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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")

REMEDY DECISION

NOTICE

CONFIDENTIALITY ORDER

This decision contains the Tribunal's recommended sanctions, orders and remedies for the Policy breaches identified in the Tribunal's Decision dated May 15, 2013.

The Tribunal's Confidentiality Notice, dated June 30, 2011, remains in effect until further notice, except as amended by this decision or by the Tribunal. Both the breach and this remedy decision are released in confidence to the parties and are not to be disclosed except as may be or has been permitted by the Tribunal or as may be required by law.

The Tribunal has also prepared a summary of the decision for the public, as contemplated by Section 70(g) of the Policy.

The Tribunal remains seized of outstanding motions and issues arising from the implementation of this decision.

A. BACKGROUND

The Tribunal's Award issued May 15, 2013, ("the breach award") identified various Policy breaches by the individual 003 Respondents, by Dr. Ray because of his counter-complaint and by the University. The hearing dates scheduled for the Tribunal to consider the parties' remedy submissions were subsequently adjourned. Instead, a consent procedure and schedule for written remedy submissions was requested and implemented (Supplementary Procedural Order #11 dated May 29, 2013). The Tribunal has considered the parties' written submissions and jurisprudence. Submissions, attached as Appendix "A" to this Award, will not be repeated or referenced with a few exceptions.

The Tribunal will now address the appropriate remedies which result from the breach findings made in the May 15, 2013 decision. In this remedy decision, the Tribunal has recommended certain sanctions and remedies based upon our remedial jurisdiction outlined in the Policy under Sections 71, 73 and 74.

Of note, Section 71(h) gives the Tribunal the option of considering remedies other than those listed in s.71(a)-(g). Furthermore, s.73 provides that:

> *The tribunal of the Hearing Panel **must** recommend any appropriate sanction or remedies it deems necessary to **guarantee** that the behaviour is not repeated. …* (emphasis added)

Section 73 of the Policy is clear that the Tribunal must provide remedies "necessary to guarantee that behaviour is not repeated." The reasonable expectations of faculty and staff and the requirement to guarantee the behaviour is not repeated was a primary consideration when the Tribunal assessed our evidentiary findings and considered the parties' submissions concerning the appropriate remedies against individuals and the University.

B. TRIBUNAL'S JURISDICTION: FINDINGS AGAINST DR. RAY

The remedy submissions filed on behalf of Dr. Ray raised a jurisdiction issue. Briefly, Dr. Ray's counsel suggested that the Tribunal exceeded our jurisdiction by failing to follow our own Policy when finding Dr. Ray's counter-complaint breached the Policy. Section 70(e) was the focus of the submissions and provides for the following:

> *"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 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 ruling and specifically invite submissions on this point."*

The Tribunal has considered the submissions of the parties. The Tribunal finds we had the jurisdiction to make the findings in the breach decision and will therefore make recommendations concerning sanctions and order remedies addressing Dr. Ray's Policy breaches. The Tribunal is satisfied the processes followed in the consolidated hearing complied with Section 70(e). Furthermore, the Policy and Dr. Ray's counter-complaint must be considered in proper context. Dr. Ray's identified concerns were met by the processes followed in the agreed upon consolidated proceeding, and the principles of natural justice and procedural fairness were observed. In the event there was a technical breach of Section 70(e), which the Tribunal does not find, Dr. Ray knew this issue was submitted to the Tribunal and waived procedural objections which he now asserts.

Generally, natural justice requires that a complainant receive notice if a finding might be made against them. Section 70(e) has obvious application where there is no pleading in response to a complaint or when the Tribunal has not been requested to find, and could not reasonably be expected to find, that an allegation is fraudulent, malicious, frivolous or vexatious. In those circumstances, the complainant must be given notice and an opportunity to make submissions, not only on the merits but also on the appropriate remedy before a finding is made under Section 70(e). This is a basic requirement of natural justice and the prejudice arising from non-compliance is obvious.

Dr. Ray's counter-complaint was filed after the 002 and 003 complaints were referred by the HRES office on March 31, 2011. In July 2011, Dr. Ray indicated that he wanted to submit a counter-complaint against Dr. Detlor. The Chair was addressing pre-hearing issues with the parties at this time. In an email dated August 4, 2011, to the Chair (copied to the parties), Mr. Heeney as counsel for Dr. Detlor raised concerns about Dr. Ray's failure to promptly file his counter-complaint. Mr. Heeney advised that Dr. Detlor would consent to the counter-complaint if "Dr. Detlor is permitted to argue within his response that the counter-complaint is retaliation contrary to University policy …". It was acknowledged that Dr. Ray would be permitted to dispute that claim if he chose to file a counter-complaint. Mr. Heeney's position was identified without objection and a timeframe for filing the counter-complaint was then established. Dr. Ray subsequently filed his counter-complaint having knowledge of Dr. Detlor's position.

That the counter-complaint could be identified by the Tribunal as a breach of the Policy was reaffirmed when the hearing commenced. On March 31, 2012, in Mr. Heeney's opening statement, the counter-complaint was again submitted to be a breach of the Policy and it was reaffirmed that the Tribunal would be requested to sanction Dr. Ray. The dispute was identified and submitted to the Tribunal without any objection by Dr. Ray, or his counsel, knowing full well the issues would be decided after the Tribunal received evidence and heard closing submissions.

