future, and not to accuse Dr. Head of misrepresenting communications; we only pointed out that Dr. Head took the unusual step of doing a cut-and-paste on Dean Hall's message instead of simply forwarding to Dr. Parlar what Dean Hall sent and what triggered this." (paras. 71d-e.)

Furthermore, Dr. Steiner alleged, at paragraph 71h of his affidavit, that Dr. Head omitted part of the email chain in her evidence found at DSB-0401, excluding Dr. Steiner's email found at DSB-1430, which he contends supports his defence. The Tribunal reviewed and considered Dr. Steiner's email (DSB-1430), dated March 28, 2006, which contains the subject "Milena" and is both "From" and "To" George Steiner. The evidence is unclear whether Dr. Steiner sent the email to himself in error. In any event, the email provides insight with respect to Dr. Steiner's feelings at the time of these incidents. The email is a summary of the events in the eyes of Dr. Steiner, and contains several words in capital letters, presumably for the purposes of emphasis:

"... 1. Brian Detlor fires off an e-mail message to Mahmut complaining about the privacy issue, WITHOUT HAVING THE COURTESY OF AT LEAST COPYING ME, after all the Ph.D. review was my agenda point for the Area meeting.

...

3. YOU decide to wade in from China by firing off your message to Fred Hall. ...

I would like to point out that during all this time I was kept completely in the dark. I learned about the whole thing THREE HOURS before the meeting was supposed to take place, THROUGH Mahmut, who forwarded to me your message with the clippings from Fred's message to you plus your 'directive' to him, ...

Milena, I must say that your recent message perfectly describes how I feel. Let me quote you: "I am perhaps more dismayed that you felt you had to take this to the Dean of Graduate Studies rather than simply ask me...." "I am disappointed and surprised that you would not raise your issues with me directly. I could have very easily provided you with the information you needed and corrected any misinterpretations."

If either Brian Detlor or yourself had deemed it appropriate to ask me about the whole issue BEFORE involving the deans, I could have pointed out to you, as I have to Fred, that we are and have been doing EXACTLY what the Grad. Studies calendar states on p. 12 about departmental reviews of graduate students. Furthermore, at no time would we consider any personal information about the student. This is an academic review!

I did not escalate these matters to the attention of the Dean of Graduate Studies, YOU circumvented [*sic*] the normal chains of communication by raising the issues with the deans behind my back. Had either you or Brian Detlor shared your original concern with me, or had at least copied me on your e-mails, it could have saved this huge mess, not to mention the 'umptein' hours of time wasted by all parties on the issue."

### **Tribunal's Findings**

The Tribunal finds that the evidence did not establish that Dr. Steiner harassed Dr. Head. The Tribunal is satisfied that the conduct and comment in this isolated instance, while not constructive or respectful, did not breach the Policy. It was not egregious. It was an open albeit personalized dispute between colleagues. The conflict, personal or otherwise, did not cross the line where it prevented Dr. Head from doing her job, albeit her role was being made difficult by a senior faculty member. There was no power imbalance or vulnerability in employment.

Furthermore, principles of academic freedom and freedom of speech should prevail. It is not the task of this Tribunal to determine whether or not a privacy breach occurred or the validity of the reasons in support or against the use of that information in an Area meeting. However, the evidence confirmed that Dr. Steiner was generally unable to move forward and Dr. Steiner more likely than not continued to hold a grudge against Dr. Head after his incident. In that regard, Dr. Head was a very credible witness. However, her characterization of these interactions in 2006 was likely impacted by the subsequent events between her and Dr. Steiner or her perception of how Dr. Steiner was treating others.

The Tribunal is not satisfied that the evidence shows that Dr. Head ever received Dr. Steiner's email (DSB-1430). Dr. Head did not rely on the email in her affidavit. As such, it was not relied upon as evidence of harassment. However, the email was provided by Dr. Steiner and submitted as evidence to the Tribunal. The email further corroborates the personal issues Dr. Steiner had with Dr. Head which is relevant when assessing Dr. Steiner's subsequent conduct and comment involving Dr. Head which we will address wherein Dr. Head's ability to function in her role becomes unreasonably impacted by a hostile work environment attributable to Dr. Steiner's conduct or comment.

- ii. **Dr. Steiner retaliated against Dr. Head as a result of her perceived association and collaboration with Mr. Bates, and for not being named as Ph.D. Director.**

### **Summary of Evidence and Submissions**

The DSB decided to appoint an inaugural Director of the Ph.D. Program, merging the positions of Ph.D. Coordinator for the two existing fields of specialization: MS/S and HR. Prior to the change in administrative structure, Dr. Steiner was the Ph.D. Coordinator for the MS/S field and Dr. Agarwal was the Coordinator for the HR field. Under the direction of Mr. Bates, Dr. Head as Associate Dean personally advised Dr. Steiner, ahead of the formal announcement of the appointment, that he would not be selected as the inaugural Ph.D. Director for the DSB on June 30, 2006.

Dr. Head testified that she conveyed the decision and did so politely (DSB-2106 at para. 38) explaining to Dr. Steiner that Mr. Bates had decided to appoint Dr. Detlor as the inaugural Ph.D. Director and that both she and Mr. Bates felt that out of respect they wanted to advise Dr. Steiner before an announcement was made to the Faculty. Dr. Head testified that

Dr. Steiner became visibly agitated. She stated in her affidavit (DSB-2106 at paras. 40-41): “He started to shake and, with little preamble, said that he had some advice for me. At this point he stated ‘you shit on people and it will come back to bite you’. I remember these words very clearly as I was so shocked and taken aback by his language and demeanor.” After this meeting, Dr. Steiner sent an email to the entire DSB Faculty (DSB-0404) where he thanked the Faculty and declined to be involved on an interim basis.

A meeting of Graduate Council took place after this June 30, 2006 incident. Dr. Head was presenting the Masters in Communication Management Program when during the meeting Dr. Steiner not only raised several issues of concern around the Program and the approval process, but was critical of the Program and the process. Dr. Head felt that Dr. Steiner’s “ambushing” was an attempt to undermine her reputation in front of Graduate Council.

Dr. Steiner asserted different facts related to the incident (para. 55). Dr. Steiner stated that the two-minute interaction included Dr. Head asking Dr. Steiner to continue as Ph.D. Coordinator on an interim basis and that Dr. Detlor would be the new Ph.D. Director. Dr. Steiner stated that he interrupted Dr. Head and said “Thank you, Milena, I’m not interested [in continuing on an interim basis.]” Dr. Steiner denied he was angry, but did state that he was saddened and disappointed by the decision. Dr. Steiner relied on his email at DSB-0404, which he stated does not exhibit any anger towards the decision. Dr. Steiner then went on to state the following, at paragraph 55e of his affidavit:

“Dean Bates sent his ‘delighted’ announcement about Dr. Detlor’s appointment to PhD Director to the Faculty on July 3, 2006. (DSB-1269) This further underlined my disappointment with Dean Bates, who was “delighted” to announce the appointment of Dr. Detlor to the PhD Director position, Dr. Detlor who has repeatedly engaged in vexatious conduct against his colleagues and myself, and especially towards the PhD program;”

Dr. Steiner then provided further commentary on Dr. Detlor’s selection as Ph.D. Director, where he alleged that Dr. Head was “secretly promoting” Dr. Detlor within graduate studies affairs, and that Dr. Detlor was “not the right person for the job. He lacked the experience and qualifications, not to mention his ... highly objectionable attitude and previous non-collegial attacks on the PhD program.”

Dr. Steiner in his affidavit (DSB-2293) also stated that he was “abruptly” removed as the Ph.D. Coordinator (para. 48) and that Dr. Head, as Associate Dean “often exercised ... [her] considerable indirect powers over me... in a heavy-handed manner through interference.” (para. 50). He viewed Dr. Head’s Complaint as “an attack on [his] integrity” and was “extremely surprised” and “completely taken aback” by receiving the “unsubstantiated” complaint (para. 51-2). He further stated that Dr. Head “has been very sensitive to criticism of her ideas or disagreements... on academic matters. As a result, she has incorrectly interpreted any disagreements I may have had with her, as attempts ‘to embarrass and harass Dr. Head.’” (para. 51). In defending his actions, Dr. Steiner generally stated that his actions “related to Dr. Head’s submissions, proposals or decisions were to ensure that university policies and procedures were properly followed”. (para. 51).

Dr. Steiner's general disapproval of the new administrative structure, which he called "unworkable" was well known (para. 53). In his opinion, "[n]o single individual has sufficient experience to have a proper understanding of the specific issues in every discipline. Thus, the PhD program cannot be effectively directed by a single 'champion', as Dr. Detlor was referred to." (para. 54). He stated that his open disagreement with the new administrative model contradicts Dr. Head's assertion. Dr. Steiner suggested his position was vindicated in his affidavit, where he stated: "[s]ubsequent problems with Detlor's one-shoe-fits-all approach proved that my original view was correct" (para. 54.)

Furthermore, in response to the claim that he retaliated against Dr. Head because of her perceived association with Mr. Bates, Dr. Steiner referred to the PACDSB report (DSB-0786) at page 8:

Despite an initial attempt to secure the services of an experienced academic, this never occurred. Instead, after a somewhat protracted process, the University **appointed for this role [of Associate Dean] a highly competent academic with strong research and teaching credentials who, however, lacked the extensive administrative experience to provide needed mentorship in academic matters to the Dean. As a consequence, she was not credible in this role to those members of the School who had been concerned by the appointment of a Dean from the business community in the first place.** (emphasis added by Dr. Steiner in his affidavit).

For those reasons, Dr. Steiner testified that his criticism of Dr. Head was not because of her association with Mr. Bates, but because of "her unusual decisions on the development of new graduate programs (and other issues dealing with academic processes and protocol) led to various criticisms of Dean Bates" (DSB-2293 at para 52b).

In paragraph 71f-g of his affidavit, Dr. Steiner critiqued an email sent by Dr. Head, who was attempting to address Dr. Steiner's concerns, after she was contacted by Dr. Hall regarding Dr. Steiner's Complaints. Dr. Steiner took the time in his affidavit to note the following:

"I just note that although Dr. Head refers to "hearsay and rumours" and "initial thoughts" [DSB-0401] on the PhD program's administrative restructuring, yes this is exactly what happened on June 30, 2006, when I was removed from the administration of the PhD program. She also states, "*The administrative structure is not part of the PhD fields proposal that is currently moving through the approvals process, and nothing has been determined with respect to this structure.*" So when and how did this plan become a "done deal" by June 30, 2006 and subsequently a fact in the Response to OCGS that Dr. Head submitted Sept, 20, 2006, almost 3 months after removing me from the PhD Coordinator position *and* the ad hoc committee that was developing the original expansion plans? Furthermore, Dr. Head was making these disingenuous statements in her above e-mail while she was in possession of Detlor's secret and false e-mail accusation of March 8 against me (DSB-0397);"

Drs. Hassini and Wesolowsky provided evidence that Dr. Steiner had never expressed an interest in the Ph.D. Director position and had voiced his disagreement with the new structure publically. Dr. Parlar testified that Dr. Steiner had told him “on several occasions” (DSB-2305 at para. 22) that he had no interest in serving as the new Ph.D. Director. As such, it was submitted by Dr. Steiner’s counsel that his client would not retaliate if in fact he had no interest in being named the Ph.D. Director.

### **Tribunal’s Findings**

The Tribunal finds Dr. Steiner harassed Dr. Head and further breached the Policy by threatening “you shit on people and it will come back to haunt you” and thereafter engaging in retaliatory conduct which resulted in a poisoned work/academic environment. The Tribunal finds that this threatening statement was in fact followed by a course of vexatious behavior undertaken by Dr. Steiner against Dr. Head contrary to the Policy which was personalized and vindictive. Dr. Head’s evidence was accepted and preferred in the absence of other reliable evidence corroborating Dr. Steiner’s evidence. The Tribunal found Dr. Steiner lacked credibility, having observed the evasive nature of his replies to questions and inconsistencies in his testimony.

The Tribunal finds Dr. Steiner’s use of the phrase “you shit on people and it will come back to bite you” was designed to intimidate Dr. Head. Dr. Steiner, as a senior faculty member of the DSB, should have known or ought reasonably to have known that the use of that phrase was inappropriate and would be unwelcomed. Dr. Steiner did not convince the Tribunal that there was a reasonable excuse for his actions. Dr. Steiner’s evidence was that he simply disagreed with the decisions made by the Associate Dean. In fact, in his sworn affidavit, he still characterized her decisions as “unusual” and “heavy-handed”. In any event, disagreement does not confer a licence to harass and personality conflicts do not justify conduct or comment creating a hostile work environment.

In addition, Dr. Steiner’s affidavit was often self-serving and critical of others. The Tribunal found parts of Dr. Steiner’s evidence inflammatory without reasonable cause or excuse. Dr. Steiner attacked his accusers and we find that many of his allegations were not supported by the evidence and in some cases were frivolous, vexatious and without merit. For example, Dr. Steiner’s suggestions that Dr. Head was “secretly promoting” Dr. Detlor, that Dr. Detlor repeatedly engaged in “vexatious” conduct towards Dr. Steiner is not supported by the evidence. The Tribunal did not place a great deal of weight in Dr. Steiner’s testimony where facts concerning his conduct were in dispute having found his evidence to not be credible. Furthermore, the Tribunal accepts evidence from both party witnesses (Dr. Detlor and Ms Stockton) and non-party witnesses (Dr. Hackett, Dr. Connelly, and Dr. Harnish) that Dr. Steiner behaved in a manner that is consistent with the description provided by Dr. Head.

**iii. Dr. Steiner harassed Dr. Head with regards to her T&P consideration.****Summary of Evidence and Submissions**

In 2009, Dr. Head became eligible for promotion to Professor. The recommendation for promotion received unanimous support at the Area level on October 30, 2009. However, at the Faculty level, Dr. Head was advised that after two Faculty T&P Committee meetings, there had been no determination reached. She was advised by Mr. Bates that Dr. Steiner identified that there was “a very serious issue that he wanted her to address”. Dr. Steiner would not disclose the nature of the issue beforehand. Dr. Head appeared for the third meeting of the Faculty T&P Committee on December 11, 2009. Dr. Del Harnish accompanied Dr. Head as an experienced advisor.

Dr. Head testified that Dr. Steiner’s questions in that meeting were harassing and did not relate in any way to her research or teaching. Dr. Steiner also questioned Dr. Harnish’s stated objections to Dr. Steiner’s line of questioning during the meeting. During his testimony Dr. Harnish called the meeting a “witch hunt” and the most inappropriate thing he had seen in 27 years at the University. The Tribunal preferred and relied upon the evidence of Dr. Harnish and Dr. Hassanein as credible witnesses who provided reliable evidence of what they observed. Dr. Harnish’s affidavit evidence at DSB-2105 and particularly paragraphs 9 to 12 are accepted in its entirety. Dr. Hassanein’s affidavit evidence at DSB-2099 is accepted in its entirety and particularly at paragraphs 7 to 16.

As Chair of the Area T&P Committee, Dr. Hassanein was responsible for presenting the Area’s recommendation to the Faculty T&P Committee. The T&P Policy permits T&P Committee members at the Area level, from very small departments, to participate in T&P discussions and voting on a case of a faculty member with whom they have had significant collaboration. This process was referred to as the “Very Small Area Exemption”. This information was disclosed to the Dean and the Faculty T&P Committee.

Dr. Hassanein provided evidence that some of Dr. Steiner’s questions were inappropriate. He provided evidence about the Faculty T&P Committee meetings considering Dr. Head’s consideration for promotion (para.13):

“a. [Dr. Steiner] commented that it was unfortunate that both members from the Area T&P committee who were presenting the case were significant collaborators with Dr. Head suggesting it was inappropriate. He was advised of the Very Small Department Exception and the procedures that were followed at the Area level in this regard (this was already part of the documentation within Dr. Head’s package which was available to all members of the faculty T&P committee ...). After he was advised that the Area had unanimously voted to support Dr. Head’s promotion and as such it did not really matter who was presenting the case, Dr. Steiner then asked what the ‘exact vote was’.

b. Dr. Steiner also challenged the decision to attach Dr. Head’s CV to the initial e-mails sent to potential external referees insinuating that my actions were

inappropriate. I indicated that my conduct was common practice and that there was no policy that I was aware of which states that my behaviour was inappropriate. I had only done this to ensure the potential referees were familiar with Dr. Head's research areas to be able to make a decision as to whether they can comment on her scholarship, and not for any inappropriate reason. I also indicated that her CV is a matter of public record as it is available online.

c. Dr. Steiner also asked for copies of the correspondence with all potential external referees. I indicated that the policy stipulates that I only share the reference letters provided by individuals who had agreed to serve as external referees along with a sample of the formal request that was sent to them which I did. I felt the manner and tone in which this was done was inappropriate. I also felt it implied that I had been involved in some wrongdoing.”

On December 11, 2009, Dr. Steiner questioned Dr. Head for ninety (90) minutes concerning an administrative process from three-and-a-half years earlier which was, used to gain approval for an additional Ph.D. course. This process issue was initially raised by Dr. Steiner at the Department level in 2006 and again in 2007 at a Graduate Council meeting. At that time, there was considerable debate in the Faculty related the Ph.D. expansion plans after the OCGS plan was submitted. A preliminary assessment of the draft plan for the Ph.D. expansion and a comprehensive assessment of the Ph.D. Program in the two existing fields (MS/IS and HR) was submitted to the Dean of Graduate Studies (Dr. Hall) on August 9, 2006 (DSB-2346) by the two external reviewers for OCGS. In July 2006 Dr. Detlor became the Ph.D. Program Director, replacing the Ph.D. Program Coordinators Dr. Steiner (MS/IS) and Dr. Agarwal (HR). In the fall of 2006 Dr. Detlor chaired a committee that responded to the August 2006 OCGS report recommendations. Dr. Steiner was not a member of this advisory committee. Dr. Steiner's evidence was that this committee reported and responded to OCGS with content that was substantially different from the first submission including the fact that: 1) a common course across Ph.D. fields was now mandatory, 2) 5 Economics courses were removed from the required curriculum 3) some MS courses were removed from the proposed curriculum. Dr. Steiner testified that he felt that the August 2006 OCGS report did not provide the foundation to make the 3 changes (para 64 of his affidavit). Dr. Steiner submitted that he raised his concerns in Graduate Council and felt he had received negative responses from Administration and faculty members and that there was no point in raising these issues after that. In subsequent emails in February 2007 (DSB-1447 at page 2), Dr. Steiner wrote that the issue was “water under the bridge” because the Dean could not “rectify the process retroactively”.

Dr. Steiner testified that he had worked on the proposal for additional Ph.D. courses with Dr. Agarwal in 2006-2007, but did not see the final version when sent to the OCGS (DSB-2347). He testified under cross-examination that he came across the document while in a photocopy room in late summer 2009, where he saw the document with a cover letter with the words “OCGS Response” from Dr. Hall. He stated the document did not state it was confidential, nor did he feel it was confidential, as those types of documents had never been confidential in the past. After he saw the document, he took a copy because in his words, “something happened which should never have happened.” Dr. Steiner stated that he noticed that the document had included the three proposals to expand the Ph.D. Program listed above which were part of the

original discussions, but had been defeated at Graduate Council. He contended that the document did not go through the same approval process as the initial application submitted to OCGS prior to the OCGS site visit in April of 2006. Dr. Steiner also stated that he was upset about the process because he had invested “a lot of time on the previous compromise plan. I felt the situation had important gravity.”

Dr. Steiner described this document he happened to find as the “missing link” between what happened at the second advisory committee, when he was no longer part of the management of the Ph.D. Program and what was actually sent to the OCGS after Dr. Detlor took over as the Director of the Ph.D. Program. Dr. Steiner testified that he received extremely negative and unwarranted criticism from Faculty administration in or around February 2007 due to his disagreement with the process. In his testimony he stated that he believed he was accused of killing the Ph.D. Program and stated, “I was a pariah.” At the same time, given that the expansion issue had been resolved two years earlier, it was a done deal and he saw no point in raising it again at that time.

The Tribunal received into evidence emails from Dr. Fred Hall, which addressed the process used in responding to the August 6, 2006 OCGS report and why deviations were made (DSB-1436). Dr. Steiner said he brought this document to the attention of Dr. Head because Dr. Hall had attributed the entire document to Dr. Head, therefore it was relevant to raise such an issue at her promotion meeting because it related to Dr. Head’s service component (as Associate Dean). Dr. Steiner stated he relied on sections 17 and 18 of the Tenure and Promotion Policy (Section III - *Academic Assessments for Re-appointment, Tenure, Permanence, and Promotion*, Subsection). Those sections are excerpted below:

“University Responsibilities

17. It is expected that, as a University citizen, each faculty member will assist at some level(s) in the committee work of the University and perform such assignments diligently and effectively. The meritorious performance of these duties shall not substitute for either effective teaching or scholarly achievement in the consideration for re-appointment, tenure, permanence, and/or promotion; however, unsatisfactory performance in the discharging of these duties may be an important factor in the delaying or denial of tenure, permanence and/or promotion.

18. The same considerations shall apply for service related to the role of the University in the community, to international activities, and to professional service associated with a candidate’s discipline.”

“For the Tenuring of Associate Professors and Professors

21. Candidates for tenure who are Associate Professors or Professors must have demonstrated that they are effective teachers. They must also have established their reputations as scholars through successful peer-reviewed publications or equivalent achievement. Consideration also shall be given to the

candidate's performance of his or her University responsibilities (see clauses 17 and 18 above)."

Dr. Steiner testified that approaching Dr. Head "would not have lead to anything better" and was "completely a non-starter" when asked why he did not raise the concern outside of Dr. Head's promotion consideration. Dr. Steiner submitted it was a matter of timing and that he was not accusing anyone of wrong doing, only that he wanted to ask her about discrepancies in the document and seek clarification. Dr. Steiner's evidence was that Dr. Head was "hypersensitive" and he denied any wrongdoing.

Dr. Steiner explained his motive for the questions was not to accuse anyone of wrongdoing or to assign blame, but only to ask about discrepancies in the document. Dr. Rose testified that Dr. Head had trouble answering the questions. He also testified that he was not sure whether "she was being evasive or if she did not know or remember. There didn't seem to be much in the way of concrete answers to the questions. I don't know why. It was impossible to know for sure because when a question would be posed, Dr. Harnish would jump up and down in disagreement." Dr. Rose testified that the questions were relevant, and even with the passage of time, he felt that Dr. Head would have some recollection of the document. In response to whether the detailed nature of the questioning was appropriate, Dr. Chan responded "if you want the truth, you have got to find out the details." Dr. Charupat testified that he did not see anything unusual or unprofessional about Dr. Steiner's behaviour at these Faculty T&P Committee meetings. Drs. Rose, Chan and Charupat were all members of the G21. Counsel for Dr. Steiner argued that it was reasonable to ask Dr. Head questions related to discrepancies in the documents and that she could answer the questions since Dr. Head was involved in the original process and drafted the document.

Counsel for Dr. Steiner submitted that questions could have been posed before the meeting but that it was not a standard practice to do so. Dr. Steiner originally suggested in his testimony that he showed the document to the entire Committee. Dr. Steiner later clarified that he identified the document at the meeting as the document Dr. Head developed. Dr. Steiner suggested he gave Dr. Head the opportunity to view the document by placing it on the table in plain view. Counsel for Dr. Steiner submitted that it was entirely reasonable for Dr. Steiner to believe that Dr. Head could have answered his questions because the document was in front of her.

Counsel for Dr. Steiner noted that Dr. Head did not file a Complaint after the Faculty T&P Committee meeting. It was submitted Dr. Steiner could not have known that Dr. Head would not recall recollection of the event, since she was a major participant in the process. It was submitted that the timing of the questioning, three years later, was justified because Dr. Steiner had not seen the OCGS document until two years later.

Dr. Steiner explained the nature and relevancy of his questions was voted on and accepted unanimously by the Committee, including by Mr. Bates. Dr. Steiner stated that he clearly informed the Faculty T&P Committee, that he was not assigning any wrongdoing with regards to how the approval process for the Ph.D. Program transpired in requesting to ask his

questions on the process. However, Dr. Steiner later, under cross-examination, summarized the disagreement by stating that he was, in fact, trying to establish responsibility for the process:

“I think the issue in the disagreement was who is responsible for what. I think it was clear that it was not handled the right way. It was undermining the governance and policies and approval process of the University. **The issue in my mind was to what degree Dr. Head was responsible for this**” (emphasis added).

Counsel for Dr. Head addressed Dr. Steiner’s explanations for his conduct. It was submitted that if Dr. Steiner was not seeking to assign blame, then the questions were irrelevant and should not have been asked because the answers would be irrelevant. If he was seeking to assign blame, then the questions were inappropriate because Dr. Steiner should have shown them to Dr. Head sooner.

Dr. Steiner testified that he would have been satisfied with Dr. Head’s explanation provided at the hearing (that Dr. Hall was responsible for approving the document), had she given those answers in front of the Faculty T&P Committee. If so, Dr. Steiner agreed that he would have likely voted in favour of Dr. Head’s promotion. His counsel submitted that Dr. Steiner felt Dr. Head’s involvement in changing the original OCGS application document was serious enough to vote against her promotion on the basis of her service as Associate Dean.

### **Tribunal’s Findings**

The Tribunal finds that Dr. Steiner harassed Dr. Head by his retaliatory conduct in the Faculty T&P Committee meetings considering her promotion to Professor. Dr. Steiner’s defence asserted that he endeavoured to “ensure that university policies and procedures were properly followed.” The Policy containing the prohibition on harassment is properly one of those policies. The Tribunal recognizes that University procedures allow for vigorous academic debates and rigorous questioning during tenure and promotion processes. However, it finds that even within this framework of academic freedom and peer assessment, Dr. Steiner’s comments and actions crossed the line of acceptable conduct. The Tribunal finds that his conduct with regard to Dr. Head was in breach of the Policy and was a continuation of the pattern of retaliatory conduct by Dr. Steiner against Dr. Head, that began in 2006.

Dr. Steiner had raised the same issues he questioned Dr. Head about several years before, both at the level of Graduate Council and at the Faculty level; and had indicated at the time, that he was satisfied with the compromise to the proposed changes to the Ph.D. Program. Dr. Steiner did not make any reasonable attempt to address any of his concerns directly with Dr. Head in an appropriate setting prior to the Faculty T&P Committee meeting. The Tribunal finds that Dr. Steiner’s explanation of how and when he found the document in the photocopy room in 2009 was not believable and his evidence is not accepted on this point due to the credibility issues we have identified. Dr. Steiner did not identify how he obtained the document in his affidavit nor was it reasonably disclosed to Dr. Head or the Faculty T&P Committee. Dr. Steiner

testified on May 23, 2012 (on the second last day of the 22 day hearing). Details on how he obtained the document were obtained under cross-examination. All of these factors have been considered in our evaluation that Dr. Steiner's testimony was not credible related to how he obtained the document.

In any event, however, Dr. Steiner obtained the document the issue is how it was used to negatively impact Dr. Head's reasonable employment expectations during her promotion to Professor. Dr. Steiner was experienced at all levels of the Tenure and Promotion (he was on his Area T&P Committee since 1985 and was serving his fourth term on Faculty T&P) process at McMaster. It is reasonable to expect that he would be aware that, although the contributions to service are one portion of consideration in T&P, those considerations focus on the level of contribution to service, not to the merits of specific administrative decisions or procedures. Further, once he obtained the document, he proceeded to use it inappropriately in the T&P process. That he would plan to only question Dr. Head on that information in a venue where she would feel compelled to try and answer, with minimal access to supporting documentation and no warning as to the nature of the questions, supports a finding that there was a premeditated plan of harassment on the part of Dr. Steiner. Following an aggressive, lengthy and inappropriate questioning, Dr. Steiner proceeded to vote against Dr. Head's case for promotion to Professor and indicated that this was done because he did not feel his questions had been appropriately addressed. The Tribunal is of the opinion that even if Dr. Steiner felt Dr. Head had made an error in her administrative handling of one issue during her tenure as Associate Dean, this would not be sufficient grounds for a negative vote on any objective basis given Dr. Head's impressive qualifications. All other evidence affirmed Dr. Head's case was very strong and that this negative vote is another act of individual harassment on the part of Dr. Steiner grounded upon a vindictive grudge where he allowed his personal self-serving interests to undermine the integrity of important University processes.

Dr. Steiner relied upon the Committee's acceptance that his questions would be permitted. The evidence showed that at the next level of assessment, the Senate Committee on Appointments found Dr. Steiner's questions were inappropriate. Dr. Steiner testified that the Senate Committee on Appointments was not at the Faculty T&P Committee meeting and that they did not know what the questions were, and therefore he suggested they could not second guess the individuals that were actually at the meeting who had the document in front of them.

Dr. Steiner, on cross-examination, made several admissions. He admitted that Dr. Head's case was a T&P case he would have supported, but for this one issue. He admitted that he had the opportunity to meet with Dr. Head at the appropriate time, years earlier, but did not do so. He admitted that, in retrospect, he could have and should have done better, and acted more sensitively by asking Dr. Head to look at the document and ask whether she needed extra time to review the document. Dr. Steiner testified that Dr. Harnish did not fully understand the relevancy of his questions despite his own experience with T&P considerations. The Tribunal accepts the evidence of Dr. Harnish and finds Dr. Steiner's rationalizations self-serving. For example, Dr. Steiner added that the situation was grounded in the "antagonistic and unfounded debate about the relevance of the questions." Dr. Steiner also testified that Dr. Head's answers were evasive. Dr. Steiner said "When it became clear that she just wasn't able to answer the

questions or provide clear answers, I could have reminded her that the document is sitting right there in front of her, on the table.”

Dr. Steiner asserted that he expected Dr. Head would be able to recall details of this administrative process from 3 years prior, yet he was unable to recall events in which he replied to G-21 issues from 3 years prior (DSB 1607 Dr. Steiner’s reply to Dr. Chamberlains G-21 email analyzing conflicts of interest on the Dean’s Selection committee). The Tribunal finds that Dr. Steiner intended to embarrass Dr. Head and negatively impacted her right to be assessed for a promotion on the merits of her consideration when he ambushed her. Dr. Steiner’s vindictive conduct tainted this process and breached the Policy when it resulted in a poisoned work/academic environment for Dr. Head.

The Tribunal in finding Dr. Steiner’s conduct was vindictive and retaliatory also considered the aggressive tone, inaccurate content and inflammatory nature of Dr. Steiner’s affidavit evidence, oral testimony and documentary evidence in our overall assessment of subsequent behaviour undertaken by Dr. Steiner against some colleagues including Dr. Head. Examples include the reference in para 71 of Dr. Steiner’s affidavit concerning “Dr. Detlor’s baseless privacy concern”, despite his knowledge when filing the affidavit that several individuals (Dr. Hall, Dr. Head, Mr. Bates) assessed Dr. Detlor’s concern as having validity; his personalized comments; and his vindictive tendencies. Reliable third party witnesses (Dr. Hackett, Dr. Connelly, Dr. Harnish, Dr. Hassanein) testified that Dr. Steiner sometimes displays aggressive and confrontational behaviour. The evidence indicates that he often was unable to accept different perspectives when he felt decisions had been made contrary to his own beliefs and opinions. The Tribunal finds Dr. Steiner’s vindictive conduct involving Dr. Head is consistent with the evidence of his behaviours received at the hearing.

**D) COMPLAINT OF MS LINDA STOCKTON**

Ms Stockton's Complaint is set out at paragraphs 91-98 of her Complaint (DSB-0002) and particularized in her affidavit at DSB-2111. Dr. Hackett, Dr. Wakefield, Mr. Vilks and Ms Cossa provided evidence in support of Ms Stockton's Complaint. Dr. Rose, Dr. Steiner, Dr. Pujari and Dr. Bart provided testimony to supplement their affidavits (DSB-2294, 2293, 2291, and 2292 respectively). Dr. Richard Stubbs, Ms Phyllis DeRosa-Koetting and Dr. Martin Dooley also provided evidence as witnesses for the individual 003 Respondents.

For the reasons identified below, the Tribunal finds sufficient and reliable evidence established a breach of the Policy for some of Ms Stockton's complaints. Otherwise, the Tribunal dismisses the remainder of her Complaint where we determined there was no breach established by the evidence or where the threshold for conduct or comment required to breach the Policy was not established.

**i. Dr. Steiner raised his voice and berated Ms Stockton:****Summary of Evidence and Submissions**

Ms Stockton testified that in a MUFA meeting on December 11, 2008, located at the Council Room, she questioned a) whether the MUFA vote on Mr. Bates' second appointment would be a precedent, and b) whether the MUFA vote was specifically targeted at the DSB. The President of MUFA at the time, Dr. Richard Stubbs, replied no to both questions. As Ms Stockton and Mr. Vilks were leaving the meeting, Ms Stockton alleged that Dr. Steiner approached her "in anger." Her evidence, at DSB-2111 at paragraphs 11 and 12, was as follows:

"He was very upset that I had asked the question. I was standing in between rows of chairs in the process of leaving. He was right in my face, so close I felt the need to back away from him. His face was red with rage, his fists were clenched and his teeth were clenched. He spoke through clenched teeth. He was so angry I thought he might hit me. He challenged me for asking the question. He listed all sorts of evidence that he thought suggested that the Dean was not acting appropriately. Some of it was bizarre, such as complaining about the composition of the Dean's selection committee. ... I just kept backing away from him. I may have ended up outside the room in the foyer. I just know I was up against something that wouldn't allow me to back up any further. It may have been chairs, or the coat rack. It was very upsetting and uncomfortable. Dr. Steiner kept right in my face and was growling his statements through his clenched teeth right in my face."

Mr. Vilks witnessed the event and stated that Dr. Steiner "looked really angry," was "uncomfortably close" to Ms Stockton, and "maintained an aggressive body-language throughout" (DSB-2100 at para. 20). Mr. Vilks further testified that he recalled more about the body language during the interaction than the actual words exchanged between Dr. Steiner and Ms Stockton.

Dr. Steiner denied that he intimidated Ms Stockton. In his affidavit (DSB-2293 at paragraph 22a-r), he stated that he had no interaction with Ms Stockton before the MUFA meeting, other than an occasional “hi”. During the MUFA meeting in December 2008, Dr. Steiner stated that Ms Stockton “launched into... a tirade on the MUFA Executive” for having organized the MUFA vote. Dr. Steiner agreed that a brief conversation took place between himself and Ms Stockton, but denied the other allegations. He stated that he “approached Ms Stockton in a professional manner and stated words to the effect of: ‘Linda, I think you are misinformed. You must have been given an incorrect story.’” Dr. Steiner stated that he was “firm” in his remarks, but was not yelling in close proximity to Ms Stockton because “she was still sitting in her chair and I was standing in the next row with a whole row of chairs between us.” With regards to Ms Stockton’s claim that Dr. Steiner clenched his fists, he stated, “I believe most people I interact with would agree that I never clench my fists. ... I never clench my teeth and I can’t even speak through clenched teeth.” Dr. Steiner also stated that there are no coat racks in Council Room.

Ms DeRosa-Koetting (Executive Director of MUFA) and Dr. Dooley both attended the MUFA meeting and each testified they did not recall Dr. Steiner behaving in the manner described by Ms Stockton. Each suggested they would have noticed it if it did happen as alleged by Ms Stockton. Dr. Wakefield confirmed on cross-examination and she did not know whether Dr. Steiner yelled at Ms Stockton or not but that she personally did not hear Dr. Steiner.

Dr. Steiner’s behaviour in other circumstances was submitted as similar fact evidence and was addressed by Dr. Hackett, a credible witness, in his affidavit (DSB-2104 at paras. 11 and 12). For example, after a PACDSB meeting on May 13, 2010, Dr. Steiner approached and questioned him in a frustrated and angry tone on why he agreed to serve on the Dean’s Selection Committee, given that he was a member of the original committee who selected Mr. Bates as Dean, and in Dr. Steiner’s view, the committee membership was manipulated to favour Mr. Bates’ second appointment. In Dr. Hackett’s own words:

“I interpreted Dr. Steiner’s comments as questioning my personal ethics and credibility. I was taken aback by what I believe was Professor Steiner’s lack of professionalism in this exchange, in as much as he spoke to me in such a loud and angry tone, at very close proximity (face to face), which was easily audible to others who had not yet left the meeting room. ... The exchange with Professor Steiner then abruptly ended, with each of us going our separate ways.”

Dr. Hackett also stated that his previous social exchanges with Dr. Steiner had been professional and respectful and his more recent exchanges have returned to being cordial and respectful.

Counsel for Dr. Steiner submitted that his client was passionately and rigorously expressing his opinion following the MUFA meeting. Counsel further made reference to an email sent by Ms Stockton to her Area Chair, Dr. Pujari, on February 26, 2009, approximately two months after the conversation at the MUFA meeting (DSB-0445). The email was sent regarding a meeting to be held between the two. In the email on page 3, Ms Stockton wrote to

Dr. Pujari “Just so you know, I personally have not been bullied by anyone, nor would I allow that to take place.” Counsel argued that this was evidence that Dr. Steiner was not told that any of his actions made Ms Stockton feel uncomfortable. Counsel also stated that Ms Stockton’s credibility should be negatively affected because in her testimony, she stated that Dr. Steiner was “growling”, but had previously described it as “yelling.”

### **Tribunal’s Findings**

The Tribunal finds that there were numerous inconsistencies in the evidence we received concerning the events related to this portion of Ms Stockton’s Complaint. We have considered the different recollections of the events in question as presented by all witnesses. As such we have used the most consistent and reliable evidence to arrive at our finding.

The Tribunal finds that the interaction between Ms Stockton and Dr. Steiner was emotionally charged and we do not accept Dr. Steiner’s description of his own conduct or that he approached Ms Stockton in a “professional manner”. However, there is a substantial inconsistency in the details of the events found in the evidence. The poisoned work/academic environment, the grouping of the Complaint, the passage of time and the divisions within the DSB necessarily impacted the reliability of the evidence. There were inconsistencies in Ms Stockton’s own representation of events between her Complaint, her written affidavit evidence and her oral testimony. The Tribunal finds Ms Stockton’s recollection was likely impacted by the passage of time as she became aware of other allegations and conduct at the DSB.

The Tribunal is not prepared to find that Ms Stockton has discharged her onus to establish the comment or conduct as alleged even though the Tribunal accepts Mr. Vilks evidence concerning the incident as reliable. The Tribunal’s own concerns with Dr. Steiner’s credibility led the Tribunal to prefer Mr. Vilks’ evidence that of Dr. Steiner “looked really angry” and was “uncomfortably close” to Ms Stockton. The Tribunal observed Dr. Steiner’s behaviour during the hearing where he also exhibited agitation during the testimony of individuals with complaints against him although he was also at times respectful. His testimony could be described as aggressive in response to questions concerning Ms Stockton, Mr. Vilks and Dr. Hackett.

The conduct described by Mr. Vilks could breach the Policy, however, Ms Stockton did not identify Dr. Steiner’s conduct as unwelcome at the time of the incident on December 11, 2008, or within a reasonable time thereafter. Ms Stockton’s email to Dr. Pujari, two and one half months following the interaction expressly identified that she had not been bullied by anyone nor would she allow bullying to take place. It was only with the passage of time and the other experiences in the poisoned workplace environment at the DSB, that Ms Stockton characterized this interaction with Dr. Steiner as harassing. The Tribunal accepts that Ms Stockton was generally credible. However, we believe her characterization and assessment of Dr. Steiner’s conduct was unreliable due to the passage of time and given the poisoned work/academic environment. As such, the Tribunal is not prepared to find that Dr. Steiner crossed the line to harass Ms Stockton in this interaction based upon the evidence we were provided with.

Even if the Tribunal had accepted Ms Stockton's evidence, it was not satisfied that a breach of Policy was established in this instance. The Tribunal accepts that Dr. Steiner had a propensity to convey information in a manner that other individuals may find inappropriate and even threatening. However, Ms Stockton was prepared to initially ignore the conduct and more importantly not tell Dr. Steiner that his conduct was unwelcomed. This was required because Ms Stockton confirmed she had not been bullied. In an academic environment, in which individuals have differences of opinion and firmly held beliefs, it is acceptable to express those beliefs with passion and in fact it is preferable that those expressions occur openly as long as conduct does not cross the line established by the Policy.

The Tribunal in these circumstances because of the different descriptions of the event and in the circumstances of this case is not prepared to find that there is sufficient reliable evidence to find Dr. Steiner harassed Ms Stockton but we do find that Dr. Steiner's conduct contributed to a poisoned work environment but did not breach the Policy.

ii. **Did Dr. Rose deliberately embarrass and expose Ms Stockton to undue scrutiny on MUFAgab in breach of the Policy?**

**Summary of Evidence and Submissions**

On February 25, 2009, Ms Stockton wrote an email on MUFAgab in reference to an article in the Hamilton Spectator regarding the Burlington expansion. Ms Stockton alleged that following her post on MUFAgab "Dr. Rose and other Respondents engaged in a pattern of harassing behaviour by deliberately embarrassing and exposing individuals to undue scrutiny through university-wide broadcasts through mechanisms such as MUFAgab or Faculty-wide email" (DSB-0002 at para. 95).

