

## Jeff Waselenchuk - Re: Reasons for dismissal

**From:** Janet Paterson-Weir  
**To:** Higgins, David; Sullivan, Pat; Waselenchuk, Jeff  
**Date:** 10/27/2011 12:26 PM  
**Subject:** Re: Reasons for dismissal

Hi David

I think this begins to address what is currently missing in terms of reviewing only recent documents (eg. Roger's summary/opinion). It would be helpful to have this more holistic profile and determine how we might best employ this. In the current focus on the details of the academic integrity committee minority opinion for example, the more holistic pattern of behaviour becomes lost in such a micro approach. For example, some staff were generally afraid about the stock pile of ammonium nitrate given typical supply required for the curriculum. If it is true, that a cavalier response which was "to make a bigger bang"; well, all one can say it is a good thing this happened at a Canadian University as the tolerance of this would have been much more severely dealt with. So, this kind of incident needs to be articulated as you have commenced with specific examples.

wasn't involved in purchasing the additional ammonium nitrate, and it's used for absolutely safe experiments (chemical cold pack demo and a student experiment). Someone's feeding JPW false information with the "bigger bang" and "generally afraid".

Jeff, as time marches on could you ask Roger to meet with us next week, to craft approach, documentation, etc. I feel we also need to get Roger much more informed and to test his willingness/confidence in our case. I can free up any afternoon Nov. 1, 2, 3 or 4. thanks, Janet

And when they don't like his opinion, they forge ahead anyway!

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→ I think it was the opposite of the above b/c of documented evidence... For instance, we all know how poorly he performed overall but that's not well documented. ∴ I think we might need to argue that performance was generally unsatisfactory but that 2 incidents were grossly concerning.

I think it might be the opposite(?) of the above b/c [because] of documented evidence... for instance, we all know how poorly he performs overall but that's not well documented. Therefore, I think we might need to argue that performance was generally unsatisfactory but that 2 incidents were grossly concerning.

Agree:

- documentation not extensive
- A.I. Committee went as light as they could  
(4 of 5, no sanctions, Rep's refrained comments)

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Disagree:

- view of progressive discipline not running its course.  
- based on April 1 letter + some previous issues.

Disagree:

- > view of progressive discipline not running its course.  
based on April 1 letter + [and] some previous issues.

Don't know:

- "magnitude" of plagiarism

Don't know:

- > "magnitude" of plagiarism

∴ if April 1 letter disappears / Δ → huge problem

if " " remains unchanged → better than 50%

[therefore] if April 1 letter disappears / changes → huge problem.  
if April 1 letter remains unchanged, no better than 50%.

Plagiarism ??? ts ??? > Significant but not worthy of termination  
Employment record poor but not catastrophic ∴ last 2  
issues (FOIP / plagiarism) need to be significant.  
Progressive discipline did occur, based on April 1 letter.  
Recommendation → terminate, but look for settlement.

Plagiarism — on its own → Significant but not worthy of termination  
Employment record — poor but not catastrophic ∴ last 2  
issues (FOIP / plagiarism) need to be significant.  
Progressive Discipline — did occur, based on April 1 letter.  
Recommendation → terminate but look for settlement.

# Jeff Waselenchuk - Fwd: comments on Roger Hofer's e-mail

**From:** Janet Paterson-Weir  
**To:** Waselenchuk, Jeff  
**Date:** 10/25/2011 5:23 PM  
**Subject:** Fwd: comments on Roger Hofer's e-mail  
**CC:** David Higgins; Pat Sullivan  
**Attachments:** Comments on lawyer's letter.docx

Hi Jeff

I went over Roger's email a few times and now have reviewed David's analysis. At this point, I am not sure we have been well served by Roger in this case. I think, for example

redacted by MacEwan

The Investigation was a majority opinion, and I will concede upset by the behaviour of our own legal counsel, but we did ask the committee to rule on whether in their opinion plagiarism was evident or not; and nothing else. They did this. Correct & issue now seems to be whether "degree" or magnitude of violation is compelling. Correct > ssue now seems to be whether "degree" or magnitude of violation is compelling.

I appreciate there are risks here and I understand legal counsel always wants a rock solid case. Given we have followed his advice in the past, we are now in a position wherein the risk for us to be seen tolerating such behaviour and seen to be doing nothing, carries a credibility risk amongst faculty and academic administrators. Even if we fail and Roy is compensated or, worse, reinstated, I would rather be seen to have tried in this case with a fair process, than quietly condone what has happened here. In this business, reputation is everything.

Jeff, your thoughts would be helpful as well even if contrary to ours. Would you be available Friday afternoon anytime after 2 pm to meet with David and me. Thanks, Janet

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\* perhaps a settlement s way to go ~ f  
so, ma n leverage we have w/b [would  
be] f nal "descr pt on" of employment ???  
(speaks to employab l ty + \$ (a pa d  
suspens on s gn f cantly removes th s  
pressure po nt.

\* perhaps a settlement is way  
to go ~ if so, main  
leverage we have w/b  
final "description" of employment  
separation (speaks to employability  
+ \$ Ca paid suspension  
significantly removes this  
pressure point.

>>> David Higgins 10/25/2011 4:39 pm >>>  
Hello Janet,

I've attached a document. My comments on Roger's points should be visible in blue. I'll also draft a document setting out the basis on which a termination would be made. Might we be able to touch base on Friday - with a view to solidifying our position and then involving Roger????

Thanks,

David

**Reason for dismissal:** an irretrievable breakdown in the employee/employer relationship.

This conclusion is supported by the following: *(The intent, of course, is to elaborate within each point. I'm attempting to describe the components of [REDACTED] behaviour and actions which are so harmful and ingrained that remedy short of dismissal is almost certainly not going to succeed.)*

1. a background of disruptive behaviour over a long period - behaviour characterized by a disregard for the possibility that institutional and departmental considerations constitute a constraint on action. Such actions sometimes caused serious concern in the minds of other employees.  
Illustrations of such behaviour are: pumpkin, ceiling, ammonium nitrate etc. . . .

2. loss of understanding of the point and purpose of employment - the education of students.  
This loss is manifested by the obstinacy with which the textbook project was pursued in the face of abundant evidence that student learning was suffering. It is as if the textbook became the purpose, instead of the students; requested lab equipment (laser) languishing untouched two years later; mediocre student evaluations

3. loss of trust - the behaviour manifested when thwarted in some way: expressed anger, creation of a poisoned atmosphere through the dissemination of e-mails containing highly misleading accounts intended to prejudice the reader; parking incident; allegations of supposed committee manipulation . . .

4. fixity of contrary behaviour: despite many efforts to provide advice, suggestions and direction about ways to adjust attitude and conduct to achieve positive results, a disruptive and divisive approach continued; this same kind of behaviour was manifested in relation to the FA – another illustration of the member's approach to difficulties and evidence that the 'difficulty' was not simply an artifact of administrative action.

5. professional misconduct – plagiarism; modeling of such unprofessional behaviour to students.

???

This legal opinion was placed in my **personnel file** by MacEwan. Yet they redacted it when fulfilling my FOIP request. Why?

Q: 1. Was there misconduct?  
2. Yes → penalty?  
12 hrs + damages  
→ harassment claim

Q: 1. Was there misconduct?  
2. Yes → penalty?  
??? + damages of(?) harassment ???

April 1 letter was written exclusive of plagiarising finding ... identified a final warning; the plagiarising was seen as a(?) culminating incident.

April 1 letter was written exclusive of plagiarising finding ... it identified a final warning; the plagiarising was seen as a culminating incident

an/a worrisome

??? worry some

true true

re magnitude:  
- sloppy vs intentional  
- written vs oral

re magnitude:  
\* sloppy vs intentional  
\* written vs oral

more questionable is the April 1 letter - hopefully sustainable for procedural reasons  
if letter stands, then we do have some degree of reasonable progressive discipline as April 1 letter was 'FOIP'; to say plagiarising was of any significance would lead to double jeopardy claim +/or make EC findings moot.

\* more questionable is the April 1 letter - hopefully sustainable for procedural reasons  
\* if letter stands, then we do have some degree of reasonable progressive discipline as April 1 letter was 'FOIP'; to say plagiarising was of any significance would lead to double jeopardy claim &/or make EC findings moot.

01/14/2014

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[REDACTED]

[REDACTED]

[REDACTED]

speculative

speculative

[REDACTED]

[REDACTED]

post-termination info  
can be relevant, which  
we don't want to rely  
on it pre-termination

Deleted: .

-I believe our p of v  
needs to be that  
available info  
supports it...  
anything more just  
reinforces it.  
∴ we might want  
to continue our  
review.

post-termination info(?) [information] can be relevant, ??? we don't want to rely on it pre-termination

[Deleted: .]

I believe our p of v(?) [point of view] needs to be that available info(?) [information] supports  
termination... anything more just reinforces it.

[therefore] we might want to continue our review.

[REDACTED]

I'm not sure there is  
any immediate value  
to this.

I'm not sure there is any immediate  
value to this.

[REDACTED]

correct or not about  
our case; only  
knowing that our  
information can't  
be compromised.

correct ~> not ??? our case; only  
ensuring that our information can't be  
compromised.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Jeff Waselenchuk - [REDACTED]