Furthermore, Dr. Ray had opportunities after the hearing commenced to withdraw his counter-complaint or at least reconsider some of his allegations knowing that Dr. Detlor sought sanctions. During both cross-examination and in responding to questions from the Tribunal, Dr. Ray admitted that the premises underlying several of his complaints had been shown by the evidence to be incorrect. Despite this, however, Dr. Ray decided not to rein in his allegations when offered the opportunity by both opposing counsel and members of the Tribunal. Dr. Ray

was asked by the Chair of the Tribunal "In light of the extent to which you have been able to participate in the hearing thus far, and all of the points of view that have been expressed, and all of the evidence we have seen so far, notwithstanding the questions Mr. Avraam asked about your remedies, is there anything you would like to alter, with the knowledge you have now, about your complaint?" Dr. Ray declined opportunities to reconsider at least some of his allegations on two occasions.

That sanctions were being sought for Dr. Ray's counter-complaint was reaffirmed once again in closing submissions. Dr. Ray and his counsel had a fair opportunity to respond to all issues before the Tribunal. No objection was raised concerning the Tribunal's jurisdiction or about the process followed prior to the issue being remitted to and considered by the Tribunal. As such, any procedural requirements were again waived during closing submissions. Dr. Ray had a further opportunity to make submissions with respect to remedies related to the Tribunal's findings after the breach decision.

Therefore, Dr. Ray had ample opportunity to decide whether to file and continue with his counter-complaint understanding the potential consequences. It was known, or reasonably ought to have been known, that issues arising from his counter-complaint for which sanctions were sought against him, had been submitted and that the Tribunal might accept and find that the counter-complaint breached the Policy. With this knowledge, Dr. Ray and his legal counsel chose to pursue his counter-complaint under the agreed upon consolidated hearing process. Natural justice and procedural fairness considerations were met by the consolidated process agreed upon by the parties and in the Tribunal's view no prejudice has been established.

C. INDIVIDUAL SANCTIONS

(i) Removal As An Option Under the Policy, Statute And The Jurisprudence

In the written submissions, a primary issue in dispute was whether certain individual 003 Respondents' removal, which was being sought by the 003 Complainants and the University, was appropriate or whether the lesser sanctions proposed by the individual 003 Respondents would be sufficient. The Tribunal has considered the submissions and the jurisprudence which outlined general and, for the most part, widely accepted remedial principles and guidelines.

The Tribunal has exercised its remedial obligations having considered the Policy and the guiding principles established in the jurisprudence. The Tribunal has assessed the sanctions for each individual by considering the applicable evidence and relying upon our findings in the breach decision. The remedies identified by the Tribunal needed to reflect the serious misconduct, be corrective and also provide for reasonable deterrence. Furthermore, the Tribunal needed to be satisfied that the sanctions would allow the poisonous academic and work environment to be remedied. In the Tribunal's view, this will be achieved only if certain individuals are absent from the University for significant periods of time.

In Dr. Taylor's submissions, a reference was made to the *Mount Saint Vincent University v. Mount Saint Vincent University* case that references the *University of Saskatchewan* case

(unreported) which the Tribunal feels is an appropriate starting point when assessing removal. The Court addressed an appropriate threshold for dismissal at paragraph 91:

> *"To justify the dismissal of a tenured academic, the university must prove gross misconduct which shows a person to be unsustainable for his or her academic role or it must be proven that he or she is manifestly no longer pursuing the goals of the university as demonstrated by gross misconduct, incompetence, or persistent failure to discharge academic responsibilities."*

The serious and multiple findings of misconduct against Dr. Taylor, Dr. Steiner, Dr. Bart and Dr. Pujari in the breach decision meet the threshold identified as grounds for dismissal as defined in the excerpt from the *University of Saskatchewan* decision and the threshold for removal as defined by The McMaster Revised Policy and Regulations with Respect to Academic Appointment, Tenure and Promotion (2007)[Tenure and Promotion Policy]. The most egregious misconduct involved unlawful interference with tenure/permanence and promotion and teaching-track conversion processes and various breaches by Dr. Taylor and Dr. Steiner of the Tribunal's orders. As such, a continued academic role for Dr. Taylor, Dr. Steiner, Dr. Bart and Dr. Pujari may also be characterized as unsustainable based on the findings in the breach decision. In the Tribunal's view, however, the threshold for removal was not met by our findings against Dr. Rose and Dr. Ray and therefore removal was not considered a reasonable sanction for them. Importantly, Dr. Ray's misconduct never jeopardized a complainant's employment with the University and the breach findings against Dr. Rose were comparatively few and less concerning.

Furthermore, the Tribunal does not accept that a removal recommendation is precluded because it is a punitive remedy or that the option is not supported by the jurisprudence. The individual 003 Respondents' submissions referenced the *Human Rights Code's* remedial purpose to support their position that removal would be punitive. However, the Tribunal is satisfied that individuals can suffer severe penalties including the termination of their employment (or in this case their removal from the University) despite the remedial purpose of the *Human Rights Code* (albeit this statute was not directly relevant to the breach findings). The Tribunal also notes the individual 003 Respondents' submissions on removal are contradictory. For example, Mr. Bates' removal was sought for alleged conduct which was relatively less serious than the breaches of Policy committed by Dr. Pujari, Dr. Steiner, Dr. Bart and Dr. Taylor. In any event, Section 71(g) of the Policy expressly provides for removal recommendations as an option available to the Tribunal.

The impact of the *Occupational Health and Safety Act* amendments under Bill 168 and the University's duty to protect employees from workplace harassment and the objectives of the Policy are amongst the primary remedial considerations. The passage of Bill 168 has changed the landscape for acceptable workplace conditions which are now statutorily recognized and behaviours are prohibited in a manner that, when considered in conjunction with the Policy, supports significant sanctions including termination of staff/removal of faculty in appropriate circumstances. Furthermore, employers must act to protect employees from harassment in the workplace just as employers must ensure that employees are protected from dangerous

machinery or substances in the workplace. Attempts to bully, intimidate and to harass other employees have no place at work for all the reasons set out in the breach decision.