Ms Stockton alleged that four emails sent by Dr. Rose were harassing. These emails contained comments on the Selection Committee for the Dean of Business and the process followed by that committee, the Performance Report, and relevant newspaper articles to the selection process. The emails were sent on February 16, 2009, March 6, 2009, March 20, 2009, and September 10, 2009 respectively (DSB-1256, 1257, 1258, and 1259).

Dr. Rose testified that Ms Stockton never complained to him about his MUFAgab posts. Dr. Rose denied trying to intimidate or bully anyone. Under cross-examination, Ms Stockton admitted that in DSB-1256, 1257, and 1258, she was not identified by name, and furthermore that Dr. Rose's email at DSB-1259 does not encourage any harassment nor does it cyber bully her personally.

It was submitted by the individual 003 Respondents that the emails identified by Ms Stockton were not harassing and simply expressed a different point of view. It was also submitted that Dr. Rose's emails are all protected under academic freedom and that Dr. Rose expressed his views on MUFAgab, thereby exercising freedom of expression that one expects at a University.

**Tribunal's Findings**

The Tribunal finds the MUFAgab posts by Dr. Rose were not a breach of the Policy. The Tribunal finds that Dr. Rose did not use the MUFAgab discussion board in an inappropriate manner with regards to his postings related to Ms Stockton (DSB 1256, 1257, 1258 and 1258) and accepts these communications are protected under principles of free speech and academic freedom.

The Tribunal has reviewed the relevant MUFAgab postings which were an open discussion about events occurring at the DSB and the University. The posts by Dr. Rose were made on a public forum designed to encourage communication amongst faculty members. Ms Stockton may have disagreed with Dr. Rose's public posts; however, it is preferable that academic discourse occur in a transparent and open manner such as this, as opposed to selective distributions containing allegations without opportunity to rebut or refute. Dr. Rose's comments did not meet the legal or Policy threshold for harassment and did not denigrate her personally or call into question her professional integrity which can be contrasted with Dr. Bart's conduct which is reviewed in the next section of this decision.

iii. **Did Dr. Bart's emails to faculty members regarding Ms Stockton's posts on MUFAgab breach the Policy?**

**Summary of Evidence and Submissions**

On the same day that Ms Stockton posted on MUFAgab (February 25, 2009) Dr. Bart sent an email (DSB-1508) to Drs. Rose, Hassini and Steiner and copied members of the G-21 including Ms Stockton's Area Chair (Dr. Pujari). The title of the email was: "The real war has now begun...are we ready...are we up for it? The content of the email was:

*Stockton's letter over MUFAGAB was clearly not under her authorship - especially given the statistics she cites. Don't be surprised to see some version of this as an OP-ED piece (and NOT just a letter to the editor!) in the spec.*

*Bates has now probably hired a PR 'crisis management' firm to orchestrate his public image for re-appointment....we now have to be prepared to respond at every turn. Are we up for it?*

*As General Carl von Clausewitz said: "Having made the decision to cross a ditch, one does not proceed only half way!"*

**Tribunal's Findings**

The Tribunal finds that Dr. Bart breached the Policy when he sent emails to a group of faculty members (G21) regarding Ms Stockton's posts on MUFAgab on February 25, 2009. Their widespread distribution amongst colleagues within the DSB did not include Ms Stockton or any persons perceived to be close to her. Dr. Bart implied that Ms Stockton's prior post on

MUFAGab was not her own authorship. In an academic setting, this type of allegation, coming from a senior faculty member, suggesting a misrepresentation of authorship is very serious. Furthermore, the Tribunal finds it would have reasonably been known to Dr. Bart that his comment would likely negatively impact Ms Stockton's professional status and reputation by influencing the views of her Area Chair (Dr. Pujari). Dr. Pujari was responsible for and involved in Ms Stockton's supervision, reappointment and conversion to teaching-track stream and given the G21 activities the Tribunal accepts that Dr. Bart's conduct crossed the line and breached the Policy. The Tribunal finds Dr. Bart's conduct created a negative and hostile work environment for Ms Stockton without reasonable cause or excuse, and resulted in a poisoned work/academic environment.

iv. **Did Dr. Pujari breach the Policy by contributing to the harassment of Ms Stockton?**

**Summary of Evidence and Submissions**

Ms Stockton alleged that Dr. Pujari breached the Policy in his treatment of her which is summarized as follows.

***Dr. Pujari did not properly investigate Ms Stockton's allegations of bullying***

First, Ms Stockton stated that Dr. Pujari did not investigate her allegation of bullying in the DSB in her email to MUFAGab on February 25, 2009. A meeting between the two took place on March 2, 2009. In subsequent email conversations (DSB-0450-0455), Dr. Pujari asked Ms Stockton to ask the members of the DSB who were allegedly bullied to approach him individually. In emails to Ms Stockton (DSB-0446, 0447, 0449), Ms Cossa, Dr. Longo, and Dr. Flynn refused to approach Dr. Pujari. After Ms Stockton informed Dr. Pujari of this, Dr. Pujari wrote the following, at DSB-0455, page 4:

"I am not surprised that Terry [Flynn] and Chris L (I assume Longo) are not prepared to come forward. I saw this because to the best of my knowledge and apparently yours too (based on what you told me in our meeting), no one approached Terry and Chris L with threatening messages. You only mentioned [sic] about Rita [Cossa] and Glen [Randall] ... it is not helpful if you mix-up people and serious allegations."

Dr. Pujari also added:

"... [A]llegations of intimidation without any investigation and ruling are just that-unfounded allegations. I said exactly the same to a few Area members who told me that they felt 'very uncomfortable', 'threatened' or 'intimidated' by Paul Bates' statements, actions and/or behaviours towards them. They declined to come forward for the fear of 'witch-hunt' or 'further intimidation' by Paul." (all formatting in original.)

Ms Stockton addressed Dr. Pujari's statements in a further email where she elaborated on why some faculty members would not come forward. Dr. Pujari replied to each of Ms Stockton's statements, including in the following excerpt, at DSB-0455 pages 2-3:

"... 3. You said, "I said that Wayne said Terry "has been dealt with and continues to be dealt with" and that I felt that you also picked on him in a faculty meeting". It should be written as "I said that Rita said that Wayne said..... .." (specifics are important). Anyways, you are entitled to feel whatever way you want to feel personally regarding what I asked in the FOB meeting but I take strong exception to the way you are writing and trying to equate what Wayne allegedly said to Rita and what I asked in the FOB meeting. Pl. elaborate why asking questions to the Director of Executive Education in a faculty meeting about a School's program is picking on Terry.

I can't wait to see the minutes of the meeting to see how the debate will be recorded. Transparency is at stake here. So far, the Dean and Associate Dean who were present in the meeting have not said anything about the discussion. It seems that they felt it differently than how you felt.

...

5. You said "I only hope that we can all move forward and stop bringing the school down". Not sure if I understood what you meant here.

Several questions come to my mind but just a couple of them are posed here:

Who is bringing down the school? Who are "we" here? I have more questions but I find it irrelevant to the specific issues we started with. So, I will just ignore this statement of yours. Thank you. ..."

Counsel for Ms Stockton characterized Dr. Pujari's response as "disingenuous and irresponsible." Counsel submitted that Dr. Pujari acknowledged he was aware of the bullying in the DSB but did nothing to investigate. Dr. Pujari admitted under cross-examination that Ms Stockton's allegations in her MUFAGab email were very serious, but in response to Ms Stockton, Dr. Pujari wrote "...it is not helpful if you mix people up in serious allegations." Counsel also drew the Tribunal's attention to the timing of Dr. Pujari's emails. Dr. Pujari sent the aforementioned emails to Ms Stockton within weeks of receiving G21 emails such as the "real war" email, the "unholy alliance" email, the "he does get dirty (old Liberal training)" email, and within months of the "secret deal" email regarding Dr. Longo.

In response, Dr. Pujari's counsel again referred to Ms Stockton's email dated February 26, 2009 (DSB-0451) where she wrote to Dr. Pujari: "Just so you know, I personally have not been bullied by anyone, nor would I allow that to take place." (at page 4). It was pointed out that Ms Stockton testified that when she wrote that email, no one had, up until that time, bullied her.

In reply, Ms Stockton's counsel submitted that Dr. Pujari's two affidavits do not mention that he spoke to Dr. Bart about the alleged incident. As well, Dr. Bart's evidence was that Dr. Pujari did not speak to him about his comments. Counsel submitted this was another example confirming Dr. Pujari was not credible.

### **Tribunal's Findings**

The Tribunal finds Dr. Pujari failed to properly address these issues in good faith and his explanations concerning this matter were self-serving. As Area Chair, Dr. Pujari's conduct must protect the common interests of all faculty for whom he has management responsibility. The Tribunal finds Dr. Pujari's explanations and interactions with Ms Stockton on these issues contributed to a poisoned work/academic environment but did not breach the Policy. Dr. Pujari also, received a letter of reprimand from the Provost and expressed concerns about being bullied himself. These coinciding events likely created a "perfect storm" in which continued effective and fair management was very difficult for Dr. Pujari. However, this conduct by Dr. Pujari was found to have not crossed the line because it primarily related to others being bullied and did not objectively affect Ms Stockton's ability to do her job and her own personal experience did not rise to the level of harassment.

v. **Dr. Pujari used events involving Dr. Hongjin Zhu to harass Ms Stockton**

### **Summary of Evidence and Submissions**

Dr. Zhu was a newly hired tenure-track Assistant Professor in the SML/HSM Area, who, in the fall of 2009, jointly taught a course with Ms Stockton. In that particular term, Ms Stockton taught five sections and Dr. Zhu taught one. Ms Stockton shared some, but not all, of her teaching materials with Dr. Zhu, including the textbook, support materials, PowerPoint presentations, but not her lecture notes for the class. Ms Stockton also shared the course outline for the class, on the condition that Dr. Zhu would "strictly follow the outline" in the words of Ms Stockton. Dr. Zhu attended some of Ms Stockton's classes to familiarize herself with the materials.

Ms Stockton has a strict lateness policy with respect to deadlines for assignments and expected Dr. Zhu to adhere to same. Ms Stockton stated that she follows a rigorous program when marking assignments involving her TAs, which necessarily includes a meeting with all her TAs. Dr. Zhu did not attend this meeting. Around November 3, 2009, Dr. Zhu asked a TA to mark two additional assignments which may have been submitted late. Ms Stockton was concerned and asked Dr. Zhu for the emails submitting the assignments. Dr. Zhu replied that she had deleted the two emails. After consulting with UTS staff at McMaster, Ms Stockton informed Dr. Zhu that she may be able to retrieve the deleted emails. Further emails were exchanged between the two faculty members. Ms Stockton raised concerns that her colleague was not forthcoming in providing the emails.

As a result, Ms Stockton stated that she asked the UTS staff to identify for her the submission time for the two assignments. Ms Stockton provided the UTS staff with the two students' user IDs. UTS staff confirmed for Ms Stockton that one student had handed in the assignment on time, and the other did not. Dr. Zhu had suggested both assignments were submitted before the deadline. Dr. Zhu later told Ms Stockton that she had told the second student that she would not accept the assignment. However, Dr. Zhu later advised Ms Stockton

that three other assignments were missing. Ms Stockton spoke with the Dean and also Dr. Pujari about her concerns.

Ms Stockton alleged that Dr. Pujari's handled this situation inappropriately. Ms Stockton attempted to explain to Dr. Pujari her concerns. Ms Stockton testified Dr. Pujari stopped listening to her and would only focus on whether the students' privacy had been invaded. Ms Stockton admitted to eventually saying something like "[Dr. Zhu] came here to teach, I did not go to China" which Ms Stockton explained as "meaning that certain standards had been established for this course and Dr. Zhu needed to cooperate with me in upholding those standards, whether or not she agreed with them, particularly since she was using my course outline." (DSB-2111 at para. 118).

In response to Ms Stockton's concerns, Dr. Pujari sent an email. Ms Stockton took issue with the following excerpt of Dr. Pujari's email dated November 30, 2009 (DSB-0482):

I have to say that I was taken aback by your statement that when you said that Hongjin has come from China to teach here and you did not go to China to teach there. I think we should refrain from this kind of language. Our School prides itself in diversity and multi-cultural background the faculty come from. Similar kind of comment was made by someone else in the Area during the recruitment process last year. I told that person that it was an inappropriate comment. He/she apologized. In this day and age, it should simply not matter where people come from.

Ms Stockton's affidavit identifies this was an "unfair comment" because "if Dr. Pujari was interpreting my comments as racist – and it was a stretch even to accept that they could be realistically interpreted that way – he should have asked me for clarification at the time." (DSB-2111 at para. 120.)

One week later, Dr. Pujari approached the Dean and Associate Dean raising this incident involving Dr. Zhu and his concerns about a breach of privacy. Ms Stockton understood that Dr. Pujari had been very upset and wanted to see her fired (DSB-2111 at para. 122). Ms Stockton subsequently received a letter from Dr. Pujari on December 8, 2009 where Dr. Pujari stated, as DSB-0485:

I am appalled to learn that you asked the technical services office in the School to check on the email communications of a recently joined faculty, Prof. Zhu...this is a most serious breach of trust and a violation of both the student and Prof. Zhu's privacy...This is unacceptable.  
...You told Prof. Zhu in an email that you have found out what day she (Prof. Zhu) received this student's report on email. Again, this is appalling and unacceptable.  
...I was also dismayed to hear you stating that Prof. Zhu has come here from China to teach and that you did not go China to teach. This kind of language is

highly inappropriate. I would like to reiterate that our School prides itself in diversity and multi-cultural background faculty members come from.

Ms Stockton testified that the letter upset her (DSB-2111 at para. 124) and that Dr. Pujari took her interactions with Dr. Zhu out of context, that he did not properly investigate what happened, and that as a result, she was harassed after she had requested guidance from him for a legitimate concern.

Dr. Pujari contacted the Dean in December of 2009 to discuss his concerns of Ms Stockton's inappropriate conduct. Dr. Pujari requested that the Dean conduct an investigation into the matter. It was at that meeting that Ms Stockton alleged that Dr. Pujari sought her termination. Dr. Pujari denies that he requested Ms Stockton's termination, but he did state that he asked the Dean "rhetorically, if people engaging in this type of conduct should work at DSB" (at para. 146).

Ms Lisa Newton, the Associate Director of Employee/Labour Relations (Legal) conducted a fact-finding investigation. The Tribunal reviewed the report dated February 1, 2010 (DSB-1315/0736). The background section of the report, at page 1, states that Dr. Pujari suggested that the Dean "ought to formally investigate the matter with a query into whether Ms Stockton's conduct warranted the termination of her employment with McMaster University. Dr. Pujari was of the opinion that it did."

In summary, Ms Newton found that the Dean did not have authority to terminate the employment of Ms Stockton, that the facts of the case did not warrant the termination of Ms Stockton, and that the facts of the case do not warrant discipline against Ms Stockton (page 2).

Ms Stockton did not receive a copy of the report in 2010. Ms Stockton reviewed the report by virtue of its disclosure made in these proceedings. Counsel for Ms Stockton submitted that Dr. Pujari hid the report from her.

Dr. Pujari denied all of Ms Stockton's allegations in his affidavit (DSB-2291). Dr. Pujari alleged that Ms Stockton's behaviour is "aggressive towards individuals in the Area and in Area meetings" (at para. 142), and was "extremely aggressive" (at para. 147) towards Dr. Zhu. Dr. Pujari outlined six incidents where he witnessed or was informed of Ms Stockton's aggressive behaviour (at para. 154 of his affidavit).

Dr. Pujari stated in his affidavit that Ms Stockton made "actual discriminatory and racist remarks" about Dr. Zhu. In fact, he called this "one of the great ironies of Ms Stockton's claim of harassment and discrimination" (at para. 149). In his own words, Dr. Pujari stated:

Ms Stockton told me that Dr. Zhu essentially should be teaching in China, not Canada, because she is from China. In the same discussion, when I challenged her about her comment Ms Stockton suggested that academic standards are lower

in China and Singapore where Dr. Zhu had previously taught. This is racist stereotyping. Ms Stockton's explanation in her affidavit is unsatisfactory.

Counsel for Dr. Pujari submitted that Dr. Pujari interpreted that Ms Stockton said that Dr. Zhu "should be teaching in China and not Canada because she's from China."

In her testimony, Ms Stockton clarified that she was in the middle of expressing that if she had gone to China to teach, she would try and understand the process there. In response to Dr. Pujari's comments, Ms Stockton entered into evidence over 20 pages of handwritten cards, postcards, and wedding invitations from former students of Chinese origin, thanking her for her teaching and dedication.

Counsel for Ms Stockton drew the Tribunal's attention to the fact that Ms Newton found that Ms Stockton did not require discipline, but rather, it was Dr. Pujari who contributed to the escalation of the situation, had effectively stopped listening to Ms Stockton, and chose not to apprise Ms Zhu of the true details of the incident. Counsel for Ms Stockton submitted that Dr. Pujari's bias, as a member of the G21, contributed to the harassment of Ms Stockton. Mr. Heeney submitted that as a member of the G21, Dr. Pujari was quite willing to promptly bring a Complaint against Ms Stockton, but had no interest in investigating Ms Stockton's bullying concerns.

Counsel for Dr. Pujari submitted that he was acting in good faith addressing a "serious privacy invasion and human rights code breach by Ms Stockton against a junior faculty member" new to the University. Counsel stated that Dr. Pujari was acting in good faith when he pursued his investigation and sent Ms Stockton the disciplinary letter. It was submitted that Ms Newton's report was biased because she had supported Mr. Bates' second appointment and was previously aware of Dr. Pujari's claims against Dr. Kleinschmidt and Mr. Bates.

Counsel further relied on comments made by an arbitrator from British Columbia (*United Food and Commercial Workers Union of British Columbia, Local 1518 v. 55369 BC Ltd.* [2007] BCCA No. 130, 90 CLAS 94 (Larson) at para. 32) which stated:

"Even severe criticism of an employee by a supervisor who is genuinely attempting to deal with a perceived performance problem is not harassment. ... Nor is it necessarily harassment where an employee has demonstrated to have been improperly disciplined by a supervisor or other supervisory action is shown to be unjustified. Supervisors have the right to be wrong provided that they act in good faith and not for an improper purpose. Poor judgment is not discriminatory per se. It only becomes harassment when it is done in a seriously hostile or intimidating manner or in bad faith."

### **Tribunal's Findings**

The Tribunal finds Dr. Pujari directly harassed Ms Stockton concerning the events involving Dr. Zhu. Ms Stockton, as will be addressed further in the group CLA section, was in a vulnerable employment position. Previous personality and other conflicts had not impacted Ms Stockton's ability to perform her job. However, Dr. Pujari's response to Ms Stockton's legitimate concerns in this instance was, in our view, retaliatory and vindictive. Dr. Pujari used this issue as an opportunity to make serious allegations against Ms Stockton which appear frivolous. Furthermore, Dr. Pujari had already identified Ms Stockton as one of the CLAs being "held hostage" and the G21 comments and conduct had firmly entrenched the "us against them" mentality which provided further context for the Tribunal's findings.

Dr. Pujari provided no reasonable opportunity for Ms Stockton to address his concerns about privacy and serious race allegations. Rather, Dr. Pujari unreasonably focused upon his suggestion that Ms Stockton's conduct may warrant the termination of her employment. Furthermore, Ms Newton's report confirmed the conduct did not warrant discipline, but this finding was not shared with Ms Stockton by Dr. Pujari when he received it in 2010. In addition, Dr. Pujari repeatedly conveyed to the Tribunal, the importance of policy compliance and due process. However, his actions with Ms Stockton did not reveal any concern for due process or policy. Rather, Dr. Pujari continued to describe Ms Stockton's behaviour as "extremely aggressive" and in his affidavit alleged that Ms Stockton made "actual discriminatory and racist remarks" about Dr. Zhu. In addition, Dr. Pujari suggested Ms Stockton's explanations in her affidavit were unsatisfactory which he described as "racist stereotyping". The Tribunal finds Dr. Pujari's evidence on these issues was not credible. The Tribunal preferred Ms Stockton's evidence where it was contradicted by Dr. Pujari without any other credible evidence to corroborate Dr. Pujari's evidence.

In addition to directly harassing Ms Stockton Dr. Pujari's conduct resulted in a poisoned work/academic environment breaching the Policy.

#### **vi. Dr. Pujari took additional retaliatory steps against Ms Stockton**

### **Summary of Evidence and Submissions**

Ms Stockton alleged that Dr. Pujari ignored her and did not speak to her from March to December 2010. Dr. Pujari was alleged to have intentionally avoided her in the hallways and look over Ms Stockton's shoulder to speak to people who were behind her. In another instance, Ms Stockton alleged that Dr. Pujari walked past a restaurant table at lunch where she and Ms Cossa were dining, but refused to acknowledge their presence. Furthermore, Dr. Pujari took retaliatory steps against her for raising concerns at the DSB, by withholding a TA request and not selecting her to sit on certain committees of the DSB. With regards to the TA request, Ms Stockton stated that in November 2010, she had submitted a request for TAs in the Winter term for approval by Dr. Pujari. She later discovered that Dr. Pujari had not processed her request, information that was provided by an administrative assistant who then entered the request.

Dr. Pujari in his evidence denied the TA allegation and called it an “administrative oversight” (at paragraph 159 of his affidavit.) Dr. Pujari forwards all TA requests by email with a paper copy to his administrative assistant before the meeting where he allocates TAs to faculty members. Dr. Pujari suggested he did not find TA requests from Ms Stockton because they were missing from his file. Dr. Pujari’s evidence was his administrative assistant did not raise the issue with him. Dr. Pujari explained that neither his administrative assistant nor Ms Stockton has ever raised this issue with him previously because he has never refused a TA to a faculty member. Dr. Pujari has implemented a new step in the process sending his TA allocation information to all faculty members to ensure no faculty request is missed. Counsel for Dr. Pujari submitted that Dr. Pujari’s actions in this instance were an administrative mix-up that was quickly corrected. Counsel characterized the incident as “simply another incident where negatives motives are being read into an innocuous situation... by Ms Stockton.”

Ms Stockton further alleged that Dr. Pujari told her that the CLAs sat on too many committees. Dr. Pujari felt the CLAs should not agree to the Dean’s requests for them to sit on committees because it should go through him.

In response, it was submitted that Dr. Pujari recommended Ms Stockton for committees, but his requests were not accepted. Attached to Dr. Pujari’s affidavit was an email sent on September 6, 2007, to Ms Heather Lambert (Administrative Assistant, Office of the Dean, DSB), where Dr. Pujari put forward Ms Stockton’s name to sit as a member of the Hearings Committee, a Standing Committee of the DSB Faculty. Dr. Pujari’s evidence was that Dean Bates deliberately ignored his recommendations but instead approached the faculty members directly to sit on committees. When Dr. Pujari raised the issue at Faculty Council, he stated he was “snubbed” by the Dean each time and eventually gave up. Dr. Pujari stated that Ms Stockton is improperly blaming Dr. Pujari instead of blaming Mr. Bates, which Dr. Pujari says “demonstrates with clarity who happens to be the real aggressors and harassment perpetrators in the 003 complaint” (at para. 167).

### **Tribunal’s Findings**

The Tribunal finds that Dr. Pujari’s repetitive and persistent conduct towards Ms Stockton affected her ability to do her job and resulted in a poisoned work/academic environment in breach of the Policy. Dr. Pujari received negative, disparaging and belittling information about individuals including Ms Stockton under his management (G21 emails). The evidence established that Ms Stockton was seen as a Dean Bates supporter. Dr. Pujari had important responsibilities to fulfill as Area Chair. The expectations of a manager are not that they be perfect in their decisions or actions but that those decisions and actions be made and undertaken in good faith. The Tribunal finds that it is more likely than not, that Dr. Pujari’s conduct cannot simply be attributed to poor management. Rather, the Tribunal finds his repetitive and persistent conduct involving Ms Stockton breached the Policy when it resulted in a hostile working environment. Furthermore, Dr. Pujari was not free from bias in his management decisions and we are satisfied that his issues with Mr. Bates and the University led to him treating Ms Stockton in a manner which breached the Policy. As a result, the Tribunal finds Dr. Pujari failed to manage his academic unit in an unbiased way.

**J) THE CLA COMPLAINTS: MR. VILKS, MS STOCKTON AND MS COSSA**

The three CLAs (Mr. Vilks, Ms Stockton, and Ms Cossa) submitted several complaints against Dr. Pujari, Dr. Ray, and Dr. Taylor, and Dr. Bart. The complaints of the CLAs were set out in paragraphs 117-139 of the Complaint (DSB-0002) and particularized in the affidavits of Mr. Vilks (DSB-2100), Ms Cossa (DSB-2102) and Ms Stockton (DSB-2111). Drs. Pujari, Ray, Taylor and Bart also submitted affidavits to the Tribunal (DSB-2291, DSB-2295, DSB-2290 and DSB-2292 respectively)

Witnesses in support of the CLAs' claims included Dr. Hupfer, Dr. Longo, Mr. Bates, and Ms Patricia Ann Wiebe. Witnesses called by the individual 003 Respondents in this matter included Mr. Ryder, Mr. Malik, and Dr. Deal. Dr. Connelly also provided testimony to the Tribunal for this matter.

Generally, the CLAs alleged they were subject to conduct contrary to the Policy because they were perceived to have applied academic research and/or industry experience that was viewed negatively by the individual 003 Respondents, and/or because they were perceived supporters of Dean Bates. The CLAs claimed they were subject to harassment which included the following conduct:

- general demeaning, harassing, bullying and intimidating conduct;
- explicit and subtle threats to the security of their positions;
- undue scrutiny during their renewal, conversion, tenure or promotion processes;
- calculated efforts to undermine their careers and security within the DSB; and
- exclusion from opportunities because individuals used their position and authority to advance their personal agendas.

The Tribunal finds that Dr. Pujari's course of conduct affecting Ms Cossa, Mr. Vilks and Ms Stockton which is reviewed in this part, rose to the level of direct and/or adverse effect harassment because of its persistent or repetitive nature. In addition, Drs. Pujari, Taylor and Bart's conduct contributed to and resulted in a poisoned academic/work environment which breached the Policy. The persistent or repeated vexatious conduct or comment rose to the level where a reasonable person would objectively conclude that a vulnerable individual had been harassed, subjected to an unwelcome hostile work environment, or otherwise dealt with contrary to the Policy.

The evidence established that each of Mr. Vilks, Ms Cossa and Ms Stockton were vulnerable and Drs. Pujari, Taylor and Bart's conduct and comment took advantage of the power imbalance which existed to harass them. The Policy affirms that all "persons entrusted with authority by the University have a particular obligation to ensure that there is no misuse of that authority in any action or relationship". Dr. Pujari had managerial responsibilities involving Ms Cossa, Mr. Vilks and Ms Stockton which he discharged in a manner which breached the Policy. The Tribunal considered the Policy's Statement of Principles to determine whether it was more likely than not that certain decisions were undertaken in a manner which was vexatious and without reasonable cause or excuse. Dr. Pujari's lack of action related to Mr. Vilks' complaint about Dr. Taylor's posters and his unwelcomed comments directed at the

CLAs were found to be a continued course of action that threatened the CLA's security and was unacceptable in a healthy workplace environment where scholarly pursuit may flourish. The Tribunal found processes were manipulated to serve personal agendas and there was a failure to act in good faith. The Tribunal finds Dr. Pujari's conduct and comment harassed the CLAs including events leading up to their consideration for reappointment in November 2009 and his refusal to entertain discussions about the CLA conversion process following the selection of the initial 2 CLA's for conversion in September 2008, which was also vindictive and retaliatory. The Tribunal also found Dr. Pujari harassed Ms Cossa in 2010 and 2011. The Tribunal finds Dr. Bart's comments about holding the CLA's hostage and some of Dr. Taylor's posters breached the Policy, due to their timing which contributed to and resulted in the poisoned work environment. Furthermore, Drs. Pujari, Bart and Taylor individually or in concert engaged in conduct or comment negatively impacted employment, including job security which created a hostile work environment.

The Tribunal finds that there was insufficient evidence to establish that Dr. Ray breached the Policy albeit his conduct can likely be explained as resulting from a poisoned work/academic environment.

i. **The Background and the Unwelcomed Conduct and Comment**

**Summary of Evidence and Submissions**

Ms Cossa, Ms Stockton and Mr. Vilks alleged Dr. Pujari opposed appointing the CLAs to teaching-track positions without reasonable cause or excuse. This was a crucial concern for the CLAs since, based on University Policy, it would determine whether they continued in their jobs or be forced to leave the University. It is alleged that, in addition to Dr. Pujari, they were also harassed by Drs. Taylor, Bart and Ray.

**Formation of Teaching-Track Appointment Stream at McMaster University**

In 2007, MUFA and the University decided to create the new stream of teaching-track faculty, which could lead to permanence, as opposed to tenure in tenure-track appointments, despite some departments using the Contractually Limited Appointment (CLA) position to provide long-term contracts to some faculty. The Yellow Document determined that individual (CLAs) would have a maximum appointment of six years. Therefore, all current CLAs working in 2007 had to either be converted to teaching-track or leave the University after 6 additional years (DSB-0923 at page 40). Further, there was a campus wide limit in the number of teaching-track positions available and that limit was jointly agreed to by the University administration and MUFA.

The new six-year limit affected several CLAs at the DSB, including Ms Stockton, Mr. Vilks, and Ms Cossa. The DSB as a whole received approval for only six of these new teaching-track positions, yet there were seven CLAs who had been employed the DSB for many

years. Five of these CLAs were in the SML/HSM Area, including: Ms Stockton, Mr. Vilks, Ms Cossa, Mr. Malik, and Mr. Ryder.

According to the Yellow Document, when a contractually limited position was being converted to a teaching-track position, the department was not required to conduct a search. The department was allowed to offer the position to an existing CLA. If the CLA had held the position for six years or more, the CLA had to receive the position (DSB-0923 at page 40).

### **May 3, 2007 Faculty Council Meeting**

At the May 3, 2007 Faculty Council meeting, Mr. Bates circulated a memorandum outlining the selection criteria and performance expectations in connection with teaching-track positions (DSB-0681). During the discussion Mr. Bates stated that the number of CLAs each Area in the DSB would be allowed to convert to teaching-track had not been defined, but would be on a “first come, first served” basis (DSB-2337 at para. 61). Dr. Pujari noted Mr. Bates’ memorandum did not establish any procedure for the creation of a teaching-track position nor did it address the hiring process. Dr. Pujari suggested at this meeting, the Dean’s office assumed responsibility for developing an allocation and approval process for the creation of the teaching-track positions to be followed by the Area Chair (DSB-2123 at paras. 56-7). Mr. Bates had hoped, at the time of the May 2007 Faculty Council meeting, he would be able to convince the Provost and MUFA to allow the DSB to transfer more than six (6) CLAs to teaching-track positions (DSB-2337 at para. 61).

### **June 2007 SML/HSM Area Meeting**

Dr. Pujari became Area Chair on July 1, 2007. The SML//HSM Area consistently suffered from a lack of tenure-track faculty resources before he was Area Chair. As such, he felt it was necessary to advocate for the Area’s needs, which he determined (after an Area consultation) was primarily a need for additional tenure-track faculty (DSB-2123 at para. 53).

The June 2007, SML/HSM Area meeting was where Drs. Bart and Taylor publicly expressed their opposition to Dean Bates and suggested Area members needed to actively work against the Mr. Bates reappointment. The CLA’s witnessed Dr. Bart and Dr. Taylor making the remarks during the meeting. They felt “shaken” (Ms Cossa), “in shock and disbelief” (Ms Stockton), and “taken aback” (Mr. Vilks). Counsel for the CLAs submitted, by virtue of their employment contracts, the CLA’s were vulnerable. Other tenured faculty were at the meeting including Dr. Hupfer who felt uncomfortable and expressed disbelief, while Dr. Longo testified the remarks were unprofessional and mean spirited. Mr. Ryder testified he was not offended by the remarks however he later stated he has a high personal threshold for offensive remarks, and provided a personal context example by stating that at one point in his career he received a death threat against him and did not feel intimidated.

After the June 2007 Area meeting, Ms Cossa stated she and Dr. Taylor had a brief discussion, where he told her the “CLAs should stay out of it,” in reference to the reappointment of the Dean. Ms Cossa acknowledged the CLAs felt vulnerable due to their limited-term

appointments at the DSB. Ms Cossa understood that any association with, or any perception of support for the Dean, would not be looked upon favourably by those opposing him, especially Drs. Bart and Taylor. According to Ms Cossa, the conversation with Dr. Taylor then turned to the June 2007 Area meeting and the fact that someone had told the Dean about the strong remarks. Dr. Taylor allegedly said, "We know who did it. That person has been dealt with and will continue to be dealt with." Ms Cossa testified she understood those comments to be a very clear threat that Dr. Taylor and other opponents of the Dean would interfere with people's careers if they tried to support the Dean. She also believed it was a warning to not support the Dean, or there would be ramifications.

### **The CLA Conversion Process Outlined in October 2007**

When the teaching-track option first became available in 2007, all five CLAs asked Dr. Pujari about being converted but did not make any progress with him on this issue at that time.

On or about October 12, 2007, Mr. Bates circulated a memorandum which referenced the May 3, 2007 Faculty meeting and outlined the teaching-track approval process (DSB-0682). The first step in the CLA conversion process was for Area Chairs to select which CLAs should be considered for conversion.

On October 12, 2007, Dr. Pujari commenced an email exchange with the Dean's Office (DSB-0683). Dr. Pujari emailed Mr. Bates and Dr. Head and asked if the aforementioned memorandum "mean[s] that the School has approval for [teaching-track] positions we have requested so many times? May I suggest that teaching-track positions will not help in starting the PhD in Marketing field which our Area desperately wants to start."

Mr. Bates testified Dr. Pujari consistently linked tenure-track positions to the conversion of CLAs, despite being told there was no such link. Mr. Bates replied to Dr. Pujari, writing: "The notional cap of six (6) Teaching Professor positions is still subject to approval. This is because there may be budget implications for filling such positions, especially if we intend to hire from the outside into a Teaching Track role. The first step is to agree on which of our currently CLA's should be considered for conversion – for which the approval process should be reasonable."

Dr. Pujari replied: "I am sorry but I am not able to infer from your clarification which step in the process will allow what you say, 'The first step is to agree on which of our current CLA's should be considered for conversion?' Is this the process to evaluate current CLA's 'convertibility' to Teaching Track position? If this is so, I do not see this mentioned in the table."

Ms Kathy Denney, Director of Administration for the DSB, replied to Dr. Pujari and provided clarification. She wrote: "Any CLAs interested in a teaching track position will have to apply and go through the hiring process as any candidate would. Having the Chairs provide their requirements for teaching track positions, the first step in the process; however, is the opportunity for Chairs to indicate which CLA positions (i.e. through the identification of which

courses will be taught in which areas) they would see as possible candidates. This is therefore implicit in the process.”

On November 15, 2007, Dr. Pujari submitted his Area’s request for faculty to Mr. Bates, which included eleven (11) tenure-track positions and two (2) teaching-track positions (DSB-0693). Dr. Pujari stated Mr. Bates did not approve the tenure-track and teaching-track allocations in the request, and therefore no allocation was provided to the Area (DSB-2123 at para. 71).

During this time, Dr. Pujari was also recruiting a tenure-track professor for the Area, but the position had not yet received official approval. Based on emails Mr. Bates had sent, Dr. Pujari believed Mr. Bates linked the tenure-track hiring in Marketing to the Burlington campus expansion. Ultimately, that tenure-track professor was not hired by the Marketing Area. Dr. Pujari felt Mr. Bates was punishing him, and his Area, for not supporting the Burlington expansion. Dr. Pujari described Mr. Bates’ actions as “punishment” and “resource starvation” on the Area, which also extended to teaching-track positions in the Area (DSB-2123 at para. 69 and 70).

**The Formal CLA Conversion Recommendation Process which Begins in February 2008**

On February 5, 2008, Mr. Bates asked Dr. Pujari to start the formal process to hire teaching professors and submit a formal recommendation to hire each teaching professor that he would like to recommend (DSB-0702). Dr. Pujari testified that on February 6, 2008 he expressed concern to Mr. Bates that his approach to the CLA process contradicted the process he had communicated in October 2007.

On February 7, 2008, Ms Kathy Denney informed Dr. Pujari that two vacant faculty positions in his Area were “mortgaged” and being ‘back-filled’ by existing faculty members; therefore there would be no immediate tenure-track replacements for faculty retiring from his Area (DSB-0703).

On February 15, 2008, Dr. Pujari met with Mr. Bates and Dr. Head. Dr. Pujari suggested Mr. Bates and Dr. Head put “intense undue pressure to name the two CLA’s [he] could recommend for conversion to teaching-track positions.” When Dr. Pujari reminded Mr. Bates he was not adhering to his original process, Mr. Bates allegedly replied “the process had changed” (DSB-2123 at para. 75). Dr. Pujari identified he was shocked by this turn of events. He stated he was not notified of a change in the process. Additionally, he was concerned if he provided recommendations for two of the five CLAs prior to the allocation of positions, “this would be an unfair process because other CLAs will have no chance to put forward their cases, and will inevitably lead to further difficulties and discord” (DSB-2123 at para. 76).

On February 19, 2008, Dr. Pujari held a meeting with tenured faculty in the Marketing Area (Drs. Hupfer, Deal, Kleinschmidt, Ray, and Wakefield) to discuss these new developments (DSB-0704).

On February, 22, 2008, Dr. Pujari wrote an email to Dr. Bart with the subject "RE: Strategy-Policy-IB and HSM disciplines: Faculty strength and future needs" (DSB-0705). Dr. Pujari sought Dr. Bart's opinion regarding the growth of the Strategy discipline in the Area for the future. Dr. Pujari wrote: "My view as an Area Chairman is that unless we know what the situation is about the replacement of the faculty who are retiring or have left (e.g. Jim Tiessen) it is unwise to consider converting CLAs into teaching professorship for July 1, 2008. The Teaching Professor issue can be considered once we know more about the resources for replacing the retiring tenure-track faculty or the members who have left."

Mr. Bates testified he felt this email was an acknowledgement by Dr. Pujari that he understood the process for converting CLAs to teaching-track appointments, but that he felt it was unwise to do so for July 2008.

Dr. Pujari testified that on February 26, 2008, Ms Pat Fraser, on behalf of the Dean, asked him to submit his recommendation to convert any of the present CLAs to teaching track appointments, so that administrative staff could prepare materials for the Provost. Dr. Pujari testified that Mr. Bates emailed him on February 28, 2008 asking for his recommendations regarding CLA reappointments and that his decision on teaching-track appointments be submitted as soon as possible (DSB-2123 at paras. 79 and 80).

On February 28, 2008, Dr. Pujari replied to Mr. Bates' email "in complete frustration and feeling deeply troubled by the pressure." Dr. Pujari told Mr. Bates he recommended the reappointments of all the CLAs to one year CLA appointments but he was not recommending anyone for teaching-track professorship in July 2008, but he was keeping an open mind for the July 2009 start (DSB-2123 at para. 81).

Ms Cossa wrote to Dr. Pujari on February 28, 2008, and asked about conversion (DSB-0415). Dr. Pujari replied to Ms Cossa and stated he was "not in a position to request for any position for teaching-track professorships, in the following excerpt (DSB-0416):

"As you know, after discussing with all CLA colleagues in Nov, 2007, I did request for TP positions in the Area provided the research-active faculty strength in the Area is maintained at the level that can support PhD field in the Marketing, create a critical mass of tenure-track faculty in Marketing, strategy and IB disciplines who would attract research income and generate intellectual capital/top-tier publications (that helps getting into FT list as well as top 3 school in research influence). ...

However, two significant developments have happened:

1. I have been told by the Dean's office that replacements have already been made (3-4 years ago) for the forthcoming retirements faculty members.
2. The associate prof. in marketing position that was approved as a net new faculty is also linked/bridged to another faculty who may be retiring in future.

...

Under these conditions and uncertainty, I am sorry to say that I am not in a position to request for any position for Teaching Professorships..."

The three CLAs did not agree with Dr. Pujari's rationale. As well, Mr. Ryder, a fellow CLA in the SML/HSM Area, also disagreed and emailed Dr. Pujari a lengthy email on March 1, 2008, detailing his opinion (DSB-0417):

"I am dumbfounded by your response to Rita. I cannot dispute any of the facts you present around the tenured and tenure-track appointments within the Marketing part of the Strategic Market Leadership and Health Services Management Area.