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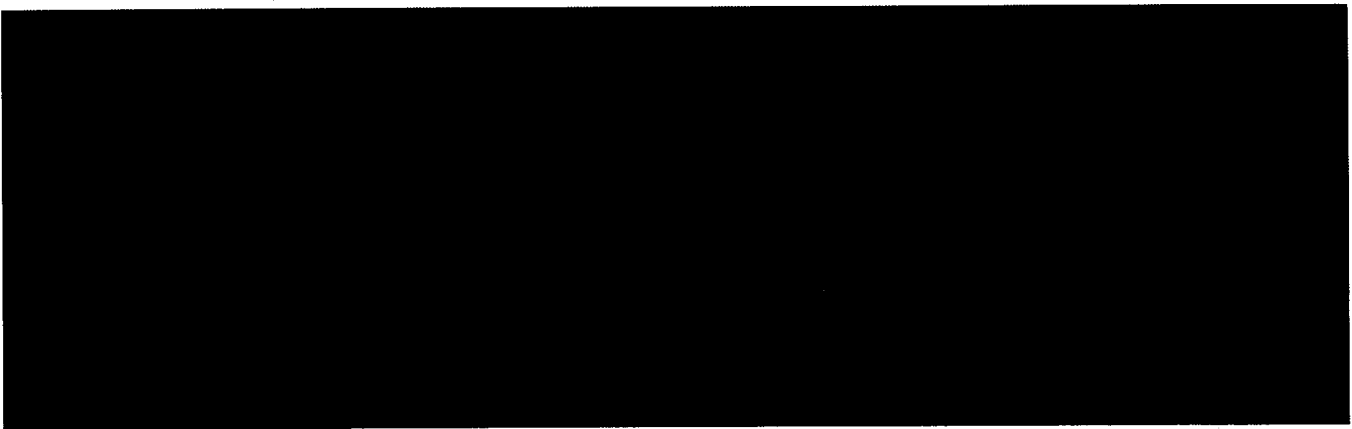
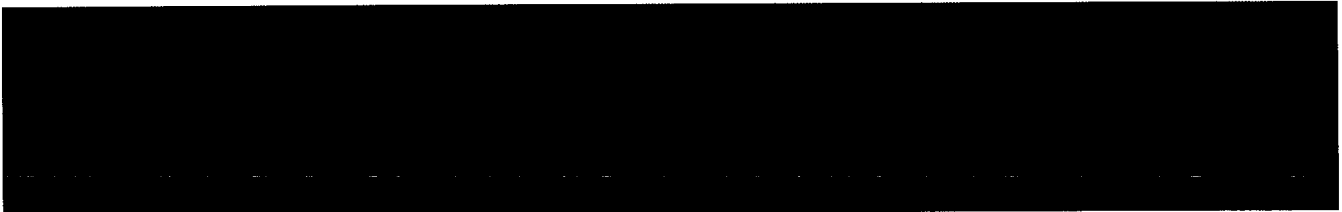
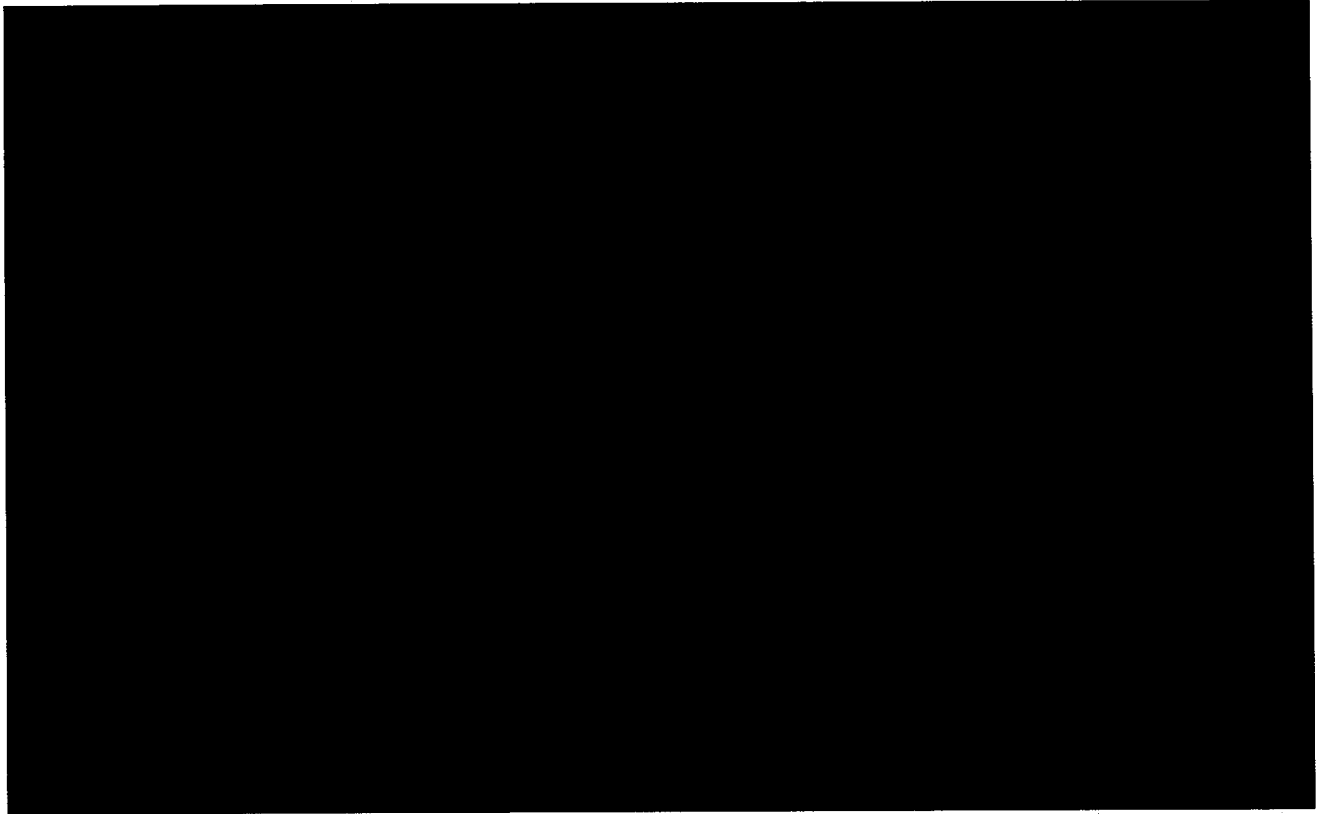
**From:** "Roger S. Hofer" <rhofer@neumanthompson.com>  
**To:** "Dr. Janet Paterson-Weir (patersonweirj@macewan.ca)"  
<patersonweirj@macewan.ca>, Jeff Waselenchuk <WaselenchukJ2@macewan.ca>, David Higgins <HigginsD@macewan.ca>  
**Date:** 10/24/2011 5:21 PM  
**Subject:** [REDACTED]  
**Attachments:** draft intent to terminate letter v2 (for Patterson Weir).docx; Brandon\_University\_and\_Brandon\_University\_Fa.DOC

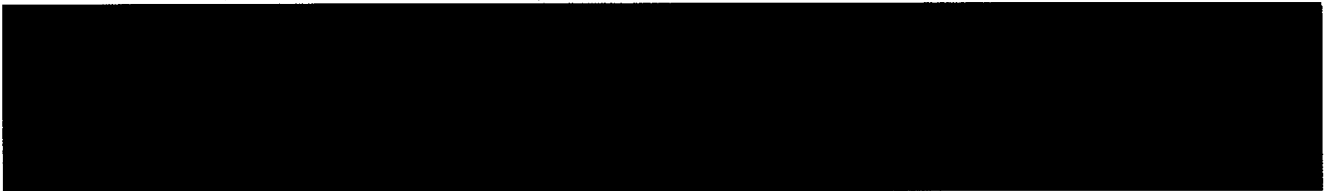
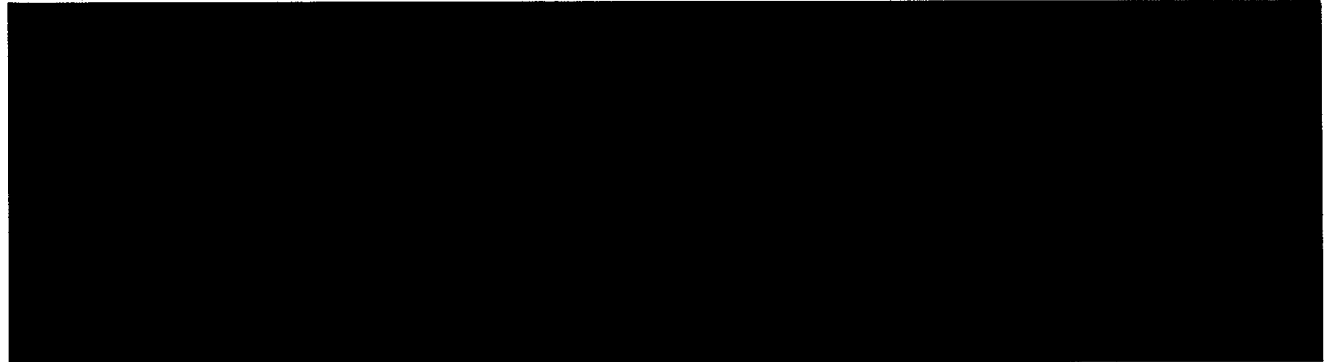
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[REDACTED]

[REDACTED]

[REDACTED]





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*Cited as:*  
**Brandon University and Brandon University Faculty Assn. (Re)**

**In the Matter of an Arbitration  
Between  
Brandon University, Employer and  
Brandon University Faculty Association, Union**

[1994] M.G.A.D. No. 83

37 C.L.A.S. 89

File no. AA94-11-009

Manitoba  
Grievance Arbitration

**F.M. Steel, Chairperson  
A. Baumgart, Employer Nominee and M. Gabbert, Union Nominee**

Heard: July 11, 12, 13, 14, 1994  
Decision: November 21, 1994

(54 pp.)

**Appearances:**

Grant Mitchell, counsel for the Employer.  
Rob Tonn and Sonia Pascal-Roy, counsel for the Union.  
Ann Bowman, Grievor.

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**ARBITRATION AWARD**

**1.0 PRELIMINARY MATTERS**

This dispute concerns a grievance filed by Professor Ann Bowman alleging that the University's refusal to issue her a probationary contract constitutes an intrusion into the process described in Article 18 of the Collective Agreement. By way of remedy, she requests that the University be ordered to issue her a probationary contract. (Exhibit 2)

Professor Bowman's employer, Brandon University, alleges that the University's refusal to offer her a probationary contract was an appropriate exercise of their powers.(Exhibit 3)

The Board to hear and determine this dispute was appointed pursuant to Article 6 of the Collective Agreement (Exhibit 1). The parties agreed that this Board is properly constituted and has jurisdiction to hear and determine the matters in dispute between them.

At the beginning of the hearing, a copy of a letter written by Mr. Mitchell and agreed to by Mr. Tonn, which defined the issues to be addressed by this Board of Arbitration was filed. Counsel have agreed as follows:

1. The Employer shall bear both the evidentiary and the legal onus to establish plagiarism;
2. The issue in the case will be confined to plagiarism, and will not deal with procedural issues, or other qualifications by rank;
3. The Union has reserved the right to argue that the level of misconduct, if any, may have warranted discipline, but not a denial of the probationary appointment based on the plagiarism allegation;
4. The Union has also reserved the right to argue that even if there was technically a "plagiarism" in the manual, that it was not sufficiently serious, in the context of the discipline and the department, to warrant the denial of the probationary contract.

Counsel also agreed that the hearing would be split between liability and remedy with the Board giving an award relating to liability only at the present time and retaining jurisdiction with respect to remedy, should the parties be unable to agree.

## 2.0 FACTS

The Department of Nursing and Health Studies at Brandon University is a department within the Faculty of Science. It is a relatively new department having been established in 1986, and has a complement of five individuals. Two of the five Faculty members are tenured, Professors John English and Mary Anne Andrusyszyn, both of whom received tenure in 1991.

The Department offers degree programs for Registered Nurses and for Psychiatric Registered Nurses. The students may either obtain a Bachelor of Science in Nursing or a Bachelor of Science in Nursing in Mental Health.

The grievor, Professor Ann Bowman, began teaching at the Department in August of 1990. She was hired on a three-year term contract which expired August, 1993. Professor Andrusyszyn was Chair of the Department at the time and participated in the decision to hire the grievor.

Pursuant to Article 7.5(b) of the Collective Agreement, all individuals holding term appointments must be evaluated within the second year of the term. The evaluation was a two-step process. First, the University determined whether or not the position itself was still required. Second, the individual occupying the term position must themselves be evaluated by the Department and by the Dean.