The Tribunal cannot overemphasize that harassment, bullying or intimidation in the workplace is unacceptable. The seriousness of the breaches and their impact upon colleagues and on the integrity of the University's processes cannot be overstated (despite the University's processes having ultimately protected the long-term employment interests of the 003 Complainants). In this regard, with the exception of Dr. Ray, the tenured individual 003 Respondents engaged in conduct which corrupted, tainted, interfered with, and compromised the integrity of tenure/permanence and promotion and teaching-track conversion processes.

The mitigating factors in the arbitral jurisprudence referenced in the individual 003 Respondents' submissions suggested individuals who have recognized and accepted responsibility for their conduct, apologized and shown sincere remorse may be reinstated if the behaviour had been corrected and is unlikely to recur. Mitigating factors identified in the submissions were weighed when considering the Tribunal's obligation to guarantee that behaviour is not repeated, recognizing the University's duty to provide a safe workplace that is free from the risk of harassment. The Tribunal accepts that genuine remorse and acceptance of responsibility are important considerations and are relevant when determining whether it might be appropriate to recommend removal. Furthermore, in our view, "genuine remorse" and "acceptance of responsibility" are even more significant in the context of Bill 168 and must be considered when applying the Policy.

The Tribunal has considered the submissions and mitigating factors in the relevant jurisprudence to determine the appropriateness of individual penalties. The Tribunal's findings support the conclusion that the employment relationship has been seriously undermined. The more difficult issue is whether the employment relationship has been irreparably damaged as a result of the findings, especially those against Dr. Pujari, Dr. Steiner, Dr. Taylor and Dr. Bart. The Tribunal is not satisfied that the individual 003 Respondents truly accept responsibility for their conduct. The evidence and submissions indicate that some individuals have not come to grips with the seriousness, impact and effect of their misconduct and that does not bode well for the potential to rehabilitate their unacceptable behaviour. The Tribunal's challenge was whether removal was the only remedy which would be reasonable for these individuals. Whether permanent removal of an individual is necessary to address the poisoned work/academic environment was a primary concern for the Tribunal when we finalized our remedial sanctions and recommendations.

(ii) Factors Which Support Significant Individual Sanctions And Remedies

As stated, the Tribunal does not accept the individual 003 Respondents' counsels' submissions that removal is not an appropriate remedy because it would be "punitive" or that it is otherwise precluded. Rather, the challenge for the Tribunal was to determine whether a recommendation for removal was necessary to achieve the remedial objectives under the Policy and to guarantee the behaviour would not be repeated. The Tribunal was mindful of fashioning a remedy which achieved appropriate remedial objectives and addressed the legitimate concerns identified by the 003 Complainants. In the Tribunal's view, reasonable fears about whether

career aspirations have been tarnished and concerns about being fairly assessed must be remedied. The remedies must ensure that there is a genuine opportunity for the DeGroote School of Business (DSB) to move forward and have a workplace compliant with University policy.

The Tribunal carefully considered the submissions filed on behalf of the individual 003 Respondents. The Tribunal views the individual 003 Respondents' proposed remedies as insufficient. The sanctions and remedies proposed by the individual 003 Respondents do not reflect the gravity of their misconduct. The individual 003 Respondents concede they must be held accountable, but in the Tribunal's view do not acknowledge the egregious nature of their misconduct. The tenured faculty members abused the fundamental privileges and responsibilities enjoyed by and entrusted to them. Established processes vital to the University community were corrupted which has had significant negative impacts upon the DSB and the University. There were substantial and multiple findings of Policy breaches and in some cases breaches of the Tribunal's orders.

Furthermore, remedy submissions on behalf of the individual 003 Respondents continued to rationalize misconduct and/or attempt to, without merit, minimize the gravity of the Tribunal's findings. There was little in the evidence and in the submissions to suggest that the individual 003 Respondents have attained the level of self-awareness about their behaviour which was necessary to satisfy the Tribunal that significant sanctions are not required or that their behaviour has been corrected and will not be repeated. The offers of a "private apology" are negated by Dr. Taylor, Dr. Steiner, Dr. Ray, Dr. Pujari and to a lesser extent Dr. Bart's testimony which confirmed they generally did not have good insight into their own misconduct even when confronted with incriminating evidence during the hearing. Furthermore, in the face of overwhelming evidence, the individual 003 Respondents not only vigorously denied any misconduct (as they were entitled) but also continued to blame the victims.

Belatedly, on some level, each of the individual 003 Respondent in their closing submissions have attempted to express remorse, often conditionally, but generally continue to appear either incapable of, or unwilling to, own up to the fact that the Tribunal has found that it was their misconduct which was primarily responsible for the poisoned academic/work environment at the DSB. The serious and multiple breaches of the Policy identified by the Tribunal cannot be ignored. Dr. Bart, Dr. Steiner, Dr. Taylor's conduct, as well as Dr. Pujari's conduct, cannot be characterized as a momentary flare-up. Although not always premeditated, their conduct was often deliberate and willful. The totality of the evidence and the traditional mitigating factors considered in the jurisprudence (such as whether there was provocation or if this was a momentary flare-up where an individual accepts responsibility for what happened) do not, as stated earlier, weigh in Dr. Taylor, Dr. Steiner, and Dr. Bart's favour.