My problem with your logic is the connection between those lack of appointments and Teaching Professors.

As I understand the history of these positions, three or four years ago the Faculty Association began to investigate the treatment of CLA's. In particular, some Faculties were offering CLA's ten month contracts as a way to avoid giving them certain standard benefits. As that investigation panned out, it was "discovered" that many Faculties were using CLA's beyond the six year window stipulated in the "yellow document."

While it took nearly two years of negotiating, the Faculty Association felt that there could be room to have faculty members who were not research-based professors but who would be granted tenure-like status. Thus the concept of Teaching Professors was born. In those negotiations, a quota was negotiated for each Faculty. In our situation, the School of Business could have up to six Teaching Professor positions. In exchange for this concession, it was agreed that the University would return to the six year limit on CLA appointments. Now, there was no new money provided for these Teaching Professorships. In essence, a Faculty could convert a CLA into a Teaching Professor. The benefit to the academic would be the elimination of an annual contract. For any CLA's not converted, a six-year clock began ticking. These are not "net new" positions to the University.

...

If the Area is deciding to not convert any of us, you are telling us that in five years you will not need any of our services.

...

I stated to you last fall and I want to repeat here that I do not see any connection between the conversion of CLA's to Teaching Professors and the tenure-track recruiting challenges facing the

Area. This is not an "either/or" situation (i.e., you either convert CLA's to Teaching Professor OR you recruit tenure-track faculty).

...

Is there some value seeking clarification from the Dean on the connection between Teaching Professors and the ability to recruit tenure-track professors? In very brief hallway conversations, I did not get the impression that he saw the two issues as related."

Dr. Pujari wrote back to Mr. Ryder. According to the CLAs, Dr. Pujari's response did not make sense and did not address the request for clarification. The email included the following (DSB-418):

"Hi Marvin

Thanks for your note. I share everyone's disappointment and concern. I too was gobsmacked to know that retiring positions in Marketing have already been replaced 3-4 years ago. Let's not forget that I was fully supportive of hiring TPs for the July 2008 start."

On March 3, 2008, Dr. Pujari wrote to Mr. Bates and advised him that "since nothing had been accomplished that year, [he] would not make any additional request for teaching positions and would keep the process open for July 2009" (DSB-2123 at para 82.)

### **The March 2008 Area Meeting**

At the next Area meeting on March 25, 2008, Dr. Pujari led a discussion regarding the Area's needs for more tenure-track faculty members. In this meeting, Dr. Pujari delivered a PowerPoint presentation regarding the Area's resource needs. On page 10 of the presentation, submitted as evidence at DSB-1343, the title reads "A Crisis of Intellectual Depth in the Area." However, the CLAs each state they recalled the title of the slide in the meeting was "A Crisis of Intellectual Deficit in the Area," and they heard Dr. Pujari make a statement reflecting that specific wording. On Page 14 of the presentation (DSB-1343), the term "intellectual deficit" does appear in the following bullet point: "Based on the resource allocations to the area to address the intellectual deficit, I will consider recommending TP [Teaching-Track] position for July 2009 start."

Mr. Vilks, Ms Cossa and Ms Stockton believed the term "intellectual deficit" was derogatory because they were not research focussed tenure-track faculty members. The CLAs claimed a copy of the presentation was not given out at the meeting. The CLAs felt the term "intellectual deficit" exemplified the inappropriate, dysfunctional, and demeaning conduct against them, reflecting the hostile work environment.

Dr. Pujari denied making the statement and denied including the title about "intellectual deficit" in the presentation. He did admit to using the term "a crisis of intellectual depth" to explain the comparison of his Area to other Areas in the DSB with respect to tenure-track faculty coverage and capacity that leads to research and intellectual contributions. He testified he

suggested this difference in tenure-track coverage (which, he stated, is 23% in his Area versus 87% in the IS Area) leads to intellectual deficit in his Area when comparing intellectual contributions in journals from his Area and other well more well-resourced Areas in the DSB. He also denied there was any difference between the presentation submitted at DSB-1343 and the presentation he gave on March 25, 2008. Dr. Pujari testified he was “simply comparing how the Area’s capacity of providing intellectual contributions to reputed scholarly journals (one of the strategic goals of DSB) is lowest in the school, and hence has a greatest need for tenure-track faculty” (DSB-2291 at para. 85).

After the meeting took place, Mr. Ryder, sent an email to the President of the University (DSB 0420) requesting guidance and direction for the CLAs. In the email discussing Dr. Pujari’s decision not to pursue teaching-track positions in 2008, Mr. Ryder wrote: “[Dr. Pujari] views the lack of tenured and tenure-track faculty to be an intellectual deficit especially if the School of Business is going to meet a research excellence goal.”

Mr. Ryder is a non-party to these proceedings and provided testimony to the Tribunal about the meeting. He stated Dr. Pujari’s presentation emphasized one of Dr. Pujari’s priorities was to hire tenure-track faculty. In his words (DSB-2308 at para. 28):

“The PowerPoint slides demonstrated that the area had the least members of tenured or tenure-track faculty teaching its courses in comparison to all other DSB areas. The significant gap between our area and the other areas was portrayed by Dr. Pujari as an intellectual deficit. Contrary to what Ms Stockton, Ms Cossa, and Mr. Vilks have suggested, I do not believe this was intended to be an insult to the CLAs. He was trying to argue the case for priority hiring for tenure-track faculty rather than argue the case against converting CLAs to teaching track faculty. ... To my recollection, [the presentation at DSB-1343] is the same PowerPoint slide show that Dr. Pujari presented at the March 25, 2008 meeting.”

On cross-examination, Mr. Ryder stated when Dr. Pujari made the reference to the intellectual deficit; he saw people were offended, and that “it was like watching people get hit between the eyes with a hammer.” Dr. Hupfer testified she heard Dr. Pujari bluntly state that CLA and Teaching Professor positions “contributed to the intellectual deficit” of the Area, as well as including it in the presentation (DSB-2107 at para. 33).

Dr. Longo testified Dr. Pujari used the term “intellectual deficit” in the Area meeting. He further stated he was “quite confident” that the presentation submitted as evidence was not the presentation used at the Area meeting, since he had not heard the term “intellectual depth” used before seeing the presentation submitted as evidence (DSB-2108 at para 98). Dr. Flynn also testified he heard the term “contributed to the intellectual deficit” being used verbally and in the presentation at the meeting (DSB-2098 at para. 34).

Dr. Pujari’s counsel submitted there was no evidence presented supporting the existence of a different version of the presentation than the one submitted as evidence, other than people’s

recollections, further noting that recollections do fade over time. Counsel submitted the reference to “intellectual deficit” was misinterpreted by the CLAs, and was not used in the derogatory manner that the CLA complainants have alleged. Counsel argued it was used in connection to the Area not having proper tenure-track research resources. Counsel submitted that the CLAs in cross-examination did not reasonably identify what they found offensive about the presentation.

The CLAs also alleged that during the meeting Dr. Bart suggested that the Area should hold the CLAs “hostage” by refusing to convert any CLAs to teaching-track faculty, in order to leverage more tenure-track resources for the Area. Dr. Bart also allegedly stated the CLAs “should not forget who is in control of promotion”, according to Mr. Vilks (DSB-0170). The CLAs also submitted that no one at the meeting, including Dr. Pujari, said Dr. Bart should not have made that comment.

As a follow-up to the meeting from which he left early, Mr. Ryder asked his Area colleagues, in an email dated April 8, 2008, whether there was a resolution made at the meeting, and whether the Area would adopt Dr. Bart’s reasoning that the CLAs be “held hostage.” Dr. Pujari replied and said (DSB-0419):

“I don’t think Chris meant this way at all. He can speak for himself. All of us can interpret the meeting in our own ways. I certainly do not believe that any one is involved in ‘holding hostage’... As Area Chair, [I] have taken a staffing decision that the Area will not seek Teaching Professors for the July 2008 start. This decision hasn’t changed. ... I will keep an open mind with regards to the Teaching Professor positions for the July 2009 start.”

As a result Mr. Ryder sent an email the next day to the MUFA President (Dr. Peter Sutherland) on behalf of all five CLAs, to see if he had any ideas about what to do about Dr. Pujari. Mr. Ryder explained (DSB-0420):

“Our problem is not with the actions of the Dean but with our Area Chair. After asking in February for teaching professors conversions, the Dean has only received two requests. One has come from the Human Resources Area and one has come jointly from the accounting and Finance Area. Although he has been assured that converting any of the CLA's in our Area will have no impact on his ability to recruit tenured and tenure-track faculty members, our Area Chair has decided to not pursue any teaching professorships for this year. He is willing to keep an open mind for the next academic year. This decision has come as a surprise to both the CLA's involved and the Dean.

Now, it seems that the Area Chair has made this decision totally on his own. There has been no vote of the Area nor any vote of the

Tenure and Promotion Committee of the Area. We CLA's asked for an Area Meeting and two weeks ago it was held. In that meeting, he laid out a vision of hiring needs. There is a great danger that the Area will not be able to mount a Ph.D. program because of a lack of tenured and tenure-track faculty. We are also facing two or three retirements and he believed he would be able to recruit new people to fill those gaps. He has been informed that hires over the past few years were meant to cover those retirements so he has not received permission to recruit anyone new. He views the lack of tenured and tenure-track faculty to be an intellectual deficit especially if the School of Business is going to meet a research excellence goal.

At the meeting, I noted that I did not hear a cogent argument for not converting some of the CLA's to teaching professors...Both the Area and I received a clear message back from the Area Chair that he had not changed his mind and that he would not be pursuing any teaching professors this year.

...

You are not wrong if you detect a feeling of impotence in this message.”

Dr. Pujari testified he became the target of the CLAs frustration associated with the “uncertainty and inertia relating to their own status”. Dr. Pujari stated he was blamed for the delay in their respective conversion to teaching-track positions, when it was Mr. Bates who refused to provide the Area with the appropriate allotments and was therefore responsible for the delay. Dr. Pujari stated he made it clear to the CLAs at the March 25, 2008, meeting that the Area both needed and wanted to continue to have teaching professors and the Area would be able to keep some CLAs as CLAs (DSB-2123 at para. 83-4).

### **The April 2008 Communications with the Provost**

On April 21, 2008, the Senate Committee on Appointments (SCA) approved the request from Dr. Pujari to renew the CLA appointments of all five CLAs in the HSM/SML Area for one additional year. However, following this SCA meeting, the Provost sent an email to Mr. Bates indicating that there had been considerable discussion at the SCA meeting about why some of the CLAs had not been converted into the teaching-track stream (DSB-0707). Mr. Bates then forwarded this email to Dr. Pujari who replied to the Provost in a detailed letter dated April 28, 2008 (DSB-0195), where he explained his rationale and why it was so difficult to put forward CLAs for conversion without knowing the allocation for faculty in his Area. Dr. Pujari wrote the ‘rule of extension beyond six years’ should not apply to the CLAs until 2012, since Mr. Bates had explained to him that extensions can be made to CLA contracts until he or she has reached six years counting from July 2007.

In her reply to Dr. Pujari on April 30, the Provost remarked that she found Dr. Pujari's response "oddly off track." She explained Dr. Pujari's belief that he needed tenure-track and tenured faculty in order to convert CLAs to teaching-track positions was irrelevant. The Provost noted other faculties had been working quickly to convert high-performing CLAs to teaching-track faculty, in meeting the spirit of the updated T&P Policy. The Provost felt Dr. Pujari had proposed to replace all CLAs with tenure-track faculty hires, but the Area would not be able to hire 12 new tenure-track hires as he requested. She wrote: "Were every new hire to be designated for your Area, you still would not find your desire met. ... It is as if you are holding your CLAs hostage for a demand that you will not and can not be met" (DSB-0708).

Dr. Pujari replied to the Provost, writing (DSB-0708):

"I am not sure anymore how else to convince anyone that I very much value contributions of CLAs except by saying that I have nominated one of the CLAs at least 3 times for teaching awards, and I asked for 2 TP allocations for our Area in Nov. 2007. I was also the initiator and one of the first nominators for the CLA colleague who won the LIFT award. Personally, I agree with you that the LIFT award winner will be a worthy candidate for a teaching professorship position."

The Provost replied and urged Dr. Pujari to recommend to the Dean that at least one CLA be converted to teaching-track. Dr. Pujari then emailed Mr. Bates and requested he allocate one Teaching Professor position to the Area. In reply, Mr. Bates directed Dr. Pujari to complete the formal documentation for the request, noting "You are not restricted to one, by the way" (DSB-0708).

Dr. Pujari testified (DSB-2123 at para 91):

"...[I]f I wanted to follow Bates' violated process of simply recommending the name of the LIFT award winner for a teaching professor position without any allocation of our position to our Area, I could have done it. However, I was fair to all CLAs and did not recommend his name. Rather, I asked for an allocation of position so that all CLAs will be aware of it and indeed have a chance to apply for this position in a competitive process as it should be."

### **The June 2008 Joint CLA-MUFA-Administration Meeting**

On June 11, 2008, a meeting was held between the five CLAs, the Dean, MUFA representatives (Dr. Sutherland and Dr. David Hitchcock), Dr. Pujari, and the former Area Chair (Dr. Deal). At this meeting, the CLAs alleged Dr. Pujari had a totally different rationale for refusing conversion. Instead of saying he was opposed to conversion because he could not get tenure-track hires, Dr. Pujari said teaching-track faculty positions had not been allocated to the Area, and no process had been set up to choose CLAs for conversion. Mr. Bates testified that MUFA agreed it could support the DSB getting more than six (6) teaching-track positions under the circumstances, but Dr. Pujari's focus remained on tenure-track positions (DSB-2337 at para. 69). The minutes from that meeting (DSB-2057) were reviewed by the Tribunal.

Dr. Deal provided testimony to the Tribunal about the meeting. He testified Dean Bates said there was a specific the number of people available for conversion, but if Dr. Pujari wanted, he could tell Mr. Bates he wanted more and the Dean would get them for him.

Dr. Pujari testified he questioned Mr. Bates about the process for CLA conversion, and that Mr. Bates stated the process was “confusing” (DSB-2123 at para. 95). Dr. Pujari requested the minutes from the meeting be amended to reflect Dean Bates’ assertion that there was no link between teaching-track hiring and tenure-track hiring (DSB-0425 and 0426).

At the meeting, the process for conversion was identified and supported by all the individuals who were present. The process was that a CLA could request conversion and the Area T&P Committee would act as a selection committee to decide who to recommend for conversion. Thereafter the CLAs’ requests and the Committee’s recommendations would go to the Dean for approval. The date for the selection committee meeting was also set for September 25, 2008.

Mr. Bates testified Dr. Pujari knew after this meeting that he could convert some of the CLAs to teaching-track positions, but he simply refused to do so until he had no choice (DSB-2337 at para. 72).

### **Comments by Dr. Pujari in 2008**

In the summer of 2008, during a private meeting with Dr. Pujari, Ms Cossa stated he said to her “We might as well be a community college.” Ms Cossa stated Dr. Pujari also said, “[a]s a result of the large number of CLAs, some tenured faculty might decide to leave and go elsewhere.” Ms Cossa stated she believes Dr. Pujari was in fact referring to himself. Dr. Pujari denied making the statements.

Ms Stockton stated Dr. Pujari said in an Area Meeting in 2008, that the sort of applied teaching the CLAs did “belonged up the hill”, that is, at Mohawk College. He allegedly added the way things were going, with so many CLAs in the Area and no new tenure-track faculty, he and others would not want to work there anymore. Dr. Pujari denied making these statements as well, and Dr. Bart testified he never heard Dr. Pujari make these suggestions.

Ms Stockton, Mr. Vilks, Dr. Longo, and Dr. Flynn claimed at an Area meeting Dr. Pujari referred to the CLAs as “nothing but retailers of information”. Mr. Vilks believed Dr. Ray also used this phrase. Both Dr. Pujari and Dr. Ray deny making this statement. Dr. Bart testified he did not hear Dr. Pujari make the alleged statement. Dr. Hupfer and Mr. Ryder testified they each recall the statement was made, but they did not recall whether Dr. Pujari or Dr. Ray made the comment. Mr. Ryder, a fellow CLA, felt the comment was a poor choice of words but he did not take offence to the comment, nor did he believe the comment was intended to be a demeaning or critical statement. He explained it is an appropriate analogy since sessional lecturers and CLAs do not conduct research or “produce” information, rather they gather and synthesize work and “retail” it to students.

Ms Cossa testified Dr. Pujari had suggested the CLAs were easily replaceable, and during a private meeting in his office, Dr. Pujari told her that he had a “drawer full of resumes from people who wanted to teach in the Area.” Dr. Pujari allegedly pointed this out to Ms Cossa, in response to her request to reopen the teaching-track professor discussion, suggesting she was replaceable. Ms Cossa made note of Dr. Pujari’s tone in making the statement, as she felt that he had “the clear message of ‘putting me in my place’ ” (DSB-2102 at para. 29).

Ms Stockton stated that if the Area decided not to continue using the CLAs, then the Area would need a strategy to replace them. She stated Dr. Pujari’s response to this idea was that he “will worry about that at the time” and that he has a “‘drawer full of resumes’ of people who want to teach here.” Ms Stockton stated she asked Dr. Pujari if she could see the drawer, but he said he was not able to show her (DSB-2111 para 81). Ms Stockton also noted Dr. Pujari sent out emails on more than one occasion asking Area members if they knew anyone who could teach a course to contact him. This was an indication to Ms Stockton that there was no drawer full of resumes (DSB-2111 at para. 81).

Mr. Vilks also stated that Dr. Pujari stated he had a “drawer full of resumes” and testified that he interpreted that as a message from Dr. Pujari that he could “simply be replaced” (DSB-2100 para 102).

Dr. Pujari denied making the comment “drawer full of resumes” however he did admit he made a similar comment. He explained that he had a “few sleepless nights” which contributed to being frustrated in the meeting and testified under cross-examination that he “keeps getting lots of emails about CVs... and some of these CVs in fact I get from Dean’s Office. ‘Drawers of resumes’ is not something I said because there is no drawer, and everything is internet--electronic. But it came out very bad.” Dr. Pujari admitted that he made the statement in respect to the CLAs. Dr. Pujari further admitted he regretted making that statement, and such a statement was inappropriate.

Counsel for the CLAs submitted Dr. Pujari was aware of the vulnerable position the CLAs were in at the DSB. At the time these statements were made, the CLAs were “desperately” seeking conversion, but Dr. Pujari’s response was he had a “drawer full of resumes” to replace them. Counsel drew attention to Dr. Pujari’s admission that the statement was inappropriate. Counsel also referred to Dr. Pujari’s testimony in the 002 portion of the hearing, where Dr. Pujari testified he was personally and professionally affected by a senior faculty member threatening his future at the DSB and threatening reprisal.

Counsel for Dr. Pujari stated his client denied that he made the statement directly to Ms Cossa. Under cross-examination, Counsel argued Ms Cossa’s memory was not clear on the issue and her recollection probably stems from the public comment Dr. Pujari made. It was conceded the public comment was made by Dr. Pujari, who knew the CLAs were upset about not being converted. When it was suggested to him that the CLAs would leave the DSB or resign, Dr. Pujari responded with his “drawer full of resumes” comment. Dr. Pujari’s counsel called the response a “natural reaction” when one is in Dr. Pujari’s position and someone hypothesizes or threatens to quit their job. His response, it was argued, was candid and within the ambit of academic freedom. However the statement was not harassing in the context of the issue of

resourcing within the DSB. Counsel submitted if, in fact, the CLAs did leave the CLAs would necessarily be replaced and this is something Ms Cossa acknowledged under cross-examination.

### *The September 2008 Area Meeting*

The SML/HSM Area met on September 25, 2008, to discuss the conversion of the remaining five CLAs. Dr. Pujari stated that the hiring process, as set out by the Dean, was followed in this meeting since “[i]t was required of me that I follow these rules as set out in this process and I did so.” (DSB-2291 at para. 215). Dr. Pujari stated he explained to the CLAs that the process included the criteria of “teaching effectiveness, pedagogy etc.” which was circulated by Mr. Bates and used by the selection committee (DSB-2291 at para. 217).

Dr. Pujari testified the T&P Committee was reminded the DSB had been allocated six teaching-track positions, but two had already been filled, leaving only four allocations. Dr. Pujari testified a majority of the T&P Committee determined two (2) teaching-track positions for the SML/HSM Area would strike a good balance between teaching-track faculty and tenure-track faculty. Dr. Pujari provided further information regarding the process used in that meeting to select successful candidates (DSB-2123 at para 96):

“The committee agreed that, as per the process, existing contractually limited positions (based on courses CLAs teach) needed to be converted to teaching-track position first and then the committee would further recommend that the relevant CLAs’ appointment be converted into appointment as teaching-track assistant professors.”

In cross-examination, Dr. Pujari suggested he had in fact advised candidates for conversion to consult the Centre for Leadership and Learning for advice on how to prepare their teaching dossier to submit in preparation for consideration for conversion.

Dr. Hupfer testified that in the meeting there were no formal criteria ranking of candidates for converting the CLAs. Only tenured faculty and no tenure-track faculty were at the meeting, unlike other past Area hiring decisions. Contrary to the testimony of Dr. Pujari, Dr. Hupfer stated that during the meeting there was no discussion about potentially converting all 5 CLAs. Rather, she testified this had already been discussed and it was understood that only 2 CLA’s would be recommended for conversion. Dr. Hupfer testified the rationale provided was that for every CLA that was added in the Area, they would lose one potential tenure-track faculty hire.

With regards to the process in the meeting, she stated in her affidavit (DSB-2107 at para. 29):

“This whole meeting was so shocking for me that I honestly remember little about it in concrete terms. ... I felt that the whole process of deciding who would be converted was quite flawed in that, as far as I remember, we just seemed to focus on who taught which courses or participated in which programs. We had their dossiers but did not refer to them in any depth. We also did not

have any kind of a formal ranking system which we have had for every other hiring decision that I have been involved in here.”

Dr. Hupfer testified that while the committee had the dossiers of all five CLAs at the meeting, they did not discuss the dossiers. She stated the process used to select which CLAs would be converted was as follows: Each committee member was given two pieces of paper. Each member would write down one course on the paper. The results would then be tallied and the person whose course received the highest number of votes would be converted first. She stated that since the CLAs are “so closely identified with courses, if you pick a course, you pick a person really.” Dr. Hupfer further testified she did not agree with the process, however she did not protest to Dr. Pujari during the meeting. She also stated she was very upset by this process and that there would only be two candidates selected. Dr. Hupfer stated she was “embarrassed to death” as a result of this meeting, and it was the first time she had ever cried after a meeting. As a result of her distress, Dr. Hupfer stated she did not remember exactly what happened at this meeting Area meeting.

After the conversion meeting, Dr. Hupfer emailed Dr. Pujari on September 26, 2008, and told him she felt “rotten” about how the CLA conversion meeting took place (DSB-2664). She acknowledged in the email that she did not disclose the discussions from the meeting with Ms Cossa or Ms Stockton, but they had asked her and emailed her to see if she was alright, since the two CLAs told her she seemed upset and sad. Dr. Hupfer wrote to Dr. Pujari and said she told Ms Cossa and Ms Stockton that she was tired but she did not want to avoid the issue. Dr. Hupfer confirmed she wanted to be at the meeting informing the CLAs of the Committee’s decision so she could apologize. Dr. Pujari replied saying he would submit the Committee’s recommendation to the Dean on the Monday and inform Mr. Vilks, Ms Cossa and Ms Stockton of the decision separately. Dr. Hupfer immediately replied and provided Dr. Pujari with further feedback from the meeting. She wrote:

“I was unable to rank them. They are all remarkable teachers... They also all make a contribution to pedagogical research / innovation / publishing and so satisfy that criteria as well. My strategy in voting was to pick the people who teach the two lowest level courses, in the hopes that by the time we had to worry about covering upper level courses, perhaps our situation would be better and we could convert more people.”

The SML/HSM Area T&P Committee decided to convert Mr. Malik and Mr. Ryder to teaching-track faculty based upon the courses they taught. Dr. Pujari reported the results of the meeting to Mr. Bates in a memorandum dated September 29, 2008. The Committee’s recommendation was reported as follows (DSB-1330):

“1. The existing contractually limited position with responsibilities to teach 3MC3 and 4ME3 courses be converted to a teaching-track position. Mr. Mandeep Malik teaches these courses. The selection committee further recommends that the appointment of Mr. Mandeep Malik be converted to a teaching-track assistant professor starting July 1, 2009.

2. The existing contractually limited position with responsibilities to teach 4SE3 and 3MC3 courses be converted to a teaching-track position. Mr. Marvin Ryder teaches these courses. The selection committee further recommends that the appointment of Mr. Marvin Ryder be converted to a teaching-track assistant professor starting July 1, 2009.”

The remaining CLAs testified they did not receive an explanation addressing why the Committee chose to convert only two CLAs or how the Committee decided who they would recommend for conversion. Ms Cossa commented that “when something is tenure oriented, you should be getting some kind of direction. There was no comparison, no ranking opportunity, no criteria. These are our careers. I don’t know how that could be considered a fair process.” Counsel for the CLAs submitted there is no point in preparing a good dossier if it is not considered in the evaluation process and a fair process was not used to select the candidates for conversion.

#### **Dr. Pujari Informs CLAs of T&P Committee’s Decision**

Ms Cossa testified that when Dr. Pujari informed her of the Committee’s decision on September 29, 2008, Dr. Pujari was evasive in answering her questions. Dr. Pujari would not disclose the criteria used for the selection process, only stating that “it was very close”. Ms Cossa further stated Dr. Pujari refused to let the Area T&P Committee reconvene to discuss the issue.

On the same day, Dr. Pujari allegedly approached Mr. Vilks’ office and, from the hallway, said: “I have no obligation to tell you but I am doing it as a favor, and your request to get on the teaching-track has been denied.” Mr. Vilks submitted he was surprised Dr. Pujari would deliver such a message in the hallway. In the ensuing discussion, Dr. Pujari said to Mr. Vilks the request was denied because Mr. Vilks “did no pedagogical research”. Mr. Vilks told Dr. Pujari his rationale was not fair because his contract stated there was no evaluation component for research, and that he would be evaluated primarily for his teaching and to a lesser extent his service. Mr. Vilks testified Dr. Pujari repeated he did not have an obligation to discuss it with him and walked out the door.

Dr. Pujari suggested Mr. Vilks’ account is “a work of fiction”. Dr. Pujari testified that when he went to tell Mr. Vilks of the news, Mr. Vilks turned his back and started to work on his computer while Dr. Pujari attempted to explain the situation.

Ms Stockton stated Dr. Pujari met with her on September 29, 2008, and informed her she had not been selected. When she asked why not, Dr. Pujari allegedly said that “he did not have to tell her why” and that “it was not a performance review.” When further pressed for an explanation, Dr. Pujari allegedly told her “you either got it or not.” Dr. Pujari testified Ms Stockton was angry and refused to listen to him when he attempted to explain the Committee’s decision. As well, he testified she kept asking him why the Committee selected the other candidates.

**CLAs Request Written Feedback in October 2008**

The three CLAs wrote an email to Dr. Pujari and the entire Area T&P Committee on October 1, 2008 (DSB-0427) at 4:23pm, requesting formal written feedback to “understand the aggregate decision-making criteria (and corresponding weighting factors) that ultimately lead to the Committee’s verdict. ... [W]e presume that some formal methodology was used. ... Without such knowledge, we cannot assess our future employability in the area.”

At 4:51pm on October 1, 2008, Dr. Bart sent a blank email to Dr. Pujari with the subject line of “your response should also be VERY brief” (DSB-1997).

At 6:44pm on October 1, 2008, Dr. Pujari replied to Dr. Bart and wrote (DSB-1997):

“How about the following:

‘The selection committee followed the guidelines designed by the Dean. There was no objection by any member of the selection committee re the process that was followed in the selection committee meeting.

Pl. Contact the Dean if you have any concerns about the process’.

If the Dean puts me under pressure to give a detailed feedback, I will say the following: “This is a selection committee rather than a tenure and promotion committee. This is a recruitment issue rather than tenure or promotion issue. So, the committee is not obliged to tell the candidates detailed feedback on strengths and weaknesses, ratings, etc.”

On October 6, 2008, Dr. Pujari responded to the three CLAs.

“The selection committee followed the guidelines provided by the Dean. There was no objection by any member of the selection committee re the process that was followed in the selection committee meeting. For this, the Area Chair is accountable to the Dean. With regards to providing ‘specific details on individual strength and weaknesses’, please note that this was a selection committee which met to take hiring decisions for teaching track positions rather than to provide performance reviews.”

The CLAs interpreted Dr. Pujari’s “performance reviews” statement as a derogatory remark.

**Dr. Ray’s Comments**

The CLAs also alleged Dr. Ray made certain comments related to them contrary to the Policy. On October 14, 2008, an email conversation took place where Dr. Pujari initially asked Mr. Bates and Dr. Head about a policy change made by the Faculty Council regarding the recruitment process and two presentations that tenure-track candidates would have to make. The

discussion then led to an analysis of the forms for feedback on visiting candidates. In response, Dr. Ray replied: (DSB-2036):

“... I am pretty sure anyone and everyone can be A+ in the service [sic] component. ... On teaching - to be very honest, my own personal benchmarks for rookies are not very high. ... I do not expect them to be running exec ed classes for mid-career managers in the first couple of years of their career anyways (that privilege should be reserved for the more seasoned turkeys). ... ”

Dr. Ray further explained his comment in an email the next day:

“...my comment was generic and wasn't particularly aimed at your program. All it meant was that in a research intensive university, the "privilege" of teaching in exec-ed programs should be extended to "seasoned" faculty - aka - those with significant teaching experience at the graduate level and those with an established research portfolio. That is not in doubt, is it? It does not of course rule out some role of hired guns from the industry to give industry specific discourse in the exec-ed programs, or other outliers (e.g. consultants with broader experiences) - except that outliers are just that.”

Dr. Ray then went on to explain his comments and provided his understanding of the criteria for hiring “rookies” for a tenure-track position in the detailed email.

The three CLAs stated they interpreted the comment as a derogatory reference to the CLAs and their value of teaching. The CLAs also alleged Dr. Pujari’s lack of objection to the comments was inappropriate.

Dr. Ray testified his reference to “A+ in the service component” was a reference to his belief that the Dean and Chair exercise a significant degree of discretion in assigning A+ in the service component during the CP/M assessments. In the context of the discussion, Dr. Ray felt his comments acknowledged there is a high probability that “rookie” candidates, being those candidates fresh out of Ph.D. programs, may be granted an A+ in the service component for committee work that would be important (from the administration’s perspective) but not in the same way as research and teaching.

Dr. Ray further testified his “seasoned turkey” comment was not made in respect of the CLAs. He stated he was making a generic reference to experienced faculty and there was no explicit or implicit reference to the CLAs, nor was he using the term disparagingly. Dr. Ray stated at an Area meeting on January 28, 2009, where the comment was brought up, he clarified he was not aware the comment was considered disparaging; it was not directed towards any group; it was in fact meant as a light-hearted comment referring to experienced faculty members; it was an expression acknowledging experience; and if the remark unknowingly hurt someone,

he regretted it. Dr. Ray felt the discussion was consistent with the principles of academic freedom, especially the notion that academic freedom does not require neutrality.

Mr. Vilks testified he remembered Dr. Ray saying that the CLAs were “different”. He recalls feeling offended and he said to Dr. Ray: “I’m really sorry you feel that way” (DSB-2100 at para. 62).

Dr. Ray stated he does not believe he used the term “different” pejoratively and that Mr. Vilks misinterpreted the statement. Dr. Ray explained the “different” nature of the CLAs is evident, by virtue of their responsibilities, limited term contracts, and their contractual categorization. He does not recall the exact circumstances in which he allegedly used the term, but he recalls telling Ms Cossa that while he had nothing personal against her, for him the proportion of research resources is a design issue, meaning the Area needed a certain level of research faculty to make a strong Marketing Area. Dr. Ray also stated Ms Stockton may have personally alluded to her difference by “boldly stating her position that tenured/tenure-track should not be teaching in the MBA program.” Dr. Ray called such context and meaning of those conversations as “perfectly normal” (DSB-2295 at para. 142).

### **Ms Cossa has concerns about her CP/M Scores**

In 2009, Ms Cossa expected to receive an “A+” for the teaching component assessment rating of her CP/M scores. Instead, Dr. Pujari recommended a rating of “A”. In April 2009, Ms Cossa went on maternity leave, thus there were no teaching evaluations to draw upon for the Fall term of that year. There were, however four sections of students that had evaluated her in the courses she taught in the Winter term of 2009. She stated the average median evaluation for those courses was an 8.75. Based on this average, she stated her initial Teaching Component Assessment should have been an “A.” Based on the CP/M guidelines in the DSB, an “A” rating covers a range of 8.5 to 9.0. Ms Cossa also stated she had been nominated for an MSU Teaching Award, which would then increase the rating to an “A+.”

Further, Ms Cossa stated Dr. Pujari conveyed incorrect information to her. When Ms Cossa asked Dr. Pujari how her rating had been calculated, she stated Dr. Pujari shared the following (DSB-2102 at para 70):

“We take an average of the teaching evaluation scores that are submitted in the Annual Activity Report. As you were on maternity leave during a part of the year 2009, we put same ratings as for the last year for your teaching and service components. This was accepted by the Dean.”

Ms Cossa did not agree with Dr. Pujari’s explanation, because she did not want her 2008 evaluations used to assess her 2009 rating when there were fresh evaluations from 2009 that should have been used. She also felt disadvantaged that since she had gone on maternity leave, her 2009 achievements were being ignored.

Ms Cossa stated the Dean supported her position and did not support Dr. Pujari's. The Dean brought forward a change in the rating to the attention of the Provost, who subsequently changed the Teaching Assessment to an 'A+'.

Dr. Pujari denied Ms Cossa allegations. He stated he had alerted the Dean and Associate Dean to Ms Cossa's leave status. Dr. Pujari wrote a note on the Area's CP/M recommendation that said "Maternity leave, same as last year- to discuss". He stated he also sent a note to the Dean's office that read, "I will appreciate if you send me your questions or concerns before the meeting." At the meeting to discuss the CP/M ratings, Dr. Pujari said the Dean ignored his note about Ms Cossa and instead took the time to reduce his and Dr. Bart's ratings, while trying to increase Dr. Flynn's rating. He stated he was then abruptly told that the Dean and Associate Dean did not have any time to discuss anything else. (DSB-2291 at para. 262). When Dr. Pujari contacted Ms Cossa, he explained to her he put the same rating as the previous year for teaching and service, which was accepted by the Dean. However, Dr. Pujari noted there was a typo error in the service rating, where the 'A-' should have been an 'A', but this would not change her final CP/M award. After Ms Cossa explained her rationale to Dr. Pujari and the Dean, Dr. Pujari replied and agreed with her, saying the issues need to be discussed.

In a subsequent meeting to discuss the issues, Dr. Pujari stated the Dean told him that "we missed this one," which Dr. Pujari took as the Dean blaming him. The Dean informed Dr. Pujari he would take the new recommendation to the Provost, who ultimately accepted the increase.

### *Dr. Taylor's Posters*

Dr. Taylor regularly affixed posters to his door outside his office at the DSB and the Tribunal was presented with copies of 158 pages of posters publically posted by Dr. Taylor. The posters mainly featured an unattributed statement, in varying colours and fonts, on a white background, sometimes accompanied by clip-art images and borders. The theme of the posters included politics, leadership, healthcare, religion, holidays, and motivation. Those posters which are particularly notable to the Tribunal included the following phrases (DSB-0456, and DSB-1356 to DSB-1368 inclusive, a selection of which is found in Appendix P):

- "Those who take the middle of the road... get run over. [NB. This poster featured a large clip-art image of the front of a transport truck in between the statement.] (posted May 19, 2009)
- Some people are like Slinkies... Not really good for anything... But they still bring a smile to your face when you push them down a flight of stairs. [NB. This poster featured an image of a Slinky.]
- Trust requires merit.
- Only fools and dead people never change their minds.
- In to-day's socio-political climate, the truth is irrelevant.

- In today's culture war, there is no free speech for those who disagree with the political correct.
- Only the dead shall see the end of war. –Plato
- Never throw dirt... you only lose ground.
- There is no second prize in a war.
- Support our troops.
- Never underestimate the strength of envy in world history. The strongest thing about the weak is their hatred of the strong.
- A leader without followers is just a person taking a walk.
- Taylor's Law: 'The probability of someone watching you is proportional to the stupidity of your action.' (I wish I could take credit for this but actually Dr. Kwan brought it to my attention... what did he mean by that?)
- People don't fail because they can't achieve their goals. They fail because they stop just short of achieving them.
- THERE IS NO I IN TEAM
- Strong and bitter words indicate a weak cause.
- Great minds discuss ideas. Average minds discuss events. Small minds discuss people.
- Never let fear or common sense get in the way.
- Irony. The opposite of wrinkly.
- Those who exchange freedom for security deserve neither. – Benjamin Franklin.
- Remember, there are no bad crews, only bad leaders. --Lt. Jane O'Neill U.S. Navy Seal.
- Homes of the free because of the brave."

Dr. Taylor stated he often put the posters up in the evenings due to the fact that after the HLI was closed he withdrew from the DSB and was usually not present during normal business hours. He further indicated several posters were related to his lecture topics. The leadership posters were not intended as a critique of Mr. Bates.

With regards to the "middle of the road" poster, Dr. Taylor's in-chief evidence was that he put up the poster in relation to the teaching of his health management course, in response to his frustration that individuals at their level of preparation seemed to be unable to form a direct opinion. When questioned by the Chair, Dr. Taylor stated this poster was put up on or about May 19, 2009. He also stated he does not teach the health management course in the summer term, since it would have concluded with the rest of the Winter term courses in the month prior.

The Tribunal received evidence that the "Slinkies" poster was not related to lectures or course materials. Dr. Taylor stated the poster was "simply an attempt at what I thought was humour. Many of the posters not shown were based in humour, but not in reference to anything in particular."

Dr. Taylor's evidence was that 80 to 90 percent of the posters were original posters, meaning he created them himself using Microsoft Word and clip-art images. The "middle of the road" and the "Slinkies" poster were two such posters.

Dr. Taylor stated he regrets if some people thought the posters were contributing to a poisoned workplace but he found the posters "humorous" and "funny." In fact, Dr. Taylor stated in his oral evidence "despite all this, I still have a sense of humour. I still think it's funny." However, when shown the "slinky" poster, Dr. Taylor stated he "wasn't putting the two thoughts together at the time, but in hindsight, yes that one poster was inappropriate."

Counsel for the CLAs reminded the Tribunal Dr. Taylor previously testified, because he found the DSB workplace so poisoned, he stopped coming to the DSB but he still found the time to put posters up outside his door. Counsel submitted the posters were inappropriate and contrary to the Policy.

Mr. Vilks alleged the "Middle of the Road" poster was particularly harassing and intimidating. He interpreted that particular poster as a threat to him, since he viewed the poster two months before Mr. Bates' second appointment as Dean began on July 1, 2009, and he was a known Dean Bates supporter. Dr. Flynn also confirmed he felt the poster was harassing.

Two non-party witnesses testified with regards to the posters. Mr. Marvin Ryder testified he perceived the postings as being directly related to attacks on the Dean. Ms Patricia Wiebe, the Area Administrative Assistant, said she was offended by some of the posters and that she personally took down a posting she found especially offensive.

On May 19, 2009, Mr. Vilks emailed his Area Chair, Dr. Pujari, with concerns about the "middle of the road" poster. Dr. Pujari was advised that several people had approached Mr. Vilks asking if he had seen the "threat" appearing on an office notice board. He told Dr. Pujari he felt the poster was a threat to him, since he was known to be a Dean Bates supporter. Dr. Pujari's response included the following (DSB-0457):

"...By your own admission, you are not the one who seems to have taken the 'middle road' (in the context of either taking a position to oppose some tactics or in favor of tactics), so the posting doesn't seem to be directed towards you. Peter, I have noticed that several people put caricatures, Dilbert jokes or proverbs outside their offices or put them in their email signature or even send some proverbs on emails while communication with colleagues in the School. Each one of them can be interpreted differently because context is either not known, not explicitly stated, or not clear... I hope you feel relaxed. In my view, this posting is not directed towards anyone. ..."

Dr. Pujari then wrote if Mr. Vilks still felt threatened by the posting, he could submit a formal complaint which Dr. Pujari suggested he would then investigate.