The article in the Collective Agreement states as follows:

7.5 All full-time and part-time appointments of Members shall be specified as

being one of:

- (b) Term appointments (whether of one, two or three year duration) shall be for a total maximum duration of three years. At the conclusion of the second year of term appointments, the position occupied by the member shall be evaluated by the University. Such evaluation shall be completed by November 1. Should it be determined that the position is not required, the Member's employment shall be terminated on the date his/her appointment expires. Should it be determined that the position is required, or should the University fail to make a determination by the specified date, the Member shall be evaluated by the Department and by the Dean. Such evaluation shall be completed by December 1. Should this evaluation (in accordance with Articles 8 and 11) be positive, the Member shall be offered a probationary/continuing appointment beginning the fourth year of consecutive service. Said probationary/continuing appointment shall be issued in accordance with clause 13 below. Should the evaluation of the Member be negative, the Member's appointment at Brandon University shall be terminated on the date his/her term appointment expires....

In a memorandum dated November 2, 1992 from Larry Dawson, the Vice-President of Administration and Finance, to Dr. Peter Letkeman, the Dean of the Faculty of Science, the University confirmed its approval of the continuation of Professor Bowman's position pursuant to Article 7.5(b) of the Collective Agreement (Exhibit 7).

It was now necessary to evaluate the individual herself. Professor English was appointed Chair of the Evaluation Committee and wrote to Professor Bowman on November 5, 1992, asking her to prepare a dossier for distribution to members of the Department and setting up an evaluation meeting for Friday, November 20, 1992 (Exhibit 8). Professor Bowman prepared a dossier which included a copy of her curriculum vitae (Exhibit 9) and distributed it to members of the Department as requested.

Professor Bowman's curriculum vitae contained her credentials and accomplishments to date. The grievor received a Nursing Diploma with an R.N. Certification from the Brandon General Hospital School of Nursing in 1985, graduating with the Gold Medal awarded for highest overall scholastic and clinical achievement. Previous to that she had received her Teacher's Certification from the Province of Manitoba, a Master of Science from the University of Minnesota at Minneapolis, and a Bachelor of Science with a major in Nursing from Mars Hill College in North Carolina. Before joining the Department of Nursing at Brandon University as an Assistant Professor in 1990, she was a nursing instructor for two years at the Brandon General Hospital School of Nursing.

Between September 1990 when she joined the Department, and November 1992 when she prepared her dossier, her responsibilities included the planning and delivery of four university level courses and the clinical placement and supervision of students in courses with a practicum component. She also authored several articles, some already published at the time of her review, one that was under review and several that were in progress.

In particular, her curriculum vitae lists a course manual which she prepared for a distance delivery course on "Decision Management for Nurses." She was asked by the Office of Extension at Brandon University to prepare the course manual in August, 1991 and to teach the course by means of distance delivery. This was the first time the course was to be offered by means of correspondence and it was recognized that more extensive student materials had to be prepared than for an on campus course. Professor Bowman was credited with six credit hours for the task.

It is this manual that is the subject of contention in the grievance. It is the University's contention that many parts of the manual were plagiarized. The University submits that the grievor attempted to represent the manual as her own work and failed to acknowledge sources appropriately or at all throughout the manual.

It is the Union's submission that the manual may have been referenced rather sloppily in parts but that in form it was similar to other teaching materials in her department and that there was no intention to plagiarize in any way.

Professor Bowman admitted in her testimony that she had put the manual together too quickly given her total teaching commitments of 22 credit hours that year and her research and scholarship in progress. Although she was assigned the preparation of the materials in August, 1991, she testified that she did not begin working on the manual until January, 1992.

At the time she was aware of the fact that the student enrolment for the Department of Nursing was rather soft and she was eager to encourage enrolment and provide a service to a community of nurses who required it but could not access the University easily. No doubt, she was also aware that the University had approved the continuation of her position with some caution given the uncertain enrolment figures in Nursing and was also acutely aware of her upcoming evaluation at the end of her term.

Consequently, she conceded an error in judgment in failing to document her sources as fully as possible in the manual and failing to be sufficiently critical of the examples of teaching materials for distance delivery courses that had been given to her as models. However, she maintained that such error in judgement did not constitute plagiarism and there was never any intention to pass off the material contained in the manual as her own. Indeed, she maintained that her actions were consistent with common practice (historically and currently) within the Department and elsewhere. (Exhibit 43).

There is no question that Professor Bowman was aware of the University's position with respect to academic dishonesty or plagiarism. To begin with, her manual reproduces the portion on academic integrity contained in the Brandon University General Calendar on page 8 of her reference manual (Exhibit 10). Inter alia, the Brandon University Calendar defines academic dishonesty as including such things as "plagiarism or other representation as one's own of any idea or expression of another." (Exhibit 13)

Moreover, Professor Bowman's manual goes on to adopt the definition of plagiarism from several dictionaries as "plagiarism: to steal and pass off the ideas or words of another as one's own; use of creative production without crediting the source; to commit literary theft; present as an original an idea or product derived from an existing source." To further assist the students, she gives several examples which may be considered forms of plagiarism:

- "1. The use of paraphrasing (even when properly done) when a fact or idea is discussed and are not commonly known or held by others in the field - that is, when the ideas are original and completely the creation of the author.
2. The improper use of paraphrasing - changing only occasional words in someone's original work.
3. The heavy reliance on another author's work as the source of one's arguments.
4. The heavy reliance on another author's organization of ideas as the main points of a portion or all of one's paper.

You can avoid concerns of plagiarism by - always acknowledging the source if you have doubts about whether the ideas are well known facts or not, and by summarizing what you have read from a source/author in your own language. Finally, perhaps most importantly, avoid concerns by synthesizing and integrating what you have learned from an individual author, with what you know, and with what other authors have said on the subject.

Professor Bowman's knowledge of plagiarism in the academic setting is also evidenced by certain incidents that occurred in her classes. Professor Bowman brought to the attention of the entire department an incident that arose in one of her classes where a junior student copied a paper from a senior student. That paper had been submitted in a previous year by the senior student.

Professor Bowman gave the junior student an F in the course and confirmed with the student in writing the severity of the offense. She had the student re-read the policy regarding academic integrity in the University Calendar while in her office (Exhibit 6). Professor Bowman wished to go further and have the senior student disciplined on the ground that she should not have allowed her paper to be used.

Several members of the Department, including Professor Andrusyszyn and Professor English, felt that this was too severe an action and eventually persuaded her not to take any further action. Professor Andrusyszyn testified that the grievor's standard of referencing in the manual was especially reprehensible given the extremely high standards she had set for her students.

Furthermore, when questioned at the evaluation meeting regarding her attitude toward plagiarism and about incidents of plagiarism in her students, Professor Bowman indicated that she took the incidents quite seriously.

Although Professor Bowman acknowledges she holds high standards and understands the definition of plagiarism, she maintains that this particular case is an example of an honest error in judgment and work that was sloppier than it should have been rather than plagiarism.

An examination of Professor Bowman's actions and conduct with respect to this manual are relevant to the determination of this issue. For example, in the grievor's curriculum vitae, she refers to this course manual twice. First, she includes it under the section headed "Teaching Experience" and describes it as follows:



"I authored a text for course 69:352 to enable delivery of the course by correspondence. I subsequently delivered the course to 27 students in rural and remote areas."

She testified that she referred to the manual as a "text" in an attempt to demonstrate that she had gone beyond what is normally provided as reference materials of an ordinary course.

Once again, under a heading entitled "Publications," she refers to:

"Bowman, A. (1991). Reference Manual for Decision Management in Nursing. Brandon, Manitoba: Brandon University."

In her direct examination, Professor Bowman testified that when preparing her curriculum vitae, she studied a book on the subject which made several suggestions. It suggested listing course manuals and other teaching tools in the resume. It appears that Professor Bowman followed all the suggestions in this book.

When distributing copies of the curriculum vitae to members of the Department, Professor Bowman also distributed copies of her reference manual for the distance delivery course on Decision Management in Nursing. It was at this point that Professor Mary Anne Andrusyszyn studied the manual in greater detail.

Professor Andrusyszyn has a Master of Science in Nursing and is presently working on her PH.D. (Exhibit 4) She is the co-author, along with Professor Maltby, of the work which it is alleged that the grievor plagiarized. (see exhibit 5). Professor Maltby had a three year probationary appointment at the Department until 1991 at which point she left the Department and is presently teaching outside of the country.

At the hearing, Professor Andrusyszyn testified that she had taught the course on Decision Management for Nurses several times before on campus but not by means of distance delivery. Previously, the course had been offered off campus and had been taught by Professor Maltby in Dauphin and by Debbie Clevett in The Pas and Thompson in 1991. In the later case, Professor Andrusyszyn acted as a course supervisor.

In teaching the course previously, Professor Andrusyszyn had included in the materials a chart which she had developed with Professor Maltby. The chart set out a framework for decision making and it was used as a teaching tool in the course and contained in the course syllabus. Eventually, Profs. Andrusyszyn and Maltby presented a paper at a conference and published two articles in which they referred to the framework and described its use in the course.

Upon reviewing the manual prepared by the grievor in preparation for the evaluation meeting, Professor Andrusyszyn testified that she noticed the framework tool which she developed reproduced without acknowledging her contribution or its prior publication in her two articles and which was referenced in the following way:

"Source: Modified from: Schnelle, K.E., 1967, Case Analysis and Business Problem Solving. N.Y. McGraw-Hill." (see Exhibit 10, pp.176-77).

Upon examining the manual in greater detail, Professor Andrusyszyn found that some parts of the manual had been taken from other nursing texts without appropriate acknowledgement as well.

At the departmental evaluation on November 20, Professor Andrusyszyn asked the grievor how she had modified the framework for analysis. Professor Bowman responded that she had not modified it; she simply took it as it was.

Furthermore, Professor Andrusyszyn testified that at that same meeting, the grievor also indicated that the manual took significant journalistic effort on her part and that it was more than just a teaching tool. Rather, it should be considered similar to a book and that is why she had listed it under "Publications" in her curriculum vitae. In her evidence, Professor Bowman denied this. She testified that she told the evaluation committee that she had listed the manual under both teaching and publications because she was not sure exactly where it fit but that it had taken more work than ordinary course materials. She understood there was a debate as to whether the preparation of material of this nature was simply part of one's teaching responsibilities or a type of publication and so she put it under both.

After Professor Bowman left the meeting, the members of the committee discussed Professor Bowman's evaluation in greater detail. In her direct examination Professor Andrusyszyn testified that the subsequent discussion centred significantly around issues of plagiarism and that she shared with the group other examples of plagiarism in the manual prepared by Professor Bowman. However, given the subsequent letters written by Professor Andrusyszyn to Dean Letkeman and Dr. Hunter-Harvey, it would seem that the group's concern was with a variety of issues, the alleged plagiarism being merely one of them.

In any case, the departmental committee decided that they could not make a decision without taking a closer look at articles authored by Professor Andrusyszyn and which, she alleged, were plagiarized by Professor Bowman in her reference manual. The committee adjourned and reconvened on Monday. After further discussion, the decision of the committee, taken by secret ballot, was a split vote, Professors English and Andrusyszyn voting in favour of a negative evaluation, and the two other members of the committee giving the grievor a positive recommendation. The committee had earlier decided that if its vote was split, then they would follow Roberts Rules of Order and the recommendation would be negative.

Given a negative evaluation, the committee decided to provide written letters of explanation to the Dean of Science, whose final decision would be determinative in the matter. (Exhibit 75)

Professor Andrusyszyn wrote Dean Letkeman a seven-page letter explaining why she could not recommend Professor Bowman for a probationary appointment (Exhibit 11). The letter details Professor Bowman's accomplishments in several areas including teaching, research and scholarship, and university and community service. The letter is negative in all of these areas, and while the manual is mentioned, the letter would certainly not lead one to believe that plagiarism was the primary reason for the negative vote.