As such, the Tribunal believes significant remedies are required and appropriate in the circumstances. While removal was a remedy seriously considered, in the end it was determined to be unnecessary. The Tribunal is most concerned that the individual 003 Respondents' presence in the workplace will jeopardize true reconciliation at the DSB and preclude the development of an environment where all faculty and staff, including the 003 Complainants, can reasonably function in the workplace as required under the Policy. However, in hindsight, decisions by the Provost in office at the time and delays in the processes employed by HRES

also contributed to the unacceptable working environment at the DSB for the reasons set out in the breach award. In these circumstances, while a recommendation for the removal of Dr. Bart, Dr. Taylor, Dr. Steiner and Dr. Pujari may have otherwise been made, we have decided against such a recommendation. Instead, the Tribunal has identified various lengthy suspensions for Dr. Steiner, Dr. Taylor, Dr. Bart and Dr. Pujari, and other sanctions to address their serious misconduct and which will still allow the Tribunal to fulfill its obligations under the Policy.

Furthermore, the breach award, when considered in context with the remedy submissions, has led the Tribunal to conclude that Dr. Pujari's and Dr. Ray's removal is not required, albeit suspensions are necessary to reflect their serious misconduct and to allow the DSB work environment to be remedied. The Tribunal is less concerned about the future behaviour of Dr. Pujari, Dr. Ray and Dr. Rose, trusting they will acknowledge the breach findings against them and respond constructively to the recommendations set forth in this decision. The Tribunal believes the evidence confirmed that Dr. Pujari was not particularly well-suited for a leadership role and displayed repeated poor judgment. Moreover, he assumed Area Chair responsibilities for the first time in a poisoned workplace. Dr. Pujari, given his dispute with the then Provost and the intense peer pressure associated with participation in the G21, likely mistakenly felt he needed to choose a side. Dr. Pujari was particularly unsuited to deal with overbearing and domineering individuals such as Dr. Steiner, Dr. Bart and Dr. Taylor. The Tribunal believes Dr. Pujari was a conflicted and reluctant participant whose behaviour is easier to correct and we have less concern that he will be an obstacle to returning the DSB to an appropriate work environment. Similarly, the Tribunal finds Dr. Ray was likely unduly and negatively influenced by the senior tenured professors with whom he increasingly became aligned in the G21+. Dr. Ray breached the Policy and exercised extremely poor judgment but the Tribunal believes that the remedies we have identified will correct his unacceptable behaviours. With respect to Dr. Rose, the evidence against him does not support removal or suspension because of the Tribunal's limited breach findings against him.

To summarize, therefore, the Tribunal has decided not to recommend the removal of Dr. Pujari, Dr. Bart, Dr. Taylor and Dr. Steiner, believing the remedies we have recommended, in addition to their individual sanctions, will address their serious misconduct and correct future behaviour. Furthermore, the Tribunal has recommended remedies which are required to protect the legitimate and reasonable academic expectations and employment conditions of the 003 Complainants. Suspensions are required to permit the 003 Complainants to progress in their careers without risk of further adverse influence. The remedies are also required to protect the integrity of the University's policies and procedures and to deter conduct which has breached and tainted the integrity of fundamental processes treasured by faculty. The remedies identified and recommended by the Tribunal can achieve general deterrence and correct behaviours in the future by ensuring that the parties who were most responsible for the poisoned work/academic environment are absent for a sufficient period of time to permit the DSB to heal and for the remedies to be effective. The Tribunal finds we cannot guarantee that the workplace issues can be corrected without the suspension of Dr. Steiner, Dr. Taylor, Dr. Bart, Dr. Pujari and Dr. Ray for periods of time which will allow for the establishment of a healthy workplace at the DSB.

(iii) Apologies, The Release Of The Tribunal's Decisions And The Public Report

Private and/or public apologies were requested in the remedial submissions and in some cases offered. The Tribunal accepts that legitimate reputational issues have been raised by individuals involved in this proceeding for which remedies are appropriate. However, the Tribunal is not satisfied that ordering an apology can be an effective remedy, especially where the contents of proposed apologies remain in dispute.

The Tribunal is required to address the poisoned work/academic environment at the DSB and respect the reasonable privacy expectations of the parties which arise from the confidentiality provisions associated with the Policy. Furthermore, the in-camera nature of this proceeding and the Policy's requirements for a summary public report which does not identify the parties, has led the Tribunal to conclude that public apologies are not the appropriate remedy for us to order absent consent. However, this finding does not suggest that sincere apologies (public and private) are not beneficial. If voluntary and sincere, the Tribunal believes an appropriate apology can facilitate healing and reconciliation within the DSB, something which has been identified as an objective by all parties. In this respect, fulsome apologies from the individual 003 Respondents are clearly warranted and are the right thing to do.

The University has drafted and offered an apology to Dr. Pujari which the Tribunal has found to be reasonable. Otherwise, individuals will have to assess their own conduct and independently determine whether an apology will be voluntarily provided and to whom. Therefore, apologies will remain an individual choice which will not be ordered by the Tribunal. However, reasonable apologies may be considered by the President when he decides if an individual may be returned to a position of authority which has been lost as a result of the sanctions ordered below.

In any event, the Tribunal has determined that the valid remedial objectives which could have supported apologies and the remedial submissions in this regard merit further consideration. It is required that faculty and staff within the DSB understand why the remedies and sanctions which will have an impact on them are necessary and warranted. If the sanctions identified in this decision are implemented and misinterpreted it is likely that such misinterpretation will weaken the impact of the remedial steps required within the DSB. The public report is not sufficient if the Tribunal is to fulfill our mandate or to respond to the reputational concerns. The Tribunal's findings and the source of the problem must be fully understood if the poisoned workplace at the DSB is to be remedied.