Mr. Vilks stated he did not approach Dr. Taylor directly because he did not feel comfortable approaching him and therefore, Mr. Vilks felt it was appropriate to approach his Area Chair about the issue. Counsel for Mr. Vilks submitted Dr. Pujari did not actually view the poster before he replied to Mr. Vilks. Dr. Pujari ignored Mr. Vilks' comment that he had personally felt threatened by the poster. Counsel for Mr. Vilks also reminded the Tribunal that Dr. Taylor testified that had someone asked him to take down the poster he would have done so however, Dr. Pujari did not do so.

Dr. Pujari confirmed he did not view the poster until later. Dr. Pujari stated he was aware of the numerous posters around the DSB. Dr. Pujari admitted on cross-examination he did not approach Dr. Taylor after receiving Mr. Vilks' email, because this issue was a "grey area" for him. For the particular poster Mr. Vilks complained about, the "middle of the road" poster, Dr. Pujari testified it was too open to interpretation. He felt if he asked Dr. Taylor to take down the poster, he would have had to ask everyone to take down their posters. He was unsure of whether he was overstepping his boundaries as Area Chair by doing so. After several questions by counsel under cross-examination, Dr. Pujari reluctantly admitted he should have talked to Dr. Taylor regarding the poster.

Counsel for Dr. Taylor stated that Mr. Vilks had expressed some displeasure with the truck poster and even complained about it to the Area Chair, Dr. Pujari, but he did not advise Dr. Taylor about this issue. Counsel further submitted the poster would have been removed almost instantly had Mr. Vilks alerted Dr. Taylor, as Dr. Taylor had done on two previous occasions when requested to by Dr. Hupfer and the Dean of Students, Dr. Phil Woods.

Counsel for Dr. Taylor argued he did not believe any of the posters can be interpreted as an attempt to intimidate or harass the CLAs to follow those that opposed to Mr. Bates' second appointment. Counsel submitted Dr. Taylor explained the truck poster simply encouraged his students to take a position, specifically on health issues, and not remain in the middle of the road.

**Dr. Taylor identified Mr. Vilks as a "Stormtrooper"**

Dr. Taylor sent an email on January 20, 2009 (DSB-1634), to Drs. Chamberlain, Pujari and Bart. Dr. Taylor's email responded to Dr. Chamberlain's question of whether Mr. Vilks supported the Dean's second appointment. In reply, Dr. Taylor wrote "To the best of my knowledge, he is 100% behind Bates. Flynn, Bontis and Vilks are Bates's stormtroopers." On cross-examination, Dr. Taylor stated he had "no regrets whatsoever" in sending that email. Dr. Bart agreed on cross-examination that the "stormtroopers" statement was inappropriate, because it could lead to a perception of bias. Dr. Pujari also admitted that it might lead to a perception of bias. Despite these concerns expressed in testimony, counsel for the 003 Complainants highlighted that no individual 003 Respondent disclosed the email. Furthermore, no individual 003 Respondent in receipt of the email expressed a conflict of interest or concern about bias in the process of considering Mr. Vilks for reappointment as a CLA or conversion to a teaching-track professor.

When asked about the email, Dr. Bart stated that in hindsight, the email was inappropriate because it could lead to a perception of bias. When Dr. Connelly was presented

with that email in addition to others, she said she would have no confidence in the people involved in the email discussions voting on her case for tenure if she was the subject of the emails. Dr. Chan agreed that the email could lead to a perception of bias. Counsel for Mr. Vilks stated Dr. Connelly's testimony was especially reasonable and credible given that she is a non-party to the hearings, was not a member of the G21, and was not aware of the vast majority of the events the Tribunal is tasked to review. Counsel also submitted Dr. Pujari and Dr. Bart received the email and did not identify it as inappropriate or stop the subsequent comments.

Mr. Vilks called the email "wholly inappropriate and a clear indication of malice towards me, Dr. Bontis, and Dr. Flynn" (DSB-2100 at para. 31). In his oral testimony, Mr. Vilks explained his understanding of the roots of the term "stormtrooper" in the World War I context, as the type of German soldier who had been first used in 1915. Mr. Vilks stated their first siege was in Riga, Latvia, his hometown. Mr. Vilks took the statement as a very personal comment, and also as an attack of his character.

In his affidavit, Dr. Taylor explained he used the term "stormtrooper" to refer to "those individuals who, in [his] view, were willing to support Dean Bates on virtually any issue without reservation," also noting that "emotions were running very high at the time" (DSB-2290 at para. 15). In his testimony, Dr. Taylor explained he has a "different point of reference" for the term "stormtrooper" and proceeded to inform the Tribunal, at length, of his interpretation. He testified each of the seven Canadian generations of his family has served in the Armed Forces, although he is the only male in his family who has not served. Dr. Taylor explained the "stormtrooper" term originated in World War I, where two of his great uncles fought. One uncle fought at the Somme, where many Canadians perished; at Vimy Ridge, where Canadians were led for the first time by their own generals instead of English command; and at Passchendaele. In the battle at Passchendaele, Dr. Taylor explained, Canadians used for the first time, 'shock' troops, or those troops to go over the trench first. Today they would be otherwise known as 'commandos' (a role in which his father served), or also known as the JTF2 (in which his nephew and cousins currently work). These soldiers in World War I went on to be known as "stormtroopers" by German generals. Dr. Taylor referred to a quotation from a German general, in the Maple Leaf Newsletter made for soldiers at war, describing the soldiers: "they were like a storm... they would never stop, they were efficient, relentless." The German general's version of "shock troops" was "stormtroopers". Dr. Taylor stated he inherited his family history, heritage and the use of that word, which may be "different than other people's interpretation". Dr. Taylor also stated that "I only wish that people had a better understanding of Canadian history and the role of the military in our history, to understand some of these things, which most people don't appreciate."

Dr. Taylor confirmed his perception that the three CLAs were very strongly aligned with Mr. Bates, and were therefore going to do whatever he wanted them to do. Dr. Taylor further characterized the term, "stormtroopers" as a complimentary and positive term, as in a loyal person who going to work hard for someone. When asked on cross-examination by Mr. Avraam in the 002 portion of the hearings whether he regretted sending the March 23, 2012 email, Dr. Taylor said he had "No regrets whatsoever." Dr. Taylor later testified, in the 003 portion of the Hearings in April 2012, that in hindsight he recognized the term can mean "other things to other people" including in Star Wars movies and pop culture. He said: "these days it comes up often

... [and] it can be misinterpreted.” He was not previously aware of Mr. Vilks’ Latvian roots and expressed regret that his family had to “go through that”. When questioned by the Tribunal whether he wanted to express some regret for his “stormtrooper” email, Dr. Taylor said “After hearing [Mr. Vilks’] story, I regret that it brought those emotions.”

Counsel for Dr. Taylor submitted none of the emails sent by Dr. Taylor, including the email that contained the “stormtroopers” reference, were vexatious or at least intended to be vexatious. Counsel stated none of the emails were ever intended to be received by the 003 Complainants and there was no course of action or repetition of his comments. As such, it was argued Dr. Taylor was never given an opportunity or warning to adjust his behaviour because his allegedly harassing behaviour was not pointed out to him as being unwelcome. Counsel stated Dr. Taylor was quite candid in saying he regrets that the “stormtrooper” reference brought up “those emotions because no one wants to hear those things.”

The CLAs stated Dr. Pujari refused in this environment to further discuss their request for conversion to teaching-track or place the topic on the agenda at subsequent Area meetings for discussion. The CLAs tried to put the issue in front of the Area on at least two occasions, including November 30, 2009, and August 27, 2010. In response to the November 2009 request, Dr. Pujari allegedly suggested the decision was the Dean’s to make. In response to the August 2010 request, Dr. Pujari stated he refused to consider conversion “until enquiries by the PACDSB and the HRES office are completed” (DSB-0527).

#### **Dr. Pujari and Dr. Bart’s Congratulatory Messages**

Mr. Vilks also alleged he was treated differently as a faculty member who was perceived to be a Bates supporter. Opponents of the Dean did not laud the accomplishments of the Dean’s supporters. However, they frequently congratulated one another. Mr. Vilks provided two examples. He received high evaluations for an MBA course taught in the summer of 2007, with median ratings of two 9s and one 10. Mr. Vilks stated Dr. Pujari sent him a hand-written congratulatory note for each of the three courses (submitted as evidence at DSB-2084-6). Subsequently, Mr. Vilks received even better evaluations (ten 10s and one 9). However, Dr. Pujari has not congratulated him on any of those evaluations.

When Mr. Vilks won an undergraduate teaching award in 2008, Dr. Bart sent him a congratulatory message. When he won again in 2010, Dr. Bart did not send a similar note. Mr. Vilks stated Dr. Bart only referred to it in passing at the gym several months later. At the same time, Mr. Vilks stated Dr. Bart continued to send congratulatory messages to other faculty who did not support the Dean, often for what Mr. Vilks calls “even the smallest accomplishments.” For example, Dr. Bart sent a congratulatory email to Dr. Ray, copied to the entire Area, for standing in as Acting Chair when Dr. Pujari was away for a few days (DSB-0502). Mr. Vilks stated every time he sees another congratulatory message he is reminded of his insignificance and vulnerability.

Dr. Bart testified “to congratulate someone is not harassment. To refrain from congratulating someone repeatedly is certainly not harassment.” Dr. Bart further stated he was “astounded” that Mr. Vilks, a former CEO of a utility company who has executive management

experience, expects the Tribunal to believe he is in a position of weakness and vulnerability (DSB-2292 at para. 65).

### *Involvement of HRES in November 2010*

The CLAs approached HRES after they were unsuccessful in their attempts to have the Area consider further CLA conversions. Mediation was offered in an attempt to resolve their issues. The mediation was coordinated by Mr. Komlen and HRES. The mediator met with the CLAs and Dr. Pujari separately on November 19, 2010. The Area T&P Committee was scheduled to meet and consider the reappointment of the CLA's on November 24, 2010. Emails were exchanged between Dr. Pujari and HRES after Dr. Pujari and the CLAs met with the mediator (DSB-1108-1117).

On November 20, 2010, Dr. Pujari emailed Mr. Mile Komlen (DSB-1108). Dr. Pujari wrote he did not sign the 'Agreement to Mediate' form given to him by the mediator because he did not, at that time, properly understand it. Dr. Pujari also wrote:

"The document refers to 'the parties' and 'attempting to settle the dispute'. I am writing to let you know that I am still not clear what 'the dispute' is, and who are 'the parties' to 'the dispute'. We probably need to sit down and talk more specifically about "the dispute" and "'he parties' before we go any further. I am busy with my teaching and T & P meeting this coming week until Wednesday... First week of December will work...."

Mr. Komlen replied to Dr. Pujari on November 23, 2010 (DSB-1108) and wrote the following:

"Hi Ashish. I have now had a chance to speak with the mediator, Mr. Andrew Baker. He has spoken with Peter, Linda and Rita, as well as yourself. It appears from his assessment that the three CLAs have complaints with regard to their appointments and denial of teaching track positions. Mr. Baker advises that he did speak with you about these issues and that you were aware of disputes that existed between you and these three CLAs. This is a matter that we are trying to resolve initially through mediation, although if we are unable to do so, they may be brought into the investigation and complaint stream. As such, you should now be aware that the mediation is intended to resolve the complaints between you and the three CLAs. I encourage you to continue participating in the mediation on this basis.

I understand that you are also involved with the decisions regarding the re-appointment of these three individuals. I have spoken with the Ombuds office regarding this situation and they confirm that you would be in a conflict of interest if you engage in

any decision-making with regard to these individuals, particularly since they have initiated complaints against you. Therefore, I am going to recommend that you withdraw from the appointments process regarding these three individuals until this matter is resolved, and that their cases be referred to PACDSB.

I am available to discuss this further if you wish.” (emphasis added)

Dr. Pujari immediately replied to Mr. Komlen on November 23, 2010, and also copied Dr. John Weaver and Dr. Graeme Luke as MUFA representatives, and Dr. Martin Kusy, the PACDSB member who spoke with Dr. Pujari about the issue. Dr. Pujari wrote (DSB-1109):

“I have a very different understanding of my meeting with the mediator. ... In the meeting, we talked about the process of teaching-track hiring and the fact that these three CLAs were not appointed to teaching-track position but I don't know exactly what the dispute is. If someone is not selected by the selection committee (T & P committee in this case), does it automatically become a dispute? I never said I was aware of any dispute. In fact, subsequent to my meeting with Andrew Baker, I wrote to you and asked you specifically what the “dispute” is who are the “parties” in the dispute. ... If there are any allegations then shouldn't they be investigated first rather than jumping to mediation. [sic] The mediator has not asked me any document in this regard.

In fact, teaching-track process is one of the serious incidents where I was harassed and was unduly pressured by the dean to violate the procedure that was set by the dean himself.

Months ago, I have talked to PACDSB in detail about the teaching-track appointment process and so far, I have not heard anything that suggests that I may have any bias against these three CLAs or that I violated any process/procedures. So, on what basis I am being removed from the duties of CLA assessment as Area Chair. I really am shocked to read your email.

I suggest the T & P meeting that is scheduled for tomorrow should be cancelled until these issues are resolved. I think the Ombuds office should be given full information and documentation about these issues.”

### **The November 24, 2010 Area Meeting**

On November 24, 2010, the Area T&P Committee meeting was scheduled and was held. An issue on the agenda was whether to reappoint the CLAs, whose contracts were expiring.

Despite Mr. Komlen's suggestion that Dr. Pujari recuse himself from determinations on the reappointment of the CLAs, Dr. Pujari convened the meeting and participated. At the meeting, the CLAs alleged Dr. Pujari spoke negatively about the CLAs' conduct and stated the meeting would need to be cancelled since there was a question of his conflict of interest.

Dr. Pujari testified given the confusion, mixed messages, and involvement of HRES, he adjourned the meeting by informing the Committee of his prior meeting with the mediator regarding the CLAs. Dr. Pujari sent an email to Mr. Komlen detailing the meeting and added the three members of PACDSB and two MUFA representatives, and explained he adjourned the Area T&P meeting after giving the following reasons (DSB-1110):

"Hi Milé

We started our T & P meeting today with regards to academic assessment of CLAs which I adjourned until further notice after giving the reasons as follows:

- Mr. Komlen has recommended that I should withdraw myself from this meeting because Peter, Linda and Rita have initiated complaints against me and it creates a conflict of interest. However, no specific complaints have been mentioned to me.
- I mentioned about my meeting with the mediator. I also mentioned that I was not offered the option to have MUFA observer in the meeting.
- Mediator clearly told me that this was the first meeting of several meetings that will take place for issues in my Area. We are yet to set the second meeting but the mediator seemed to have made a determination of my conflict of interest without seeing any document from me or telling me what exactly the complaint is.
- There was a mischaracterization of the my meeting with the mediator as I could understand from [Mr. Komlen's] email yesterday.
- No specific complaint or dispute were explained to me by the mediator except that these three CLAs are not happy about not getting teaching-track positions.
- Immediately after the meeting with mediator, I had specifically asked [Mr. Komlen] to tell me what the dispute is and who are the parties but I was not told.
- Last year, I chaired Area T & P committee meeting where contracts of two of the CLAs we renewed unanimously which means I voted for their renewal last year.
- I also mentioned in the meeting that all of T & P committee members who participated and voted in the teaching-track appointment meeting could be accused of having the same conflict of interest as I have been accused of. Why am I singled out? From my perspective none of the committee members have any conflict

of interest until we know what the dispute is and what the complaint is and what is determined based on the enquiry.

- Some time back, I gave all the documents relating to teaching-track appointments to PACDSB to let me know if I have done anything wrong.

My request to all: It should be resolved as soon as possible because the Dean has to inform the CLAs about the outcome of the academic assessment by December 15, 2010 as per Yellow Document.”

In his affidavit, Dr. Pujari suggested he did not make any disparaging comments about the CLAs and the Ombuds Office never communicated with him. He stated he was prepared to recuse himself from the meeting however, “it was important for me to understand what basis, if any, there was for my recusal.” Dr. Pujari also testified another PACDSB Member, Dr. Martin Kusy, attended the Area T&P Committee meeting and did not appear to have any concerns with the propriety of Dr. Pujari’s conduct. As well, such concerns did not appear in the PACDSB report.

Dr. Pujari, under cross-examination, agreed that he unilaterally did not put the CLA conversion issue back on an Area meeting agenda, despite knowing that other Area members wanted it on the agenda. Dr. Pujari explained he wanted to wait for the HRES and PACDSB reports. In the meantime, the CLAs stated the “six-year-clock” was running out. The renewal of their CLA contracts had to be decided on by the Area in November 2010, since Mr. Vilks and Ms Stockton’s contracts were set to end in 2011, and Ms Cossa’s contract expired in 2012.

Under cross-examination, Dr. Pujari conceded he knew he had at least two teaching-track positions available (with potentially more) because only 4 of the initial allotment had been filled. Dr. Pujari explained he did not discuss further conversions because he only had two positions and there were three potential candidates. He stated he did not want to go through that process again and be criticized.

### **Dr. Pujari’s Conduct After the November 24, 2010 Area Meeting**

Immediately after the November Area meeting, Dr. Pujari met with the PACDSB member, Dr. Susan Denburg, and explained why he was confused by the HRES email.

On November 24, 2010, after Dr. Pujari’s meetings with Dr. Denburg, Mr. Komlen sent Dr. Pujari an email which explained his previous email in great detail (DSB-1113). Mr. Komlen’s email included the following:

[T]he three CLAs could have brought formal complaints against you and would have had their own investigator assigned to them, but following my discussion with you in the hallway of MUSC a couple of weeks ago, we seemed to agree that mediation was a

better option. To have you now say that you were unaware of the parties or the issues is somewhat perplexing. ...

[I]t was not the mediator who made a determination of a conflict of interest, as you suggested. It was, in fact, the Ombuds Office who made this observation. In any case, it appears to be standard practice to recuse oneself from any decision-making concerning one's accusers, so my recommendation to remove yourself from the process was not intended as any sort of sanction, of which I have no authority to issue, but merely a RECOMMENDATION. This should probably have been done on your own accord without me or the Ombuds having to point it out to you. ...

[Y]ou state in your email below that immediately following your meeting with the mediator on November 19, you asked me to advise you what the dispute was and who the parties were, but that you were not told. ... I responded to you indicating that the parties were Linda, Peter and Rita, and that "the three CLAs have complaints with regard to their appointments and denial of teaching track positions". You confirmed in your note below that that this was indeed discussed with the mediator when you write: "No specific complaint or dispute were explained to be by the mediator except that **these three CLAs are not happy about not getting teaching-track positions.**" Therefore, you seem to have been aware of the dispute ..." [emphasis in original]

Dr. Pujari replied to Mr. Komlen in a detailed email on November 28, 2010 (DSB-1114), where he wrote the following:

"...From the outset, I must admit that I may have misunderstood the processes. I do find it difficult to understand different stages of these concurrent processes and I apologize if I haven't been paying enough attention to these. I have never worked in this kind of environment-PACDSB, HRES office, mediator, investigator, Ombuds, MUFA's role in grievances and T & P.....it is overwhelming for me. It is really difficult to understand all these in terms of who has what authority on whom for what decisions.....and what do these all mean to my own position as Area Chair. Your email has somewhat clarified and I thank you for that. After T & P meeting that day, I noticed that some of the members also have the similar concerns [sic] and questions and wanted to know from me. I did not have the answers.

Before we meet, let me try to explain a few things that became the sources of my confusion and frustration.

The mediator mentioned that CLAs are upset about not been [sic] selected for teaching-track positions as well as my disciplinary letter to Stockton (which is factually incorrect) and potential personal injury and reputation law suit by CLAs (or may be by Linda, it was not clear), area's general climate, how to split the area, which faculty may go into which areas, possible plans for CLAs to absorb in the school (executive prog, other types of contract) [sic] and we agreed to talk more soon as this was first of several meetings. The mediator also talked about me becoming a notional chair which I found surprising. And, then I got your email recommending me to withdraw from the CLAs' academic assessment. My immediate reaction was that I have been made a notional chair.

Honestly, I did think it as a sanction on me when you recommended me to withdraw from the assessment and I was puzzled because I am not aware of any reason because we talked so many issues [sic] during my meeting with the mediator. I don't even know who has the authority to put this kind of sanction [sic]. It sounded like it was the mediator's recommendation conveyed through you. And, I wondered what was happening. On one hand, I and mediator [sic] talked about possible solutions for the Area that included potential solutions for CLAs' employment in other ways (including a new Strategy Area after the Area split and then hiring more teaching professors by the Strategy Area), and suddenly I got the email from you which says that the mediator's assessment finds me in a conflict of interest for CLAs' academic assessment. [sic]

My understanding is that if someone is complaining against me, I should know the nature of the complaint or allegation (just like I am saying what the nature of my complaint is against the Dean). The CLAs through the mediator must tell me what the dispute or complaint or allegation is, e.g. did I harass them? Did I have any malice? Did I not follow the established process or something else? Is it unreasonable for me to ask what the nature of the complaint is? From my stand point, someone being upset for not being selected by the selection committee is not a complaint or an allegation. It is really not about anyone's 'happiness'. Parties in mediation should be made aware of exact nature of the complaint.

I can recuse myself from the academic assessment of CLAs to complete the process. ..."

In his affidavit, Dr. Pujari stated he offered to recuse himself from the Area T&P Committee meeting on November 28, 2010, although, he stated, he "had, at best, only a vague notion or sense of what the CLAs' grievances were toward me" (DSB-2291 at para. 229).

The next day on November 29, 2010, Dr. Pujari met with Mr. Komlen, Dr. David Wilkinson (PACDSB Member) and Dr. John Weaver (MUFA representative). At that meeting, Mr. Komlen informed him of the CLAs allegations. Dr. Pujari suggested this was the first time he became aware of the specific allegations. Dr. Pujari stated he immediately told Mr. Komlen he would be willing to recuse himself. Dr. Pujari stated Mr. Komlen asked him if it was a possibility that the CLAs would not be renewed. Dr. Pujari replied saying “we do not have tenure-track positions right now, there are plenty of sections to teach and the CLAs’ teaching record has been good. In this context, all three CLAs should be renewed without any issue and that the meeting would probably be very short” (DSB-2291 at para. 232). In his affidavit, Dr. Pujari states that Mr. Komlen then indicated to Dr. Pujari that he “did not need to recuse [him]self from the meeting. ... Dr. Wilkinson and Dr. Weaver both agreed with Mr. Komlen’s decision.” (DSB-2291 at para. 233).

### **Rescheduled December 2010 Area Meeting and CLA Reappointment**

At the rescheduled Area T&P Committee meeting two weeks later on December 9, 2010, Dr. Pujari did not recuse himself and chaired the meeting. Dr. Pujari voted in favour of renewing the three CLAs contracts and the final vote at the Area meeting supported the CLAs contracts being renewed.

The Provost, Dr. Ilene Busch-Vishniac, testified the University had worked with MUFA to secure one additional teaching-track position for the DSB to permit all three CLAs to be converted rather than two (DSB-2338 at para. 38), since a third conversion would have exceeded the DSB’s teaching professor cap.

Dr. Hupfer testified she asked Dr. Pujari in a subsequent Area T&P meeting why they did not then convert them to teaching-track. Dr. Pujari’s reaction was a heated comment that such a question was not on the agenda and would not be discussed. Dr. Longo testified he was strongly and aggressively challenged in a meeting by Dr. Ray and Dr. Pujari in response to concerns he raised about conversion of the CLAs, in or around January 2011. Dr. Ray suggested that Dr. Longo was inappropriately aggressive in questioning the Area Chair. Dr. Longo reiterated he was only expressing his concern. Dr. Hupfer corroborated Dr. Longo’s testimony. Dr. Hupfer confirmed Dr. Longo raised the CLA conversion issue and that he was criticized because the issue was not on the agenda.

On April 13, 2011, the Interim Dean, Dr. McNutt, wrote to Dr. Pujari and provided an excerpt of the T&P Policy regarding the conversion of the CLAs. Dr. McNutt noted, “Since all three of the CLA faculty members have held their positions for more than six years, they must each be offered the position” (DSB-0726).

On April 16, 2011, Dr. Pujari emailed Dr. McNutt and acknowledges receipt and approval of the April 13, 2011 letter. Dr. Pujari insisted the sequence of comments made with the Interim Dean in previous discussions be clarified, since it was “critical” that it be recorded accurately (DSB-1149 or DSB-0727). Dr. Pujari clarified:

“To be clear, and for the record, you mentioned in our first discussion ... that as per University rules, [the three CLAs] must be offered teaching-track positions as they have worked here for more than six years and the University has given 2 more positions. I replied by saying that I agreed if this is what the rules say. I also asked if there is any role for the Area Chair to which you replied that it was the Dean’s responsibility. I then agreed that it was fine with me and suggested the plan of having [the three CLAs] in the proposed new SMHP Area...”

Dr. Pujari noted in his affidavit that “[v]ery interestingly, after Bates resigned in March 2011, it took almost no time, and very little effort on my part to get remaining CLA’s appointed to Teaching Track positions” (DSB-2123 at para. 100). In support of this assertion, Dr. Pujari referred to two emails, DSB-1141 and DSB-1149. DSB-1141 is an email from Ms Pat Fraser, the Executive Officer of the DSB, dated March 14, 2011, where she informs Dr. Pujari that Interim Dean Dr. Bob McNutt has been informed that the allotment of teaching-track appointments for the DSB has been increased from six to eight. The document at DSB-1149 is excerpted above.

Mr. Bates called Dr. Pujari’s above statement “outrageous.” In his own words, Mr. Bates testified that (DSB-2337 at paras. 78 and 80):

“[e]ven though it was obvious to everyone that what Dr. Pujari was doing was trying to extract tenured and tenure-track positions at the expense of our CLAs, he tries to blame me for the delayed conversion of our remaining CLAs. ... It is apparent from the exchanges [with Dean McNutt] that Dr. Pujari did nothing to assist the conversion of Ms Stockton, Mr. Vilks and Ms Cossa from contractually limited appointments to teaching-track positions. Dr. Pujari attempts to take credit for their conversion, but it is obvious from the documents that he had no choice. The University rules mandated this conversion, and based on Dr. Pujari’s statement regarding whether there was any role for the Area Chair, it is clear that he would have thwarted this attempt if given the choice.

### **Relevant Jurisprudence**

Counsel for the CLA Complainants submitted case law with regards to the complaints related to CLA conversion. The Supreme Court formulated the test for determining whether a reasonable apprehension of bias arises in *Newfoundland Telephone v. Newfoundland Board of Commissioners of Public Utilities* (1992), 4 Admin. L.R. (2d) 121 (S.C.C.) at paragraph 133 in this way:

“It is, of course, impossible to determine the precise state of mind of an adjudicator who has made an administrative board decision. As a result, the courts have taken the position that an unbiased appearance is, in itself, an essential component of procedural fairness. To ensure fairness the conduct of members of administrative tribunals has been measured against a standard of reasonable apprehension of bias. **The test is whether a**

**reasonably informed bystander could reasonably perceive bias on the part of an adjudicator”** [emphasis added].

In addition, Justice De Grandpré wrote in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at p. 394 that:

“... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is “what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that the [the decision-maker], **whether consciously or unconsciously**, would not decide fairly.” [emphasis added].

Furthermore, as noted by the Supreme Court of Canada in *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259, at para. 58:

“...impartiality is the fundamental qualification for a judge, and this, of course, is true for administrative tribunals such as ours. Impartiality, however, is not an absence of prior experience with the issues in question, but rather means **having an open mind which is open to persuasion.**” [emphasis added]

Counsel for the CLA Complainants also directed the Tribunal’s attention to the case of *Benedict v. Ontario* [2000], 2000 CanLII 16884 (ON CA), at paragraph 35:

“In circumstances like this case, it is only the judge who knows the particulars that could give rise to apparent bias should the judge hear a case. Where a judge perceives a potential self-interest, especially where the circumstances may not be known to the litigants, he or she should withdraw from the case or should raise the potential problem and make full disclosure of all the relevant facts prior to, or at the outset of, the proceedings. Where any party takes the position that a reasonable apprehension of bias exists, the judge must carefully weigh that submission and when in doubt should disqualify himself or herself.”

Counsel for the CLA Complainants emphasized the recusal of Dr. Pujari was necessary because the best person to know whether there is a bias or an appearance of bias is the person who is making the decision. That person, in this case Dr. Pujari, had all of the facts and should have recused himself. Counsel reminded the Tribunal the 003 Complainants did not know all the G21 activities. The 003 Complainants filed their Complaint before the disclosure, which included G21 emails discussing “taking the school back” and, in the words of counsel, “stacking the committees.” In contrast, the individual 003 Respondents, including Dr. Pujari, were aware

of the surreptitious discussions and had a positive obligation to disclose those concerns or to recuse themselves.

### **Tribunal's Findings**

The evidence outlined above together with our general findings in the 003 Complaint established Mr. Bates and his perceived supporters were being disparaged in the G21 emails and that strategies were identified and acted upon. The Tribunal preferred the evidence of Ms Cossa, Mr. Vilks, and Ms Stockton to that of Drs. Pujari, Bart, Taylor and Ray where it conflicted and there was no other corroborating evidence which was reliable and credible. Mr. Vilks, Ms Stockton and Ms Cossa were in a vulnerable employment position and were indeed held "hostage" as suggested by Dr. Bart at the March 2008 Area meeting. The Tribunal accepts and prefers the evidence of Ms Cossa concerning her discussion with Dr. Taylor, including her interpretation that Dr. Taylor warned her that there would be ramifications for persons who supported the Dean. Dr. Pujari, consistent with the strategies identified in the G21 emails, not only had knowledge of, but acted upon the G21's expressed animosity towards Mr. Bates and his perceived supporters by undertaking vexatious conduct and comment which created a hostile work environment.

The Tribunal accepts there was no Faculty or Area budget increase associated with the conversion of CLAs to teaching-track. Dr. Pujari could reasonably be sceptical, despite assurances otherwise, that the conversion of CLAs to teaching-track would count against the Area complement of "required" tenure-track faculty. The Tribunal members are aware there are many examples where the acquisition of personnel is an "either or" proposition in the current budgetary environment. The Tribunal further recognizes an Area Chair has the responsibility of developing the strategic plan for the Area and acting as an advocate in terms of implementing the strategic plan and acquiring resources. Furthermore, there were no clear guidelines from the University, MUFA or the Faculty on the required process for the conversion of a CLA to a teaching-track faculty position. However, the Tribunal notes that constructive feedback and transparency was lacking when the Tribunal considered Dr. Pujari's conduct and comment. The issue is whether there was sufficient evidence to conclude Dr. Pujari's conduct constituted harassment or whether these events were simply the result of poor management decisions.

The evidence confirms Dr. Pujari was in a leadership position in a poisoned workplace. The lack of clarity in the procedures surrounding the teaching-track stream at McMaster during these events did not provide Dr. Pujari with reasonable cause or excuse for his persistent vexatious conduct or comment. Specifically Dr. Pujari's initial unwillingness to consider the conversion of any of the CLA's in his area, and the comments by Dr. Bart about holding the CLA's hostage all breached the Policy by resulting in or by their contribution to an unacceptable work environment. The power imbalance and the vulnerability of the CLA's in employment were acted upon by Drs. Pujari, Taylor, and Bart whose conduct and comment breached the Policy. Dr. Pujari explained he was concerned the conversion of the remaining three CLAs would jeopardize future tenure-track appointments in his Area. However, Dr. Pujari was assured several times this would not be the case. In the poisoned work environment, his skepticism may not have been unfounded but it is speculative and unduly suspicious. However it does not justify

conduct unreasonably threatening the job security of the CLA's at the DSB without reasonable cause or excuse and his conduct which he undertook with full knowledge of the G21 activities.

The jurisprudence reflects that casual comments should not be regarded as discriminatory or harassing if isolated, unless sufficiently vexatious and egregious. However, a pattern of insults, which are repetitive and persistent, results in a prohibited condition of employment when it creates a negative work environment which is known or ought reasonably be known to be unwelcome. The conduct or comment by Dr. Pujari created a hostile work environment for Mr. Vilks, Ms Stockton and Ms Cossa. Drs. Pujari, Taylor, and Bart's conduct and comment with the three CLAs was offensive and determined to be vexatious and unwelcomed when the Tribunal applied the objective test to the course of conduct established by the evidence. The evidence of Drs. Pujari, Taylor, Bart and Ray was found not to be generally credible where contradicted by reliable evidence.

The Tribunal finds the events leading up to and involved in the selection of two CLA members for conversion to teaching-track in September 2008 contributed to and resulted in a poisoned workplace. Dr. Pujari, as Area Chair, established and carried out a strategy for the Area that favoured the hire of tenure-track faculty over teaching-track conversions of existing CLA's. Dr. Pujari expressed he felt it would hamper the acquisition of more tenure-track faculty to convert any or all of the CLAs to teaching-track appointments. In verbally expressing this strategy, we find Dr. Pujari did liken the presence of CLAs in the area in comparison to tenure-track faculty as an "intellectual deficit". The Tribunal finds this to be a very poor choice of words and unwelcome to the CLAs.

The Tribunal received substantial evidence about the content of the PowerPoint presentation and comments made during the area meeting in March 2008. The Tribunal finds the "intellectual deficit" statement was not included in the title of a slide presented during the Area meeting. We received reliable evidence from two non-party witnesses regarding the events of the meeting. Mr. Ryder, who was called as a witness by Dr. Pujari, testified the presentation was the same as the slides submitted as evidence. The Tribunal accepts the evidence of Dr. Pujari and Mr. Ryder that the presentation slides submitted as evidence at DSB-1343 was, in fact, the presentation delivered in March 2008. Conflicting evidence was presented regarding Dr. Pujari's comments in the meeting. Dr. Ryder wrote a contemporaneous email on behalf of all CLAs to the President of the University stating Dr. Pujari "views the lack of tenured and tenure-track faculty to be an intellectual deficit." Dr. Hupfer also testified to hearing the term being used, as did the three CLAs and Drs. Flynn and Longo. Dr. Pujari denied using the statement and using the term in a title of a slide. We find Dr. Pujari did express this comment while the slide was being displayed and in the poisoned work environment of the DSB is was unwelcomed. The Tribunal finds the evidence did not establish that Dr. Pujari directly harassed the CLAs in this instance if this conduct was only viewed in isolation.

In addition, the Tribunal finds it is likely Dr. Pujari made all of the alleged comments including the reference to the "Community College, Up the Hill, and retailers of information". The Tribunal finds it is likely that Dr. Pujari made the comment about having a "drawer full of resumes" both publicly and in individual meetings with CLAs when they requested conversion to teaching-track positions and sought information on the conversion process. Our finding is that

these comments likely were made by Dr. Pujari, as alleged by several 003 Complainants and also corroborated by non-party witnesses. These comments contributed to the poisoned workplace in the DSB in breach of the Policy because of the course of conduct the Tribunal identified involving Dr. Pujari which was persistent, repetitive and reasonably known to be unwelcomed.

The Tribunal also finds Dr. Taylor's posting of some of the posters were contrary to the Policy because they contributed to and resulted in the poisoned workplace. The "middle of the road" and "Slinkies" posters were the two most egregious, in our opinion based upon the reliable evidence. Dr. Taylor offered no reasonable cause or excuse for his actions. His defence that he posted the "middle of the road" poster to invigorate students to take a position was discounted after Dr. Taylor admitted the poster was posted in May, a time when there are few students. The Tribunal finds the timing of this particular posting was relevant. The DSB Dean Selection Committee announced the results of its search that Mr. Bates' would be appointed for a second term as Dean (May 7, 2009). The Tribunal finds this poster was an attempt to intimidate those who were the most vulnerable (untenured faculty and CLAs). Further, we find Dr. Taylor's explanation of events related to that particular poster lacked credibility.

The Tribunal finds Dr. Pujari's response to Mr. Vilks concerns were vexatious in all of the circumstances. In Ms Stockton's case, Dr. Pujari pursued the potential breach relatively aggressively when addressing the complaint that Ms Stockton had accessed another faculty member's email account. In Mr. Vilks' case, Dr. Pujari was unreasonably dismissive given his knowledge of G21 communications. Dr. Pujari ought to have known that his comments to Mr. Vilks were unwelcome. Dr. Pujari's conduct contributed to the poisoned work/academic environment and breached the Policy because of the course of conduct found to have been undertaken by Dr. Pujari.

The Tribunal also finds Dr. Taylor's "stormtrooper" email on January 20, 2009 constituted harassment under the Policy. The Tribunal does not accept that Dr. Taylor had reasonable excuse or cause to send it. Dr. Taylor ought to have known the email was unwelcome. The Tribunal felt Dr. Taylor's evidence defending this claim was contrived and condescending. He initially expressed no regret for the comment in his affidavit. When he was cross-examined in relation to the 002 Complaint on March 23, 2012, he confirmed he had no regrets in sending the email. Mr. Vilks testified as a 003 Complainant on April 10, 2012, regarding his personal interpretation of the "stormtrooper" reference. On April 23, 2012, Dr. Taylor relied upon his family background in the military and Canada's involvement in World War I and II to suggest the term was intended to be positive. Therefore, it was submitted his comments could not be derogatory or unwelcomed. Dr. Taylor only reluctantly expressed some remorse for the "stormtrooper" comment after the Chair of the Tribunal asked Dr. Taylor whether he regretted his email. Contrary to his counsel's submission, the Tribunal did not find Dr. Taylor's expression of regret to be candid in any respect. Rather, the Tribunal found this evidence to be self-serving and not credible especially when the G21 emails are reviewed in their entirety. Dr. Taylor viewed Mr. Vilks as a Dean Bates supporter. The Tribunal does not accept Dr. Taylor's remark was intended to compliment Mr. Vilks for allegedly supporting Mr. Bates who he and 20 other faculty members including the recipients of his email were fervently trying to remove.

Dr. Taylor noted in his affidavit that “emotions were running very high at the time” the email was sent. The email was sent in the months leading up to the reappointment of Mr. Bates; while the three CLAs were not selected to be converted to teaching-track (DSB-0427); approximately one month after the MUFA vote on the reappointment of Dean Bates; one month after the release of the Performance Report, of which Dr. Taylor was a signatory; one week after Dr. Taylor told the G21 they must be prepared to go public to the media (DSB-1613); and the same day Dr. Taylor confirmed to the members of the G21 he would attend the next scheduled meeting of the G21 (DSB-1635). Dr. Taylor’s assertion that “emotions were running high” is properly viewed in the context of the G21 evidence.

The Tribunal does not accept Dr. Taylor’s explanations, which we found to be inconsistent, and self-serving. Additionally, one of Dr. Taylor’s colleagues, Dr. Connelly, provided objective evidence to the Tribunal that the “stormtrooper” email was inappropriate. The Tribunal agrees the email was inappropriate and finds Dr. Taylor’s conduct is in breach of the Policy as it was sufficiently vexatious and, when considered in the context of the other events that had occurred prior to the email (his statements in the June 2007 Area meeting, the subsequent actions related to “finding the mole” and the G21 communications that came to light during the hearing) and were yet to come (Dr. Taylor’s actions with respect to T&P), we find this email to be a part of an ongoing course of harassment against individuals who were considered by Dr. Taylor to be supporters of Mr. Bates.

The Tribunal also finds Dr. Pujari’s actions with respect to the reappointment process for the CLAs in the Fall of 2010 continued the harassment. Dr. Pujari continued to engage both subtle and explicit conduct which undermined the careers and security of the CLAs. The Tribunal finds Dr. Pujari used policy as a self-serving excuse to harass Mr. Vilks, Ms Stockton and Ms Cossa despite his repeated suggestions that alleged ambiguities provided reasonable cause or excuse for his conduct or comment.

The Tribunal finds Dr. Pujari was aware of the gist of the CLA’s complaint against him *before* the November 24, 2010 Area T&P meeting. Mr. Komlen reminded Dr. Pujari they had spoken about it in the McMaster University Student Centre at least “a couple of weeks ago.” On November 19, 2010, he met with a mediator who, at a minimum, described the complaint’s general nature. Dr. Pujari testified the mediator “raised the issue of the CLAs and said the CLAs were ‘unhappy’ about the teaching-professor issue.” Dr. Pujari wrote in a later email that the mediator and he did indeed discuss the essence of the complaint, being “the process of teaching-track hiring and the fact that these three CLAs were not appointed to teaching-track position. ... If someone is not selected by the selection committee (T&P committee in this case), does it automatically become a dispute?” In his November 24, 2010, email to Mr. Komlen, Dr. Pujari stated he told the Area T&P Committee that “these three CLAs are not happy about not getting teaching-track positions.”