In particular, Professor Andrusyszyn states as follows with respect to allegations of plagiarism;

"Professor Bowman developed a reference manual for the Distance Education course she offered in Decision Management. She copyrighted the manual. Within the manual, she included a decision making framework which had been published in a refereed journal in 1990. I had developed this tool when I taught the course previously. The framework was later refined with the assistance of Rycki Maltby [another professor in the Department] and subsequently published. There

is no reference made on the tool to its having been developed by Professor Maltby and me other than a general acknowledgement for course material at the beginning of the manual. Any student reading the manual and using the framework would assume that Professor Bowman had created the tool by modifying it from the original source. They would not know who the authors were and that this was published work. This demonstrates a lack of professional integrity and a less charitable view would constitute it as plagiarism.

There are several other areas of the manual that have been inappropriately referenced. For example, nine student exercises from Concept Media's Critical Thinking tapes were not credited; pages 26, 27 and 29 did not reflect referencing to Baumann and Bourbonnais. Students reading the content would not recognize that the material had been paraphrased or copied from a specific source. This does not constitute good scholarly practice."

Professor English, the Chair of the Departmental Evaluation Committee and the other tenured professor in the Department, also sent Dean Letkeman a written letter explaining his negative vote (see Exhibit 48). Once again, the three-page letter makes a variety of critical comments in several different areas. However, in particular with respect to scholarship and research, it states as follows:

"Factors considered were Professor Bowman's research into anxiety and delirium, papers presented at conferences, her published article and authorship of a copyrighted manual developed to accompany the Distance Education offering of 69:352 Decision Management in Nursing. During the interview process, Professor Bowman was asked about her inclusion of the decision making tool that had been developed by Professor Andrusyszyn, apparently this had not been acknowledged so that it appeared that Professor Bowman had developed the tool."

It should be noted that Professor Bowman testified that her response to the question during the evaluation meeting was that she had reproduced the decision making tool exactly in the same format from the previous course syllabi available in the Department.

On the other hand, the two other members of the Evaluation Committee who had been positive in their recommendation, Renee Will and Viola Fast-Brown, made no mention at all of any discussions or allegation respecting plagiarism. Instead, they refer to the fact that the Department has been embroiled for some time in an ongoing conflict of personalities and philosophies and stated their belief that the review process for Professor Bowman had been coloured by emotion, resulting in a less than objective review (see Exhibit 76).

After reviewing all three letters, Professor Bowman's curriculum vitae, and the manual in question, Dean Letkeman decided to offer Professor Bowman a probationary appointment. He testified that in his opinion, the allegations were more in the realm of sloppy referencing as opposed to plagiarism. At the time, he made his decision there was no clear written allegation of plagiarism and therefore he did not think it appropriate to refer to it in his recommendation. Moreover, Profs. Andrusyszyn and English's letters were marked confidential and he did not feel the Collective Agreement allowed him to rely on those letters for his determination.

His understanding of the grievor's scholarly activity was that it was average and adequate and that opinion was arrived at without reliance on the manual since he felt it had a lower priority than other

listed publications. He had reviewed her curriculum vitae and understood the manual to be developed for a course and that the material contained in it had been developed over time and that Profs. Maltby and Andrusyszyn and contributed to that process. Dean Letkeman's experience in other departments had been that faculty members included lab manuals in their resumes.

He felt that the problem referred to in the letters from the department members was a result of conflicting personalities in the Department and that the grievor should be given the benefit of the doubt. As he testified, "it was an internal family feud."

Consequently, Dean Letkeman wrote a memorandum to Dr. Harvey-Hunter, the Vice-President, Academic of the University, positively recommending Professor Bowman for a tenure track appointment (Exhibit 29). In that memorandum, he refers to some personality difficulties between Faculty members in the Nursing Department. In the end, he recommends the appointment since, "the Collective Agreement does not have a collegiality clause in it."

Upon becoming aware of Dean Letkeman's decision to grant the probationary appointment, Professors Andrusyszyn and English telephoned Dr. Hunter-Harvey detailing their allegations and indicating that these concerns had not been addressed by Dean Letkeman. Dr. Hunter-Harvey asked Profs. Andrusyszyn and English to put their concerns into writing, which they did.

Professor Andrusyszyn wrote a memorandum to Dr. Hunter-Harvey, dated December 3, 1992 and referenced as "Academic Dishonesty." The entire memorandum is focused on allegations of academic dishonesty and not on the additional concerns mentioned in her letter to Dean Letkeman. It states as follows:

"According to the Brandon University Calendar academic dishonesty includes such things as: ... plagiarism or other representation as one's own of any idea or expression of another person ..." (p. 81).

It has come to my attention that a decision making framework which I and another colleague (Professor Maltby) had published in a refereed journal in 1990, was included in a reference manual developed and copyrighted by another Faculty member. Other than a general acknowledgement at the beginning of the manual, no reference was made on the framework or in the Bibliography indicating who developed the work as well as where and by whom it had been published. Professor Maltby and I had signed over copyright permission to the journal which had published the work. The framework was copied without permission of the publisher and myself.

... Further, work previously published in Baumann and Bourbonnais' book on Rapid Decision Making was copied and paraphrased in the reference manual without appropriate referencing. It appears that the material, as presented, is the Faculty member's original work.

These issues were brought to the attention of the Dean of Science in a confidential letter dated November 23, 1992. I would like to know what actions will be taken by the University administration on my behalf. These issues are of serious importance to the academic community of which I am a part." (Exhibit 12).

Professor Andrusyszyn testified that, given Dean Letkeman's approval of Professor Bowman's probationary appointment, Professor Andrusyszyn felt that her only recourse was to go to the next level of management at the University. Professor English also submitted a memorandum to Dr. Hunter-Harvey in which he expresses his opinion that the Dean of Science has ignored his concerns regarding allegations of plagiarism against Professor Bowman and a double standard is being promulgated in the department where faculty can be less rigorous in their scholarship than the students they teach. (Exhibit 30).

Dr. Susan Hunter-Harvey has been the Vice-President Academic and Research for Brandon University since August, 1992. (exhibit 27) One of her special responsibilities is the Office of Extension, which is the office responsible for all off-campus programs and consequently, responsible for the distribution of the manual in question. Dr. Hunter-Harvey testified that some of the off-campus programs were delivered through Inter-Universities North, a consortium of the three universities in Manitoba and thus the standards of each course had to meet the standards of all three universities, not just that of Brandon University.(exhibit 28)

Moreover, Dr. Hunter-Harvey testified that she was especially concerned that the Department of Nursing demonstrated and continue to demonstrate a high level of competence and professionalism. Manitoba was going through a phase at present, where nursing education was moving from the schools of nursing located in the hospitals, to departments of nursing located in universities. Thus at present, the nursing program was striving for acceptance in the academy as a professional program.

Given that background of concern for the maintenance of high standards of professionalism, both in distance delivery education and in nursing programs, Dr. Hunter-Harvey was especially concerned when she became aware of allegations of academic dishonesty with respect to Professor Bowman, allegations made by the two most senior members of the Department.

By December, 1993, Dr. Hunter-Harvey had several pieces of information in her hands. She had seen a copy of the reference manual in question and was referred to the instances of alleged plagiarism. Professor Andrusyszyn had given her copies of the two published articles in question (Exhibits 5 and 16).

She had a written memorandum from Professor Andrusyszyn making serious allegations of plagiarism, and she had a copy of the grievor's curriculum vitae which referred to the reference manual as a text which she had authored. She testified that in her mind the fact that the grievor referred to her manual in her resume as "I authored a text" meant that the manual should conform to the referencing standards of a book.

On the other hand, she had a memorandum from Dean Letkeman which, while mentioning certain collegiality problems in the Department, made no mention whatsoever of the quite serious allegations of plagiarism. Also, she was not aware at the time of the manuals in the Department which Professor Bowman had used as models.

Consequently, based on the information in front of her, she decided that some further investigation was necessary. She discussed the situation with both Dean Letkeman and John Blaikie, the Union representative. While Dean Letkeman preferred to handle the matter informally through discussions with Department members, he agreed that "I feel we need to gather much more information about this complaint before proceeding further." (see Exhibit 31)

Consequently, Dr. Hunter-Harvey asked Dean Letkeman to take a closer look at the allegations which he agreed to do. Dr. Letkeman reviewed the manual and compared it to a number of other nursing texts as well as other documentation from nursing departmental files. He detailed his results in a memorandum to the President of Brandon University dated December 14, 1992 (Exhibit 33) in which he concluded that there were a number of portions that contained paraphrasing from textbooks, and in particular "A Framework for Case Analysis" was reproduced without acknowledging that the Framework had been developed by Professors Andrusyszyn and Maltby. He points out that the Framework was identical to the one appearing in the departmental course outlines in both 1988 and 1989.

His conclusion is that it would have been more courteous to cite the papers of Andrusyszyn and Maltby at the end of the manual as well as acknowledging them at the front of the manual for their contribution to the overall course, and that she could be reprimanded for this oversight. He used the words "more courteous" because he felt that the oversight could have been an honest error on the part of Professor Bowman.

With respect to the paraphrasing of the variety of portions from other nursing texts, he indicated that the books were referenced at the end of the chapter, and although it would have been courteous to footnote these pages directly, he concluded that much of the material was generic and not unique. In his opinion, within the context and background environment of developing the manual for distance learning in a given period of time, "then I find Ann Bowman's attempts at proper referencing within reasonable bounds." He indicated that he would not change his earlier recommendation for the granting of a probationary appointment. (Exhibit 33).

Dr. Hunter-Harvey was not totally satisfied with Dr. Letkeman's further review, given his comment that he did not have the time to read and compare all of the nursing texts mentioned to the appropriate parts in the manual, although Dean Letkeman felt that he had reviewed sufficient material to come to a decision. In addition, his frequent mention of the fact that the copyrighted material had only been reproduced with permission led her to wonder whether he was confusing the issues of plagiarism and breach of copyright. In any case, Dr. Hunter-Harvey felt that his conclusions were inconsistent, since, if a reprimand were appropriate in the circumstances, then that indicated there was some substance to the allegations.

Consequently, she convened a meeting on December 18, 1992 between Professors Andrusyszyn, English, herself and Dean Letkeman. She testified that the purpose of the meeting was to discuss both sides of the issue of recommending Professor Bowman for a probationary appointment (Exhibit 34). Given that neither the grievor, a Union representative, or the two members of the departmental evaluation committee that had made positive recommendations, were invited to this meeting, it is not clear that both sides of the issue were indeed present. Dr. Hunter-Harvey testified that she did not include the grievor or anyone from the Union because at this point in time, they were simply trying to problem solve.

No solution to the problem arose from the meeting. Basically, the minutes of the meeting indicate a difference in opinion as to the degree of seriousness of Professor Bowman's actions and, specifically, a difference in opinion as to the nature of plagiarism. Dean Letkeman felt that given the nature of the material, referencing of this sort was quite common in the University, especially in view of the acknowledgments at the front of the manual. He testified that he showed Dr. Hunter-Harvey examples of other manuals used at the University where referencing was inconsistent. In his opinion, Professor Bowman's manual had more references in it than any other manual he had seen. Dr.