Therefore, in lieu of ordering public apologies, the Tribunal has determined that remedial objectives can also be fulfilled by requiring that the breach and remedy decisions be made privately available to affected individuals and to persons with an administrative need to know at the University. The disclosure presently authorized by the Tribunal for distribution of our breach decision, supplemented by further private and confidential disclosure with conditions to individuals for remedial, training and counselling purposes is required at the DSB. The confidential private disclosure the Tribunal has ordered, under Part D below, will provide context, accountability and understanding of this proceeding to affected individuals within the DSB, for appropriate stakeholders, and to witnesses who testified at the hearing. Private

distribution of the Tribunal's breach and/or remedy decisions in confidence to key stakeholders such as the University's administration and MUFA should ensure the appropriate messages are communicated within the DSB to achieve both general deterrence and to correct behaviour. The Tribunal will address these additional recommendations and orders in more detail after we address the recommendations and orders issued for the individual 003 Respondents.

(iv) Recommendations And Orders

The Tribunal finds the following remedies are required to address the serious breaches of the Policy engaged in by the individual 003 Respondents and by Dr. Ray in his counter-complaint:

(1) Relying upon the findings in the breach award and having considered the remedial submissions, the Tribunal finds just cause to recommend that Dr. Pujari receive a one year suspension without pay, benefits, privileges or access to the University's premises during the period of his suspension. The recommendation would have been removal, or a longer suspension because of Dr. Pujari's failure to fulfill Area Chair responsibilities for which he was entrusted, but for mitigating factors which included the Tribunal's findings against the University.

(2) Furthermore, the Tribunal orders:

(a) Mandatory Sensitivity, Harassment and Conflict Resolution Training for Dr. Pujari upon his return from the suspension;

(b) That Dr. Pujari be immediately removed from his positions of authority (including if applicable, Area Chair, as a member of an Area or Faculty Level Committee, or as a member of the Senate, Board of Governors or any other governance committee) where he would have authority to potentially affect terms and conditions of the employment of anyone at the DSB;

(c) That Dr. Pujari be prohibited from holding any such position of authority for a minimum of five years after his return to the University from his suspension and, thereafter, only once the President determines it is appropriate for him to be eligible to be considered for holding such position;

(d) That the Tribunal's breach and remedy decisions in their entirety, as well as exhibits, may be released to a subsequent tribunal (internal or external) or Court, should Dr. Pujari attempt to re-litigate or challenge this matter in another forum.

(3) Relying upon the findings in the breach award and having considered the remedial submissions, the Tribunal finds just cause to recommend that Dr. Bart receive a three year suspension without pay, benefits, privileges or access to the University's premises during the period of his suspension. The recommendation would have been removal but for the mitigating circumstances of the Tribunal's findings against the University related to the poisoned academic/work environment.

(4) Furthermore, the Tribunal orders:

(a) Mandatory Sensitivity, Harassment and Conflict Resolution Training for Dr. Bart upon his return from the suspension;

(b) That Dr. Bart be immediately removed from his positions of authority (including if applicable, Area Chair, as a member of an Area or Faculty Level Committee, or as a member of the Senate, Board of Governors or any other governance committee) where he would have authority to potentially affect terms and conditions of the employment of anyone at the DSB;

(c) That Dr. Bart be prohibited from holding any such position of authority for a minimum of five years after his return to the University from his suspension and, thereafter, only once the President determines it is appropriate for him to be eligible to be considered for holding such position;

(d) That the Tribunal's breach and remedy decisions in their entirety, as well as exhibits, may be released to a subsequent tribunal (internal or external) or Court, should Dr. Bart attempt to re-litigate or challenge this matter in another forum.

(5) Relying upon the findings in the breach award and having considered the remedial submissions, the Tribunal finds just cause to recommend that Dr. Taylor receive a three year suspension without pay, benefits, privileges or access to the University's premises during the period of his suspension. The recommendation would have been removal but for the mitigating circumstances of the Tribunal's findings against the University related to the poisoned academic/work environment.

(6) Furthermore, the Tribunal orders:

(a) Mandatory Sensitivity, Harassment and Conflict Resolution Training for Dr. Taylor upon his return from the suspension;

(b) That Dr. Taylor be immediately removed from his positions of authority (including if applicable, Area Chair, as a member of an Area or Faculty Level Committee, or as a member of the Senate, Board of Governors or any other governance committee) where he would have authority to potentially affect terms and conditions of the employment of anyone at the DSB;

(c) That Dr. Taylor be prohibited from holding any such position of authority for a minimum of five years after his return to the University from his suspension and, thereafter, only once the President determines it is appropriate for him to be eligible to be considered for holding such position;

(d) That the Tribunal's breach and remedy decisions in their entirety, as well as exhibits, may be released to a subsequent tribunal (internal or external) or Court,

should Dr. Taylor attempt to re-litigate or challenge this matter in another forum.

(7) Relying upon the findings in the breach award and having considered the remedial submissions, the Tribunal finds just cause to recommend that Dr. Steiner receive a three year suspension without pay, benefits, privileges or access to the University's premises during the period of his suspension. The recommendation would have been removal but for the mitigating circumstances of the Tribunal's findings against the University related to the poisoned academic/work environment.

(8) Furthermore, the Tribunal orders:

(a) Mandatory Sensitivity, Harassment and Conflict Resolution Training for Dr. Steiner upon his return from the suspension;

(b) That Dr. Steiner be immediately removed from his positions of authority (including if applicable, Area Chair, as a member of an Area or Faculty Level Committee, or as a member of the Senate, Board of Governors or any other governance committee) where he would have authority to potentially affect terms and conditions of the employment of anyone at the DSB;

(c) That Dr. Steiner be prohibited from holding any such position of authority for a minimum of five years after his return to the University from his suspension and, thereafter, only once the President determines it is appropriate for him to be eligible to be considered for holding such position;

(d) That the Tribunal's breach and remedy decisions in their entirety, as well as exhibits, may be released to a subsequent tribunal (internal or external) or Court, should Dr. Steiner attempt to re-litigate or challenge this matter in another forum.