On November 23, 2010, Mr. Komlen informed Dr. Pujari the Ombuds Office felt there would be a conflict of interest if he proceeded with the meeting. Mr. Komlen then clearly recommended Dr. Pujari recuse himself from the Area T&P Committee meeting. Dr. Pujari received the email because he replied to it. In relation to the Fall 2010 reappointment of the CLAs, Dr. Pujari should have reasonably understood his involvement in the reappointment

meeting led to a reasonable appearance of bias for the CLA's who had filed a complaint against him with HRES. Dr. Pujari did not heed Mr. Komlen's advice; rather he released information about the CLA's complaint against him to the Area T&P Committee and then suggested that the meeting should be cancelled.

The November 24, 2010, meeting was subsequently adjourned for two weeks. After the meeting, Mr. Komlen informed Dr. Pujari his comments to the Area T&P Committee were misleading. Mr. Komlen pointed out that Dr. Pujari was actually aware of the nature and identity of the CLAs' complaints at least two weeks prior; the Ombuds, not the mediator, made the assessment of the conflict of interest, and that, essentially, it was reasonable that he recuse himself from the Area meeting.

The *Code of Conduct for Faculty and Procedure for Taking Disciplinary Action* (DSB-0793) applies to all faculty members at McMaster University. The document states the general basis of a conflict of interest in the following manner at Section 1.(d):

“Each faculty member is responsible for conducting himself or herself in a professional and ethical manner towards colleagues, students, staff, and other members of the University community. Without limiting the generality of the foregoing, faculty members at McMaster University will ... **disclose conflicts of interest or other circumstances which may reasonably introduce or appear to introduce bias into any academic or administrative decision to which they may be a party.**” (emphasis added)

Members of faculty with managerial responsibilities must conduct themselves in a way that does not give rise to a reasonable apprehension of bias. A decision maker must be open to persuasion (consciously or unconsciously) and cannot have prejudged or predetermined an outcome. Decision makers must ensure they remain impartial throughout their consideration of a candidate or disclose potential conflicts or knowledge which might reasonably be interpreted to taint their views on an academic decision impacting employment.

Dr. Pujari suggested he received conflicting advice from University officials. The Tribunal finds it is irrelevant that Dr. Pujari feels he received conflicting advice after the November meeting about whether he should recuse himself from subsequent meetings, or that the CLAs were all subsequently reappointed. The concern of the Tribunal is whether the actions of Dr. Pujari indicate the conduct and comment he undertook resulted in a hostile work environment unreasonably impacting persons while they were vulnerable in their employment. The Tribunal was less concerned with the complaint filed with HRES by the CLA's because that fact was known to them. The CLAs were not deprived of an opportunity to raise their concerns about a reasonable apprehension of bias because the complaint had been filed. Dr. Pujari had the option to decline their concerns and assert that in fact he was not biased. The CLA's could properly choose to pursue the issue and assert the mere filing of the complaint was sufficient to establish the recusal requirement. Rather, what Dr. Pujari failed to do was disclose the full extent of the information provided to him and his own conduct which the Tribunal has determined tainted his decision making.

The Tribunal finds Dr. Pujari breached his obligation under the Code of Conduct for Faculty by not disclosing the G21 emails which he had knowledge of and for which he himself participated in where persons for whom he was responsible are disparaged. Making decisions impacting the CLAs employment and without appropriate disclosure breached the Policy. Furthermore, it raises serious credibility problems for Dr. Pujari when he attempted to rationalize his behaviour and in the Tribunal's view did not establish reasonable cause or excuse.

The Tribunal found Dr. Pujari ought to have known that his continued involvement with the CLA reappointment process in November and December 2010, despite advice to the contrary, was unwelcome and crossed the line to direct harassment because of Dr. Pujari's knowledge of and involvement with the G21 emails. Furthermore, Dr. Pujari provided no reasonable excuse or cause for his behaviour when he took no steps to address or distance himself from the disparaging comments being made about the CLAs. It was reasonable for the CLAs to feel it was Dr. Pujari's intent to threaten their job security.

### **Conduct Excluded from the Tribunal's Findings of Breach of the Policy**

The Tribunal finds Ms Cossa did not prove Dr. Pujari's conduct related to her 2009 CP/M evaluations breached the Policy. The Area Chair is required to assign merit evaluations which are then submitted to the Dean. Individual faculty then have the right of appeal which was done in this case. The Tribunal finds sufficient ambiguity in the assignment of merit when a faculty member is on leave for part or whole of a year. Dr. Pujari acted in a manner that cannot be described as harassing or even inappropriate based upon the reliable evidence we considered. Ms Cossa's interpretation that Dr. Pujari's actions were unwelcome and harassing highlights the systemic and encompassing problems a poisoned workplace presents and we do not believe this issue was evidence of harassment.

Similarly, The Tribunal finds that the tone and content of Dr. Pujari and Bart's congratulatory notes and/or lack thereof in 2010 was neither harassment nor sufficient evidence to establish a poisoned workplace. Dr. Bart emailed his Area with regards to an arguably minor achievement by a tenured faculty member. It is reasonable to expect that as the work environment at the DSB was becoming more difficult and poisoned, communications were being viewed through a lens of mistrust. Further we have considered Dr. Pujari's evidence that he was struggling with several difficult and time consuming processes at this time and likely was prioritized his communications as a result. The case law indicates that managers are not held to a standard of perfection in terms of decisions. Inconsistent conduct in these situations may have resulted from the poisoned work environment but did not breach the Policy.

The Tribunal also finds Dr. Ray's comments likely resulted from the poisoned work/academic environment. There was insufficient evidence to establish Dr. Ray's conduct was part of the pattern of behavior which we found constituted direct harassment or a breach of the Policy. The Tribunal accepted Dr. Ray's testimony that the "seasoned turkeys" comment was directed towards senior faculty. The Tribunal finds the evidence also did not establish that Dr. Ray's comment about the CLA's being "different" was unwelcome or harassing. The Tribunal accepts Dr. Ray's explanation that he did not use the term "different" in a pejorative

sense. In these contexts, the Tribunal found that these comments by Dr. Ray do not constitute a breach of the Policy.

**Reprisal Allegations for the CLA complaints to HRES**

ii. **Dr. Pujari generally ignored Ms Cossa.**

**Summary of Evidence and Submissions**

Ms Cossa alleged she was a victim of reprisal for submitting a complaint against Dr. Pujari.

a) **Ms Cossa was the victim of a reprisal when Dr. Pujari proposed an Area reorganization which severed her from her teaching Area.**

Dr. Pujari testified that he proposed to put the three CLAs in the new Strategy Area because it would “address the placement of the CLAs as well as composition of two new Areas with Marketing (including 2 Teaching professors) and Strategy (with 3 CLAs/Teaching Professors)”, and because he was instructed to do so (DSB-2291 at para. 245).

On March 24, 2011, Dr. Pujari circulated a draft reorganization plan for the SML/HSM Area, at the Area meeting. His proposed plan split the Area into ‘Marketing’ and ‘Strategy’ and divided faculty between the two new Areas. The proposed plan appeared to place Ms Cossa in the ‘Strategy’ Area rather than ‘Marketing’ which was interpreted to “effectively sever” Ms. Cossa from her courses. Ms Cossa wrote to Dr. Pujari identifying her issues (DSB-1322 at pg.5) and repeated her concerns at the Area meeting on March 30, 2011.

Ms Cossa testified she felt Dr. Pujari’s responses were dismissive, high-handed, disrespectful, and trivializing. She also felt the decision was done in retaliation. Ms Cossa also alleged Dr. Pujari said words to the effect that “he had already taken the teaching-track people into the Marketing Area and he should not get stuck with the CLAs as well.” Ms Cossa further submitted Dr. Pujari disclosed a private career discussion she had with Dr. Pujari at the Area meeting about other courses she had wanted to teach.

Mr. Vilks interpreted Dr. Pujari’s proposal to mean that Ms Cossa’s employment would end because the only way to remove teaching-track/permanent faculty is by having their courses taken away. Ms Stockton testified she heard Dr. Pujari say that he should not get “stuck with the CLAs too.” Dr. Hupfer heard Dr. Pujari make a comment similar to “we’ve already had to take two teaching profs [into the proposed Marketing Area], we shouldn’t have to take the CLAs too.” Dr. Hupfer further testified the meeting became increasingly hostile and argumentative. She says when the vote was taken, Drs. Pujari and Ray were visibly upset that the Area did not vote to support the proposed split. Dr. Hupfer stated that after the meeting she felt she was chastised in an email from Dr. Pujari.

Dr. Pujari denied making all of the alleged comments. Further, Dr. Pujari testified that after Dean McNutt had left the meeting, the discussions became heated and Ms Stockton “especially became quite hostile and angry, and thumped the table while she spoke” (DSN-2291 at para 254). Ms Stockton, Ms Cossa, Mr. Vilks, and Dr. Hupfer all deny Dr. Pujari’s assertion that Ms Stockton hit the table with her hand at that meeting, or any other meeting.

At the Area meeting on March 30, 2011, Dr. Pujari heard Ms Cossa’s concerns as detailed above. Dr. Pujari testified he assumed the Acting Dean had informed the CLAs of the Dean’s decision to keep the CLAs in the same Area as the Acting Dean (the new Strategy Area), and so Dr. Pujari explained the rationale in the meeting as to why the CLAs would be in the new Strategy Area in order to balance teaching and research faculty in each new Area. Dr. Pujari also stated at the meeting that CLAs had previously taught courses from various disciplines and so it “should not be difficult for Ms. Cossa to transition from marketing courses to strategy courses” (DSB-2291 at para. 251).

Dr. Pujari testified the notion of an Area split had been under discussion for many years because the Area was gradually becoming too big to house the various disciplines of marketing, strategic management, health services management, communications management and business valuation. The split, he said, became more pronounced after the release of the PACDSB report which recommended the Area split into smaller units. The Acting Dean, Dr. Bob McNutt, later clarified instructors would still teach their regular courses regardless of the proposed Area split.

Dr. Pujari testified that if Dean McNutt had told the CLAs before the meeting that they would be appointed as teaching-track professors and what the Area reorganization plan was, the three CLAs would have been more receptive to the Area reorganization plan (DSB-2291 at para. 251).

However, Dr. Pujari testified Dean McNutt’s views about the Area split made a “180 degree change.” The Dean apparently asked the Area members not to decide about the Area split in that particular meeting. The Dean left shortly after the meeting began. Dr. Pujari testified the meeting then became hostile and angry. Dr. Pujari alleged that after the Dean departed, Ms Stockton became particularly angry and hostile and “thumped” the table with her hand while she spoke. (DSB-2291 at paras. 251 and 257).

Mr. Malik, a former CLA and a converted teaching-track professor, attended the March 30, 2011, Area Meeting. Mr. Malik he did not hear Dr. Pujari make a comment related to not wanting CLAs in his Area. He also stated he did not see Ms Stockton hit the table with her hand, although he stated he may not have had an opportunity to observe it if she done so. He further testified those in attendance conducted themselves within reasonable parameters of “civility”.

Dr. Pujari found it surprising that, in the midst of the Area reorganization, Ms. Cossa and Mr. Vilks did not want to teach any other courses and in fact wanted to hold on to the courses they were already teaching. Dr. Pujari assumed the opposite while developing his reorganization plan. In his affidavit, he stated “I regret that my assumption that members will not hold on to their courses was incorrect” (DSB-2291 at para 256).

When Dr. Pujari met with Dean McNutt after the Area split meeting, the Dean allegedly said to him “You got beat,” and that he should have shown him the proposal before the meeting, even though the Dean allegedly told Dr. Pujari he did not want to see the plan. Dr. Pujari believes that he was being set up, which, was confirmed for him because the issue was raised before the Tribunal.

Furthermore, in his affidavit (DSC-2291) para 259, Dr. Pujari suggested “this meeting was deliberately made hostile by the 003 complainant so that they could blame Dr. Ray and I for the unpleasant nature of this meeting to manufacture as part of their complaint”. To support his allegation Dr. Pujari noted the Complaint was to be delivered on March 31, 2011 but was only delivered to “us” a week later (April 8, 2011).

### **Tribunal’s Findings**

The Tribunal finds a heated and open disagreement occurred between faculty which did not breach the Policy. The Tribunal did not find sufficient reliable evidence to conclude that Dr. Pujari purposefully planned to sever Ms Cossa’s employment at the DSB by proposing the reorganization. The proposal was contentious and the motion ultimately did not pass. In this instance the Tribunal accepts latitude is justified under principles of academic freedom and freedom of speech. Dr. Pujari attempted, albeit clumsily, to bring about a change in the DSB that he interpreted as a reasonable recommendation from the PACDSB. Dr. McNutt was not called as a witness to the Hearings by any party. There appears to have been a miscommunication between administration, the Area Chair, and amongst faculty members, which is unfortunate and likely resulted from the poisoned work/academic environment but did not breach the Policy.

The Tribunal rejects Dr. Pujari’s allegation that the CLAs deliberately made the March 30, 2011, Area Meeting hostile in order to bolster their Complaint or that he was set up. Dr. Pujari’s evidence was not accepted unless corroborated by other reliable evidence. Dr. Pujari’s claims appear unfounded, and not supported by any reliable evidence. The Tribunal finds this was another example of Dr. Pujari’s self-serving evidence which is an impediment to remedying the poisoned work/academic environment. For example, the Tribunal noted that Mr. Malik, who was called as a witness to support Dr. Pujari’s case, testified that the meeting was conducted within reasonable parameters of “civility”. If the Tribunal accepted this evidence that the meeting was not obviously hostile this discredits Dr. Pujari’s own serious allegations. On the other hand, Mr. Malik’s evidence likely simply represents what he viewed as a normal meeting at the DSB. However, the Tribunal is satisfied that the DSB meetings, placed in issue, would likely be objectively viewed as concerning to persons from other Faculties. As a result of a poisoned work/academic environment these meetings could reasonably be viewed as “normal” by persons used to how meetings were conducted in the SML/HSM Area.

b) **Dr. Pujari harassed Ms Cossa by refusing to recommend her for committee appointments**

**Summary of Evidence and Submissions**

Ms Cossa alleged Dr. Pujari did not recommend her to be appointed to any DSB committees after her maternity leave, despite her multiple requests. She states this had an adverse effect on her CP/M score and compensation. Ms. Cossa believes this was retaliation.

Four points were raised in Dr. Pujari's defence to the claim that he did not appoint Ms Cossa to committees. First, Dr. Pujari did not consider the CP/M issue as part of the complaint because the Dean admitted a mistake where they discussed Ms Cossa's inquiry about her teaching evaluations during her maternity leave. Second, the Dean bypassed Dr. Pujari and directly approached Area members to perform committee work. As such Dr. Pujari claimed he had no control over those matters. Third, Dr. Pujari testified he limited his interactions with Ms Cossa to avoid her criticisms and he asked the Associate Dean to find her committee work. Lastly, there were Area elections for standing committees which Ms Cossa could have stood for but she failed to pursue opportunities.

**Tribunal's Findings**

The Tribunal finds Ms Cossa appropriately requested that Dr. Pujari assign her to committee work. Dr. Pujari's lack of action on this item contributed to the poisoned workplace. However, the Tribunal does not find there was sufficient evidence to establish Dr. Pujari harassed Ms Cossa or breached the Policy.

c) **Dr. Pujari refused to deal with Ms Cossa and ignored her deferred exam marks**

**Summary of Evidence and Submissions**

Ms Cossa testified Dr. Pujari refused to address a variety of issues involving her and forwarded concerns to the Associate Dean (DSB-0618, DSB-0619, and DSB-2041). Issues included a request for information related to courses in the Fall of 2011 and refusing to provide information related to the T&P process. Ms Cossa alleged Dr. Pujari's refusals were a reprisal against her as a complainant.

Ms Cossa testified she submitted the deferred marks in a timely fashion after the deferred exam on June 22, 2011, but by July 13 and August 15, 2011, Dr. Pujari had still not submitted them. Students had completed an exam from the previous Winter term which Ms Cossa marked and submitted on June 22, 2011, to Dr. Pujari for approval. She placed the exam marks in his mail slot in the DSB. Normally, Dr. Pujari would sign the marks and submit them to the appropriate administrative office. In this case however, he did not. On July 13, 2011, the Academic Programs Office asked about the deferred exam marks which Ms Cossa realized

Dr. Pujari had not submitted. On August 15, 2011, an administrative assistant found the marks in a folder on her desk. This embarrassed Ms. Cossa as it appeared as if she had not done her job. Ms Cossa alleged the way Dr. Pujari handled the deferred exams marks in June 2011 was a reprisal.

Dr. Pujari denied the allegations except for admitting that he decided to limit his interaction with Ms Cossa because he wanted to avoid her criticisms and any further allegations of harassment. Dr. Pujari's generally defended these claims by suggesting he was "forced" to recuse himself from all dealings with the CLAs. In his own words (DSB-2291 at para. 272):

In response to paragraphs 84-90 in Ms Cossa's affidavit, [where Ms Cossa stated that Dr. Pujari refused to deal with her and ignored her deferred exam marks] due to the inflammatory, defamatory and hostile comments and allegations made by the complainants against me, I was forced to recuse myself from all dealing with them and to keep my contact with them to a minimum (lest more alleged harassment be added to the laundry list of grievances.) For instance, they have complained that I did not recuse myself from decision making involving them. Now that I have recused myself from matters which impact them, Ms Cossa complains that I have avoided contact with her. This is truly absurd. First, Ms Cossa complains about my lack of recusal. And, when I recuse, she complains of my recusal and calls it an act of reprisal. It seems that Ms Cossa's and her co-complainants' real motive here is to remove me from my Senate-approved appointment as the Area Chair." [emphasis added]

Dr. Pujari provided further evidence he has always offered help and support to Ms Cossa, and provided several examples of his support as Area Chair, including changing her class loads when the class size increased, endorsing her salary increase request and sharing in her disappointment when she received less than requested, congratulating her on her accomplishments, sympathizing with her on various issues, and following up with her concerns with administrative staff.

### **Tribunal's Findings**

In his affidavit, Dr. Pujari stated he was "forced to recuse" himself from dealing with and contacting "them," being the 003 Complainants, to avoid any future claims of harassment. Such an interpretation is incorrect, self-serving and unreasonable. As Area Chair, he was still required to perform the duties and responsibilities of that Office unless he chose to resign.

Dr. Pujari attempted to limit his interactions with Ms Cossa due to their strained work relationship. Dr. Pujari took "recusal" to mean he could fully remove himself and not make decisions related to Ms Cossa. However, being ignored by one's Area Chair is unwelcomed conduct unless reasonably communicated. The process of approving marks is a normal function of an Area Chair. The routine act of submitting marks to an Area Chair should not be affected

by any outstanding conflict or litigation. The Tribunal finds Dr. Pujari engaged in a reprisal when he decided not to deal with Ms Cossa and withheld the submission of her deferred final exam marks.

Dr. Pujari's explanation for essentially ignoring Ms Cossa is that he wanted to avoid any further claims of harassment. This, however, is not a reasonable cause or excuse for his conduct. The Tribunal therefore found Dr. Pujari engaged in a reprisal and harassed Ms Cossa in refusing to deal with her and withholding her deferred exams marks. However, the Tribunal finds there was insufficient evidence to determine how the folder appeared on the administrative assistant's desk on August 15, 2011. Therefore Dr. Pujari is not found to have engaged in conduct to embarrass Ms. Cossa as alleged.

iii. **Dr. Pujari harassed Mr. Vilks in his Statements Related to the New Products Course**

**Summary of Evidence and Submissions**

On March 30, 2011, the SML/HSM Area met to discuss the reorganization of the Area into separate Marketing and Strategy Areas. As part of the proposed division, existing courses would be divided into one of the two proposed Areas. Mr. Vilks stated Dr. Pujari had placed the "New Product Marketing" course in the Marketing Area, rather than in the Strategy area. Mr. Vilks raised this issue with Dr. Pujari and provided a rationale for placing the course in the proposed Strategy Area. When he raised these issues, Mr. Vilks stated Dr. Pujari rudely said "Everyone knows new products is marketing!" Mr. Vilks found the comment dismissive, insulting and demeaning.

On March 31, 2011, Dr. Pujari sent an email to Dr. Ryder and stated the following (DSB-1322 at page 17): "I think Peter Vilks is wrong about 4MC3. I will never agree to moving this or grad level new products course. You have been so gracious to transfer entrepreneurship courses but it seems after that accommodation some became greedy."

**Tribunal's Findings**

The Tribunal finds there is not sufficient evidence to establish that Dr. Pujari engaged in reprisal or breach of the Policy.

iv. **Dr. Pujari's Racism allegations against the CLAs is a reprisal for their filing the 003 Complaint**

**Summary of Evidence and Submissions**

In the 003 Complaint, the CLAs alleged the following, at paragraph 123-6:

123. It is also alleged that the Respondents exhibited a bias in favour of theoretical researchers with purely academic backgrounds, and the contributions of any professors who do not fit within that mould were mistreated and demeaned.

124. It is alleged that this has been manifested in the manipulation of criteria for new hires, discounting teaching experience, and stacking selection committees with “theoretical research only” faculty.

125. This bias and harassment was evidenced during discussions at an Area meeting regarding the suitability of a new candidate. Concerns were raised regarding a tenure-track position in respect of the candidate’s language skills and suitability to teach executives at a post-graduate level.

126. In response, Dr. Ray wrote that the teaching could be left to the “seasoned turkeys” in respect to CLAs and those with industry experience and/or an applied academic research background. Dr. Pujari did not object to the comment and did nothing to signal that such comments were in any inappropriate or contrary to his perception of these groups.

The CLAs subsequently disclosed the “new candidate” was Dr. Hongjin Zhu.

Counsel for Dr. Pujari submitted a Response to the 003 Complaint dated November 18, 2011 on behalf of Dr. Pujari.

The CLAs collectively submitted Dr. Pujari breached the Policy because of statements made in that Response. At paragraph 130 and 133, counsel for Dr. Pujari submitted the following (hereafter known as the “Response”):

“...Dr Pujari strongly objects to the complainants [*sic*] thinly veiled and discriminatory attack on Dr. Zhu based on her race and ethnic origin. This is precisely the type of discrimination that the Anti-Discriminatory [*sic*] Policy is supposedly designed to prevent and yet it is being used by policy violators for their own selfish purposes. ...

Dr. Pujari pleads DSB ought to be more tolerant and respectful to international candidates and faculty. It is apparent that Ms Stockton, Ms Cossa and Mr. Vilks have yet to embrace the multi-cultural nature of DSB.”

At paragraph 149 of his sworn affidavit (DSB-2291), Dr. Pujari stated:

“...one of the great ironies of Ms Stockton’s claim of harassment and discrimination is that Ms Stockton herself made actual discriminatory and racist remarks about Dr. Zhu. Ms Stockton told me that Dr. Zhu essentially should be teaching in China, not Canada, because she is from China. In the same discussion, when I challenged her about her comment Ms Stockton suggested that academic standards are lower in China and Singapore where Dr. Zhu had previously taught. This is racist stereotyping. Ms Stockton’s explanation in her affidavit is unsatisfactory.”

At paragraph 200 of his sworn affidavit (DSB-2291), Dr. Pujari excerpts the 003 Complainants Response to the Demand for Particulars (paras. 88-89) at length and comments on it in the following way:

“...this comment about Dr. Zhu, their colleague, is untrue and objectionable. It was the same mean spirited treatment that Ms Stockton demonstrated towards Dr. Zhu when she brought up Dr. Zhu’s national origin and invaded her privacy.”

It was submitted the above statements were inappropriate character attacks, and evidence of reprisal by Dr. Pujari for the 003 Complaint being filed, contrary to the Policy. The CLAs rejected Dr. Pujari’s characterization of their comments as racist.

Ms Cossa stated she had little contact with Dr. Zhu and was on maternity leave when the incident involving Ms Stockton took place. Ms Vilks stated he has never met Dr. Zhu. Mr. Vilks and Ms Cossa testified Dr. Pujari’s allegation was particularly offensive to them given their own ethnic background and since they are also immigrants to Canada. Ms Stockton provided the Tribunal with several dozen cards, notes and well-wishes from grateful international students she has taught in the past.

Dr. Pujari later commented in his affidavit on the CLAs denial of racism in his affidavit, stating “[w]hile I’m prepared to take them at their word on this point, I do not accept their collective disparagement of Dr. Zhu who they have victimized to make this point in an attack on me.”

Dr. Pujari explained he objected to the CLAs referencing Dr. Zhu to support their complaint. Under cross-examination, Dr. Pujari denied calling the three CLAs racist. Dr. Pujari also confirmed he would not withdraw the disputed section in his Response, but that he would modify his sworn affidavit to state he now accepts the CLAs’ explanation about Dr. Zhu.

**Tribunal's Findings**

The CLAs did not reference Dr. Zhu's language skills or suitability to teach, to attack Dr. Pujari's character in 003 Complaint. The alleged bias in favour of theoretical researchers, manifested in the manipulation of criteria for new hires caused Dr. Zhu to be referenced. The Tribunal did not accept Dr. Pujari's explanation. Dr. Pujari was an evasive, stubborn, and inconsistent witness. Neither Dr. Pujari nor his counsel provided a reasonable explanation for the allegations.

Dr. Pujari's response was an inappropriate character attack on Ms Cossa, Ms Stockton, and Mr. Vilks without reasonable cause or excuse that breached the Policy. Dr. Pujari responded to the CLAs claim by stating "[i]t is apparent that Ms Stockton, Ms Cossa and Mr. Vilks have yet to embrace the multi-cultural nature of DSB." Under cross-examination, Dr. Pujari confirmed he would not withdraw his allegations because "it is slightly harder for [him], because of the whole DSB culture and what I have experienced." Dr. Pujari expressly claims Ms Stockton made "discriminatory and racist remarks about Dr. Zhu" in DSB 2291 at paragraph 149. The Tribunal finds that Dr. Pujari's racism allegations were reckless and retaliatory. As such, the Tribunal finds Dr. Pujari engaged in a reprisal which breached the Policy.

**K) COMPLAINT OF DR. TERRY FLYNN**

Dr. Flynn's allegations are set out at paragraphs 23-43 of his Complaint (DSB-0002) and are particularized in his affidavit (DSB-2098). Dr. Alexandre Sevigny, Ms Cossa, Mr. Vilks, Dr. Maureen Hupfer, Dr. Del Harnish, Dr. Busch-Vishniac, and Mr. Bates gave evidence supporting Dr. Flynn. Drs. Taylor, Bart, and Pujari responded to the Complaint in their affidavits (DSB-2290, 2292, and 2291 respectively). Dr. Martin Dooley, Dr. Joe Rose, Dr. Ken Deal, Dr. Sourav Ray, Mr. Marvin Ryder, Mr. Mandeep Malik, Dr. Narat Charupat, Dr. Yufei Yuan, Dr. Lilian Chan, Dr. Isik Zeytinoglu, Dr. Jim Tiessen, Dr. Elliot Schreiber, Dr. Willi Weisner and Mr. David Weiner testified on behalf of the individual 003 Respondents. Additionally, Drs. Chamberlain, Randall and Wakefield were summonsed to provide evidence.

The Tribunal has outlined our general findings in the 003 Complaint and established the timelines for the G21 emails which, amongst other things, disparaged Mr. Bates and his supporters. The Tribunal finds the reliable evidence confirmed group and individual bias negatively impacted some of the 003 Complainants including Dr. Flynn when they became vulnerable in their employment. The Tribunal finds Dr. Flynn was identified as a close supporter of Mr. Bates. Furthermore, there is sufficient evidence to conclude that Dr. Flynn was the victim of retaliatory conduct initiated by Drs. Bart and Taylor and subsequently condoned and carried out by Drs. Pujari, Bart, Steiner and Rose when they participated on T&P Committees addressing Dr. Flynn's renewal without disclosure of their bias.

G21 or G21+ participants on the T&P Committees, including Drs. Pujari, Bart, Steiner, Rose, Ray, Yoshikawa and Deal voted against Dr. Flynn's renewal at the Area or Faculty Level. The Tribunal is satisfied it is more likely than not, that Drs. Bart, Pujari, Steiner and Rose's votes were tainted and to varying degrees their conduct breached the Policy despite legitimate concerns with Dr. Flynn's dossier with respect to research. The Tribunal, having considered the G21's group emails and other reliable evidence has concluded that it is more likely than not, that Drs. Bart, Steiner, Rose and Pujari, whether consciously or unconsciously, did not assess Dr. Flynn's renewal fairly and they prejudged his case. The Tribunal finds the haste with which Dr. Flynn was being dismissed exhibited that research concerns, while legitimate, were used as a convenient excuse to retaliate against Dr. Flynn. Dr. Flynn had legitimate issues related to his research but not with respect to his teaching. Dr. Flynn had an abundant service record on the face of his dossier. However, Dr. Steiner raised questionable service and administrative issues, reflecting his behaviour with Dr. Head without reasonable cause or excuse. Failure to renew Dr. Flynn at this stage of his career was unreasonable. The Tribunal is satisfied that such conduct or comment breached the Policy because it created a negative work environment and adversely impacted Dr. Flynn's employment.

The course of conduct and comment by Drs. Taylor, Bart, Pujari and Steiner created a hostile work environment for Dr. Flynn who was denied the privilege of having his renewal untainted or considered by faculty free of personal animosity toward him which suggested bias. Dr. Flynn was deprived of the opportunity to raise a reasonable apprehension of bias issue when Drs. Pujari, Bart, Steiner and Rose failed to disclose private disparaging comments about Dr. Flynn made by them or other G21 participants known to them when they participated in the Area or Faculty T&P Committee.

The Tribunal finds that the evidence establishes that Dr. Flynn was directly harassed by Dr. Taylor when he spoke to Dr. Flynn concerning the “mole” and sent emails referring to Dr. Flynn in a derogatory manner which we have identified as sufficiently egregious and part of a course of conduct to constitute a breach of the Policy. Additionally, the Tribunal finds that Drs. Taylor, Bart, Pujari and Steiner engaged in conduct and comment which resulted in a poisoned work/academic environment at the DSB breaching the Policy. The evidence relied upon by the individual 003 Respondents failed to establish reasonable cause or excuse for the conduct of Drs. Taylor, Bart, Pujari and Steiner. Their behaviour threatened the security of Dr. Flynn in his employment at McMaster, was clearly unwanted (even if it was unknown to Dr. Flynn at the time of filing of the complaint) and adversely impacted Dr. Flynn’s reasonable expectations in employment.

The Tribunal further finds that Dr. Rose engaged in conduct which only contributed to the poisoned workplace but which was determined to have breached the Policy. The Tribunal finds there was insufficient evidence to find Dr. Ray breached the Policy despite his negative vote at the Area level and his alleged conduct.

i. **Did Dr. Taylor and Dr. Bart harass Dr. Flynn or treat him in a manner which breached the Policy?**

**Summary of Evidence and Submissions**

By way of background, Dr. Flynn began his tenure track appointment in the SML/HSM Area on January 1, 2007. On July 1, 2007, Dr. Flynn was appointed to the position of Director of the MCM (Master in Communication Management) program. In July 2009, Mr. Bates was selected as Dean of the DSB for his second term. In September 2009, Dr. Flynn was denied renewal at the SML/HSM Area T&P Committee’s initial and reconsideration meetings.

Dr. Flynn testified that Dr. Taylor and Dr. Bart expressed, in an aggressive and intimidating manner, their opposition to Mr. Bates’ second appointment as Dean of the DSB at an SML/HSM Area meeting on June 25, 2007. Dr. Flynn testified Drs. Bart and Taylor in his view declared “war on Mr. Bates” with their comments. Dr. Flynn felt it was appropriate to let Mr. Bates know how strongly the two faculty members felt and so he subsequently told Mr. Bates about the comments.

Mr. Bates testified that he spoke to both Dr. Bart and Dr. Taylor regarding whether those comments had been made upon receiving this information from Dr. Flynn. Mr. Bates did not reveal the source of his information to Dr. Bart or Dr. Taylor. Mr. Bates did not take any further steps to address this issue after speaking with Dr. Taylor and Dr. Bart.

Dr. Wakefield was summonsed as a witness and her testimony confirmed that both Drs. Taylor and Bart went to her attempting to uncover the identity of the alleged “mole.” Ms Cossa testified Dr. Taylor said to her “We know who did it. That person has been dealt with and will continue to be dealt with”. Dr. Flynn testified Drs. Taylor and Bart told him there was a

“mole” in their Area, and he was going to find out who the “mole” was and “deal with” that person.

Dr. Taylor admitted he had found out that Dr. Flynn told Mr. Bates, and that Dr. Bart also knew it was Dr. Flynn who had approached Mr. Bates. However, Dr. Taylor denied approaching Dr. Wakefield or suggesting he would be “dealing with” the mole.

Dr. Bart denied all of Dr. Flynn’s allegations. Dr. Bart submitted he had very limited contact with Dr. Flynn except in connection with the Directors College. In addition, he stated that he would not use such language as “a mole” who would be “dealt with”, or other arrogant and bravado expressions or aggressive and intimidating comments, as alleged. During cross-examination Dr. Bart stated Drs. Flynn, Wakefield, and Taylor were all confused and that they had attributed someone else’s comments to him in error. Dr. Bart also claimed he never went to see anyone about who told Mr. Bates about the comments he made in the Area meeting. Dr. Bart stated it was in fact Dr. Flynn who would often tell Dr. Bart that he was on the wrong team, not *vice versa*, and that Dr. Flynn had attributed his own personal comments to Dr. Bart.

Dr. Pujari, who took over as Area Chair at the meeting in question, testified no faculty member approached him after the Area meeting to complain that they felt any of the comments made by Drs. Bart and/or Taylor were inappropriate, nor did anyone report anything having to do with a search for the “mole.”

Dr. Flynn described his situation after he informed Mr. Bates of Drs. Taylor and Bart’s comments as “dead man walking” and “having a target on his back”. Dr. Flynn alleged Drs. Taylor and Bart subsequently negatively influenced his Area Chair, Dr. Pujari and his renewal was adversely impacted because of his perceived association with Mr. Bates. As outlined in the introduction of the 003 award and as summarized in the general chronology (Appendix O) the activities of the G21 were in full effect during the period relevant to Dr. Flynn’s Complaint.

In that regard, some emails sent by Dr. Taylor and Dr. Bart were specifically highlighted in closing submissions. It was submitted these emails, when considered with all the relevant G21 emails, confirmed that Dr. Flynn was targeted when he was being considered for renewal commencing with the Area T&P Committee meeting on September 4, 2009. Counsel for Dr. Flynn asked the Tribunal to find the evidence established bias against Dr. Flynn that negatively impacted his consideration for renewal.

For example, on January 20, 2009 (DSB-1634), Dr. Taylor sent an email to Drs. Chamberlain, Pujari and Bart responding to Dr. Chamberlain’s question of whether Mr. Vilks supported the Dean’s second appointment. In reply, Dr. Taylor confirmed Mr. Vilks, to his knowledge, was “100 percent behind Mr. Bates” and also wrote in the same email, “Flynn, Bontis and Vilks are Bates stormtroopers.”

Dr. Bart sent an email to the G21 on February 25, 2009 (DSB-1557), in response to the MUFAGab post written by Ms Stockton (discussed elsewhere in this Award). Dr. Bart replied to the 20 faculty members and stated:

“Stockton's letter over MUFAGAB was clearly not under her authorship - especially given the statistics she cites. Don't be surprised to see some version of this as an OP-ED piece (and NOT just a letter to the editor!) in the spec. Bates has now probably hired a PR 'crisis management' firm to orchestrate his public image for re-appointment...we now have to be prepared to respond at every turn. Are we up for it? As General Carl von Clausewitz said: "Having made the decision to cross a ditch, one does not proceed only half way!"”

Dr. Flynn testified the reference to a “PR ‘crisis management firm” was a reference to him because that is the area in which he works. Dr. Flynn further testified Dr. Bart often told him he was “on the wrong team” by supporting Mr. Bates in his endeavour to be appointed for a second term as Dean of the DSB.

A further email was sent by Dr. Taylor on February 25, 2009 (DSB-1557) to all members of the G21, in response to the email sent by Dr. Bart addressing Ms Stockton's MUFAGAB post. In reply to Dr. Bart's email, Dr. Taylor wrote:

“Terry's probably going to orchestrate this - he's not great but he does get dirty (his old Liberal training) so prepare for more. Wayne Shall we post our evaluation we sent to PG et.al. on MUFAGAB seeing as it has been ignored by those for whom it was written? P.S. As for your quote, Chris, it sounds like Ilene's charge to the committee.”

After the Area T&P Committee meeting on September 4, 2009, and before the Area T&P Committee reconsideration meeting on September 22, 2009, Dr. Pujari sent an email (DSB-1335, page 162) on September 16, 2009, to his Area T&P colleagues Drs. Taylor, Bart, Bontis, Deal, Hupfer, Yoshikawa, Ray, and Randall which confirmed the request for a reconsideration meeting for Dr. Longo and Dr. Flynn's T&P files. Dr. Taylor was on leave at that time and did not participate in Dr. Flynn's Area T&P Committee vote. Nonetheless, a reply email was sent (DSB-1335, page 163) by Dr. Taylor on September 16, 2009, to all Area T&P members at page 163 of DSB-1335 entitled “Urgent-Dr. Terry Flynn and Dr. Chris Longo: Request for reconsideration ... Strictly Confidential” where he stated:

“... I know there are no proxy votes but for what it is worth, in my opinion, as a two-term former area chair and one of only a few area people who has appeared before Senate re contentious T&P cases, neither one has earned the privilege of staying at Mac.”

Counsel for Dr. Taylor argued that his client did not specifically mention Dr. Flynn or Dr. Longo's name. It was submitted that Dr. Taylor's opinion concerning Drs. Flynn and Longo was based on his broad experience and his strong conviction that the University only hire qualified researchers and was not related to the candidate's position on the Dean's second appointment issue. Dr. Taylor admitted he should not have sent the email since it was contrary to accepted T&P practice. Nevertheless, Dr. Taylor's counsel submitted that there was no nefarious motivation in sending the email. Dr. Taylor submitted maintaining the standards of

McMaster University were a priority for him. Dr. Taylor's counsel submitted in defence of Dr. Taylor that his actions were an example of senior faculty being rigorous and uncompromising in asserting their right to safeguard the T&P process at McMaster. Dr. Taylor testified his opposition to Mr. Bates constituted peaceful dissent which was permissible under University policy, and that he did not allow that opposition to influence his administrative decisions. Dr. Taylor denied Dr. Flynn's allegations and refuted them by suggesting that no person complained to him about any of his allegedly harassing comments or actions. Neither Dr. Flynn, nor any other 003 Complainant, informed Dr. Taylor that they felt harassed.

Counsel for Dr. Taylor further submitted that if Dr. Flynn had felt he was being harassed by Dr. Taylor seeking the identity of the "mole" then it would have been reported to the Dean as a further action in the alleged "declaration of war", which had already been told to the Dean in the months prior. In addition, Counsel for Dr. Taylor submitted there was no evidence that Dr. Taylor "dealt with" Dr. Flynn or anyone else, nor did Dr. Taylor send the alleged harassing emails to Dr. Flynn. Counsel pointed to the fact that Dr. Taylor had disengaged from the DSB starting in 2007 and did not appear regularly in the DSB during regular business hours after the summer of 2007. As such, it was suggested that Dr. Taylor did not harass Dr. Flynn because he was generally absent during relevant times

### **Tribunal's Findings**

The Tribunal has considered all the evidence including the voluminous documentary record. The Tribunal will not refer further to the individual G21 emails found in the Exhibits which we identified earlier in our findings but will specifically identify those we have considered in making our findings along with the testimony from witnesses. The timeline for these events in the context of other events occurring at the DSB as outlined in the introduction to the 003 Decision and in the attached timeline (appended at Appendix O).

The Tribunal finds it more likely than not that Drs. Taylor and Bart effectively declared "war" on Mr. Bates in the June 25, 2007, Area meeting. Drs. Taylor and Bart's opposition to Mr. Bates, as well as some G21 colleagues, expanded to focus on Mr. Bates' perceived supporters. To support this finding, we rely upon the various G21 emails under Drs. Taylor and Bart's authorship or for which they were in receipt. The Tribunal finds Drs. Taylor and Bart's credibility on these issues was negatively impacted by the inconsistencies in their testimony when compared to the most reliable and consistent evidence addressing their comments and conduct during and following the June 25, 2007, Area meeting. Where in conflict on these issues, we preferred the evidence of Drs. Flynn, Longo, Hupfer, Wakefield and Ms Cossa to that of Drs. Taylor and Bart.