Hunter-Harvey disagreed and felt that Dean Letkeman and she had differing understandings of the meaning of plagiarism and the standards of referencing required in textual material rather than laboratory manuals.

Dr. Hunter-Harvey had a subsequent meeting on December 21 with Professor Bowman and the Union representative to suggest that a third party review of the manual take place.(Exhibit 35). She confirmed that intention in a memorandum to Professor Bowman dated December 23, 1992 (Exhibit 36). The Union and the grievor made it clear they did not agree that a third party review was necessary.

As a result of inquiries to the President of the Canadian Association of University Schools of Nursing, Dr. Hunter-Harvey received several names of individuals who might be appropriate to act as independent assessors (Exhibit 39 and 40) and in the end retained Dr. Leslie Hardy to evaluate the reference manual in question.

Dr. Leslie Hardy received her Ph.D. in 1983. She is the author of numerous publications including 22 refereed articles, 2 books and 3 book chapters. She is a full professor and a former director, and has taught workshops on referencing sources for ten years. She has been on the executive of CAUSN and has been involved in University distance course education. Her credentials are extensive. She is presently the chair of the Nursing program at the University of Northern British Columbia in Prince George, British Columbia. (exhibit 52)

She has dealt with the issue of plagiarism before, as an instructor at Memorial University. There were two complaints of plagiarism against students which she had to deal with. Additionally, she has given workshops on the technique of writing a paper and has included material on plagiarism in those workshops.

Dr. Hardy was sent a brief outline of the facts, a copy of the manual, a copy of the two articles by Professors Andrusyszyn and Maltby and the appropriate nursing texts. She was not sent the previous course syllabi used in the course when taught previously or the lecture notes prepared by Professors Andrusyszyn and Maltby and given to and relied on by Professor Bowman when preparing her manual. (As a matter of fact, Dr. Hunter-Harvey herself did not see this material until the day of the hearing although she knew it existed and had been asking for a copy.)

After reviewing that material, Dr. Hardy concluded that there was "extensive evidence of plagiarism of primary and secondary sources" in the reference manual prepared by Professor Bowman. Subsequently, (as a result of Dr. Hunter-Harvey reading a copy of the opinion of an expert retained by the Union, Dr. Gail Storr,) Dr. Hardy was sent additional contextual information relating to the case and requested to review the material and decide whether the additional material had any effect on her original report (Exhibit 46). This contextual material included a more extensive description of the case in question, copies of the evaluation letters by departmental members, and copies of the variety of other reference manuals that had been prepared in the Department for similar courses. Dr. Hardy indicated that her opinion had not changed as a result of this additional material.(exhibit 45)

Dr. Hardy testified that her opinion was based on a close analysis of the manual only and not on its comparison with other material in the department. If the paragraph in the manual was a direct quote, then she expected to find quotation marks around it. If the manual contained ideas from other authors then a reference should be given in the text after the idea. If a paraphrase of another author's idea was used then once again the concept should be referenced immediately in the text.

On this standard, she found that full sentences and phrases of sentences from other sources were used without proper acknowledgment. She also found that ideas were paraphrased from other sources without listing the author and frequently, "fill quotes, phrases and paraphrasing from various sources are used in one area, creating a mixing and matching of ideas without acknowledgment of any of the sources. (Exhibit 24)

As a result of Dr. Hardy's opinion to the University that the manual contained extensive incidents of plagiarism, the University decided to deny Professor Bowman a probationary contract.

The Union then retained its own expert, Professor Gail Storr (Exhibit 42). Professor Storr obtained a Bachelor of Nursing and a Masters of Education from the University of New Brunswick and a Masters of Nursing from Dalhousie University. Her Masters of Nursing was completed by means of distance education between 1982 and 1989.

She is presently an Associate Professor at the University of New Brunswick. She has had a variety of experience both as a nurse and as a teacher as well as publishing nine major publications, three of which appeared in refereed journals. She has served on a large number of committees, both at the University, in the general and nursing community and in particular, is presently a member of the Academic Freedom and Tenure Committee of the Canadian Association of University Teachers and has been on the CAUT Council for the last three years.(see Exhibit 58).

She was first contacted by the Union in March, 1993 and asked for advice with respect to the situation, which she provided (Exhibit 44). Later, in response to a request from counsel for the Union,(Exhibit 60) she provided a formal assessment (Exhibit 57). In providing her assessment, she reviewed the other manuals prepared by Professor Maltby (Exhibits 25 and 26) as well as the correspondence surrounding the case to which reference has already been made.

In her opinion, Professor Maltby's and Professor Bowman's manuals were similar in the standards of referencing used. They were manuals which an adult learner could use to complete the course independently. In the opinion of Professor Storr, there were no clear standards for referencing teaching materials of this kind. After a review of the grievor's manual and a comparison of that manual to Professor Maltby's, she concluded that there was a pattern of shoddy or sloppy referencing in both manuals, and Professor Bowman's manual did not evidence a pattern of passing off someone else's ideas as one's own. Thus, although she agreed with Dr. Hardy as to the physical absence of quotation marks in certain places and the lack of reference beside a paragraph which was a paraphrase from a text, she disagreed as to the conclusion to be drawn.

Whereas, Dr. Hardy drew her conclusions from a review of the manual in isolation, applying the same standards as an academic article, Professor Storr drew her conclusions from a review of the manual in comparison to other precedents in the department and in comparison with the actual practice in the academic community.

Given that difference of opinion surrounding the manual, it is necessary to review the manual in question in some detail.

Prior to preparing the reference manual, Professor Bowman had taught a course in decision management for nurses several times on campus. Thus, she was familiar with the basic texts in the area such as Baumann and Bourbonnais, Lancaster and others.



Before preparing her reference manual, the grievor was given two other examples of materials that had been prepared for a distance delivery course. She testified that both of these sets of materials had been held up to her in the Department as models for a distance delivery course.

The first set of materials is entitled "Comprehensive Health Assessment, Correspondence Course Syllabus" (Exhibit 25) and was developed to be delivered by means of correspondence. It is specifically described as a syllabus and is really an expanded course syllabus. It contains a variety of information for the students such as the course descriptions and telephone numbers, the objectives of the course, and the textbooks. It also contains an extensive reference list.

There is minimal textual material in this expanded course syllabus and it is preceded by references to readings and followed by a number of questions for the students. Occasionally, the textual material will reference a certain text, but without referring to particular pages. Not all statements in the textual material are referenced. For example, on page 19 the syllabus refers to the fact that "85% or more of client communication of meaning is non-verbal" but there is no reference as to where this information came from. Also on page 19 the last paragraph on client observation skills is taken from Ivey, A.E. (1983) *Intentional interviewing and Counselling CA*: Brooks/Cole Publishing, p.58 but is not credited. Some things are referenced in a very general way. For example, on page 34, a statement is made to the effect that, "This course focuses on the use of a tool developed by Gordon. Name the functional health pattern assessment tool." There is no reference to the text this is taken from. There is no need to list all the omissions. It is sufficient to note that there are many examples of the failure to acknowledge sources. (see Professor Storr's review, Exhibits 44 and 57).

The syllabus contains several quizzes at the end of units. There is no acknowledgement of source with respect to these quizzes. The quiz is headed "Department of Nursing and Health Studies, Professor R. Maltby," consequently a third party, not being privy to the testimony at the hearing, would have no way of knowing whether or not these quizzes had indeed been prepared by Professor Maltby or by someone else.

At the end of the course syllabus are a series of acknowledgements which indicate that the case studies were adapted and acknowledges their source.

The second set of materials offered to Professor Bowman as a model and also prepared by Professor Maltby is once again referred to as a syllabus for a course entitled "Nursing in the Community" and intended for distance delivery. The syllabus for this course is very similar to the previous syllabus prepared for the course on comprehensive health assessment. However, this syllabus is bound and its external appearance is more professional. As well, aside from the usual information, the referencing for the textual material is more extensive. Not only is there a general reference list at the beginning of the syllabus, but there is a selective reference list for each unit. The textual material contains certain excerpts from a variety of acknowledged texts and articles. Quotes are identified as such, and not only are references given, but pages are also indicated. Generally speaking, when acknowledgements are made, they are more fully referenced. (Exhibit 26). However, there are some omissions and some incomplete references. (see Professor Storr's review, Exhibit 57)

Professor Bowman made it clear in her testimony that these two manuals were set up as standards in the Department for materials for distance delivery courses. Professor English had been negotiating with other organizations in Alberta to use these manuals in the teaching of their courses. Both manuals have been used subsequently in the department. Renee Will was urged to use Professor Maltby's manual when she delivered a section of Nursing in the Community off-campus.

Professor Bowman did inquire whether there were any formal guidelines as to standards for materials in distance delivery courses. She had a conversation with Bruce McFarlane in the Office of Extension and he confirmed that there were no specific guidelines with respect to these materials.

In addition, there were no specific guidelines in the Department of Nursing as to the standard to be maintained. Professor Bowman was given no formal directions as to how to prepare the manual for her course, but was given the two manuals referred to as guides or examples. None of this is especially surprising, since it is assumed that one of the abilities and responsibilities of an academic is to prepare material for their courses. However, it is also very common to use other people's materials as precedents, especially in an area such as distance delivery, given its relatively recent development.

As a matter of fact, after review of Professor Maltby's course outline in Comprehensive Health Assessment (Exhibit 25), the grievor did have some concerns regarding the method of referencing. She noticed that there was a great deal of similarity between the textual material and certain of the nursing texts, and that this material was not footnoted and referenced in a precise manner. She had a conversation with Professor Andrusyszyn to this effect and was told by Professor Andrusyszyn that since Professor Maltby had listed the references at the beginning of each unit, this was sufficient. In fact, Professor Andrusyszyn testified that after her conversation with Professor Bowman, she had taken the manual to Professor Maltby and to another colleague. Both had agreed that although there was some "messy referencing" in the outline, all the references were listed somewhere in the outline and therefore it did not constitute plagiarism.

As a result, the grievor concluded that if she adopted a similar method of listing the references either at the beginning or end of each unit, that would be sufficient. In her cross-examination, Professor Andrusyszyn admitted that she conveyed the message to Professor Bowman that what Professor Maltby had done in her materials was acceptable.

What Professor Bowman did not know and what she was not told, was that after their conversation, as a result of Professor Andrusyszyn pointing out these shortcomings to Professor Maltby, a later version of the syllabus was corrected by the next person teaching the course. However, when preparing her own manual, Professor Bowman was left with the impression that the two syllabi she had seen were appropriate models. As a matter of fact, although Professor Andrusyszyn was not sure as to the time sequence she admitted that the upgrading may have taken place after the allegations against Professor Bowman were made.

In addition to the two outlines or manuals already described, Professor Maltby also gave the grievor a folder with information and indicated that she was welcome to use anything in the folder in the preparation of her own course. The folder consisted of handwritten lecture notes prepared by Professor Andrusyszyn and Professor Maltby. The notes are typical of those of a teacher preparing an area for lecture. They summarize large areas of the course. Generally speaking, most of the lecture notes are not referenced, although a text name with a page attached to it appears from time to time. Professor Bowman incorporated many parts of these lecture notes into the manual without going to the original sources. Upon careful examination, it appears that many of the lecture notes were paraphrases of ideas expressed in nursing texts or word-for-word quotes (see Exhibits 14 and 15).