(9) Relying upon the findings in the breach award and having considered the remedial submissions, the Tribunal finds just cause to recommend that Dr. Ray receive a one academic term suspension without pay, benefits, privileges or access to the University's premises during the period of his suspension.

(10) Furthermore, the Tribunal orders:

(a) Mandatory Sensitivity, Harassment and Conflict Resolution Training for Dr. Ray upon his return from the suspension;

(b) That Dr. Ray be immediately removed from his positions of authority (including if applicable, Area Chair, as a member of an Area or Faculty Level Committee, or as a member of the Senate, Board of Governors or any other governance committee) where he would have authority to potentially affect terms and conditions of the employment of anyone at the DSB;

(c) That Dr. Ray be prohibited from holding any such position of authority for a minimum of five years after his return to the University from his suspension and, thereafter, only once the President determines it is appropriate for them to be eligible to be considered for holding such position;

(d) That the Tribunal's breach and remedy decisions in their entirety, as well as exhibits, may be released to a subsequent tribunal (internal or external) or Court, should Dr. Ray attempt to re-litigate or challenge this matter in another forum.

(11) Relying upon the findings in the breach award and having considered the remedial submissions, the Tribunal finds and for just cause orders that Dr. Rose:

(a) Receive a formal written reprimand and that the Tribunal's decisions be maintained in his record for five years;

(b) Undertake Mandatory Sensitivity and Harassment Training within the next 90 days;

(c) Be immediately removed from his positions of authority (including if applicable, Area Chair, as a member of an Area or Faculty Level Committee, or as a member of the Senate, Board of Governors or any other governance committee) where he would have authority to potentially affect terms and conditions of the employment of anyone at the DSB;

(d) Be prohibited from holding any such position of authority for a minimum of five years and, thereafter, only once the President determines it is appropriate for him to be eligible to be considered for holding such position;

(e) Be aware that the Tribunal's breach and remedy decisions in their entirety, as well as exhibits, may be released to a subsequent tribunal (internal or external) or Court, should Dr. Rose attempt to re-litigate or challenge this matter in another forum.

(12) The President when considering the Tribunal's recommendations, or when implementing sanctions and orders, may privately inform and release in confidence details of the Tribunal's decisions to Dr. Graeme Luke, Dr. Rafael Kleiman and Dr. Michele Dion as MUFA representatives and as may reasonably be required within the University's governing structure, to facilitate the remedial purposes of the Policy.

The individual sanctions in the preceding section suspending certain individuals from the University were warranted because of the egregious Policy breaches. Furthermore, the Tribunal finds the individual sanctions are required for the purposes of general deterrence; in order to correct behaviours; and importantly, to guarantee the DSB has a reasonable opportunity to achieve a work/academic environment in compliance with the Policy. Suspension from the University and restricted participation in the University community, is warranted because of the continued vulnerability of certain Complainants and because of the poisoned work/academic

environment at the DSB. Persons who have breached the Policy will not be able to directly, and perhaps as importantly, indirectly influence the employment and career aspirations of specific individuals for a timeframe reasonably necessary for those persons to progress in their career.

D. ADDITIONAL RECOMMENDATIONS AND OTHER REQUIRED ORDERS

The following additional recommendations and orders have been identified by the Tribunal as required to address the remaining issues identified in the submissions. As stated earlier, the Tribunal has remained concerned that, despite the individual sanctions, true reconciliation in the DSB and compliance with the Policy is not attainable without sufficient knowledge and understanding of the complex series of events which have unfolded. The Tribunal has determined that public apologies will not be ordered as a remedy. The breach decision will not be publicly released, except as may be required by law. The Tribunal finds additional recommendations and orders are necessary to guarantee that the behaviour is not repeated given the in-camera nature of these proceedings and the requirements of the public report. This has created a remedial challenge for the Tribunal which has had to balance various competing rights and expectations.

Remedying the breaches and the poisoned work/academic environment necessarily relies upon the good faith of the various stakeholders who can facilitate solutions. The members of the University community most directly affected by the breaches of the Policy must fully understand the complex issues which arose at the DSB and reflect upon the challenges moving forward. The public report must not be misinterpreted. Individuals who have suffered because of the poisoned work/academic environment at the DSB must fully understand what transpired and the cause. The breach decision provides an important remedial and learning tool which can be used both for training and other remedial purposes as addressed below. The Tribunal recognizes that remedial success is dependent upon the good faith participation of stakeholders within the University community. Persons in positions of authority, faculty and staff at the DSB, as well as MUFA and the employee union representatives all have important roles and responsibilities if the misconduct is to be properly understood, corrected and terminated.

Therefore, the Tribunal has determined that the scope and seriousness of the individual Respondents' conduct must be communicated privately in confidence and with conditions, to persons responsible for, and those affected by, the poisoned work/academic environment at the DSB. The Tribunal's decisions can be made available for training and remedial purposes if an undertaking to maintain confidentiality is obtained from individuals on the terms ordered below. The DSB faculty and staff, University Administration, HRES, MUFA and other employee representatives have an interest and are stakeholders who can facilitate compliance with the Policy and the law if the issues are fully understood. The public report will address certain expectations but it will not, in our view, address fully the remedial measures required at the DSB. As a result, the Tribunal has concluded that the decisions are required to be privately released, in confidence, with the Tribunal retaining jurisdiction if we are to guarantee that the behaviour is not repeated and if the poisoned work/academic environment is to be remedied.