The testimony from Drs. Flynn, Wakefield, Tiessen and Ms Cossa, established that Drs. Taylor and Bart were aware shortly after the meeting that Dr. Flynn had discussed their comments with Mr. Bates. Drs. Taylor and Bart subsequently conveyed their knowledge and disapproval of his actions to Dr. Flynn. The Tribunal finds the weight of the most reliable and credible evidence indicates that it was more likely than not that Dr. Taylor went to Dr. Flynn (and Dr. Wakefield and Ms Cossa) and discussed the existence of a "mole" who had provided information from the Area meeting to Mr. Bates. The Tribunal finds it likely that the purpose of

the “mole” comments was to intimidate Dr. Flynn by making him aware of their knowledge. Furthermore, we accept Dr. Flynn’s evidence that Dr. Bart told him that he was “on the wrong team”. However, these communications in isolation did not reach the threshold for direct harassment.

The Tribunal did not accept Dr. Bart’s submission that Drs. Wakefield, Flynn and Taylor were all confused in their evidence on this point. Dr. Bart’s search for the “mole” after the June 2007 Area meeting was confirmed by the evidence of Dr. Wakefield, whose evidence was credible and reliable. Dr. Bart’s comment to Dr. Flynn that he was “on the wrong team;” and Dr. Bart’s reference to a PR crisis management firm in an email to the G21, all were evidence of Dr. Bart’s intention to target Dr. Flynn for his communications with and support for Mr. Bates. Dr. Bart acknowledged under cross-examination that he should not have sent his email and conceded other G21 emails were inappropriate and could lead to the perception of bias. Dr. Bart’s acknowledgement will be considered when the Tribunal receives submissions on remedy.

Dr. Flynn confirmed both Dr. Bart and Dr. Taylor came to his office separately and told him they intended to uncover the identity of the “mole” and “deal with” that person. Dr. Wakefield also testified Dr. Bart and Dr. Taylor separately approached her and asked whether she knew who divulged the information about the Area meeting to Mr. Bates (DSB-1098, paragraph 20). The Tribunal finds Dr. Bart’s conduct crossed the line and contravened the Policy when his vexatious and repetitive conduct resulted in a hostile work environment for Dr. Flynn.

The Tribunal finds the emails sent by Dr. Taylor, calling Dr. Flynn a “stormtrooper”, suggesting that Dr. Flynn would “orchestrate” Mr. Bates second appointment and encouraging people to vote negatively in Dr. Flynn’s T&P case in advance of the meeting, were vexatious and repetitive. The evidence shows there is a reasonable likelihood that Dr. Taylor had a bias against Dr. Flynn and that he planned on acting upon information irrelevant to Dr. Flynn’s T&P dossier for tenure and promotion when he suggested to Ms Cossa that the mole “would ‘continue’ to be dealt with”. The evidence and reasonable inferences support that Dr. Taylor acted upon his threat when he expressed the view that Dr. Flynn had not earned “the privilege of staying at Mac”.

The Tribunal finds that Drs. Taylor and Bart’s actions against Dr. Flynn following the Area handover meeting in June 2007 resulted in and contributed to the poisoned workplace in breach of the Policy. It is acceptable for colleagues to express their displeasure with the actions of another colleague; however, in a collegial environment this should take place through direct and open communications. Drs. Taylor and Bart’s email communications contributed to our finding that their actions resulted in the poisoned environment at the DSB in breach of the Policy. The covert nature of these emails (sent to G-21 colleagues only), the timing of the distribution of this vexatious information related to Dr. Flynn’s consideration for renewal and the persistent nature of the emails and conduct were factors contributing to our finding Drs. Taylor and Bart’s conduct resulted in a poisoned workplace.

**ii. Dr. Flynn's general allegations of harassment against Dr. Pujari****Summary of Evidence and Submissions**

From 2004-2006 Dr. Flynn was a CLA industry professor and in 2006 was converted to a tenure-track position for an initial appointment of three years commencing on January 1, 2007, after which he would be eligible to be renewed for a further three years. Thereafter, Dr. Flynn relied on his Area Chair, Dr. Pujari, for direction in preparation of his dossier. Dr. Flynn believed Dr. Pujari was deliberately unhelpful, omitted key guidance, and failed to provide mentorship because, according to Dr. Flynn, Dr. Pujari wanted him to fail to obtain renewal.

Dr. Pujari met with Dr. Flynn on three occasions in three years to discuss the annual CP/M and review his dossier. Dr. Flynn alleged one annual meeting for an untenured faculty member was inadequate. Dr. Flynn testified Dr. Pujari did not inform him that he urgently needed to address his lack of publications, or that his research was so insufficient that he was in danger of not being renewed. In Dr. Flynn's opinion the meetings were not substantive nor did any follow-up take place between the meetings. Dr. Pujari sent Dr. Flynn memoranda, including a summary, following each meeting (DSB-0414 and DSB-0917). Dr. Flynn understood it was the role of the Area Chair to be supportive of a T&P case or the faculty member could identify another colleague to bring forward the case.

Dr. Pujari reviewed the memoranda in his testimony. Dr. Pujari's testimony confirmed discussion items during the annual meetings included the need to publish and improvements required in Dr. Flynn's dossier. In 2008 Dr. Pujari raised concerns over Dr. Flynn's heavy service commitments especially with MCM and he encouraged Dr. Flynn to write papers and to publish. In the 2009 meeting Dr. Pujari expressed surprised that nothing had happened in terms of improving Dr. Flynn's research record since their 2008 meeting. Dr. Pujari showed Dr. Flynn the Yellow Document and emphasized the need for publications. Dr. Pujari offered to speak to the administration in order to assist in the reduction of Dr. Flynn's service commitments, which Dr. Flynn declined.

Dr. Pujari testified he provided some form of mentorship and assistance to Dr. Flynn, but explained the DSB did not have a formal mentorship program. Furthermore, Dr. Pujari suggested Dr. Flynn did not properly prioritize his dossier for renewal. Dr. Pujari testified he offered feedback to Dr. Flynn on his research statement, assisted with preparing the dossier, offered to discuss any concerns, reviewed the drafts, provided comments, and made corrections. Dr. Pujari relied upon a significant amount of correspondence and meetings with Dr. Flynn where he provided assistance with the preparation of Dr. Flynn's dossier. The purpose of the annual meetings, according to Dr. Pujari, was to review Dr. Flynn's progress and status, his CP/M, and his research. Dr. Pujari conceded it may not have been perfect, but it was a good start for the Area that someone was undertaking mentorship.

Dr. Flynn testified he asked Dr. Pujari directly if he supported his case for renewal during their last meeting in August of 2009. Dr. Pujari allegedly replied "It is not my position to be supportive of your case, as the Area Chair." Dr. Pujari denied making the above statement. Dr. Pujari testified he told Dr. Flynn he was not in a position to tell him "whether I would be

supportive or not and that a T&P member's vote is confidential." Dr. Pujari subsequently voted against Dr. Flynn's case at both the initial and reconsideration meeting at the Area Level one month later.

Counsel for Dr. Pujari submitted Dr. Flynn admitted on cross-examination that he never complained to Dr. Pujari about a lack of sufficient mentorship, that Dr. Pujari encouraged him to publish in top tier journals, and that Dr. Pujari tried to ensure Dr. Flynn's success in the T&P renewal process. In an email sent on August 27, 2009, Dr. Flynn wrote to Dr. Pujari and says (DSB-1018): "Hi Ashish, thank you for all your guidance, advice, and support over the last few months." Dr. Flynn agreed under cross-examination that he meant what he wrote in that email.

Counsel for Dr. Pujari noted that Dr. Flynn was unable to provide any evidence to the Tribunal that Dr. Pujari was critical of Dr. Flynn and, in contrast, highlighted the fact that evidence was submitted that Dr. Flynn sent an email to Mr. Vilks in which he called Dr. Pujari arrogant and ignorant and instructed Mr. Vilks to send the email to a larger group.

Dr. Flynn also alleged Dr. Pujari harassed him in a number of other instances. Dr. Flynn testified Dr. Pujari was dismissive and became visibly angry in an Area meeting where Dr. Flynn suggested changing a course affiliation from Marketing to Strategy. The Complainant alleges Dr. Pujari continually opposed the MCM Program, for which Dr. Flynn was the Director. At a separate Faculty meeting in 2009, Dr. Flynn submits Dr. Pujari "sprang" a question on Dr. Flynn regarding losses within the MCM Program finances, without providing advance notice, despite ample opportunity to do so. Dr. Flynn stated Dr. Pujari asked the question at the Faculty meeting for the sole purpose of discrediting and embarrassing Dr. Flynn and the MCM program of which he was the Director and Dr. Pujari's questions regarding the MCM program at Faculty meetings that were unfounded or incorrect.

Dr. Flynn alleged that Dr. Pujari's attempts to have prospective MCM students write the GMAT to gain admission was an attempt to sabotage the MCM program. Students entering the MCM program are professionals and not undergraduates since the MCM program is executive education. Therefore, it was submitted the GMAT would therefore be inappropriate for incoming students. Dr. Pujari had no response when Mr. Vilks asked Dr. Pujari why he apparently ambushed Dr. Flynn. Dr. Flynn stated Dr. Ray and Dr. Steiner also supported Dr. Pujari's efforts to sabotage the MCM Program.

Dr. Flynn alleged Dr. Pujari (along with other faculty members including Drs. Ray, Yoshikawa, Taylor, and Bart) were quick to publicly compliment certain colleagues on their achievements, but would tend to either ignore his accomplishments or belittle others as the opportunities arose. For example, when Dr. Taylor was awarded the title of Fellow, Canadian Institute of Management, Dr. Pujari quickly sent out a congratulatory note to the entire area (DSB-1321). When Dr. Flynn was elected a Fellow of the Canadian Public Relations Society, and its national president in June 2009, Dr. Pujari made no attempt to recognize the accomplishment until after the Dean had sent a notice to the Faculty. Dr. Flynn stated the length and tone of the two congratulatory emails were significantly different.

Dr. Pujari denied Dr. Flynn's allegations. He denied he became angry during an Area meeting when discussing the re-categorization of one of Dr. Flynn's courses. Rather, Dr. Pujari stated Dr. Flynn created a poisoned work environment in the Area by being rude and disrespectful to him when Dr. Flynn asked him about his qualifications and suitability to discuss such a course categorization.

With regards to the question about losses in the MCM program, Dr. Pujari denies he asked such a question, but did state he raised concerns over the low enrolment in the MCM Program and asked a staff member present at the Faculty meeting for reasons behind the low enrolment. Such discussions, in Dr. Pujari's opinion, including enrolment numbers and budgets, are appropriate during Faculty meetings.

Dr. Pujari denied attempting to sabotage Dr. Flynn's reputation during Faculty meetings, or his work in the MCM Program with respect to the GMAT requirement. Dr. Pujari categorized those discussions as normal Faculty discussions on academic programs and admission requirements.

With regards to the congratulating of fellow faculty members, Dr. Pujari stated Dr. Flynn did not bring up his appointment to the Canadian Public Relations Society to him. In any event, Dr. Pujari stated he forwarded the *Daily News* story related to Dr. Flynn's appointment to the Area.

Several witnesses provided character evidence supporting Dr. Pujari. Dr. Deal testified Dr. Pujari is highly intelligent, dedicated to his career, and that he is an asset to the DSB. Mr. Ryder stated Dr. Pujari is fair and a "rules-is-rules" kind of person. Mr. Ryder testified it would take a lot to convince Dr. Pujari to deviate from the rules and practice. Mr. Malik testified he never observed Dr. Pujari act in an aggressive way or treat anyone in a disrespectful manner.

### **Tribunal's Findings**

The Tribunal finds there was insufficient evidence to establish that Dr. Pujari's alleged lack of mentoring or his open communications with Dr. Flynn, for example, at the Area meeting harassed Dr. Flynn for incidents summarized in the proceeding section. Further, in hindsight, Dr. Flynn likely viewed these interactions with Dr. Pujari in a negative light as a result of the difficulties he experienced with the renewal process. Reflecting our 002 findings, managers are not held to a standard of perfection. The evidence does not establish that the specific actions rise to the level of harassment or a breach of the Policy. We are satisfied that many of these events likely occurred. However, the evidence was inconsistent and found to be unreliable or insufficient.

The Tribunal finds objective evidence confirmed that Dr. Pujari provided reasonable mentorship. Dr. Pujari's emails reasonably identified to Dr. Flynn the concerns about his research and publications. Reasonable issues were identified by Dr. Pujari which Dr. Flynn needed to address. There were legitimate questions with the merits of Dr. Flynn's dossier. Dr. Pujari's conduct may have been found to only have resulted from and/or contributed to a poisoned work/academic environment which may not have risen to be a breach of the Policy

except for the fact that Dr. Pujari engaged in subsequent conduct and comment involving Dr. Flynn's T&P consideration.

The Tribunal is satisfied the evidence confirmed there was personal animosity motivating Dr. Pujari's treatment of Dr. Flynn. Further, this personal animosity is confirmed and reflected in the G21 communications in which Dr. Pujari participated or for which he was in receipt. However, the necessary vulnerability and power imbalance was not present between Drs. Pujari and Flynn until Dr. Flynn was assessed by the Area T&P Committee which Dr. Pujari chaired. Dr. Pujari's knowledge of G21 activities confirms as Area Chair he likely expected Dr. Flynn to be negatively impacted because of his perceived support for Mr. Bates. Dr. Pujari with full knowledge of the G21 colleagues' views allowed Dr. Flynn renewal's to be tainted. At this point, Dr. Pujari's conduct and comment concerning Dr. Flynn crossed the line and impacted Dr. Flynn's employment as discussed below.

iii. **Dr. Flynn's three year review for renewal was discriminatory and harassing**

**Summary of Evidence and Submissions**

Dr. Flynn alleged the process he was subjected to for renewal in 2009 was both discriminatory and harassing.

**Area T&P Committee Meeting**

The Area T&P Committee consisted of Dr. Pujari as Chair, and Drs. Randall, Ray, Hupfer, Yoshikawa, Bart and Deal (by conference call). Dr. Taylor was on research leave at the time and sent his regrets, as did Dr. Bontis. Their deliberations and vote, submitted as evidence at DSB-1332, were 2 in favour (Randall, Hupfer), 5 against (Pujari, Ray, Yoshikawa, Bart, Deal), and no abstentions, for renewing Dr. Flynn as an Assistant Professor for a three-year term. Individuals identified in the evidence as members of the G21 all voted against Dr. Flynn.

The Area Recommendation to the Faculty T&P Committee was prepared by Dr. Pujari (DSB-1332). The document confirmed the Area Chair shared with the Area T&P Committee that he "counseled Dr. Flynn during research progress meetings in past two years and explicitly advised him (in writing) to spend proportionally more time on research as compared 'service' [sic] and other activities as this is a tenure-track appointment." Dr. Pujari was unsupportive of his renewal and questioned Dr. Flynn's scholarly promise and ability to get tenure at the Area T&P Committee meeting, on September 4, 2009.

Dr. Hupfer testified some members of the Area T&P Committee were angry, sarcastic and impolite in their discussions about Dr. Flynn. In her affidavit (DSB-2107), Dr. Hupfer suspected some of the comments at the Area level were motivated by the belief that Dr. Flynn had shared information from the Area meeting in June 2007 about the opposition to Mr. Bates' second appointment as Dean. She testified the atmosphere was "anything but collegial." Dr. Randall also raised concerns in his testimony.

Dr. Pujari delivered the Area T&P Committee's decision to Dr. Flynn on September 9, 2009. Dr. Pujari allegedly said to Dr. Flynn that the vote was "not even close". Dr. Flynn asked Dr. Pujari about the basis of the Committee's decision. Dr. Flynn stated Dr. Pujari was evasive in answering his questions, only confirming the Committee considered the criteria in the Yellow Document. Dr. Flynn requested a written rationale for the Committee's decision, as well as a copy of the minutes and decision from the Committee, on September 11, 2009 (DSB-1030). Dr. Pujari stated he could not comply with the request. Dr. Pujari testified he did not provide Dr. Flynn with further details because he was bound by the confidentiality under the Yellow Document.

### **Area T&P Committee Reconsideration Meeting**

Dr. Flynn requested the Area T&P Committee reconsider his renewal. The Area reconsideration meeting for both Drs. Flynn and Longo took place on September 22, 2009. Drs. Pujari (Chair), Randall, Ray, Hupfer, Yoshikawa, Bart, Deal (through conference call) and Bontis participated. Dr. Taylor was on research leave at the time and sent his regrets but as earlier identified advised on September 16, 2009 by email in advance of the meeting that neither Drs. Flynn nor Longo had "earned the privilege of staying at Mac". Dr. Flynn was accompanied by Dr. Alex Sevigny as a faculty advisor at the meeting. The vote to renew Dr. Flynn's tenure was a vote of 2 (Randall, Hupfer) in favour, 4 (Pujari, Ray, Bart, Deal) opposed, 1 (Bontis) abstention, and 1 (Yoshikawa) technical abstention (member of Faculty T&P Committee). The Area T&P Committee's final recommendation was to allow Dr. Flynn's appointment to lapse.

Despite Dr. Flynn's understanding that his research was the main focus at the reconsideration meeting, Dr. Flynn alleged Drs. Bart, Ray, and Yoshikawa aggressively questioned Dr. Flynn on topics unrelated to the Committee's eventual decision. For example, Dr. Flynn stated Dr. Bart questioned whether Dr. Flynn received course relief for his MCM Director position, despite already knowing the answer. Dr. Bart also asked about his teaching on overload, to which Dr. Flynn replied it was at the request of the Dean. Dr. Bart asked whether that was his "personal choice." Dr. Flynn took that question to mean that it was his "personal choice" to support the Dean rather than his detractors.

Dr. Pujari testified Dr. Bart's questioning was appropriate because he was inquiring about Dr. Flynn's scholarly contributions and he had observed that Dr. Flynn might have spent too much of his time on service, which was against his Area Chair's advice.

Dr. Deal, a long-standing faculty member, was a member of the Faculty T&P Committee who voted to allow Dr. Flynn's appointment to lapse. Dr. Deal was not physically present at the meeting, but participated via teleconference. Dr. Deal testified that he felt nothing inappropriate happened at the meetings, the discussions were normal and appropriate and that members of the Committee treated Dr. Flynn fairly.

Dr. Sevigny, a credible witness experienced with processes outside the DSB faculty, took notes at the reconsideration meeting (DSB-0472). Dr. Sevigny testified the tone of meeting was mocking, dismissive, rude, sarcastic, and tense. He testified Dr. Bart's questioning was inappropriate, condescending and dismissive. He also stated the manner of questioning, the

refusal to let Dr. Flynn fully answer the questions asked, and the dismissive nature after his responses, seemed disproportionate. Dr. Sevigny felt the suggestion about whether Dr. Flynn's research area was truly a discipline was a personal challenge to Dr. Flynn.

Counsel for Dr. Flynn noted Dr. Deal also participated in the meeting via teleconference. Counsel also noted Dr. Deal was a signatory to the Performance Report and was not aware of several of the emails sent by Drs. Taylor and Bart. Counsel further submitted Dr. Deal's perception of events was impaired due to his participation by teleconference which was highlighted by the fact that he was not even aware Dr. Sevigny was present at the meeting. Dr. Dooley testified he told Dr. Pujari that having members participate via conference call was "unwise". Counsel for Dr. Flynn submitted Dr. Sevigny's notes do not identify Dr. Deal's attendance because he participated via conference call, he was not involved in this discussion and therefore his perception of events was impaired.

Counsel for the individual 003 Respondents asked the Tribunal to question Dr. Sevigny's testimony. Counsel suggested Dr. Sevigny's notes were inaccurate because Dr. Sevigny did not know Dr. Deal participated in the meeting via teleconference. Counsel submitted Dr. Deal's participation via teleconference did not affect his perception of the case or vote, and Dr. Deal testified he would have asked members to speak up if he could not hear something.

Dr. Hupfer testified Drs. Bart, Ray and Pujari were even more sarcastic in the reconsideration caucus discussion following Dr. Flynn's appearance then at the initial meeting. She stated Dr. Bart engaged in a heated discussion suggesting the Committee would be damaging the reputation of the School if they approved Dr. Flynn's renewal. Dr. Hupfer also testified she felt intimidated by Dr. Bart when he stated she was afraid or did not lack the courage to vote against Dr. Flynn's renewal and told her "you should have the courage to vote NO". She further stated Dr. Bart suggested the result of the vote should be identified publicly in the minutes of the meeting.

Dr. Randall also presented evidence regarding the reconsideration committee's discussion in caucus following Dr. Flynn's appearance. Dr. Randall testified that Dr. Bart suggested that anyone who voted in favour of Dr. Flynn's renewal should have their names published. To support his view that Dr. Bart was engaged in intimidation, Dr. Randall referenced his own tenure process experience. Dr. Randall testified Dr. Bart told him that he had voted against Dr. Randall's case: "No, it had nothing to do with your research, it was a 'fuck you' vote because you wouldn't play ball." Dr. Bart denied making this statement to Dr. Randall.

Dr. Bart testified that he asked for the vote to be recorded because he was surprised some colleagues were expressing support for Dr. Flynn. He stated that he put the question to the group to test their resolve. He explained there is a current debate concerning board governance regarding publicizing how directors vote on contentious issues. Dr. Bart's counsel submitted, "there was nothing wrong in asking that question, and nothing wrong with testing the resolve of fellow committee members. Ultimately the Committee voted against recording the votes of Committee members."

Dr. Pujari also did not find Dr. Bart's suggestion that the vote be recorded threatening. Dr. Bart was simply asking if the minutes should note the names of the members with their votes, which was a useful corporate governance practice. Dr. Pujari, however, disagreed with Dr. Bart's suggestion and felt that publishing the names of the "no" votes was inappropriate.

Dr. Pujari met with Dr. Flynn in Dr. Sevigny's presence to discuss the results after the Committee had made its final decision to allow his appointment to lapse. Dr. Flynn testified that Dr. Pujari was extremely unhelpful and continually repeated that the Committee followed the Yellow Document. Dr. Sevigny testified he was concerned about the manner in which Dr. Pujari delivered the results to Dr. Flynn, which was done in an "extremely defensive... dismissive, [and] mocking" way, and was "not collegial in any way." He testified Dr. Pujari repeatedly referred to the Yellow Document to justify the Committee's reasoning. Similarly, Dr. Sevigny (DSB-0474) noted Dr. Pujari's responses to Dr. Flynn's questions during the meeting frequently referred to the Yellow Document.

After the meeting, Dr. Flynn followed up and emailed Dr. Pujari to ask whether there were any abstentions to the vote (DSB-0475). Dr. Pujari did not respond. Dr. Flynn stated he felt Dr. Pujari's opposition to his renewal was confirmed when Dr. Pujari sent him a sarcastic and mocking email on October 14, 2009 (DSB-0478), which stated: "Pl. see attached. This is the summary of our first research meeting in 2009 in which we discussed about your research progress and your plans (this one you say you have)."

Counsel for Dr. Pujari submitted Dr. Flynn's allegations constitute "revisionist history" with regard to his inadequate research record. Counsel stated it is simply not credible that Dr. Flynn was not aware of the need to publish. Dr. Flynn conceded on cross-examination that from the start of his employment at McMaster he was aware of the need to do research and publish and that his research in 2009 was "not where he would have liked it to be". Dr. Deal testified that he informed Dr. Flynn in late 2006 or early 2007 that he needed to research and publish, and Dr. Flynn confirmed this conversation.

### **Tribunal's Findings**

The Tribunal has considered the conduct and comment related to Dr. Flynn at the Area T&P Committee meeting on September 4, 2009; the reconsideration meeting on September 22, 2009; the Committee caucus after Dr. Flynn left the reconsideration meeting; and the communication by Dr. Pujari to Dr. Flynn of the decision, which was witnessed by Dr. Sevigny. The Tribunal accepted the evidence of Drs. Hupfer, Randall and Sevigny who provided consistent reliable and credible evidence which was preferred when it conflicted with evidence provided by Drs. Bart, Pujari and Ray

The evidence confirms Dr. Flynn had a strong teaching and service record at the University. Dr. Flynn was converted from his CLA position to tenure-track while he remained the Director of the MCM Program and his teaching load remained the same. Dr. Flynn acknowledged there were concerns about his research and this was the focus of criticisms raised with respect to his renewal. Dr. Flynn did admit his case was marginal with respect to the established requirements for progression to renewal, particularly with respect to his research.

The Tribunal affirms that issues related to Dr. Flynn's deficiencies were appropriate to identify as relevant concerns. The Committee had legitimate concerns about Dr. Flynn's lack of progress in research, his potential to contribute to scholarly research, and his heavy focus on service. The recommendation that Dr. Flynn's appointment should be allowed to lapse was therefore, on its face, within the scope of possible outcomes, albeit a departure from the expected norm.

The issue is whether Dr. Flynn's consideration for renewal was tainted by personal animosity by some members of the Committee and the conduct or comment crossed the line or the process involved vindictive behaviour which created a negative work environment in breach of the Policy. The Tribunal has determined that it is likely that extraneous factors, unrelated to the usual considerations in the T&P deliberations, affected the process and thereby breached the Policy. There was adverse effect harassment and a breach of the Policy because Dr. Flynn was deprived of the opportunity to raise a reasonable apprehension of bias issue with the Committee and the evidence in the Tribunal's view established bias.

The Tribunal relies upon its general findings concerning the G21 emails and the material events summarized in the general factual chronology (Appendix O). After initially expressing that the CLAs should be "held hostage" the focus of the G21 members in the SML/HSM Area including Drs. Bart and Taylor turned to Drs. Flynn and Longo who were also perceived as Mr. Bates' supporters and who became vulnerable when they were considered under T&P Committee processes. For example, the Tribunal finds that Dr. Taylor confirmed his intention to seek retaliation against Dr. Flynn when he said to Ms Cossa that "We know who did it. That person has been dealt with and will continue to be dealt with". The Tribunal finds Drs. Bart and Pujari's behaviour during the Area T&P Committee reconsideration meeting and Dr. Taylor's attempt to influence the outcome of the initial Area T&P Committee meeting breached the Policy and more likely than not established retaliatory and vindictive behaviour.

The Tribunal was persuaded by reliable evidence presented by Drs. Hupfer and Randall who, although neither were a party to these proceedings, stated they felt intimidated by some of Dr. Bart's remarks in the Area meetings in question. The tone, nature and duration of Dr. Bart's direct questioning of Dr. Flynn were also inappropriate in the view of Drs. Hupfer and Randall. The Tribunal also accepts evidence of Dr. Sevigny as a credible, independent observer who observed that the reconsideration meeting was "mocking, dismissive, rude, sarcastic and tense" including Dr. Bart's questioning. Furthermore, the Tribunal accepts Dr. Sevigny's evidence concerning Dr. Pujari specifically noting that when discussing Dr. Flynn's results, Dr. Pujari was not collegial but rather dismissal and "mocking".

Furthermore, the Tribunal preferred the evidence of Dr. Randall and accepts it where it contradicted Dr. Bart's testimony. The Tribunal finds Dr. Bart's likely made the "fuck you" and "play ball" comment to Dr. Randall. While Dr. Randall was not a party to these proceedings, it constitutes a very disturbing example of the type of behaviour in the poisoned workplace at the DSB.

The Tribunal placed less weight on the testimony of Dr. Deal related to Dr. Bart's conduct in the Area T&P Committee meeting in 2009 as he was participating by teleconference and therefore his perceptions were not the best available evidence.

Drs. Bart, Taylor and Pujari's conduct or comment breached the Policy when Dr. Flynn was being considered for renewal at the Area T&P Committee level when it resulted in and contributed to a poisoned academic/work environment. The Tribunal finds several of the events associated with the decision not to renew Dr. Flynn at the three-year-review mark confirmed a poisoned workplace. The Tribunal finds it is more likely than not that Dr. Pujari's decisions were biased and factors external to Dr. Flynn's dossier impacted the tone, nature and extent of his communications. Dr. Pujari's conduct and failure to act and fulfill his responsibilities as Area Chair resulted in the poisoned workplace in breach of the Policy. The Area recommendation was also relied upon by the Faculty T&P Committee and further negatively impacted Dr. Flynn in his employment.

### **Faculty T&P Committee Meeting**

The Area's recommendation against Dr. Flynn's renewal proceeded to the Faculty T&P Committee in October 2009. The seven members of the Committee at that time were Drs. Chan, Charupat, Kwan, Steiner, Rose, Yoshikawa, and Mr. Bates. Dr. Flynn was invited to attend the meeting and Dr. Martin Dooley, Professor of Economics and Vice-President of MUFA, attended the meeting at the request of Dr. Flynn as an "advocate for the process and for no one person or persons" (DSB-2307).

The Faculty T&P Committee voted to accept the Area recommendation to allow Dr. Flynn's appointment to lapse and cited that they were not convinced Dr. Flynn's "current work would result in an acceptable publication record within a three year term" (DSB-1311). The vote to allow Dr. Flynn's appointment to lapse was 5 (in favour), 1 opposed (Bates) and 1 technical abstention.

Dr. Flynn was questioned at the meeting by Drs. Kwan, Rose, and Steiner for approximately 75 minutes. Dr. Flynn described Dr. Steiner's questioning in the meeting as aggressive and stated it lasted over 45 minutes. Dr. Steiner's questions were not focused on his research, which was the main concern identified in the Area T&P recommendation. Rather, Dr. Steiner questioned the MCM program budget Dr. Flynn presented to the University Graduate Program Committee in 2005 and his work with the MCM Program. Dr. Flynn felt Dr. Steiner's questions were designed to discredit his role as MCM program director. Dr. Flynn alleged that during the questioning he asked Mr. Bates as Chair if the questions were all relevant. Dr. Flynn stated that when Mr. Bates tried to stop Dr. Steiner's questioning, Dr. Steiner became very aggressive with Mr. Bates.

Dr. Rose made a comment that Dr. Flynn knew the Area's expectations for renewal and stated that Dr. Pujari had detailed them in annual review memoranda. Dr. Flynn suspected Dr. Rose must have relied upon Dr. Pujari's memoranda. Dr. Flynn found this to be odd because (1) the memoranda did not outline expectations for renewal, (2) the memoranda were not part of Dr. Flynn's dossier, and (3) the Area recommendation made no mention of such memoranda. Dr. Flynn speculated that Dr. Rose had conferred with Dr. Pujari. Dr. Flynn also thought Dr. Rose's comment was confrontational, alleging his statements were merely an attack made in bad faith.

Dr. Rose testified he did not see, or ask to see, any emails or memoranda between Dr. Pujari and Dr. Flynn, nor were those issues presented to the Faculty T&P Committee. Dr. Rose testified the questions asked by the Committee, including his own and those of Dr. Steiner were entirely appropriate. Dr. Rose testified the statement he purportedly made was in fact a question asking Dr. Flynn to explain the difference between what Dr. Pujari told the Faculty T&P Committee about his research output and Dr. Flynn's statement to the Committee. He further believed Dr. Flynn's case was decided on the merits and for no other reason.

Dr. Rose also noted other members of the Faculty T&P Committee did not object to his or Dr. Steiner's questions. Dr. Dooley testified he did not observe any behaviour towards Dr. Flynn that could be considered hostile or harassing. He felt the T&P process was followed correctly. Dr. Dooley further disclosed to Dr. Flynn following the meeting that he had a pre-existing personal family relationship with Dr. Steiner and that their children were engaged to be married. Drs. Kwan, Chan, and Zeytinoglu provided testimony to the Tribunal that the questions asked by Drs. Steiner and Rose were normal and professional.

The Faculty Committee ultimately voted against Dr. Flynn's renewal in its recommendation to the Senate Committee on Appointments (DSB-1311). Counsel for Drs. Steiner and Rose submitted his clients voted against Dr. Flynn's renewal because of his weak research record and failure to engage in research at a research-intensive university.

### **Tribunal's Findings**

The Tribunal finds the questions posed by Drs. Steiner and Rose at the Faculty T&P Committee meeting were not direct harassment of Dr. Flynn if viewed in isolation. The merits of Dr. Flynn's renewal consideration was one for which difficult questions should be expected and had to be asked. Dr. Flynn admitted his case was marginal with respect to the established requirements for progression to renewal, particularly with respect to his research. Academic freedom requires reasonable deference to the scope and types of questions unless there is reliable and clear evidence of harassment or bias. Dr. Flynn's subjective view is not dispositive. The Tribunal finds insufficient evidence to support direct harassment, in isolation, by either Drs. Steiner or Rose for the questions they each raised at the Faculty Committee meeting.

The issue is whether there is sufficient evidence to establish Drs. Rose and Steiner breached the Policy because of their involvement with or knowledge of G21 emails which disparaged Dr. Flynn personally due to his association with Mr. Bates or due to the persistence or repetitive nature of the conduct. The Tribunal finds sufficient evidence associated with the decision not to renew Dr. Flynn at the three-year-review to support a finding that the Policy was breached.

The Tribunal finds that Drs. Steiner and Rose had knowledge of the disparaging remarks about Dr. Flynn and the stated objectives by the G21 breached the Policy when they failed to identify a bias and voted against renewal thereby tainting the process. Furthermore, Dr. Harnish, Dr. Hupfer, and the Provost, Dr. Busch-Vishniac, all testified it was rare for someone in Dr. Flynn's situation at the University not to be renewed at that point in their career. The Tribunal also relied upon its own experiences with these processes and made reasonable inferences where

there was no direct evidence. Where the evidence conflicted, the Tribunal preferred the credible evidence of non-parties and especially Drs. Sevigny, Randall and Hupfer.

The Tribunal finds the nature, length and tone of Dr. Steiner's questioning of Dr. Flynn was indicative of a pattern of inappropriate behaviour exhibited by Dr. Steiner in several Faculty T&P Committee meetings. Dr. Steiner's conduct during the Faculty Committee meeting and his vote resulted in a poisoned work/academic environment and Dr. Rose's bias and vote, but not his questions, during the Faculty Committee meeting contributed to the poisoned work environment in breach of the Policy.

Our findings also reflect some concerns identified at the Senate Committee on Appointments. In October 2009, the Senate Committee on Appointments initially voted to allow Dr. Flynn's appointment to lapse. The SCA's decision is detailed in the minutes of the meetings at DSB-1289 and DSB-1290. As per the Yellow Document, Dr. Flynn was invited for an interview with the SCA at its next meeting in November 2009, the minutes of which were submitted as evidence at DSB-1291. The Committee noted Dr. Flynn's unique service contributions to the University; that Dr. Flynn was not underperforming; and that Dr. Flynn had been misled if he had been told that he needed to have 10-12 published papers at this stage in his appointment. One member of the Committee commented he was surprised the Area and Faculty were attempting to dismiss Dr. Flynn so quickly. Ultimately, the Senate Committee on Appointments voted unanimously in favour of Dr. Flynn's renewal with a vote of 8 in favour, 0 opposed and 0 abstained.

The Tribunal shares the concerns expressed at the SCA that Dr. Flynn was being dismissed and not renewed so early in his career. On balance, the Tribunal is satisfied that while reasonable grounds existed to support Dr. Flynn not being renewed that in all of the circumstances the reasonable research concerns were relied upon improperly to justify vexatious conduct which tainted Dr. Flynn's T&P consideration and breached the Policy.

#### **iv. Dr. Bart's treatment of Dr. Flynn at the Director's College and his removal**

##### **Summary of Evidence and Submissions**

Dr. Flynn was also a faculty member of the Directors College, which was led by Dr. Bart and offered jointly by the DSB and the Conference Board of Canada. Dr. Flynn shortly after his appointment to the DSB as a faculty member in 2004 was asked to join the Director's College. He subsequently taught a module on Corporate Reputation for 5 years and received high teaching evaluations.

On December 22, 2009, Dr. Flynn received an email from Ms Catherine Gardiner from the CBoC, one of the partners of the Directors College, informing him the curriculum for his course had been modified and his relationship with the Directors College would be terminated. Dr. Flynn stated he was shocked and disappointed because he had been teaching the course for 5 years with high evaluations. Dr. Bart emailed Dr. Flynn on December 23, 2009 (DSB-0489) suggesting they discuss the matter. Dr. Flynn stated he tried to have the conversation with

Dr. Bart in early 2010 but Dr. Bart did not follow through. Dr. Flynn believes Dr. Bart terminated Dr. Flynn's relationship with the Directors College, without reasonable cause or excuse and specifically as a reprisal for Dr. Flynn's support of Mr. Bates.

Dr. Bart testified a sponsor of the DC, NATIONAL Public Relations Inc., initiated that change. Mr. David Weiner, a Senior Partner with NATIONAL Public Relations Inc., provided evidence that his firm made a large financial donation to the DC and asked to supply instructors at the DC. Around November 2009, Mr. Weiner sat through one of Dr. Flynn's DC sessions. He identified an overlap from the course he taught, on crisis management, and Dr. Flynn's course on reputation management. Mr. Weiner felt the two courses seemed redundant and he expressed a need to streamline the content of the two courses in a discussion with Dr. Bart. Mr. Weiner could not recall who initiated the discussion. However, he indicated he could have been the one who initiated it.

Dr. Bart explained he and Ms Catherine Gardiner jointly agreed that it was important to accommodate the sponsor. Ms Gardiner informed Dr. Flynn of the change. In retrospect, Dr. Bart regrets not delivering the news personally to Dr. Flynn, but he did not want to deliver more bad news to Dr. Flynn, who was in the midst of addressing his renewal status as outlined above. Dr. Bart testified he would have explained the need to accommodate Mr. Weiner as a sponsor but would have confirmed Dr. Flynn was an excellent instructor.

Counsel for Dr. Flynn noted Dr. Weiner did not insist or demand that the two courses amalgamate, as Dr. Bart had inferred in his testimony. Counsel also submitted Dr. Bart insisted on removing Dr. Flynn from the Directors College because when an opportunity came for Dr. Flynn to return to the Directors College and teach a course he currently teaches at McMaster, he was not asked to return. Instead, a professor from outside the University, Dr. Schreiber, was asked to teach the course.

### **Tribunal's Findings**

The Tribunal finds it did not have sufficient evidence to establish Dr. Flynn's removal from the Directors College was harassment on the part of Dr. Bart. Ms Gardiner representing the joint venture partner communicated the decision for Dr. Flynn's removal. Mr. Weiner's evidence provided a reason for this managerial decision. The Tribunal is not prepared to make any adverse inference that Dr. Bart orchestrated Dr. Flynn's removal without having received evidence from Ms Gardiner.

**L) COMPLAINT OF DR. CHRIS LONGO**

Dr. Longo's allegations are set out at paragraphs 57-77 of his Complaint (DSB-0002) and are particularized in his affidavit at DSB-2108. Witnesses in support of Dr. Longo included Dr. Hupfer, Dr. Wakefield, Dr. Dooley, Dr. Sevigny, Mr. Bates, and Dr. Randall. Dr. Randall's attendance at the hearing was under summons. Drs. Taylor, Pujari, Steiner, and Bart provided evidence in response to Dr. Longo's Complaint. Their affidavits are found at DSB-2290, DSB-2291, and DSB-2293, DSB-2292 respectively. Their supporting witnesses included Drs. Kwan, Dooley, Chan, Deal and Chamberlain.

Our introduction to the 003 Complaint outlined the Tribunal's broad findings and established the timelines for the G21 emails which, amongst other things, disparaged Mr. Bates and his supporters. The Tribunal finds the reliable evidence confirmed group and individual bias negatively impacted some of the 003 Complainants including Dr. Longo when they became vulnerable in their employment. The Tribunal finds Dr. Longo was perceived to be a close supporter of Mr. Bates. There is sufficient evidence to conclude that Dr. Longo was the victim of retaliatory conduct initiated by Drs. Bart and Taylor and subsequently condoned and carried out by Drs. Pujari, Bart, Steiner and Rose when they participated on T&P Committees addressing Dr. Longo's tenure and promotion review without disclosure of their bias.

The Tribunal, having considered the G21's group emails and other reliable evidence has concluded that it is more likely than not, that Drs. Bart, Steiner, Rose and Pujari, whether consciously or unconsciously, did not assess Dr. Longo's case fairly and they prejudged him. The course of conduct and comment by Drs. Taylor, Bart, Pujari and Steiner created a hostile work environment for Dr. Longo who was denied the privilege of having his case considered by faculty free of bias. Dr. Longo was deprived of the opportunity to raise a reasonable apprehension of bias issue when Drs. Pujari, Bart, Steiner and Rose failed to disclose private disparaging comments about Dr. Longo made by them or other G21 participants known to them when they participated on the Area or Faculty T&P Committee.