While still in the midst of preparation for her course, Professor Bowman asked Professor Andrusyszyn for any material that would be pertinent to the course on Decision Management in Nursing. Professor Andrusyszyn gave her one test and the answers to it (see Exhibits 61,62).

In addition, in the Department of Nursing administrative office, there were file folders for each course containing course syllabi and old examinations. When Professor Bowman first joined the Department, she was given a tour by Professor English and there was an indication that the file folders and their contents were available for general use.

Professor Bowman was given the distinct impression that not only were the course syllabi available for general use, but faculty members were expected to follow them quite closely. She gained this impression through a conversation she had with Professor Andrusyszyn in the spring of 1990, just prior to the grievor teaching the course in Decision Management for Nursing for the first time. Professor Andrusyszyn accused her of changing the course objectives on her own. Although this turned out to be untrue and Professor Andrusyszyn did apologize, the incident left the grievor with the strong impression that the course syllabi in the file folders were not only available for use, but were expected to be used.

These then were the sources used by the grievor when preparing her own manual for the correspondence course and the context in which it was prepared.

Turning to the manual itself, the second page of the manual indicates that copyright is claimed by the author. It states as follows:

"Copyright 1992, Decision Management in Nursing for Distance Education:  
Brandon University

All rights reserved.

This manual may not be reproduced in whole or in part in any form without the  
express permission of the author."

It should be noted that this case centres around whether or not Professor Bowman committed plagiarism when she prepared the reference manual. Breach of the copyright laws is quite a different thing and is not the concern of this Board.

However, for many of the witnesses, the claiming of copyright by Professor Bowman was a factor that they took into account in coming to the conclusion that Professor Bowman had attempted to pass off this work as her own. Professor Andrusyszyn testified that the fact that Bowman was claiming copyright meant that the work was placed on a different and higher standard. Dr. Hunter-Harvey testified that in her opinion the claim of copyright meant the work was equivalent to a publication since one did not claim copyright for lecture notes, course outlines and similar material.

On the other hand, Professor Bowman testified that her claim of copyright was not part of an intention to pass off this work as her own. Rather, she had taken great pains to obtain permission from a variety of publishers and authors to reproduce the materials contained in this text. Many times that permission had been given for a limited period of time or for a limited number of copies.

Consequently she wished to ensure that the limited permission rights she had obtained were not abused. She knew that the course might be taught by sessional instructors. In her mind the inclusion of the claim to copyright would ensure that anyone attempting to reproduce parts of the manual would check with her first, and she could then explain which items could be reproduced as desired, and which items could only be reproduced in a limited fashion.

She further testified that she took the phraseology contained from another text and in retrospect would have been better off by simply indicating that the materials in this manual were not to be reproduced without checking with her first.

Aside from the claim of copyright, Professor Bowman has acknowledged certain indebtedness on the second page of the manual. In her acknowledgements, she specifically states "I also wish to thank Faculty members, Professors Andrusyszyn and Maltby for contributing ideas and materials used in the preparation of this manual."

Generally, the reference manual is divided into ten units excluding the preamble. The preamble contains general course information and a list of reference material and recommended books, as well as a bibliography of twelve pages. Each unit begins with a listing of objectives, followed by selected readings and unit readings. The student is referred to specific chapters in specific texts. Each unit then ends with a listing of the references to direct the students to the material summarized in the unit.

The manual itself, as explained by Professor Bowman, is an attempt by her to go one step further than the extended course syllabi prepared by Professor Maltby (Exhibits 25 and 26). In a distance delivery course, it is important that the materials be able to stand by themselves. Although the students were able to contact Professor Bowman by means of telephone whenever they had questions, the main objective of the course was to allow nurses who lived and worked in distant communities to upgrade their educational qualifications without the necessity of travelling to Brandon to take the courses. She was aware of the limited library resources that the students might encounter. Moreover, in other courses, the students had told her that they encountered problems in summarizing ideas.

Therefore, when preparing the manual she had two specific purposes. First, she attempted to reproduce for the students copies of the important readings in the manual itself as well as a listing of the appropriate references and readings. When reproduced material is contained in the manual, Professor Bowman has been very careful to obtain permission for its reproduction.

Second, she included much more textual and descriptive material than had been the situation in previous course material. She testified that the notes she included were an attempt to synthesize information and tie together ideas for the students as she might do in an oral lecture. The ideas and concepts themselves come from a variety of places but specifically are a summary of the various authors on the subject listed in the manual.

The inclusion of more textual material was problematic for Professor Bowman. First, for several of the University witnesses it changed the nature of the materials. Dr. Hunter-Harvey testified that one of the reasons she considered the manual a publication and therefore required to comply with thorough standards of referencing was because of the amount of textual material as opposed to a "course syllabus", such as prepared by Professor Maltby.

Dr. Leslie Hardy agreed that normally there is not a lot of textual material in a course syllabus and as such it is not a publication. Given the amount of textual material in Professor Bowman's materials, it could not be accurately called a course outline or syllabus, rather it was a manual.

Moreover, as Dr. Hardy testified, the textual material in the manual contained many uses of sources without reference. Dr. Hardy acknowledged that there is a difference between an occasional failure to footnote which she would define as trivial or as an honest error and the omissions in the manual

which were of a serious nature. Every author is capable of an occasional error and this is not considered plagiarism or academic dishonesty. For example, Professors Andrusyszyn and Maltby acknowledged Schnell and Gordon in one article as the source of ideas for the development of their framework for case analysis and only acknowledged Schnell in their second article. Professor Andrusyszyn admitted that this was an oversight and Dr. Hardy agreed that no blame should be attached for an omission of this nature.

However, with respect to the manual, Dr. Hardy testified that it was not difficult to find over thirty examples of inappropriate referencing in the manual and that constituted plagiarism. In her opinion, the listing of references either at the beginning or end of the unit was not sufficient. She concluded that plagiarism occurs consistently throughout the manual.

It is interesting to note that the inappropriate referencing is most predominant in the earlier chapters, and one finds increased appropriate referencing in the later chapters. One of the reasons for this, is that Professor Maltby and Andrusyszyn's lecture notes have been used extensively as they stood in the earlier chapters and, as it turned out, these lecture notes were in fact taken from nursing texts. When Professor Bowman relies on preparing her own textual material for the later units in the reference manual, they are more often appropriately footnoted, although there are some problems in the later chapters as well.

Aside from the incomplete referencing throughout the manual, there is a case study assignment at the end of the manual. At the end of the case study assignment on page 176 of the manual, there is a Framework for Case Analysis. The Framework for Case Analysis is a tool by which students can attempt decision making in any particular factual situation. This framework was developed by Professors Andrusyszyn and Maltby based on ideas in works by K.E. Schnelle and Gordon. Professors Maltby and Andrusyszyn published two articles in which this framework tool was reproduced and discussed. The first article, "Seeing Grey More Readily," appeared in the May/June 1990 edition of Nurse Educator (Vol. 15, No. 3, p. 7). The article discusses the development of the course on Decision Management in Nursing and reproduces the framework headed as "Table 1 Integrated Decision Making Framework" (Exhibits). The second article, "The Case Study Approach of Teaching Decision-Making to Post-Diploma Nurses", appeared in 1990 in Volume 10 of Nurse Education Today (pp. 415-419, Exhibit 16) and refers to the framework tool as "Decision Making Framework".

However, aside from this framework tool appearing in two published journals, it also appears on the last page in the course syllabus on Decision Management in Nursing. When it appears in the course syllabus, it is titled differently, as "A Framework for Case Analysis." It is also structured and typed differently and the attribution is slightly different. In publications in the Journal, the integrated decision making framework is footnoted to both Schnelle and Gordon. When it appears in the course syllabus, the source is indicated as modified from Schnelle. Moreover, this Framework for Case Analysis appears in the course syllabus as early as January and September of 1987 (Exhibits 22, 23). It is reproduced in exactly the same format in the course syllabus for January and September of 1988 (Exhibits 20, 21), course syllabus for the winter of 1989 (Exhibit 19) and the course syllabus for the winter of 1990 (Exhibit 18).

Professor Bowman testified that although she had read Professor Andrusyszyn's and Maltby's articles and in fact had taken them into her class and shown them to her students, that had been more than a year previously. When she was preparing the manual in 1992, she had forgotten about the publication and simply reproduced the Framework for Case Analysis in exactly the same format as it appeared in many of the prior course syllabi for several years.

Indeed Professor Andrusyszyn testified that it was her assumption that Professor Bowman copied the framework from the previous course syllabi rather than from her publications. Given the similarity between the format for the framework in the syllabi and the manual and the prior testimony as to the availability of course syllabi in the Department for use by all teachers, we find as a matter of fact that Professor Bowman did indeed reproduce the Framework for Case Analysis on page 176 from the previous course syllabi in exactly the same format and not from the published articles of Professor Andrusyszyn and Maltby.

However, that does not end the matter. Professor Andrusyszyn testified that the use of her framework in the course syllabi throughout the years without proper acknowledgement to herself or to her own publications was perfectly appropriate since it was she and Professor Maltby who were giving these courses. It is unnecessary, she maintained, for the author of the publications to reference herself when referring to them. Dr. Hardy also agreed that when the chart merely states that it has been modified from another writer, the reader assumes that it was the author of the materials that modified the chart.

Whether or not this argument is correct, it is noteworthy that the Framework for Case Analysis was contained in the course syllabus on Decision Management in Nursing in exactly the same format when Debbie Clevett was teaching the course in the fall of 1991 (see Exhibit 17, p.11). No reference is made to the publications when the framework tool is reproduced in the course syllabus even though the article had been published by that time. Professor Andrusyszyn testified that she was involved to some extent in the course when Debbie Clevett taught it in the fall of 1991. That may be; however, her name does not appear on the course syllabus and students would not know of Professor Andrusyszyn's involvement by reading the syllabus alone, a concern that was expressed by the University with respect to its appearance in Professor Bowman's manual. In cross-examination, the witness added that she was not offended by the lack of attribution because Debbie Clevett was simply including the framework in a syllabus while Professor Bowman was including it in a format which Professor Andrusyszyn considered a publication.

We cannot distinguish the appearance of this Framework for Case Analysis tool as it appears in the course syllabus prepared by Debbie Clevett in the fall of 1991 from the way it appears in the reference manual prepared by Professor Bowman in 1992. Regardless of whether it was titled a syllabus by Debbie Clevett or a manual by Professor Bowman, it would have been distributed to students without acknowledgement that the framework tool had been developed by Professors Andrusyszyn and Maltby.

It should be noted that Professor Andrusyszyn had seen the manual at an earlier point in time. When it was completed in the Spring of 1992, but before it was distributed to the students, Professor Bowman brought it to Professor Andrusyszyn for her comments. There seems to be a misunderstanding as to the purpose for which it was first shown to Professor Andrusyszyn.