Furthermore, the Tribunal finds this approach is necessary given that the individual 003 Respondents have continued to attempt to minimize their own wrongdoing and in some instances, characterized findings made by the Tribunal in a manner which was self-serving and not reflective of the seriousness of the misconduct. In addition, the participation of and concerns expressed by numerous non-party witnesses to the proceedings necessarily needs to be considered by the Tribunal when fashioning remedies. The anonymity of the participants is a practical challenge in large part due to the 002 Complainants public campaign against Mr. Bates. However, there was an expressed commitment to reconciliation at the DSB, if the representations made during the proceedings are to be believed. If this is the case, a full understanding of the Policy breaches within the DSB should be welcomed. In the Tribunal's view, reliance upon the decisions as a counselling and learning tool and for the purpose of remedying the poisoned work/academic environment is necessary to "guarantee the behaviour is not repeated".

The Tribunal has also been asked to address the damage to Mr. Bates' reputation. The breach decision confirms that no violation of the Policy was established against him but the public release will not identify Mr. Bates as a party. The confidential and private release of the breach decision for training and for purposes of remedying the poisoned work/academic environment at the DSB may address some of Mr. Bates' reputational concerns. However, Mr. Bates chose not to pursue his own complaint. Therefore, the Tribunal will not order the apologies requested by Mr. Bates.

Furthermore, the University sought an order from the Tribunal requiring the University to investigate the conduct of Dr. Chamberlain, Dr. Nainar, Dr. Zeytinoglu, Dr. Chan and Dr. Kwan. The Tribunal is not prepared to make any such order because these individuals were not made a party to the proceedings. The University can independently assess what investigative steps are required with respect to the poisoned work environment at the DSB because the University has obligations under the *Occupational Health and Safety Act* and the Policy to take reasonable steps to protect employees. As such, the Tribunal need not make any recommendation in regard to any further investigation or disciplinary decisions by the University involving persons who were not a party to these proceedings.

Nonetheless, the Tribunal is obligated to recommend any appropriate remedy it deems necessary or appropriate to guarantee the behaviour is not repeated and to remedy the poisoned workplace. As such, in addition to the aforementioned recommendations the Tribunal also makes the following general orders which are intended to facilitate the private exchange of information in confidence which the Tribunal finds necessary, appropriate and required to address the Policy breaches and remedy the poisoned work/academic environment at the DSB:

(a) The Tribunal's Confidentiality Notice dated June 30, 2011, will continue in full force, except as may be amended by the Tribunal.

(b) Within 90 days, the University and MUFA will negotiate and agree upon an effective mechanism to ensure appropriate oversight of the tenure and promotion process at the DSB. The Tribunal understands the Senate has already approved Terms of Reference for the Associate Dean (Faculty Affairs and Accreditation) with assigned responsibility for tenure and promotion at the DSB but this

structure has not been formally implemented due to concerns raised within the DSB and by MUFA. The Tribunal directs that this revised structure be considered further in light of the Tribunal's breach and remedy decisions. In the event no agreement is reached, the Tribunal may be requested to order the effective mechanisms necessary to guarantee behaviour is not repeated.

(c) The University will provide mandatory training of the Policy to all faculty and staff at the DSB. To facilitate effective training and for remedial purposes, the following is ordered:

(i) The University can rely upon and utilize the Tribunal's decisions when implementing training and providing education at the DSB for purposes of remedying the poisoned work/academic environment;

(ii) The decisions, or part thereof, can be provided to DSB faculty members and staff, University Administration, HRES, MUFA or legal representatives for purposes of implementing training, education and remedial processes at the DSB. Before being provided with the Tribunal's decision(s), an individual will be:

(a) Made aware of the Tribunal's Confidentiality Notice which remains in effect including the prohibition against reprisals;

(b) Required to sign a Confidentiality Agreement;

(c) Advised of the remedial purpose for which the decision(s) are being privately disclosed and that they are being utilized for training, education or counselling purposes;

(d) Asked to undertake in writing that the private information in either decision, not otherwise available publicly, will not be shared or communicated further outside the DSB or disclosed to persons not authorized to receive the decision(s);

(e) Advised that the Tribunal has remained seized of issues arising from the implementation of the decision(s) or the Confidentiality Notice and that the Tribunal has the authority to remedy breaches of the Confidentiality Notice for anyone receiving the decision.

(d) Furthermore, individuals within the University's Administration and MUFA have already received the breach decision and have knowledge of certain conduct by individuals identified as members of the G21 and G21+. Their group emails were disclosed in the evidence and relied upon and supported some of the breach findings. While they may or may not have participated in the proceedings as witnesses, many of these individuals were not parties. The Tribunal therefore orders the following in addition to the requirements outlined in the preceding

Section (c) when counselling G21 and G21+ members who are still employed at the University:

(i) The breach and remedy decisions, or part thereof, will be disclosed by the President or his delegate to individuals who were identified in the breach decision as members of the G21 or G21+ in the presence of a MUFA representative. Furthermore, the reprisal provisions of the Policy and the Confidentiality Notice will be communicated to these individuals when the decisions are disclosed.

(ii) The University (and hopefully MUFA) can counsel these individuals and will reaffirm that tenured professors holding positions of responsibility which can affect the employment conditions of their colleagues are required to comply with the Policy.

(iii) The concerns identified with respect to the activities of the G21 and G21+ in the breach decision and the findings against the individual parties can be relied upon by the University for the purpose of counselling during the meeting(s). However, the Tribunal's decisions will not form part of these individuals' personnel file or discipline record for those who were not named parties (including Dr. Chamberlain, Dr. Nainar, Dr. Zeytinoglu, Dr. Chan and Dr. Kwan).

(iv) G21 and G21+ members with appointments that may have a direct or indirect bearing on the career aspirations and employment conditions of the 003 Complainants or witnesses called on their behalf, will be counselled (in the presence of a MUFA representative) and reminded of relevant University policies pertaining to conflicts of interest and be informed of the legal test and their duties should an issue be raised by an individual who identifies a reasonable apprehension of bias.