The Tribunal finds that the evidence establishes that Dr. Taylor directly harassed Dr. Longo when he sent emails referring to Dr. Longo in a vexatious and derogatory manner. Dr. Taylor's conduct was identified as sufficiently egregious and part of a course of conduct to have constituted a breach of the Policy. Drs. Taylor, Pujari, Rose, Bart and Steiner also breached the Policy when their course of conduct and comment resulted in and/or contributed to a poisoned workplace for Dr. Longo and tainted Dr. Longo's tenure and promotion consideration at the Area and Faculty level. These individual 003 Respondents acted without reasonable cause or excuse when they failed to disclose their bias as exhibited by their conduct or comment; failed to satisfy the Tribunal that they did not consider false and derogatory information about Dr. Longo circulated to G21 members in their assessment of Dr. Longo's dossier; and they did not likely discharge their committee duties in good faith. Their individual and collective conduct and comments were sufficiently vexatious to be prohibited by the Policy because it created a negative working environment for Dr. Longo. Their behaviour threatened the security of Dr. Longo in his employment at McMaster, was clearly unwanted (even if it was unknown to Dr. Longo at the time of filing of the complaint) and adversely impacted Dr. Longo's reasonable expectations in employment. The individual findings and reasons are identified further below.

i. **Dr. Longo was harassed by faculty members of the DSB prior to the specific complaints related to his T&P considerations**

**Summary of Evidence and Submissions**

In late 2008, the Committee tasked with recommending whether Mr. Bates should be appointed to a second term as Dean of the DSB was formed. Dr. Longo accepted a request to serve on that committee. Dr. Longo submitted that he was harassed by some faculty members of the DSB, as a result the belief that he was a supporter of Mr. Bates. As a result of his involvement on the Dean's Selection Committee Dr. Longo alleged that he was effectively blacklisted. Dr. Longo submitted that his membership on the Committee and his perceived support of Mr. Bates subsequently led the individual 003 Respondents to harass him up until after the Committee approved Mr. Bates' second appointment in April 2009.

In their testimony, the individual 003 Respondents (with the exception of Dr. Rose) stated that they did not perceive Dr. Longo to be a supporter of Mr. Bates.

The perception of Dr. Longo's support for Mr. Bates was submitted by Dr. Longo's counsel to be obvious from G21 emails. Further, counsel for Dr. Longo asked the Tribunal to consider the Response to Demand for Particulars by the 002 Complainants, dated October 28, 2011, which states the following at paragraph 4:

“Taylor and Bart were nominated as possible representatives [to the Dean Selection Committee] by Pujari as Chair of Strategic Market Leadership and Health Services Management Area. Their nominations were refused by the Provost. ... In Taylor and Bart's place, Chris Longo was appointed by the University as their Area's representative, without Pujari's knowledge. **Longo was a junior, un-tenured member of Faculty and a Bates supporter.**” (emphasis added)

Counsel submitted that the individual 003 Respondents believed Dr. Longo was a “Bates supporter” in the context of the Dean Selection Committee, which convened before Dr. Longo's case was considered by the Area T&P Committee. In an email from Dr Chamberlain to the G21 dated January 12, 2009 (DSB-1613), Dr. Chamberlain suggested that the Selection Committee “comprises of at least five of the six supporters Bates has among faculty members.” In a reply to that email chain on January 20, 2009 (DSB-1634), Dr. Chamberlain writes to Drs. Taylor, Pujari, and Bart asking “Is Chris Longo part of the unholy alliance as well?”

Dr. Longo's counsel further relied upon an October 6, 2008, email from Dr. Chamberlain to Dr. Richard Stubbs, Dr. Herb Schellhorn, Dr. David Hitchcock, Dr. Clarence Kwan, Dr. Zeytinoglu, Dr. Chan, Dr. Khalid Nainar, Dr. Bart, Dr. Taylor, Dr. Pujari, Dr. Steiner, Dr. Rose, and Dr. Abad regarding 12 DSB faculty members and his assessment of the potential for bias in favour of Mr. Bates within the Provost's nominees for the Dean's Selection Committee. In the email, Dr. Chamberlain wrote that Dr. Longo had a “secret deal” with Mr. Bates (DSB-1683). Dr. Taylor admitted in oral testimony that he was the source of the allegation

and provided the information about a secret deal between Dr. Longo and Mr. Bates to Dr. Chamberlain without any evidence of the veracity of his claim. Dr. Taylor confirmed that the secret deal was referring to his understanding that Mr. Bates agreed to help Dr. Longo get tenure in exchange for an assurance from Dr. Longo that he would vote in favour of Bates' second term as Dean.

Counsel for Dr. Longo submitted that the "secret deal" email was one of the most irresponsible emails in the evidence before the Tribunal. Mr. Heeney called the comments defamatory, wholly untrue, and stated that they effectively put a target on Dr. Longo's back. Counsel suggested that the email implied that Dr. Longo, contrary to University policy, agreed to cast a vote for Mr. Bates in exchange for receiving tenure and promotion. Counsel submitted that at the time the email was sent, the G21 was aware Dr. Longo was up for tenure & promotion, and they knew that three of his Area members (Drs. Bart, Pujari, and Taylor) and G21 members who were on the Faculty Tenure and Promotion Committee (Drs. Chan, Kwan, Rose and Steiner) received that email. Counsel stated that Dr. Zeytinoglu, Dr. Steiner, Dr. Chamberlain, and others reviewed Dr. Chamberlain's lengthy email and responded to it, correcting errors, but none of the G21 members, including Dr. Taylor, expressed any concern about the veracity or factual foundation for this statement about Dr. Longo. Dr. Dooley, when shown the email, testified that that email alone could lead to a perception of bias.

In an email from Dr. Kwan to the G21 dated November 20, 2008 (DSB-1774), Dr. Kwan stated that he, as a member of the Dean's Selection Committee, would be "overwhelmingly out-voted" because the Committee was biased towards favouring Mr. Bates' second appointment. Dr. Kwan encouraged G21 members to take a "defensive move" and either deliver the Performance Report to the Selection Committee members, or approach their Area's representative to the Dean Selection Committee to request that the G21 member be allowed to present their views directly to the Selection Committee. Dr. Kwan wrote that this move would allow the G21 more time to receive a legal opinion on the Performance Report and finalize the Report. In reply on the same day, Dr. Taylor wrote to the G21 stating "I will contact our Area rep but just in case he is too timid to pass along my message please also consider this a request to appear before the committee." Dr. Pujari replied on the same day and stated he was concerned to discuss the request because there may have been an issue of "how did I find out who is in the committee and approaching them." In particular, Dr. Pujari was concerned with requesting to meet with Dr. Longo, one Marketing member on the Dean Selection Committee "as he is a tenure-track faculty not tenured" (DSB-1774).

Counsel for Dr. Longo submitted that Dr. Steiner contributed to the harassment of Dr. Longo after a MUFA meeting in 2008. Dr. Randall witnessed Dr. Steiner state "that Chris Longo... that Chris Longo" with such anger that he felt concerned enough to inform Dr. Longo. Dr. Wakefield described Dr. Steiner's behavior at that meeting as angry, upset, shaking his finger, shaking entirely, saying "that Chris Longo, that Chris Longo." Counsel stated that Dr. Steiner was upset that Dr. Longo was appointed to the Selection Committee because Dr. Longo is a perceived Dean Bates supporter, and Dr. Steiner was not appointed.

Dr. Steiner admitted being very frustrated about the events surrounding the formation of the Dean's Selection Committee that would be responsible for considering the appointment of

Mr. Bates for a second term as Dean. Dr. Steiner had been voted from his Area to be on the Dean's Selection Committee. Dr. Steiner expressed that he felt the Provost, through improper means that negatively impacted him, blocked him from sitting on that Committee. Dr. Steiner expressed his frustration with this decision in a letter to the Provost (DSB 0782). As a result, Dr. Steiner testified that he was "very, very frustrated" at the MUFA meeting on Dec 11, 2008. Further Dr. Steiner eventually admitted to saying "that Chris Longo" but further explained that he felt that it was not a threat to Dr. Longo. Rather, it was an expression of his frustration that Dr. Longo's appointment to the Dean's Selection Committee was inappropriate due to a longstanding tradition that no junior person would get put on a Dean's Selection Committee.

Counsel for Dr. Longo referenced his "Brown and Dunn" objections (which have been noted and considered by the Tribunal) and asked the Tribunal to consider that Dr. Steiner's testimony on material points was not found in his affidavit and also not raised with witnesses in cross-examination. Dr. Steiner was present for most of the hearing but did not testify until May 23, 2012.

### **Tribunal's Findings**

The Tribunal has considered all the evidence including the voluminous documentary record. The Tribunal will not refer further to the individual G21 emails found in the Exhibits which we identified earlier in our findings but will identify further some of those we have considered in making our findings. The timeline for these events occurring at the DSB are outlined in the introduction to the 003 Decision and in the attached timeline (appended at Appendix "O").

The Tribunal finds that Dr. Taylor provided disparaging and unfounded information to Dr. Chamberlain that Dr. Longo had a "secret deal with the Dean". The seriousness of Dr. Taylor's allegations and the covert nature of these emails (sent to G-21 colleagues only), the timing of the distribution of this vexatious information related to Dr. Longo and the persistent nature of the emails and conduct were factors contributing to our finding Dr. Taylor's conduct resulted in a poisoned workplace. Dr. Taylor did not attempt to stop the dissemination of that disparaging information to the members of the G21 in receipt of the email chain. For example, the email chain results in Dr. Chamberlain asking if "Chris Longo is part of the unholy alliance as well?" and further we find that Dr. Taylor provided the information, without reasonable cause or excuse, to Dr. Chamberlain. Furthermore, Dr. Taylor had no underlying factual basis to allege that Dr. Longo had agreed to vote in favour of Mr. Bates second appointment as Dean in exchange for receiving assurance that his own tenure and promotion consideration would be approved. The Tribunal heard no reliable evidence to establish any factual basis for this statement from Dr. Taylor or any other witness for the individual 003 Respondents. Initiating this unfounded accusation and failing to address the spread of that serious accusation from Dr. Chamberlain to members of the G21 constituted direct harassment on the part of Dr. Taylor

The Tribunal finds that the disparaging information about Dr. Longo contained in the G21 emails and especially those emails generated in response to information provided by Dr. Taylor breached the Policy. These baseless allegations contained damaging information that originated without reasonable cause from a senior faculty member (Dr. Taylor) and disparaged a

junior colleague in a vulnerable position. The individual and collective comments were vexatious and/or egregious resulting in a negative working environment for Dr. Longo. The timing of the dissemination of the information (in close approximation to the review of Dr. Longo's consideration for tenure and promotion) and the target audience (faculty evaluating Dr. Longo's tenure and promotion at the Area and Faculty level) were aggravating factors that confirmed our finding.

Drs. Bart, Pujari, Taylor, Steiner and Rose were either recipients or participated in the email exchange which, in the circumstances of this case, contributed to the poisoned work/academic environment at the DSB and breached the Policy in the Tribunal's view. A hostile work environment was created for Dr. Longo when without his knowledge, the disparaging comments were shared and some active opponents of Mr. Bates engaged in retaliatory conduct against perceived supporters of Mr. Bates, including Dr. Longo. The allegation of a "secret deal" between Dr. Longo and Mr. Bates had no foundation in fact, was clearly unwelcome and coincided with Dr. Longo's evaluation by his peers (many of whom were recipients of the email from Dr. Chamberlain) for tenure and promotion.

The Tribunal finds that Dr. Steiner did not directly harass Dr. Longo with his statement following the Dec 11, 2008, MUFA meeting. The Tribunal however, finds that it was likely that following the MUFA meeting Dr. Steiner behaved in a manner that could reasonably be interpreted to be aggressive (note our previous findings in the section of the Decision related to Ms. Stockton's complaints against Dr. Steiner) but more importantly confirmed his personal animosity which he acted upon as discussed below.

- ii. **Dr. Longo was harassed by the individual 003 Respondents in his first and second T&P consideration and the Policy was breached.**

### **Summary of Evidence and Submissions**

Dr. Longo was also a faculty member in the SML/HSM Area where on June 25, 2007 at the Area handover meeting, Drs. Taylor and Bart expressed strong opposition to the second appointment of Mr. Bates. The evidence established that Dr. Longo was perceived to be a supporter of Mr. Bates. Similar to Dr. Flynn's experience, Dr. Longo also alleged that during his first and second tenure and promotion consideration he was subject to treatment contrary to the Policy. Counsel for Dr. Longo highlighted the fact that, no individual 003 Respondent disclosed these emails or expressed a conflict of interest when considering Dr. Longo's T&P dossier at either the Area or Faculty level.

### **First Area T&P Consideration in 2009**

Dr. Longo alleged that his first tenure consideration in September 2009 was denied, in part, because of his perceived support for Mr. Bates and his difficulty in obtaining tenure was also related to his participation on the Dean Selection Committee. Dr. Pujari was allegedly

unsupportive and his conduct during the process was alleged to be harassing and designed to make the process difficult for Dr. Longo.

It was submitted by counsel for Dr. Longo that Dr. Pujari was unsupportive of his first consideration for tenure and did not discharge his duties as Area Chair in a professional manner in the events leading up to and including the Area T&P meetings. The evidence confirmed that in 2009 Dr. Longo submitted 15 potential external referees for his dossier to Dr. Pujari but 14 of them were rejected. Dr. Longo stated that Dr. Pujari replaced an external referee with a former colleague of Dr. Pujari. Dr. Longo also submitted that he suggested Dr. Pujari speak with Dr. Jeremiah Hurley in the Economics Department to assist with the review of the referees. Dr. Pujari refused.

With regards to the list of external referees, counsel for Dr. Pujari testified that Dr. Longo initially signed off on Dr. Pujari's list of external referees in 2009. Counsel for Dr. Pujari suggested that Dr. Longo developed a case of "buyer's remorse". Dr. Longo's request to replace one external referee was agreed by the T&P Committee. Counsel for Dr. Pujari stated that the referees that Dr. Pujari was selecting, and to which the Committee agreed, were legitimate and in some cases actually helped Dr. Longo's case.

Counsel for Dr. Pujari submitted that Dr. Pujari did, in fact, provide mentorship to Dr. Longo to prepare his T&P dossier. Dr. Pujari provided advice to Dr. Longo about publishing in high-quality journals, to apply for research grants as a principal applicant, and directed Dr. Longo to the Yellow Document. Dr. Longo agreed, on cross-examination that focusing on high quality publications would assist him in the T&P process and would cause T&P committee members to look more favorably on his dossier. In a letter dated April 5, 2009, Dr. Pujari confirmed the contents of a January 30, 2009, meeting with Dr. Longo and provided advice on improving his dossier (DSB-1331 at page 6.). Dr. Longo confirmed the accuracy of the letter, and also agreed that Dr. Pujari was, in fact, providing him with guidance and assistance with his tenure process.

On September 4, 2009, the SML/HSM Area T&P Committee (Drs. Randall, Ray, Hupfer, Yoshikawa, Bart, Deal (by conference call) and Bontis (by conference call)), chaired by Dr. Pujari voted against recommending Dr. Longo for tenure (3 in favour – Randall, Hupfer, Bontis, 4 opposed – Pujari, Ray, Bart Deal, 1 technical abstention – Yoshikawa [DSB-1305]). Those opposed or raising technical abstentions were all identified as G21 participants. Dr. Longo was informed by Dr. Pujari of the Area T&P decision on September 9, 2009, and invited to attend a subsequent Area T&P Committee meeting to present his case for reconsideration. It was further submitted that Dr. Pujari misled Dr. Longo by advising him that the first Area Committee vote "was not even close." Dr. Pujari denied making that statement. In contemporaneous notes taken by Dr. Longo, dated September 8, 2009 (DSB-2532), Dr. Longo wrote "He informed me that the vote at the area T&P was 'not close'."

As also discussed in Dr. Flynn's Complaint, on September 16, 2009, in advance of the Area T&P reconsideration meeting for Dr. Flynn and Dr. Longo, Dr. Taylor replied to a confidential email (to Dr. Pujari, Dr. Bart, Dr. Bontis, Dr. Deal, Dr. Hupfer, Dr. Yoshikawa, Dr. Ray, and Dr. Randall) detailing the agenda for the reconsideration meeting. Dr. Taylor wrote in

his email: "... I know there are no proxy votes but for what it is worth, in my opinion, as a two-term former area chair and one of only a few area people who has appeared before Senate re-contentious T&P cases, neither one has earned the privilege of staying at Mac." (DSB-1335 at page 163). When asked on cross-examination whether he was attempting to influence other members of the Faculty T&P Committee with his email, Dr. Taylor testified that he did not. Dr. Taylor agreed that the email was inappropriate. Counsel for Dr. Longo submitted that Dr. Taylor was so biased that he felt the need, without being a participant, to disclose what he felt about both Drs. Longo and Flynn's dossiers despite the fact that he was not part of the process.

Counsel for the individual 003 Respondents further submitted that Dr. Pujari took important steps in 2009 to protect Dr. Longo's rights under the Yellow Document, which included "putting his neck on the line" by sending a letter to ensure that Dr. Longo was afforded the time he needed to prepare for a reconsideration request of the Area's decision.

The Area T&P Committee met again on September 22, 2009, for a reconsideration meeting. The same 8 faculty members who contributed to the first meeting on September 4, 2009, participated (Drs. Deal and Bontis by conference call again). Drs. Bart, Pujari and Ray questioned Dr. Longo during that meeting. The Area recommended that Dr. Longo be granted tenure and promotion with a vote of 4 (Randall, Hupfer, Deal, Bontis) in favour, 4 (Pujari, Ray, Yoshikawa, Bart) against and no abstention. Counsel for Dr. Longo submitted that there was improper block voting during Dr. Longo's first tenure consideration and Drs. Pujari, Ray, Bart, Taylor, and Yoshikawa consistently voted no.

Dr. Randall was also a member of the Area T&P Committee. Dr. Randall testified the process was not fair or reasonable in his view. He felt his comments with regards to external references were not duly considered and testified "My concern was that since my background was in the area, I should have had additional weight. The issue came up again in our most recent T&P, I wasn't allowed to provide names. I was told it was because I wasn't in Marketing." Counsel for Dr. Longo submitted that when Dr. Longo's external referee letters came forward, all Committee members were allowed to submit feedback, but when a Marketing individual came forward, Dr. Randall's feedback was ignored.

Counsel for Dr. Pujari called Dr. Randall a "rookie" who was participating in his very first Faculty T&P Committee, and who had just been through the T&P process himself. Counsel also submitted that Dr. Randall was not objective and was "without a doubt, sympathetic" towards both Dr. Flynn and Dr. Longo. Counsel also noted that Dr. Randall participated in a meeting organized by Dr. Bontis, which took place in Ivor Wynne Centre, where a number of faculty members including 003 Complainants shared information of perceived harassment by the individual 003 Respondents. As a result, counsel argued that the Tribunal should place less weight on Dr. Randall's testimony suggesting his evidence could have been influenced by the 003 Complainants and that Dr. Randall was biased against the individual 003 Respondents because he took part in this meeting. Additionally, Counsel argued that the fact that Dr. Randall did not complain to the Dean or the Provost about Drs. Flynn and Longo's T&P cases should taint his entire testimony.

Mr. Collins, counsel for Dr. Taylor, noted that the body of Dr. Taylor's September 16, 2009, email did not specifically reference Dr. Longo (or Dr. Flynn) by name. Dr. Taylor submitted that his opinion on Dr. Longo's T&P case was based in his strong convictions that the DSB should only hire qualified researchers with experience, but not whether they are a supporter of Dean Bates. In subsequent emails in that particular conversation, Dr. Taylor distinguished health economics and economics in general, when selecting referees and in research. Counsel for Dr. Taylor reminded the Tribunal that Dr. Longo was warned to avoid publishing in health sciences journals. It was submitted Dr. Taylor's emails showed his strong desire for a candidate that had a research resume appropriate for the DSB, and who was the right fit for his Health Services Management Area. Dr. Taylor admitted that he should not have sent the "earned the privilege" email but his counsel submitted that there was no nefarious motivation in sending the email.

In response to arguments made by Mr. Collins, counsel for Dr. Longo pointed out that Dr. Taylor did not mention Dr. Longo (and Dr. Flynn) by name because the subject of the email was "re Chris Longo and Terry Flynn," and Dr. Taylor referenced them with the words "neither one."

### **First Faculty T&P and SCA Consideration in 2009**

Dr. Longo's dossier for tenure and promotion was next considered by the Faculty T&P Committee (Mr. Bates (Chair), Committee members: Drs. Chan, Charupat, Kwan, Steiner, Rose, and Yoshikawa) during meetings in the fall of 2009. On October 8, 2009, Dr. Longo was invited to attend and address questions related to his consideration. Drs. Chan, Rose and Steiner asked him questions during that meeting. The Faculty T&P Committee recommended that no action be taken at that time, in a vote of 1 in favour, 5 opposed, and 1 technical abstention to the recommendation that Dr. Longo be promoted to Associate Professor with tenure, in their letter to the Senate Committee on Appointments (DSB-1311 at page 4).

The Senate Committee on Appointments initially followed the Faculty recommendation (DSB-1289) on October 19, 2009 where the SCA voted (for 11, against 1) to support the Faculty decision and took no action on Tenure and Promotion for Dr. Longo, in effect recommending that Dr. Longo be considered the next year since his 2009 dossier was considered to be an "early" request for tenure (DSB-1289). The SCA gave Dr. Longo permission to appear before the SCA on November 23, 2009 (DSB-1291). The SCA decided to approve the recommendation of the Faculty T&P Committee and take no action on Dr. Longo's tenure and promotion, in a vote of 8 in favour, 0 opposed, and 2 abstentions.

Counsel for Dr. Longo also submitted that Dr. Steiner made comments which were harassing to Dr. Longo at the subsequent Senate Committee for Appointments meeting where Dr. Longo's case was being discussed (October 19, 2009). In Dr. Longo's first tenure consideration at the Senate Committee of Appointments, he alleged that Dr. Steiner asked questions regarding minute details of his consideration and was harsh during the process. Counsel for Dr. Longo argued that Dr. Steiner suggested to the Senate Committee on Appointments that there was a concern that Dr. Longo's dossier was not absolutely honest. The following is an excerpt from the minutes of the closed session of that meeting (DSB-1289):

“Dr. Steiner explained that one of the main concerns the Faculty Committee had with Dr. Longo’s case was the way he had described his research activities in his curriculum vitae. It was partly a formatting problem, but it was also partly a problem with absolute honesty. Dr. Longo had listed a great many grants, some for unusually large amounts of money -- but it had turned out that some were described as ‘applied for,’ some were listed because he was planning to be a “collaborator” or “co-applicant” on the grant, and none of them had actually resulted in any research funds for him. There was not single research paper in his c.v. resulting from these ‘grants.’”

In his testimony, Dr. Steiner described a series of events leading up to his participation on Dr. Longo’s T&P evaluations in 2009. With respect to the Faculty T&P Committee meetings in 2009 and 2010, Dr. Steiner submitted that he voted against Dr. Longo’s case in 2009 on the basis that it was a very weak file that had received a very weak vote at the Area level.

In responding to the complaint, Dr. Steiner’s sworn affidavit dated May 23, 2012 (DSB-2293), included the following at paragraph 20:

“I invite Dr. Longo to withdraw all his unsubstantiated allegations against me, and I will not harbour any ill feelings towards him since I believe that, without knowing any of the specifics, he misinterpreted the treatment of his tenure applications by the 2009 and 2010 Faculty T&P Committees, and in particular by myself.”

### **Tribunal’s Findings**

The Tribunal finds that Dr. Longo was a credible witness. His testimony was corroborated by credible non-party witnesses and reliable documentary evidence. The Tribunal observed some inconsistencies in the representation of events by Dr. Pujari that negatively affected his credibility. Dr. Pujari’s lack of disclosure of his G21 activities related to Dr. Longo and the potential impact of those activities on his testimony are a concern. For these reasons, we preferred the admissible evidence of Dr. Longo where it conflicted with Dr. Pujari’s evidence.

The Tribunal finds that the weight of the evidence indicates that Dr. Longo’s first tenure case (initial and reconsideration decisions) was denied on its merits and the SCA decision was relied upon for the overall merits of the file.

The Tribunal finds that the allegations that Dr. Pujari directly harassed Dr. Longo by being unsupportive of Dr. Longo’s tenure and promotion considerations in 2009 were not established by the evidence. The Tribunal finds however, that Drs. Pujari, Taylor, Bart, and Steiner breached the Policy when their actions resulted in a poisoned workplace environment that impacted Dr. Longo in his tenure and promotion considerations in 2009. Drs. Pujari, Bart, Taylor, and Steiner’s conduct was properly understood by their G21 activities. Evidence relied upon in our assessment included the likelihood of bias having considered the timing and nature

of the information Drs. Pujari, Taylor and Steiner received from their G21 colleagues about Dr. Longo; Dr. Pujari's decision to marginalize most of the external referees provide by Dr. Longo for his tenure and promotion considerations in 2009; Dr. Pujari's dismissive consideration of Dr. Longo's further objection to the selected referees; Dr. Pujari's replacement of one referee with a former colleague against Dr. Longo's wishes, and Dr. Pujari's misleading information provided to Dr. Longo on September 9, 2009 that the Area committee vote was "not even close"; Dr. Taylor's email to the Area T&P Committee in advance of the September 22, 2009, reconsideration meeting, and Dr. Steiner's comments and conduct at the Faculty T&P Committee and SCA meetings. Their individual and collective conduct and comment was vexatious and breached the Policy when it tainted the process and negatively impacted Dr. Longo's reasonable expectations of employment without reasonable cause.

The Tribunal relies upon its general findings concerning the G21 emails and the material events summarized in the general factual chronology (Appendix "O"). After initially expressing that the CLAs should be "held hostage" the focus of the G21 members in the SML/HSM Area including Drs. Bart and Taylor turned to Drs. Flynn and Longo who were also perceived as Mr. Bates' supporters and who became vulnerable when they were considered under T&P committee processes. The Tribunal finds Drs. Bart and Pujari's behaviour during the Area T&P Committee reconsideration meeting and Dr. Taylor's attempt to influence the outcome of the initial Area T&P Committee meeting breached the Policy and more likely than not established retaliatory and vindictive behaviour.

The Tribunal noted that the G21 emails related to Dr. Longo were distributed to his peers before Dr. Longo's tenure case being considered in 2009, however, they did not come to his attention until after he had filed his Complaint. The Tribunal accepts the emails are evidence that some individuals who had made comments regarding Dr. Longo's perceived support for Dean Bates later acted upon their animosity by casting negative votes when Dr. Longo's T&P case was before them at the various committee levels. At a minimum, there is an appearance of bias from many of the emails presented to the Tribunal and we have determined that Drs. Taylor, Bart, Pujari Steiner and Rose breached the Policy during the tenure and promotion processes when they did not declare their bias and thereby resulted in and contributed to the poisoned workplace.

The Tribunal is satisfied the evidence confirmed there was personal animosity motivating Dr. Pujari's treatment of Dr. Longo. Further, this personal animosity is confirmed and reflected in the G21 communications in which Dr. Pujari participated or for which he was in receipt. Dr. Pujari's knowledge of G21 activities confirms as Area Chair he likely expected Dr. Longo to be negatively impacted because of his perceived support for Mr. Bates. Dr. Pujari with full knowledge of the G21 colleagues' views allowed Dr. Longo's T&P considerations to be tainted.

It is clear that during several T&P meetings in particular (Drs. Flynn, Longo, Head), Dr. Steiner behaved in a way that was vindictive and not collegial. Dr. Steiner stated, "they all got what they asked for in T&P so why have a harassment complaint". Although Dr. Steiner's behaviour in these specific instances did not rise to the level of direct harassment, this statement misses the point. The tenure and promotion process was tainted by the conduct of individual 003

Respondents and Dr. Steiner's actions resulted in and contributed to a poisoned workplace in breach of the Policy.

### *Second Consideration in 2010*

Dr. Longo prepared his second tenure and promotion dossier in the spring of 2010. In response to some concerns expressed in 2009 about his contribution to multi-investigator grants and research projects, Dr. Longo's requested to include letters from principle investigators of the grants in which he was a collaborator. This request was initially denied by Dr. Pujari but ultimately permitted on the advice of Dr. Dooley representing MUFA. Dr. Pujari also refused Dr. Longo's request in August of 2010 to update his dossier with the most recent information available to him and again acquiesced after Dr. Dooley provided advice supporting Dr. Longo's request.

### *Second Area T&P Consideration in 2010*

Dr. Longo alleged that Dr. Pujari was even more difficult and confrontational during the preparation phase of his second consideration for tenure. Dr. Pujari allegedly asked for a shortened timeline to provide a list of external referees, and only selected one referee from Dr. Longo's list of 15. Dr. Pujari ignored Dr. Longo's further objection to the selected referees. Dr. Longo tried to include letters from internal referees which Dr. Pujari initially refused until another faculty member became involved. Counsel for Dr. Longo submitted the evidence established that Dr. Pujari had previously solicited letters from external referees on behalf of another faculty member of the DSB, Dr. Ray. However, Dr. Pujari did not do the same for Dr. Longo.

In response to the argument that Dr. Pujari treated Dr. Ray differently than Dr. Longo in the T&P process with respect to external referees, counsel for Dr. Pujari and Dr. Ray relied upon Dr. Dooley's advice in the matter, as discussed below. Both Dr. Ray and Dr. Longo ultimately have co-investigator letters included in their dossiers. Both were included, but not at Dr. Pujari's request in Dr. Longo's case. In Dr. Longo's case, counsel stated that he was the instigator and Dr. Dooley agreed. They were accepted in Dr. Ray's case because the external referees wanted Dr. Pujari to send the letters as part of the package for Dr. Ray. Dr. Pujari's Counsel submitted that a comparison with Dr. Ray is therefore unfair. Dr. Pujari denied he sought out the letters on his own volition.

At the time Dr. Dooley was Vice-President & OCUFA Director of MUFA. Dr. Dooley's assessment of Dr. Pujari's actions in relation to Dr. Longo's 2010 tenure consideration was that he acted in a very prudent manner by agreeing to consult MUFA regarding best practices where the Yellow Document was silent, and by approaching Dr. Dooley when he had issues. Dr. Dooley also advised Dr. Longo, when requested, on the interpretation of the Yellow Document and the selection of external referees, since there was disagreement interpreting the Yellow Document. Dr. Dooley confirmed when the Yellow Document was unclear on certain issues he approached a trio of advisors for further advice. Dr. Dooley confirmed that Dr. Pujari and the Area T&P Committee followed his advice.

Counsel for Dr. Pujari submitted that Dr. Pujari tried to follow the rules, and sought help when required. Counsel stated that Dr. Pujari was emphatic that he wanted Dr. Longo to be successful in his consideration for tenure.

The SML/HSM Area Tenure & Promotion Committee (Dr. Pujari (chair), Drs. Randall, Ray, Hupfer, Bart, Taylor) met on Saturday September 18, 2010, and the vote was 1 (Randall) in favour, four (Pujari, Ray, Bart, Taylor) against and one (Hupfer) abstention. The Area T&P Committee thus recommended that Dr. Longo's tenure track appointment be allowed to lapse.

Dr. Hupfer testified she felt pressured to vote no against Dr. Longo in the Area T&P Committee meetings in 2010 because several members of the Area T&P Committee were actively pressuring her. Dr. Longo alleged that Dr. Bart contributed to the harassment by improperly pressuring the Area T&P Committee in 2010 to vote against his consideration for tenure.

Dr. Bart acknowledged in his affidavit that he stated in his summation comments to the Committee that "you must vote no" when Dr. Longo's dossier was being discussed. Dr. Bart characterized his statement within the context of Dr. Longo's "clearly deficient qualifications regarding tenure." Dr. Bart stated that he relied heavily on the external referees' evaluation of Dr. Longo's research, evaluations that were critical of Dr. Longo's work. To the Committee, Dr. Bart stated that it would be (DSB-2292 at para. 48):

"extremely difficult to justify support by the Area to the rest of the DSB Faculty and University and that those supporting Dr. Longo, based on the external reviews' assessments, would ostensibly be doing so on criteria other than those required by [the Yellow Document] i.e. personal relationships or other sources influencing their state-of-mind."

Dr. Bart testified his words were being taken out of context. He also added that as a tenured Professor since July 1997, it was his responsibility to voice those concerns to the Committee, which is why they have a T&P Committee in the first place.

Following the first Area T&P Committee meeting in 2010, Dr. Pujari informed Dr. Longo of this decision. On September 21, 2010, Dr. Longo formally requested reconsideration at the Area T&P Committee level. Dr. Longo submitted that Dr. Pujari selected a Saturday, for the initial Area T&P Committee meeting in 2010, which was a time when those supportive of Dr. Longo were not able to attend. Dr. Pujari testified that a Saturday meeting was unusual but it was scheduled to accommodate the PACDSB representatives. Dr. Pujari rescheduled the meeting and suggested Dr. Deal's participation by telephone at that meeting was not improper.

On October 1, 2010, the Area T&P Committee held a reconsideration meeting for Dr. Longo's case (present: Dr. Pujari (chair), Drs. Randall, Ray, Hupfer, through conference call: Drs. Bart, Deal, Bontis, Taylor). Dr. Longo was invited to attend the meeting and Drs. Bart, Pujari and Ray questioned Dr. Longo at this meeting. A motion in favour of granting tenure and

promotion was passed with 4 (Randall, Hupfer, Deal, Bontis) in favour, 4 (Pujari, Ray, Bart, Taylor) against and no abstentions.

Dr. Deal testified before the Tribunal and provided an affidavit (DSB-2303). With regards to Dr. Longo's case, he stated that he did not observe "any extraneous issues or bias against Dr. Longo (or Dean Bates) at play in the presentation of Dr Longo's case or in the ultimate voting... I happened to support Dr. Longo's case for tenure and voted in favour" (at para. 39). Dr. Deal stated that the general consensus was that Dr. Longo's service and teaching were adequate, but the real problem was the perceived strength of his research. He also stated that there was "some wavering among the external referees such that there was not overwhelming support" (at para. 41). Counsel for Dr. Pujari noted that Dr. Deal was a G21 member, a former Area Chair, has decades of experience on T&P committees, and supported Dr. Longo's bid for tenure.

### **Second Faculty T&P Consideration in 2010**

The Faculty T&P Committee (Mr. Bates (Chair), Drs. Chan, Charupat, Kwan, Parlar, Steiner, Yoshikawa) met on October 19 to consider Dr. Longo's dossier and determined that Dr. Longo should appear prior to a formal vote. Dr. Longo was invited to appear before the Faculty T&P Committee (Mr. Bates (Chair), Drs. Chan, Charupat, Kwan, Parlar, Steiner, Zeytinoglu) on October 29, 2010, and the Committee voted not to support the dossier for tenure and promotion (2 in favour, 1 opposed, 4 non-technical abstentions).

In 2010 Dr. Steiner abstained from the vote on Dr. Longo's file because he found it to be a very difficult case and because he was removed from the area of research. Dr. Steiner also referred to DSB 2688 in which members of the PACDSB were given an opportunity to view the decision of the Faculty T&P Committee and declined to comment.

Counsel further argued that the PACDSB Report states that the PACDSB was satisfied with Faculty and Area T&P processes over which they had oversight (DSB 0019 at page 26, section 1(d)), which necessarily includes Dr. Longo's case. Counsel asked the Tribunal to consider Dr. Longo's claims of harassment as closed given that PACDSB already reviewed the issue and determined that the approach used in selecting external referees was acceptable. Counsel further submitted that if the Tribunal is of the opinion that the Tribunal should examine this issue, and then attention should be drawn to the fact that PACDSB was involved and were satisfied, and told Dr. Pujari they were satisfied at the time. Therefore, if there was a practice that the Tribunal believes Dr. Pujari should have pursued differently than the one that was pursued, then that cannot be constitute harassment since it was not vexatious conduct.

The SCA subsequently met to consider Dr. Longo's file on November 22, 2010, and voted to grant tenure and promotion. On the specific question: "That the committee on appointments approve the recommendation from the Faculty of Business T&P Committee that Dr. Longo's tenure appointment be allowed to lapse on June 3, 2011 the vote at SCA was 3 in favour, 6 against, 1 abstention.

Counsel for the individual 003 Respondents submitted the conduct was not vexatious or harassing and that Dr. Longo claimed a lack of mentorship and unfair treatment at the Area level for both tenure considerations. However, the Area recommended him for tenure in both years. Counsel for the individual 003 Respondents submitted that the fact that all of the tenure-track 003 Complainants, including Dr. Longo, were awarded tenure is fatal to their claims of harassment.

### **Tribunal's Findings**

The Tribunal finds that the allegations that Dr. Pujari directly harassed Dr. Longo by being unsupportive of Dr. Longo's tenure and promotion considerations in 2010 were not established to be a breach of the Policy

The Tribunal finds that Dr. Bart's assertion in 2010 that the Area T&P Committee "must vote no" did not directly harass Dr. Longo. The comment may have been unwelcome to Dr. Longo; however we feel that Dr. Bart could express his opinion that the Committee vote "no". Dr. Bart was protected by academic freedom in this situation. We feel that as a member of the T&P Committee, he is able to express his opinion to a group of peers on what action he feels a committee, as a whole, should take. While Dr. Bart may have used different words or tone to express his opinion, we believe that the substance of his opinion was based on his interpretation of the external referee letters, which were objectively critical of Dr. Longo. Dr. Bart's reasonable apprehension of bias as evidenced in his conduct and communications related to the G21 were used as supporting evidence in our decision that this comments by Dr. Bart in Dr. Longo's T&P consideration meetings resulted in the poisoned workplace in breach of the Policy.

The Tribunal finds however, that Drs. Pujari, Bart, Taylor and Steiner breached the Policy when their conduct resulted in a poisoned workplace environment that impacted Dr. Longo in his tenure and promotion consideration in 2010. As in 2009 they failed to disclose the private disparaging comments about Dr. Longo made by them or other G21 participants which were known to them when they participated in the Area or Faculty T&P committee discussions. Dr. Longo was thereby deprived of the opportunity to raise the issue of reasonable apprehension of bias and ensure his tenure consideration was not tainted or considered by faculty having undisclosed personal animosity towards him.

This finding of personal animosity and a likelihood of bias contributes to our overall finding that Drs. Pujari, Bart, Taylor and Steiner's actions resulted in a poisoned workplace in a breach of the Policy. Covert G21 actions and communications related to Dr. Longo and their explicit and subtle threats to his security at the DSB were reflected in their conduct and votes at the Area and Faculty T&P level. Drs. Bart, Pujari, Taylor and Steiner's conduct did not prevent Dr. Longo from being awarded tenure at the SCA level but it did taint the T&P process and therefore is found to have contributed to and resulted in a poisoned workplace.

## X. COMPLAINTS AGAINST MCMASTER UNIVERSITY

### A) THE 002 COMPLAINTS

The poisoned workplace issue as characterized in the 002 Complaint is addressed in the following section. The Tribunal will summarize the 002 closing submissions in this part of the Decision with respect to the alleged breaches by the University for conduct identified in the 002 Complaints.

#### i. The 002 Complainants' Submissions

The 002 Complaint addressed the University's obligation to provide a healthy work environment and to treat employees fairly, with civility, decency, respect, and dignity in order to allow for their competent work performance. The University breached this duty in numerous circumstances in the 002 Complainants' submissions as a result of the conduct of persons within the "directing mind" of the institution.

002 Complainants' counsel focused on the Provost's ultimate responsibility for the HRES office and the implementation of the *Anti-Discrimination Policy*. In the submission of 002 Complainants' counsel, though Mr. Komlen is not without responsibility, it is the Provost who bears the primary responsibility to ensure that the policy is applied and enforced; for ensuring that the workplace is free of harassment and intimidation; and ensuring that all employees are treated with dignity and civility so that they can competently perform their work. The allegation is that the Provost failed to do so and further, the Provost's actions were harassing and bullying in and of themselves, thereby directly breaching the Policy. Examples stressed by 002 Complainants' counsel in closing submissions included:

1. That dissent on the issue of the expansion of the DSB to Burlington was not accepted or tolerated. The discipline of Dr. Pujari and his Area Chair colleagues in 2007 was alleged to be an act of administrative intimidation that was an attempt to silence the Area Chairs or have them improperly removed. The discipline in 2007 was also a very clear message to those who knew what was happening at the DSB. It was suggested President Peter George, Dr. Fred Hall, Mr. Milé Komlen and Mr. Paul Bates were all aware of what was going on concerning the Area Chair issues. The timing of both the letters of discipline in late October, and the decision that those letters should be removed in early January, neatly bookended the important Faculty vote on December 17, 2007. The Provost's email exchanges with Mr. Bates at (DSB 063) and with President George (DSB-061) were highlighted.
2. The Provost's email to President George (DSB-061) confirmed that by October 27, 2007, she had already received three or four emails from faculty alleging intimidation in the DSB. The Provost was repeatedly asked to produce those emails. 002 Complainants' counsel submitted that it was mysterious that none

were found or produced as evidence. The Provost was neither familiar with nor did she uphold the *Anti-Discrimination Policy*. 002 Complainants' counsel stressed that had the Provost reviewed the Policy with any of the faculty she could have advised them that the Policy provides both formal and informal mechanisms for remedying harassment where a complainant does not wish to be identified. It is in these areas the 002 Complainants allege the Provost failed to fulfill the duties of her position.