Professor Andrusyszyn testified that she thought the grievor was simply giving her a copy. Since she was particularly busy, she simply skimmed through it, noted the copyright and acknowledgements on it, and put it away in her desk. She did not think she had been asked to provide any feedback, and certainly did not notice in particular the alleged instances of plagiarism. When Professor Bowman came back in two weeks to pick up the manual, she was simply told that the manual looked "super" but Professor Andrusyszyn had not had any time to spend on it.

On the other hand, Professor Bowman testified that she gave the manual to Professor Andrusyszyn, with the comment, "this is the first run through of the course by distance, there is bound to be some problems". She assumed Professor Andrusyszyn would give her some feedback. Whichever version is correct is not crucial to our determination. However, it should be noted that Professor Bowman gave a copy of the manual for review to the very person who authored the framework the grievor is alleged to have plagiarized.

This then is the manual in question and the context in which it was prepared. Was the manual plagiarized? Does the grievor's intention when preparing the manual make a difference? What are the standards for referencing in the academic community and in the Department of Nursing at the time? Can one draw an inference of plagiarism from a lack of referencing?

### 3.0 DECISION

#### 3.1 PROCEDURAL MATTERS

The facts as stated give rise to a number of issues dealing with whether or not procedural irregularities took place in this case. Counsel for both the University and the Union have quite appropriately agreed to expedite matters so that the Board may focus on one central issue - is this a situation of plagiarism?

Furthermore, counsel agreed that if the Board decided that Professor Bowman did not plagiarize her manual, then it effectively removed the negative evaluation of the Department (since the negative vote of the Department was heavily based on allegations of plagiarism) and it also removed the concern of the administration. Consequently, no further analysis was required.

However, if the Board decided that Professor Bowman did indeed plagiarize her manual, then the Board must still decide whether, according to the evidence, Dean Letkeman would still have positively recommended the awarding of a probationary contract in the face of substantiated allegations of plagiarism. If that were the case, then the issue of whether or not the University had jurisdiction under Article 7.5(b) of the Collective Agreement to intervene and overrule the Dean's decision in this matter, would still have to be addressed.

#### 3.2 STANDARD OF PROOF

In coming to our decision, both parties have agreed that the University bears the onus of proof. However, it is perhaps not sufficient to simply state that the Employer must prove its case on the balance of probabilities. In recent decisions many arbitrators have recognized that a standard such as "the balance of probabilities" is a variable one rather than a precise one, and one which will change with the circumstances of the case (Brown & Beatty, Canadian Labour Arbitration 3rd ed., p. 7-22).

In the case at hand, we are dealing with an allegation of professional dishonesty, which if confirmed, will effectively and for all practical purposes end the grievor's career. While it is clear that a criminal standard of proof would not apply, some arbitrators have felt that given the stigma and consequence of the finding, a higher test should be required.

The nature and standard of proof has been discussed in cases of professional misconduct. In the case of *Re Bernstein and College of Physicians and Surgeons* (1977), 76 D.L.R. (3d) p.38 at p.61, the Court repeated that there is no precise formula for the standard of proof, and in all cases,

"Before we choose a conclusion of fact, the tribunal must be reasonably satisfied that the fact occurred, and whether the tribunal is so satisfied will depend on the totality of the circumstances including the nature and consequences of the fact or facts to be proved, the seriousness of an allegation made, and the gravity of the consequences that will flow from a particular finding."

Although cases have described the nature of proof in varying ways, perhaps the most common reference in cases of this nature is an acceptance that the Employer must prove its case with clear, strong and cogent evidence.

Again at page 76 of the Bernstein case, the Court states as follows:

"I hold that the degree of proof required in disciplinary matters of this kind is that the proof must be clear and convincing and based upon cogent evidence which is accepted by the tribunal.... I think however, that the seriousness of the charge is to be considered by the tribunal in its approach to the care it must take in deciding a case which might in a fact amount to a sentence of professional death against a doctor."

In the case of *Hurt v. College of Physicians and Surgeons of British Columbia* (1985), 63 B.C.L.R., p. 185, the Court once again agreed that there is a high standard of proof of conclusive evidence required to justify the destruction of Dr. Hurt's professional reputation (see p. 198). (See also the recent case of *University of Saskatchewan Faculty Association and the University of Saskatchewan*, unreported decision, April 25, 1994, (Christie) where the board agreed that the civil standard of proof would be rigorous in a matter of serious consequence such as the loss of academic tenure and dismissal, while in cases dealing with less serious consequences such as ordinary discipline, the standard proof on the balance of probabilities would be acceptable.)

Thus the Board finds that in a case such as this, where a finding of plagiarism would, in practical terms, constitute professional death for the grievor, the Employer must prove, on the balance of probabilities, with clear, cogent and strong evidence, its allegations of plagiarism.

### 3.3 DEFINITION OF PLAGIARISM

Having established the standard of proof to be applied in this case, the Board must next determine which definition of plagiarism is applicable in the present situation. Academic dishonesty is fundamentally destructive to the functioning of a University.

Plagiarism is a serious form of academic dishonesty and must be dealt with when found. But it is not clear what plagiarism is, nor is one definition of plagiarism accepted by all parties.

Mr. Mitchell, counsel for the University, argued that there have been two definitions of plagiarism put forward in this hearing, one by Dr. Hardy and one by the expert retained by the Union, Dr. Gail Storr.

In Dr. Hardy's analysis, a review of other manuals which Professor Bowman had used as models in the preparation of her own was irrelevant to the determination of whether the grievor's manual was plagiarized. Unintentional plagiarism is still plagiarism in Dr. Hardy's opinion since the issue is not what the author intended but what would a reader assume. Would a reader of this manual assume that the ideas and concepts contained in the manual were Professor Bowman's original thoughts? It



does not matter whether Professor Bowman intended to do anything wrong, wished to deceive readers or acted with wilful blindness.

If intention is irrelevant, then the context in which the manual was written is also irrelevant. The consistent use of sources without attribution leads inevitably to the finding of plagiarism of the nature of the material. The standards for referencing are the same for all types of materials and those standards were clear and accepted generally by the University community. It is also clear that Professor Bowman knew how to reference correctly since she did so in her academic publications and in parts of the manual itself.

On the other hand, Professor Storr testified that intention and context are essential factors to the determination of plagiarism in a particular case. For example, in order to determine whether the manual in question was plagiarized, she compared it to standards for this particular type of material in the academic community generally and to other manuals in the department, in particular. In her opinion, the standards of referencing for this type of material are not clear in the academic community and the standards complied with by Professor Bowman were the same as found in similar materials in the Department of Nursing.

Despite the differing views of their experts, both parties embraced the document prepared by the Canadian Association of University Teachers as having important things to say about plagiarism.(exhibit 32).

In October, 1993, on behalf of the Canadian Association of University Teachers, Professor Donald C. Savage prepared a paper entitled, "Fraud and Misconduct in Academic Research and Scholarly Activity". Given the absence of other authority on the topic and the thorough and careful analysis contained in the paper, as well as the fact that both parties adopted the definitions contained therein, the Board adopts its comments as useful and appropriate in the circumstances.

While emphasizing the importance of intellectual honesty in the role of the university, the document points out that the idea of academic fraud is not absolute and has evolved and changed over time. As well, the paper underscores the fact that it is important to distinguish between the trivial and the serious. It is important to develop a definition that maintains intellectual integrity while at the same time is not so rigid as would freeze university work and scholarly activity. "It is important to understand not only what academic research fraud or misconduct is but also what it is not." (15-12).

The document defines misconduct in academic research to include plagiarism (p. 15-9) but adds that, "the definitions suggested in this article indicate that there are varieties of misconduct in academic research all of which are related and involve the notion of a conscious deception." (p.15-10)

A plagiarist is defined as someone who, "copies material written by another author and passes it off as his or her own." (15-13). Thus, the article indicates that, "In practical terms this means that the plagiarist must have copied significant passages of another persons's work without attribution or rendered them into a text which is so close as to make no difference." (15-14).

However, the article goes on to differentiate referencing in different types of material implying that different standards apply in different situations.

"We should not forget that there is a common fund of knowledge. It is not necessary to footnote the source of the information about the date on which the Second World War started. Those who write popularization, textbooks or encyclopedia

articles are likely to use the accumulated work of others without footnotes although bibliographic reference is useful nevertheless. All this suggests that allegations of plagiarism require sensitive judgment, and the penalties should fit the crime. ...

....We should, therefore, be wary of those with absolutist definitions that are claimed to be more or less eternal, but we should act where individuals clearly steal the work of others and pass it off as their own. There is also a distinction between the use of the material of others in lectures and in published research. It is impractical and silly to insist that the lecturer must stop at the end of every sentence and give verbal footnotes. In undergraduate lectures, in particular, where the lecturer is reviewing the past and current wisdom on the subject, it is inevitable that he or she will be using the material of others or drawing on the common fund of knowledge in the discipline. Lecturers should not be harassed by over-zealous administrators for doing this, though they should, of course, acknowledge major and significant borrowing from others. A different standard might well apply in a graduate course involving research methods. Copyright law, of course, applies to written materials reproduced for students in a course." (15-14, 15-15)

From this document can be taken the conclusion that a finding of plagiarism requires a finding that the author consciously intended to deceive and pass this work off as her own. Even Dr. Hardy acknowledged that an occasional missing reference represents human error and not plagiarism. When can an inference be drawn that the omission of references was a result of human error and when could it be said to be plagiarism? Given the comments in the CAUT document, it seems to the Board that in order to determine whether missing references amounts to plagiarism, there must also be a finding that the inappropriate referencing was done with an intention to deceive. Intention can be determined from one's acts and conduct and can include acting in such total disregard of appropriate referencing techniques that one must be taken to have intended to pass the work off as one's own.

Therefore, an examination of the context in which the manual was prepared is important to determine whether the grievor intended to pass off the work as her own or acted in such total disregard that she must be taken to have intended to pass the work off as her own. While the University submitted that context was irrelevant to the determination of whether plagiarism existed, it seems to us that even the witnesses for the University inevitably took context into account to some extent when making their determination.

So, for example, Dr. Hardy considered it relevant that there were many examples of sloppy referencing in the manual. Dr. Hunter-Harvey considered it relevant to her determination that the grievor had claimed copyright on the manual. Professor Andrusyszyn had considered it relevant that Professor Bowman had been so strict with students plagiarizing in her class yet had produced a manual which was missing many footnotes. She felt that the standards for referencing should be exemplary coming from someone who acts as a role model for students.

All of these considerations reflect the fact that plagiarism is not an abstract absolute concept even for the University witnesses but rather a determination to be made based on the context.

The contextual factors which were considered by the Board in coming to our conclusion include the nature of the materials and standards applicable to those materials, the standard of similar manuals within the Department and their representation to the grievor, the manual itself and Professor Bowman's use and description of this manual in her curriculum vitae and departmental evaluation meeting.

With respect to the standards of referencing applicable to teaching materials, the CAUT document suggests that in attempting to determine whether plagiarism has occurred, expectations and standards differ depending on the nature of the material. There is a continuum ranging from very little acknowledgment when giving oral lectures in an overview course to some referencing in textbooks, encyclopedias, and teaching materials to the more exacting standards set out by the journals for academic articles of original thought. The CAUT document suggests that some flexibility is necessary especially where the work is generic and considered to be part of the common fund of knowledge in the field.