(v) G21 and G21+ members on committees or involved in processes which could reasonably affect terms and conditions of employment will be advised that if any 003 Complainant or witness in the proceeding raises a reasonable apprehension of bias concern, the expectation is that each individual will assess and comply with his or her recusal obligations. The Tribunal's decisions and exhibits can be relied upon should a faculty member's refusal to recuse him or herself be disputed or if an individual's decision leads to an investigation, or any subsequent formal complaint which is considered under a hearing process internal or external to the University.

(e) An adjudicator, a court, or an investigator can be provided with or rely upon the Tribunal's decisions and exhibits should any subsequent proceeding involving the 003 Respondents or other members of the G21 or G21+ whether internal or

external to the University be commenced by any of them which challenges the Tribunal's decision, remedies or the sanctions imposed.

E. REMEDIES FOR THE UNIVERSITY BREACHES

As the employer, the University bears responsibility for the poisoned work/academic environment for the reasons set out in the breach decision. The University's submissions identified and offered remedies which appropriately recognized the University's obligations under the *Occupational Health and Safety Act* and the Policy. In this section, the Tribunal identifies which remedies will be ordered because of the University's breach of the Policy.

Compliance with statutory requirements and providing complainants with access to timely and effective processes in the event a complaint is filed must be addressed. In that regard, the HRES position on confidentiality and some of the processes followed by HRES contributed to the poisoned work environment at the DSB. However, the Tribunal emphasizes that the University's policies were not the cause of, nor do existing policies explain or in any way justify, the individual 003 Respondents' misconduct identified in the breach decision. Having considered the breach decision findings and the remedial submissions concerning the University, the Tribunal orders:

(a) The University will commence a review of the Anti-Discrimination Policy (the "Policy") within 90 days. Consistent with University processes, the University Secretariat will support the review process and ensure that the resulting recommendations are presented to the University's Senate and Board of Governors for consideration. The mandate of any individual(s) retained to assist would be to provide recommendations, advice and assistance in support of the review. Any review should *inter alia* specifically consider:

(i) The proper scope of the HRES Office;

(ii) The scope of HRES' obligation to keep matters confidential.

(iii) Processes which require the HRES Office to expeditiously dismiss or refer complaints to a Tribunal if they meet minimal thresholds and if they cannot be promptly settled.

(iv) Whether an investigator under the Policy should interview all parties (the complainant(s) and the respondent(s)), before finalizing and submitting a report concerning a complaint;

(v) Whether an investigator must specify the reason for the extra time in his or her report if circumstances warrant an investigation longer than three months;

(vi) Whether the Policy should require mandatory mediation as soon as possible, and before a Tribunal adjudicates the matter;

(vii) Confidentiality provisions related to the Tribunal hearing processes be reviewed to balance confidentiality with public accountability;

(viii) Provide the University Administration express authority to take interim steps, including separating the parties or suspending a respondent(s) with pay, pending the conclusion of an investigation, especially where it is necessary to minimize the risk of reprisal. Any necessary amendments to the Tenure and Promotion Policy should be discussed between the Senate Committee on Appointments and MUFA in the usual way;

(ix) Whether the Policy should be amended to directly confer upon a Tribunal the power to make interim orders in circumstances where reprisal is claimed. Tribunals need the express authority to hear a matter expeditiously and on short notice where a claim of reprisal is made either during the investigation process or after the investigation process has been completed and a hearing is being scheduled.

(b) The University will be provided with 12 months to complete the review of the Policy. The University will communicate the revised Policy to all faculty and staff after it has been reviewed and any revisions approved by the University's governing bodies.

(c) The University and/or its Environmental & Occupational Health Support Services (EOHSS) will update existing training and continue to offer and promote violence and harassment prevention training to the entire University community.

(d) The University will ascertain if other relevant policies need to be reviewed given the Tribunal's findings.

(e) The Tribunal accepts that the letter of apology offered by the University is appropriate. The President is, therefore, directed to provide Dr. Pujari with the proposed written apology as follows:

Dear Dr. Pujari:

I write further to the findings of the Tribunal in the complaint brought by you and a number of other individuals at the DeGroote School of Business (the "DSB") against Paul Bates and McMaster University (the "University"). As you know, all of the allegations against Paul Bates and the University in this complaint were dismissed with the exception that the Tribunal found that the University contributed to the poisoned work environment by not properly investigating your complaint involving Dr. Kleinschmidt. The purpose of this letter is to apologize to you for this incident.

In its decision, the Tribunal found that the investigation into your complaint against Dr. Kleinschmidt was flawed in that the necessary steps were not taken to avoid the perception of a conflict of interest on the part of senior administration and to address your concerns. Although the Tribunal did not in fact determine that a conflict of interest existed in this case, the University respects the Tribunal's decision that "the perception of bias and favoritism, albeit not established as true by the evidence, contributed to the angst within the DSB".

I have taken considerable time to reflect on this situation and apologize for the flaws in the investigation of your complaint and for the anxiety that this has caused. I can assure you that the University is committed to ensuring a professional working environment founded on respect and dignity and to upholding the principles of the Anti-Discrimination policy.

Sincerely,

Patrick Deane
President and Vice Chancellor, McMaster University

The Tribunal remains seized concerning any issues arising from the implementation of our decisions, recommendations, orders and sanctions as well as the disposition of outstanding motions.

Dated at Hamilton this
23rd day of September, 2013

Dr. Maureen MacDonald (Chair)
on behalf of the Tribunal comprised
of herself, Dr. Bonny Ibhawoh
and Dr. Lorraine York

DR. CHRIS BART ET AL
(Applicants)

- and -

MCMASTER UNIVERSITY ET AL
(Respondents)

Court File No. 210/14

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

PROCEEDING COMMENCED AT
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