3. The 002 Complainants' alleged that the Provost's investigation into the Kleinschmidt incident was completely flawed. The University's inaction with regards to Dr. Pujari's harassment claims against Dr. Kleinschmidt was a failure to ensure a workplace free of harassment. The Provost also allegedly acted unethically when she did not recognize any conflict when investigating Dr. Pujari's issues with Mr. Bates and Dr. Kleinschmidt in January 2007, at the same time that a grievance had been filed by Dr. Pujari and four other Area Chairs in response to the disciplinary action taken by the Provost in October 2007. In the submission of 002 Complainants' counsel the Provost blatantly misapplied the Policy and breached the statement of ethics.
4. The 002 Complainants' position is that the University understood the serious discontent within the DSB by the fall of 2008. The decision to appoint Mr. Bates for a second term is striking and is but one of the University's failures to remedy the DSB environment. The University ignored the dissenting opinions of the 002 Complainants and others. Concerns articulated by a number of different faculty members, many of whom had decades of service at the DSB, were not taken seriously. The University failed to immediately investigate the concerns that were raised in the Performance Report directly or through the use of a neutral third party. The Performance Report; the MUFA ballot; and concerns about the environment at the DSB were ignored by the University. It was alleged the selection process, the make-up of the Selection Committee (as appointed by the Senate) and the Senate Committee on Appointments were such as to ensure that Mr. Bates' second appointment as Dean was secured.
5. The whole process commencing in 2009 was tainted by the Provost's bias and favoritism towards the 003 Complainants and Mr. Bates. The 002 Complainants feel they did not receive the same treatment as the Complainants in the 003 file. Specifically, the 002 Complainants' document outlining concerns was provided to HRES in the fall of 2008, however, it took over a year before the first 002 Complainant, Dr. Bart, was even interviewed by Mr. Komlen. At the time of his interview, Dr. Bart was advised by Mr. Komlen that he had already met with over twenty other persons. Ms Milne suggested that the timing of these processes indicate that her clients' concerns were an afterthought for HRES and the University.
6. A meeting held at the Ivor Wynne Centre attended by some DSB faculty members, including individuals who eventually became the Complainants in the

003 file, discussed issues at the DSB. The meeting was initiated on either the Provost's advice or on Dr. Bontis' own initiative. The Provost's motive for setting up that meeting is highly suspect according to the 002 Complainants' counsel. Ms. Milne submitted that it cannot possibly be suggested the Provost was actually attempting to remedy any harassment at the DSB and the Provost's actions simply fanned the flames. No emails, notes, record or agenda, were ever produced for this meeting. It is extremely telling according to counsel, that not one of the 003 Complainants mentioned that they too were involved in private meetings despite all of the questioning and insinuation put to her clients, and their supporting witnesses about the G21 meetings.

Ms Milne also suggested the following individuals had relevant evidence which would have assisted the Tribunal. The Tribunal was asked to draw an adverse inference against the 002 Respondents for the failure to call the following witnesses:

1. Mr. Komlen could have testified about his involvement with the DSB (as far back as October 2007), when and how that came about, and information on any discussions he had with the Provost. Mr. Komlen could have discussed the structure and timing of the investigation without revealing confidential discussions he had but none of that evidence was presented despite issues identified concerning whether Mr. Komlen was a compellable witness.
2. Dr. Peter George could have provided valuable evidence, particularly on issues relating to the Dean selection process and his meetings with Dr. Bart in 2006 and with concerned faculty in 2008.
3. Dr. Medcof likely had relevant evidence related to his communications with Mr. Bates and Dr. Head concerning decisions affecting Dr. Richardson and Dr. Taylor.
4. Dr. McNutt should have been called to address his interactions and advice to the Provost in 2007 and his involvement in the Dr. Pujari and Dr. Kleinschmidt incident.
5. Ms Golden or another Conference Board of Canada representative should have been called to address their involvement in Director's College decisions.
6. Dr. Nick Bontis was mentioned repeatedly during the proceedings but was never called as a witness.

Further, Ms Milne acknowledged some of her clients, particularly when giving testimony in the 003 matter, were able to reflect upon some of their own conduct. 002 Complainants' counsel stressed that Dr. Bart, Dr. Taylor and Dr. Pujari acknowledged they had made some errors in judgment. In some cases, they apologized directly to those obviously affected by their

comments or their actions. They now realize, in hindsight, that emails may have been taken the wrong way or that they used inappropriate words in their communications. On the other hand, Ms Milne suggested, there was nothing of the sort from Mr. Bates other than the apology to Dr. Rose at the end of the Faculty meeting in October 2009. The closest Mr. Bates came to an apology in his testimony was that he was sorry Dr. Pujari had suffered. Mr. Bates expressed no other regret or remorse during his testimony. It is clear that when Mr. Bates was the Dean it was a particularly bad time. DSB was marked by a division and a loss of collegiality. It was a time when all these issues which are the subject of these complaints, arose. Yet, despite all of that, Ms Milne suggested the Tribunal heard no remorse from Mr. Bates which, she suggested, spoke volumes.

ii. **The University's Submissions**

002 Respondents' counsel on behalf of the University stressed there is no doubt that the DSB is a poisoned work environment. 002 Respondents' counsel acknowledged the unacceptable environment and the challenges the University has had in addressing issues at the DSB. The Komlen report, the PACDSB report, and the Heidebrecht report all confirm these problems existed for a long time. Dr. Hackett addressed the history of discontent. Dr. Kleinschmidt talked about it both in his Affidavit and in his evidence.

Mr. Avraam submitted that it is clear the academic/work environment is worse than what was known by the University prior to having had the benefit of a full hearing. However, the evidence confirms it is not a situation where everybody was contributing equally to or is equally responsible for the DSB's problems. Rather, the behaviour of the four 002 Complainants (excluding Dr. Richardson) and the individual 003 Respondents is far worse than what was understood in the reports submitted prior to the Tribunal hearings. Furthermore, the unacceptable behaviour is not just limited to the four 002 Complainants. Dr. Chamberlain, Dr. Nainar, Dr. Zeytinoglu and Dr. Kwan's conduct should also be considered. If the G21 (002 Respondents' counsel confirmed when he used the term G21, he did not mean everybody, as there clearly are far worse culprits than others) did not get their way or things were not done "the Mac way", as they viewed it, "there was hell to pay". In 002 Respondents' counsel's submissions, Mr. Bates, Dr. Head, the Provost and many of the 003 Complainants were targeted by these individuals for these types of reasons. The University is now aware that the work environment is far worse than anyone reasonably could have known and the primary perpetrators continue to "not get it".

Mr. Avraam challenged Ms Milne's assertion there should have been further investigation into the Performance Report. 002 Respondents' counsel submitted that the hearing has proven the Performance Report was not only riddled with false information but unbeknownst to the University at the time it was part of a larger, improper agenda. 002 Respondents' counsel submitted the Performance Report is "full of lies and misinformation" which is confirmed by the evidence. Faculty contributing to the Performance Report testified about the importance of research and due diligence in a research intensive university. Yet they produced "with all due respect, that piece of garbage". 002 Respondents' counsel submitted that the G21 conduct was all about seizing control from the administration. The 002 Complainants' general lack of

concern about whether the Performance Report was factually accurate undermines its legitimacy and raises issues with respect to the authors' motivations.

002 Respondents' counsel stressed the lack of due diligence when preparing the Performance Report. G21 witnesses consistently suggested that G21 members would not mislead others in the group. Contributions to the Performance Report were accepted without any questioning despite the serious allegations. For example, witnesses testified they had no idea about Dr. Bart's challenges with Ms Golden. Dr. Bart was solely relied upon to address the Director's College issues despite the fact that Dr. Bart did not disclose material facts either in the Performance Report or in communications with his fellow Complainants in 002. The Performance Report also relied solely upon Dr. Taylor for the HLI submissions. 002 Respondents' counsel submitted that we know what happened with the HLI from the evidence and also need to consider Dr. Taylor's massive credibility problems. In the Performance report, Dr. Rose addressed Area Chair issues for the Human Resources and Management Area. However, the Performance Report fails to identify that Mr. Bates actually told Dr. Rose that another Area member nominated Dr. Medcof. The Performance Report is silent concerning the strategy to obtain tenure-track resources at the expense of CLAs that Dr. Pujari admitted to in his 003 cross-examination.

The Performance Report was drafted in bad faith, reckless and involved no due diligence. 002 Respondents' counsel highlighted Dr. Kwan's cross-examination and his response to being informed of the misinformation in the Performance Report to which Dr. Kwan suggested "Should I lose sleep over this?" In contrast, Dr. Kwan was concerned that the Performance Report might be leaked to Mr. Bates supporters because they might correct mistakes. The Tribunal was also asked to consider Dr. Chamberlain's, Dr. Bart's and Dr. Nainar's evidence and those witnesses' lack of concern about Mr. Bates' reputation. MUFA voting results were posted all over campus. The Charles Schwab article in the *National Post* and the Case Study smearing Mr. Bates were slipped under DSB office doors.

Mr. Avraam also stressed other conduct linked to the G21. The Tribunal was referred to the G21 emails and those commenting on the PACDSB report, including references to manufacturing a crisis. 002 Respondents' counsel submitted the 002 Complainants (excluding Dr. Richardson), the individual 003 Respondents and other G21 members poisoned the DSB. These persons used unprecedented and improper means to achieve their objectives, all in bad faith, ridiculing colleagues in the G21 emails and punishing those who were Mr. Bates supporters or perceived supporters during the CLA conversion process and the T&P processes which are addressed in the 003 Complaint. It was submitted that their own witness Mr. Marvin Ryder acknowledged that Drs. Bart and Taylor used this Area meeting to "rally[ing] the troops". Furthermore Mr. Ryder agreed with the suggestion that Drs. Bart and Taylor were "going out on a mole hunt to find out who told Paul" about the negative comments made at the Area meeting.

Respondents' counsel pointed out that during the 002 proceeding and prior to the disclosure of the G21 emails, the Chair of the Tribunal asked twice, of two different witnesses who were members of the G21, "what happened to the G21 after the Dean's reappointment?" The Tribunal was told it disbanded. In fact, we now have evidence that the G21 continued, after the Dean's appointment, with the block voting strategy. There were approximately 150 G21 or

G21+ emails after Mr. Bates' second appointment as Dean. If not for Dr. Chamberlain's sending the email by mistake to a faculty member not in the G21, the Tribunal and the parties would not know the scope of the G21's activities. In contrast, 002 Complainants' counsel, without any evidence, suggested the Respondents were not disclosing documents. Mr. Avraam submitted that this allegation is without merit and not supported by any evidence.

002 Respondents' counsel stressed that HRES operates independently from the University. The Provost received reports from Mr. Komlen that were necessarily general. While HRES reports to the Provost, information received in confidence or disclosed during mediation is not communicated. The issues at the DSB were complex and HRES processes are complaint-driven. The evidence confirmed that when the Provost's name was associated with any concerns, Mr. Komlen was then directed to report directly to the President.

002 Respondents' counsel submitted that the allegations concerning the Provost's motivation or involvement concerning the meeting at the Ivor Wynne Centre is pure speculation. The Tribunal has hearsay evidence that Dr. Randall said Dr. Bontis told him that the Provost told Dr. Bontis to have a discussion. There is no admissible evidence concerning the Provost's involvement, if any, and the issue was not raised with the Provost when she testified. In any event, the evidence received established that a group of individuals met to discuss what everyone acknowledges was an unacceptable work environment. There is no evidence, however, that the persons who met did anything improper. In the 002 Respondents' counsel's submissions, to equate that meeting with the G21 conduct reaffirms that the 002 Complainants "don't get it."

002 Respondents' counsel responded to Ms Milne's request that adverse inferences be made as a result of certain witnesses not being called. Mr. Avraam submitted that the 002 Complainants failed to meet their evidentiary onus and the Complaints are frivolous. Furthermore, the 002 Complainants' counsel could have called witnesses they identified including Mr. Komlen. Issues concerning HRES were addressed in the Chair's preliminary rulings. In addition, Dr. Bart is still at the Director's College and could have called any witness to address these issues including individuals from the Conference Board of Canada. The 002 Complainants chose to rely on speculation and hearsay evidence. The 002 Respondents' evidence was uncontradicted on material points. In the Respondents' counsel's submissions, no adverse inferences are warranted against the Respondents.

In sum, 002 Respondents' counsel submitted that this complaint must be dismissed against Mr. Bates and the University. However, the Tribunal is left with a monumental task, not only to deal with individual 003 harassment complaints but also the poisoned work environment. If the individual 002 Complainants and individual 003 Respondents "got it", it would help. Instead, 002 Respondents' counsel submitted we heard an aggressive defense from the individual 003 Respondents and an aggressive closing argument from the 002 Complainants. The "they don't get it" characterization was used in the submission of the Respondents' counsel to suggest a continuing problem. It was submitted, that as a result, these attitudes pose a difficult challenge for the Tribunal under the Policy.

002 Respondents' counsel submitted that the Tribunal cannot ignore Dr. Chamberlain's, Dr. Nainar's, Dr. Kwan's and Dr. Zeytinoglu's conduct when considering the poisoned work

environment. Respondents' counsel acknowledged that the Tribunal cannot make dispositive individual findings against non-party witnesses under the Policy for due process reasons since they were not identified as Respondents. However, 002 Respondents' counsel submitted the Tribunal can, under that Policy, open or mandate an investigation into their activities because problems remain at the DSB which are not going to be resolved by simply addressing the conduct of the individual 003 Respondents.

**B) THE 003 COMPLAINTS**

The poisoned workplace issue as characterized in the 003 Complaint is addressed in the following section. The Tribunal will summarize the 003 closing submissions in this part of the Decision with respect to the alleged breaches by the University for conduct identified in the 003 Complaints.

**i. The 003 Complainants' Submissions**

Mr. Heeney, on behalf of the 003 Complainants, made relatively brief submissions concerning the University's responsibility under the Policy. He identified that the 003 Complainants do not seek personal remedies from the University unlike the Complainants in 002. Rather, the 003 Complainants want the unacceptable behaviours to stop and they are seeking the University's assistance to this end. The individual 003 Respondents and non-party G21 members who testified were identified by 003 Complainants' counsel as responsible for the poisoned workplace. It was submitted that the poisoned workplace had a material and significant impact upon the 003 Complainants. The 003 Complainants seek to be treated with decency, civility and with respect. Furthermore, they want to be assured that they will not suffer further reprisals. In addition, concerns were raised about what will happen after the hearing if the concerning behaviours continue. 003 Complainants' counsel identified that the University must ensure that the Complainants are provided with a safe and respectful workplace as required by the Policy.

003 Complainants' counsel addressed issues related to HRES in response to the alleged flaws identified by the 002 Complainants and the individual 003 Respondents concerning the investigation. The suggestion that the investigation was flawed under the HRES processes is not a matter pursued by the 003 Complainants but they are willing to respond to this issue that was identified by the individual 003 Respondents. Mr. Heeney submitted that the suggestions that the HRES investigation was flawed only to the individual 003 Respondents' detriment, is not reasonable. For example, neither side met with one another. Ms Milne investigated complaints by the 002 Complainants during the HRES process. Similarly, Ms Novack investigated complaints raised by the 003 Complainants. The purpose of those mediations was solely to determine whether a formal complaint should be filed and pursued. Further, Mr. Komlen could have been summonsed by the 002 Complainants or the individual 003 Respondents if they wished to pursue concerns about HRES processes.

In any event, the hearing before the Tribunal resulted in full procedural fairness and the disclosure of all relevant documents. Witnesses were called and cross-examined. To suggest that the earlier attempts to investigate and mediate were in and of themselves a breach of the Policy is not sustainable. Nobody was disciplined as a result of those investigations. The process concerns raised by the individual 003 Respondents and the 002 Complainants are without merit, in the submission of the 003 Complainants' counsel.

**ii. Individual 003 Respondents' Submissions**

Mr. Fletcher and Mr. Hopkins made closing submissions on behalf of the individual 003 Respondents, other than Dr. Taylor who was represented by Mr. Collins. The individual 003 Respondents' submissions, including those from Dr. Taylor's counsel, relied upon academic freedom and freedom of speech principles to justify or defend the comments or conduct identified as harassment and discrimination in the 003 Complaint. The individual 003 Respondents' submissions were that the allegations *inter alia* include legitimate and normal disagreements on the merits of various issues which are in fact permitted under Policy. However, the individual 003 Respondents were described as having found themselves involved in a "divisive and demoralizing process" facing serious, but ultimately unsupported, harassment allegations by their colleagues.

The Tribunal was asked to consider the evidence and alleged conduct in the context of academic freedom so as to not inhibit or chill free inquiry or open discussion. These important principles require the Tribunal to consider issues identified at the DSB and specifically those allegations made against the individual 003 Respondents in context. It was submitted that the HRES Office and the University are obliged to uphold academic freedom and freedom of expression and association.

The submissions and evidence related to the G21 was referred to as a "smoke screen" by the individual 003 Respondents' counsel. The group emails and actions of non-parties to the proceeding are not relevant and should not be considered. The Tribunal was asked not to judge the conduct of the individual 003 Respondents on the basis of who they may have associated with or how they expressed themselves with likeminded colleagues at the DSB. To do so would breach core freedom of expression and associated *Charter* values. It was further submitted that the Tribunal should be aware of the inherent dangers associated with similar fact evidence which cannot be relied upon.

In addition, concerns were raised in closing submissions that the individual 003 Respondents were not informed by HRES that complaints were about to be brought against them nor were they provided with an option to mediate the specific issues raised in the 003 Complaint. These and other issues were identified as procedural concerns for which the University is responsible. It was further submitted that the hearing was a result of a political process rather than a legal process. The individual 003 Respondents' counsel reminded the Tribunal that it was absolutely critical for the Tribunal to be fair to both sides. The Tribunal must interpret facts impartially and objectively recognizing the DSB is in the midst of a difficult and turbulent time in its history.

Furthermore, in the individual 003 Respondents submissions, many of the issues and disagreements originated or pertained to interpretative issues under the Yellow Document or grey areas under other policies. It was submitted that disagreement was and should be expected because of the lack of clarity in various policy documents. Such disagreement was characterized as healthy and normal. It was submitted that the Yellow Document and T&P processes were followed in good faith and to the best of the individual 003 Respondents' abilities in every case involving the 003 Complainants. Processes and cases were only determined on the merits. It was submitted that no bad faith has been established by the evidence. It was submitted that when

these processes are scrutinized and the merits of the decision and questions looked at, these serious and troubling allegations have been established as untrue. The individual 003 Respondents' counsel asked the Tribunal whether this is the kind of University we would want where asking questions can lead to devastating and possibly career ending complaints being filed by colleagues who are unhappy with committee decisions.

The individual 003 Respondents requested the Tribunal direct mandatory T&P training including training on the Yellow Document to avoid issues in the future and to address concerns that were identified.

### iii. **The University's Submissions**

Mr. Avraam on behalf of the University relied upon his submissions that have been earlier summarized under the 002 Complaint. 003 Respondent University counsel submitted, that having taken the Tribunal through the G21 emails disclosed during the hearing, including how the G21 members viewed the Komlen Report and the PACDSB's role, that there is no doubt that significant problems existed and continue to exist at the DSB. The University's efforts to address and understand the full scope of the problem were unsuccessful.

003 Respondent University counsel's submissions acknowledged that processes under the Policy need to be reviewed. For example, under the process followed by HRES, neither Ms Milne (who assisted the 002 Complainants) nor Ms Novack (who assisted the 003 Complainants) spoke to each other before the investigation was concluded. Issues should not have been allowed to fester within DSB even if persons may not be prepared to go on record formally for an investigation. 003 Respondent University counsel submitted that investigations should not be completed without hearing all sides of the story and that needs to change under the Policy. These and other issues were identified as problems under the existing Policy. However, it was submitted that the Tribunal hearing has cured and addressed any due process concerns. Respondent University counsel submitted that all parties had full opportunity to present their case and defend it and so any issues raised at this late stage are moot.

Furthermore, 003 Respondent University counsel contrasted the contradictory submissions from the 002 Complainants and the individual 003 Respondents when characterizing pre-hearing process concerns at HRES. The Complainants from 002 had the assistance of Ms Milne and did not speak to Mr. Bates to give him an opportunity to respond. However, Mr. Avraam submitted that the individual 003 Respondents' counsel's submissions were "vitriolic" pointing out how Ms Novack did not speak to them to get their side of the story in the 003 Complaints. He further submitted the behaviours by individual Respondents in 003 and the individual Complainants in 002 became worse as the hearing progressed and this is a concern and a challenge if the DSB work environment is to be remedied.

003 Respondent University counsel also identified the need for mandatory training given the importance of the Policy throughout the University and more so at the DSB.

In addition, Mr. Avraam noted that Dr. Ray had never made a complaint against the University. However, a majority of the remedy he identifies is against the University.

### **Tribunal's Findings**

#### **Generally**

All parties generally agreed that the academic/work environment at the DSB is poisoned albeit for different reasons. The Tribunal has considered all of the issues raised in the 002 and 003 Complaints. The Tribunal does not find the reliable evidence established any specific conduct supporting a claim of direct harassment by the University or by its administration. We find no specific conduct that was harassing or malicious behaviour on the part of persons in the administration within the "directing mind" of the University, having considered the legal test for harassment. The Tribunal is satisfied that it has sufficient credible and reliable evidence to support our findings having heard from necessary and relevant witnesses. Furthermore, the Tribunal finds no justification to draw the adverse inferences identified by the Complainants' counsel in the 002 Complaint.

The Tribunal, however, is satisfied that McMaster University must accept some responsibility for the difficult DSB working environment that has become increasingly poisoned. Therefore, the Tribunal finds a poisoned workplace/academic environment for which the University is responsible under the Policy, having considered the evidence in this consolidated hearing. In that regard, the Tribunal has also earlier identified conduct by the Provost against Dr. Pujari which contributed to the poisoned work/academic environment in breach of the Policy.

The Tribunal's 002 and 003 findings with respect to a poisoned work/academic environment at the DSB, for which we feel further comment is required to assist the parties when making submissions on remedy, are set out below. The Tribunal's remedial orders concerning the poisoned work/academic environment are deferred until after we receive and consider further submissions from the parties.

#### **Did McMaster University fail to remedy what it knew to be a poisoned work environment in the DSB?**

The Tribunal acknowledges that significant steps were taken on the part of McMaster University to address isolated events in the DSB. The Provost, the President, Employee/Labour Relations personnel, HRES and MUFA became involved with various issues. Formation of the PACDSB was a significant act by the University. Unfortunately, the challenges at DSB were systemic and cultural. In the Tribunal's view, the causes of the issues were not readily apparent or easily understood in many situations. The Tribunal feels that, without a hearing, it is unlikely that any other process could have effectively and comprehensively addressed the issues or fully understood the breadth of the challenge faced. The Tribunal emphasizes that we had the benefit of over 200 hours of testimony heard in this consolidated hearing, in addition to the affidavits

and a very large volume documentary record compiled to assist us in understanding the scope and source of the problems at the DSB.

Furthermore, the Tribunal heard evidence repeated early in the consolidated hearing that the G21 was disbanded after the appointment of Mr. Bates for his second term as Dean. Thereafter, the group emails disclosed after the commencement of the proceedings proved otherwise. Subsequent evidence confirmed that action of the G21 continued, after the Dean's appointment, with the block voting strategy. There were approximately 150 G21 or G21+ emails after Mr. Bates' second appointment as Dean. This evidence provided reliable context to assess and understand the nature of some of the alleged conduct but especially processes and decisions made under CLA conversion and T&P. The Tribunal, the University and the 003 Complainants did not know about the scope of the G21's activities, and these activities would not have been revealed, if not for Dr. Chamberlain's inadvertently sending an email to a faculty member who was not a member of the G21. A respectful academic/work environment cannot be achieved when behaviour identified in this decision, as a concern, persists unbeknownst to the University. Such conduct was covert and insidious and would not be reasonably known by the University.

### *Level of Responsibility*

Having considered all of the evidence, the Tribunal finds the 002 Complainants with the exception of Dr. Richardson and/or the individual 003 Respondents were to varying degrees primarily responsible for the poisoned work/academic environment at the DSB during Mr. Bates' tenure as Dean and thereafter. The Tribunal has serious doubts about the 002 Complainants' characterization and perceptions of the cause of the poisoned academic/work environment particularly where it conflicted with other reliable evidence. The Tribunal does not accept the individual 003 Respondents' characterization of the issues and does not accept that principles of academic freedom, freedom of speech or freedom of association justify conduct or comment which the Tribunal finds as a breach of the Policy in this Decision. The Tribunal does not find that the 002 Complainants or the individual 003 Respondents had "clean hands." Furthermore, the Tribunal's findings in the 003 Complaint identifies conduct by the individual 003 Respondents and other faculty who were not parties in these proceedings which the Tribunal finds is the primary reason for the increasingly unacceptable and poisoned academic/work environment at the DSB.

Many processes rely upon the good faith of the participants. Processes integral to the University and affecting others were misused or tainted by individuals who sought to further their own agendas and/or to seek retribution for what they perceived to be injustices. The resultant conduct and collateral damage to colleagues in vulnerable positions poisoned the academic/work environment. Dr. Bart, Dr. Taylor and certain other faculty were unwilling to accept decisions and move forward. The Tribunal will address our concerns in further detail when addressing the 003 Complaint against the individual 003 Respondents.

Two divisive camps formed at the DSB. The formation of divisive camps entrenched by grouping individual complaints into the existing 002 and 003 files during the HRES process likely created barriers to resolution. Small and manageable issues became subsumed within larger agendas. Certain senior tenured faculty often tainted and corrupted processes integral to

the University while, on the other hand, demanding fair process and identifying themselves as individuals who consider “process” to be very important. Dr. Bart and Dr. Taylor amongst others play a central role. The Decision identifies some breaches by individual 003 Respondents of the Policy. However, the Tribunal is also concerned about the cumulative effect of inappropriate comment and conduct on the DSB whether we have identified a breach of the Policy or not.

The Tribunal does not accept the suggestion that the 002 Complainants were vulnerable or a power imbalance existed to any extent that would cause us to be concerned. The Tribunal finds that processes were tainted and misused by the 002 Complainants. Dr. Bart and Dr. Taylor’s allegations in the 002 Complaints were self-serving. They had agendas and employed an “us-against-them” mentality. Dr. Bart and Dr. Taylor are senior tenured faculty who exemplified qualities of hubris and lack of accountability. To rely upon harassment jurisprudence and the purposes of the Policy to define their experiences, especially given their aggressive and reckless tendencies and behaviours, stretches credibility and is disingenuous.

Mr. Bates is expected to show reasonable leadership reflective of the high standards expected of the University’s Deans. However, the expected standard of behaviour for a Dean is not perfection. Decisions were made by the Dean in a difficult work environment which he inherited. The events surrounding the vote related to the expansion of the DSB in Burlington contributed to an increasingly challenging workplace which became poisoned and for which many persons bear some responsibility. However, in context, the harassment and/or reprisals allegedly experienced by the 002 Complainants have not been established on the evidence. Rather, the Tribunal is satisfied, without agreeing with all of the decisions at issue in this proceeding that reasonable explanations were provided by Mr. Bates and those explanations were usually supported by corroborating evidence. The Tribunal has identified that a lack of transparency in decisions or timely and direct communication of decisions by Mr. Bates and the Provost to individual faculty members directly impacted by those decisions also contributed to the escalation of the poisoned work environment at the DSB and in the case of the Provost’s conduct, caused the Policy to be breached by the University. On the other hand, the Tribunal is satisfied that as a group, the 002 Complainants and the individual 003 Respondents in some cases utilized what we hope is unprecedented and improper means to achieve individual and G21 objectives in bad faith, albeit with varying levels of individual responsibility, participation and knowledge. We have determined that Dr. Taylor, Dr. Bart, Dr. Steiner, Dr. Pujari and Dr. Ray’s conduct in the 003 Complaint has violated the Policy. Such conduct necessarily was a primary cause of a poisoned work/academic environment at the DSB.

The Tribunal did not feel the reliable evidence resulted in any of the Dean or Provost’s behaviours rising to the level of direct harassment under the Policy. However, some decisions, which may have been engendered by an already poisoned workplace, did not help the situation and may have resulted from or in the instances identified, contributed to worsening a bad situation. The Tribunal reiterates that Mr. Bates as Dean and Dr. Busch-Vishniac as the Provost had a responsibility to communicate decisions in a clear, timely and transparent manner despite the extenuating circumstances that the Tribunal has identified. The Tribunal feels that identifying and acknowledging these concerns are important if the DSB is to move forward and achieve the respectful academic/work environment required under the Policy. As we have

learned, avoidance, even if understandable, may worsen and perhaps even encourage bad behaviour. The hostility of the 002 Complainants (particularly Dr. Bart), no doubt made it difficult for Mr. Bates. However, ultimately Mr. Bates had managerial responsibilities to fulfill. Reasonable boundaries and expectations needed to be established, communicated and enforced. Fulfilling managerial responsibilities and trusting internal processes including grievance procedures, as difficult as that may be, may have proven more constructive than avoidance or denial while hoping the issues would go away.

The Tribunal has identified the primary causes of the poisoned work/academic environment. However, the Tribunal also has concerns about varying levels of responsibility of all participants, whether the evidence established a breach of the Policy or not. Everybody will need to be part of the solution and respond to the Decision constructively and in good faith. Litigation is adversarial, but effective and lasting solutions are not.

The University acknowledged in closing submissions that refinements to various policy and procedures are likely required. The Tribunal agrees. While appropriate processes existed and were available, implementation proved to be challenging for the reasons identified. Untimely processes and decisions made under University Policy may have exacerbated problems. HRES issues will be specifically addressed separately below.

***The University failed to immediately investigate allegations made in the Performance Report.***

The Tribunal finds that the “Performance Report” was properly considered. The weight given to it reflected its non-commissioned, non-sanctioned and un-documented nature. The Tribunal is satisfied that much of the Performance Report was flawed, speculative and filled with questionable facts. Furthermore, the Tribunal does not accept that McMaster University ignored the concerns of faculty members concerning the DSB environment, including dissent voiced on the selection process, the Performance Report, and the MUFA ballot.

The hearing has proven the Performance Report was not only riddled with false information but was part of a larger self-serving agenda unbeknownst to the University at the time. Contributions to the Performance Report were accepted without question despite the serious nature of the allegations contained within it. The Tribunal finds the 002 Complainants generally were not concerned about the factual accuracy of the serious allegations in the Performance Report. G21 members gave evidence that they did not care about Mr. Bates’ reputation. Dr. Bart said “we [the G21] did not take into account Paul’s reputation when we went to the press.” Dr. Nainar said “we didn’t care about their reputation, we didn’t give it second thought.” Dr. Bart and Dr. Taylor’s motivations appear particularly self-serving and vengeful in light of their selective disclosure of facts related to the DC and the HLI. The Performance Report was drafted in bad faith and involved no due diligence. The 002 Complainants (excluding Dr. Richardson), the individual 003 Respondents and other G21 members’ actions further poisoned the workplace environment at the DSB. Individuals used improper means to achieve their objectives, privately ridiculing colleagues in the G21 emails and punishing those who were Mr. Bates supporters or perceived supporters by introducing bias and

abusing processes for personal gain during the CLA conversion process and the T&P processes which we address in the 003 Complaint.

**Was the Provost's disciplining of the Area Chairs an act of administrative intimidation done to exert pressure on the Faculty to obtain approval of the Burlington expansion?**

The Tribunal has already determined that the reliable evidence does not establish the actions of any individual who was part of the University directing mind were harassing or malicious as alleged by the 002 Complainants. The Tribunal is not prepared to rely upon speculative evidence and hearsay to impugn the Provost's decisions especially in the poisoned environment which we have identified. The Provost is not a party named in these proceedings as an individual Respondent. In any event, the Tribunal finds no harassment or reprisal by the Provost personally or by extension the University.

The Tribunal is satisfied that discipline imposed on the five Area Chairs was a reasonable exercise of management rights by administration. Sufficient evidence established that a disciplinary response was a reasonable and allowable option available to the Provost. On the other hand, the Tribunal is not satisfied that it had reliable or sufficient evidence to establish on a balance of probabilities that the discipline was an act of administrative intimidation implemented for any ulterior purpose in breach of the Policy. Further, other processes were available and initiated which could effectively address the merits of the discipline if required.

**Did the Provost misapply the Policy?**

The Tribunal is required to determine whether the Provost as a directing mind of the University breached the Policy directly or acted in a manner making the University responsible for the poisoned work/academic environment. The Tribunal does not find the Provost's decisions with respect to the administration or implementation of the Policy harassed the 002 Complainants contrary to the Policy. Specifically, the Tribunal finds nothing untoward associated with the meeting held in the Ivor Wynne Centre with the exception of the Tribunal's general concern that entrenched groups unfortunately formed within the DSB.

**Was the Provost's investigation of the incident between Dr. Pujari and Dr. Kleinschmidt contrary to the Policy?**

The Provost suggested that since Dr. Pujari approached her, she did not think he viewed it as conflict. The grievance was about discipline and Dr. Kleinschmidt's incident was about bullying. As such, the Provost saw the issues as distinct with separate processes. The Tribunal accepts the Provost's explanation. However, the Tribunal finds the Provost's inquiry and subsequent investigation were not handled well. All investigations must be properly documented and conducted according to Policy including avoiding a perception of conflict of interest on the part of senior administration. The Tribunal is concerned that the investigation had flaws and the

perception of bias and favouritism, albeit not established as true by the evidence, contributed to the angst within the DSB.

The Tribunal was satisfied that for the reasons identified earlier in Dr. Pujari's complaint that certain acts of the Provost contributed to the poisoned work/academic environment related to her failure to effectively and appropriately address his concerns. As a result, the Tribunal is satisfied that a breach of the Policy was established against the University, in these events, for the reasons provided.

### **Mr. Bates' Second Appointment as Dean**

The Tribunal does not find the decision to appoint Mr. Bates for a second term as Dean is an example of the University's failure to address a poisoned work environment. The Tribunal also finds that the appointment process for Mr. Bates proceeded in accordance with McMaster University Policy and did not perpetrate or constitute harassment. Mr. Bates was a lightning rod but he was not the cause of the poisoned academic/work environment.

### **Mr. Bates' Lack of Remorse**

Serious and personalized allegations were made against the Mr. Bates challenging his reputation and integrity and we have dismissed all allegations of harassment on the part of Mr. Bates. As such it is difficult to reconcile specifically what Mr. Bates should be apologizing for. The Tribunal finds that Mr. Bates expressed a reasonable level of genuine remorse where appropriate under the circumstances.

### **Did McMaster University and HRES delay the investigation of the harassment complaints? What impact has delay or flaws identified with HRES processes had on the DSB?**

The Tribunal believes there were flaws with the process which are more obvious with the benefit of hindsight. In the Tribunal's view, specific processes employed by HRES were ineffective. There are clearly areas for improvement, including training and awareness of the scope of the HRES Office and the associated policies, mentoring of managers, timely action on complaints, transparent and equitable access to advice, effective mediation and enforcement against reprisals in the workplace.

The consolidated hearing permitted the full weight of the evidence for these complaints to be addressed in an efficient and comprehensive manner (for which we thank all counsel) despite what necessarily has become a time-consuming process. Delays may have been inevitable in part, due to the scope of the issues. However, this does not justify the unacceptable workplace/academic environment which persisted and which likely still persists at the DSB. Further, individual grievances and challenges to administrative decisions were not pursued in a timely fashion, in part due to the anticipation of the formation of the larger group complaints. Full and final settlements were revisited when finality should have been respected. With the

benefit of the evidentiary record, the Tribunal believes processes were unnecessarily delayed or complicated under the Policy.

The Tribunal finds the investigation and subsequent submission of claims could have been more timely and transparent. It took the Director of HRES one year (from the receipt of the Performance Report) to interview any of the 002 Complainants about allegations of harassment in the DSB. However, the Tribunal does not accept the evidence established that the 002 Complainants were the “afterthought” of the HRES investigation despite the suggestion that by the time Mr. Komlen met Dr. Bart, he had already met with 20 other individuals. The Tribunal does not accept that the HRES investigation was tainted by the Provost’s alleged favourable bias towards the 003 Complainants and Mr. Bates. Further, the Tribunal does not accept the characterization of the flaws submitted by counsel for the individual 003 Respondents. Rather, a flawed process impacted all parties equally. However, we agree that the structure of the Policy should be revisited.

In our view, the decision to group 002 Complainants and 003 Complainants exacerbated the poisoned workplace by emphasizing lines of division within the DSB. Processing these individuals’ complaints, by encouraging groups to meet, in some cases reinforced unfounded suspicions. The 002 Complainants’ judgement was clouded by their disdain for the Dean. Attributing blame to Mr. Bates even when none existed and being unable to accept decisions amplified suspicions concerning the strategic direction taken by the DSB. In the Tribunal’s view, these individuals demonized Mr. Bates to rationalize their own conduct.

Expeditious resolution should be a primary goal of the Policy but it is the Tribunal’s view that grouping the complaints likely made a mediated settlement more elusive, if it were in fact possible. Furthermore, the primary mediators appear to have had access to only one group’s version of concerns. However, grouping complaints where a mediator had no communication with the other group may have been counterproductive with the benefit of hindsight. Grouping persons with common grievances likely focused discussions about how persons may have felt victimized or similarly aggrieved, and made persons unduly suspicious. Better processes may have facilitated a timely resolution for some parties or at least streamlined processes so that clear individual complaints could have been adjudicated expeditiously. The Tribunal finds that processes and decisions, unfortunately likely resulted in a complex matter becoming even more unwieldy and difficult to manage despite good intentions.

The Tribunal notes the documentary evidence suggests a further mediator was utilized to assist with the Complaints filed by Ms Cossa, Mr. Vilks and Ms Stockton against Dr. Pujari. The record appears to confirm that Dr. Pujari and the CLAs spoke with this mediator in the late fall of 2010 prior to the filing of the formal Complaints on March 31, 2011. Unfortunately this belated attempt to mediate was not able to bring faculty together to resolve differences.

### ***The Tribunal’s Comments on the poisoned work/academic environment***

In general, despite being confronted with evidence of comment or conduct which was, at a minimum crass, individuals who the Tribunal found to have breached the Policy remained dismissive or unconcerned about the negative impact on colleagues. Often blame or excuses for

inappropriate conduct or comment continued to be attributed to alleged flawed processes, misunderstandings or unclear policy. More concerning is that some 002 Complainants and certain individual 003 Respondents who were identified as breaching the Policy showed no remorse and remained intransigent throughout the hearing, albeit Dr. Bart did attempt to express empathy in the latter half of his testimony in the 003 matter. This disconnect, in the face of credible and objective evidence of harassment, raises challenges if a respectful work/academic environment is to be achieved as required by the Policy. The parties should address the Tribunal's concerns during the remedy submissions.

## **XI. THE TRIBUNAL'S FINAL THOUGHTS**

The Tribunal sincerely hopes, despite the Policy breaches we have identified, that all parties are committed to restoring a respectful work/academic environment that most parties previously suggested was a primary goal. Vigorous debate which is respectful of others holding competing views reflects the importance of both academic freedom and freedom of speech. The Tribunal in its deliberations was very mindful that this decision not be misinterpreted or negatively impact individuals who exercise academic freedom and freedom of speech. However, as the Tribunal has identified these freedoms are not absolute in a university environment. Especially with the protections afforded by tenure, these values need to be respected and not abused.

All parties participated in an exhaustive and stressful hearing. The Tribunal hopes that, with the benefit of hindsight, the parties will now reflect upon their conduct and comment and understand how decisions, lack of communication and taking action on partial or incorrect information can poison a work environment. Petty conduct, name calling, capitalizing on power imbalances and the maligning of reputations cannot be rationalized by an "ends justifies the means" mindset and certainly cannot be allowed to create an unlawful and hostile work environment. Harassing conduct is not only a breach of Policy but is unbecoming of esteemed faculty.

The Tribunal trusts that individuals will reflect upon choices that were made and objectively consider our findings in light of the full weight of evidence received and previous case law. If so, the Tribunal is optimistic that DSB faculty and staff can learn from this experience. It is incumbent on faculty and to a lesser extent staff to place differences behind them and to move forward. The work/academic environment required by the Policy and under the law can be achieved at the DSB if parties are committed to finding good faith solutions.

Dated at Hamilton this  
15<sup>th</sup> day of May, 2013



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Dr. Maureen MacDonal (Chair)  
on behalf of the Tribunal comprised  
of herself, Dr. Bonny Ibhawoh  
and Dr. Lorraine York