The evidence submitted indicated that there are clear written standards for academic articles published in journals. Most journals either specify their standards or adopt those already promulgated by various associations. (See for example, the Publication Manual of the American Psychological Association (1984) 3rd ed. American Psychological Association, Washington, (Exhibit 53) and Kate L. Turabian, Student's Guide for Writing College Papers, (1969), 2nd ed, University of Chicago Press, Chicago and London, (Exhibit 55) and Information for Authors sent out by various nursing journals including, Nursing Outlook and the Journal of Nursing Administration, (Exhibit 59).

Those standards may vary to some extent depending upon the discipline involved. For example, the system of in-text citations used in English and the humanities is different to some extent from the style used in the social sciences. (see, Diana Hacker, A Canadian Writer's Reference, Nelson Canada, 1989, Scarborough (Exhibit 54). However, the Canadian Writer's Reference points out that information from sources must be documented unless the facts and ideas are common knowledge. Obviously, there may be a difference of opinion, depending upon the discipline as to which facts are generic and in the common domain.

Aside from the CAUT document, the evidence of the witnesses also indicated that different standards and expectations existed with respect to different material. For example, all of the witnesses seemed to agree that if one reproduced examinations or quizzes that one would not be expected to footnote sources. Dr. Hardy did not even look at the examinations when conducting her review. Copies of examinations were found in the files regarding each of the courses and Professor Bowman would have found the case studies in those files. No sources were listed on the copies of the exams and Professor Andrusyszyn testified that was common practice. Thus the nine student exercises obtained from Concept Media and contained in the manual were obtained by Professor Bowman from material given her by Professor Andrusyszyn and Maltby. Professor Andrusyszyn agreed that exercises of this nature were often reproduced without attribution. Indeed, Professor Andrusyszyn included case studies without attribution or listed without page numbers in her own course syllabus (see for example, case A and case analysis - Heather in the course syllabus for Decision Management in Nursing, Sept. 1987, Exhibit 23).

Dr. Hunter-Harvey testified that she would not expect examinations reproduced in a manual to be footnoted or for the author to acknowledge the original source of the examinations.

It is expected that this type of material be used freely between instructors without acknowledgment.

Aside from examinations and case studies, Professor Andrusyszyn and Dr. Hardy did testify that in their opinion, written teaching materials intended for students as differentiated from oral lectures or lecture notes prepared by teachers for primarily their own use should comply with the same standards as an academic article in a refereed journal. "Anything that comes out of the department must be as close to perfect as possible."

However, later in her testimony, Professor Andrusyszyn also agreed that Professor Maltby's materials were a course manual and that the referencing standards for those materials were different. She indicated to Professor Bowman that if the references were listed in the manual that was sufficient. With respect to lectures or course notes, Dr. Hunter-Harvey testified that the degree of footnoting expected would depend on whether the notes were "published".

The evidence of the witnesses indicates that their expectations changed depending on whether the item was referred to as a syllabus or a manual or the degree of textual material contained or depending on the nature of the material.

This evidence is consistent with Professor Storr's testimony that, although there were clear and developed standards for referencing articles published in an academic refereed journal, the same could not be said of the standards for referencing teaching materials. There were no written standards specifically applicable to teaching materials and in her experience, teachers did not apply the same rigour to referencing teaching materials as they did to the referencing of academic articles.

She agreed that perhaps the most preferable or the highest standard would be to reference teaching materials in the same way as academic articles but, in practice, that simply does not occur. In her experience, she has encountered a wide variety in the standards of referencing of teaching materials.

This is particularly true in the field of distance delivery education. Although referred to generally as "distance delivery education", there are different ways of delivering that type of education. A correspondence course is only one example, although it is the most common method. Education could also be delivered by means of television, teleconferencing, video-conferencing and computer courses.

When a distance-delivery course is taught by means of correspondence, the content in the materials provided are intended to replace lectures usually given orally by a teacher in a classroom. It is irrelevant as to whether the materials are labelled course manuals or course syllabus. What is important is their content and their purpose. In Professor Storr's opinion, the manual was not a publication but a teaching tool and the standards of referencing are not the same as those applicable to an article published in an academic journal. When referring to distance education, she concludes in her report "certainly there are no well established universal guidelines in developing course materials as there are, for example, in developing material presented at learned conferences or for publication in scholarly journals.

Given the differing practices of referencing in the academic community, Professor Storr testified that reasonable people could differ as to the standard for referencing in course materials. The Board notes that the CAUT document supports Professor Storr's contention that there are differing standards for different forms of scholarly work. (see exhibit 32, paragraph 4.6) In the determination of whether the lack of referencing in parts of the grievor's manual necessarily results in the conclusion that Professor Bowman tried to pass the work of others off as her own, the existence or non-

existence of commonly accepted referencing standards for this type of material which are used consistently in practice is a relevant consideration.

In such a situation, the standard adopted in the particular department became particularly relevant.

The evidence has established that the two other manuals prepared by Professor Maltby were held up in the department and to Professor Bowman of appropriate models. When she questioned the standard contained in one of the syllabi, she was told by a senior and tenured member of the Department that the standard was adequate. The labelling of one as a syllabus and the other as a manual is not a distinguishing factor in the Board's view. Nor do we consider it relevant to a determination of intention that the latter manual contained more textual material than the former. Both had a number of missing references and thus neither complied with the standards expected of academic articles. Professor Storr concludes in her report that, "a similar standard is used by Professors Maltby and Bowman with regard to crediting or quoting parts of sentences or paragraphs from various sources." (p.4) Thus, we conclude that the Department itself accepted different standards of referencing depending on the nature of the material.

However, there is also the matter of Professor Bowman's inclusion of the reference manual in her list of publications and her reference to it as a text which she authored. Dr. Hunter-Harvey testified that Professor Bowman's reference in her curriculum vitae (Exhibit 9) to the fact that "she authored a text" meant to her that the grievor considered herself to be the author of a text and therefore the standards of referencing should be similar to a book. Dr. Hardy testified that she did not include any course outlines or course materials in her list of publications.

Dr. Hardy also indicated that she has seen c.v.'s prepared for purposes of promotion and tenure where manuals were included. Also, Professor Storr testified that people drafted curriculum vitae in different formats. Simply labelling a piece of work a text or a publication or a manual or a syllabus did not make it so. That was the purpose of peer review in the academic setting. In Professor Storr's opinion, the manual was not a text in the formal sense and no one who looked at it would assume it was a published text given the inclusion of such items as dates for assignments, instructions on how to get in touch with the instructor etc.

Some mention was also made of the fact, that aside from the nature of the description of the manual in her resume, the grievor described it in the evaluation meeting in terms that indicated she thought of it as an original piece of work. Professor Andrusyszyn first testified that at the meeting Professor Bowman indicated that the manual took "significant journalistic effort, that it was "like a textbook". A little later in her cross-examination, she rephrased her remarks and indicates that "Ann said the manual went beyond teaching." Professor Bowman testified that she did not indicate that the work was a significant journalistic effort but rather that it took a significant amount of work and was more extensive than normal course materials.

With respect to Professor Bowman's conduct as evidenced by her curriculum vitae and comments in the departmental evaluation meeting, the Board does not find that these acts indicated an intention to plagiarize.

First, it seems to us correct that the manual is something more than a mere course syllabus and did indeed take a fair amount of effort. It is important to note that the Collective Agreement indicates that "curriculum materials" may be considered within the definition of scholarship and research. (see Collective Agreement, article 8.2(c)). Consequently, its inclusion under publications is sug-

gested by the Collective Agreement itself. Whether, the evaluation committee would agree that this manual is "curriculum materials" is another matter.

The fact that the manual is referred to as a text should be taken with a grain of salt. One must remember that this curriculum vitae is an attempt on the part of a young professor undergoing her first and quite important peer review, to place her work in the best possible context. In her curriculum vitae, she clearly differentiates between articles published, in progress and teaching materials.

With respect to the inclusion of the framework tool without specific acknowledgment, we find that any omission of appropriate footnoting to Professors Andrusyszyn and Maltby's articles was, although inappropriate, an honest error. Given the evidence that the framework appeared in the same format in the six previous course syllabi upon which the grievor relied for preparation, we find that Professor Bowman included the Framework for Case Analysis without appropriate attribution by reason of simple omission and inadvertence. We also note that Professor Bowman gave Professor Andrusyszyn the manual for review before it was distributed to the students. Even Dr. Hardy who testified on behalf of Brandon University agreed that a simple error would not constitute plagiarism. Finally, the area with which we were most troubled was the number of inappropriate references or total lack thereof in the reference manual as a whole. Dr. Hardy concluded that given the number of sloppy references in the manual, the manual was plagiarized. Given the evidence, and in particular the analysis that showed that the first two units of the manual had a great many references missing while the standard of references improved in the later parts of the manual, we conclude that when Professor Bowman relied on the lecture notes she obtained from Professor Andrusyszyn and Maltby, she put them into the manual as they were. When she developed her own lecture notes she tended to reference them more accurately. It is clear that these lecture notes were prepared by the two professors for their own purposes with no intention or knowledge that they were to be included in written material. They were given to Professor Bowman in an attempt to assist her. Does their use in the manual constitute plagiarism?

It was acknowledged that sloppy references occur in materials without the author being considered culpable. Professor Andrusyszyn admitted that in certain of her course syllabus sources were referred to without page numbers. While it would have been more precise to have listed a page number, its omission could not be considered to be intellectually dishonest. Again, in one of her articles, Professor Andrusyszyn did not put quotes around a paragraph that was identical to its original source. (Exhibit 16, p 416.) Although Dr. Hardy listed as inappropriate several instances of paraphrasing in the grievor's manual that were referenced without page numbers, Professor Andrusyszyn did this at least once in her articles and testified that it was unnecessary to list page numbers when paraphrasing. (Exhibit 16)

The Board has reviewed the manual carefully. We find that students would conclude that Professor Bowman was not trying to pass off the ideas contained in the textual material as her own original work. We base this finding on several factors including the stated purpose of the manual as teaching materials, the listing of references both before and after the textual material, the bibliography in the preamble and the inclusion of reproduced material from nursing texts which in several cases repeated and reinforced the ideas mentioned in the notes, and the fact that many in-text citations were present (even if not always in proper form). We do not believe a person would think the discursive parts of the manual were part of Professor Bowman's original thoughts.

Indeed, the CAUT document acknowledges that authors of textbooks are likely to use the "accumulated work of others without footnotes although bibliographic reference is useful nevertheless."

(Exhibit 32, paragraph 4.6). In that respect, Professor Bowman was following the practice discussed in that document when she referred to the concepts of authors in her field without footnotes but rather included the text in a list of references.

In the final analysis, considering all the factors mentioned above including the false sense of security given to the grievor in that she was led to believe that a listing of the references similar to that contained in the Maltby manual would be sufficient, we find that the grievor did not intend to deceive and did not attempt to pass off the materials contained in the manual as her own original work.

Consequently, we find that plagiarism not being found, the University should award Professor Bowman her probationary contract and we so order.

In accordance with the agreement between the parties, we make no ruling on the quantum of back wages and benefits in the hope that the parties can come to a resolution on the issue of quantum themselves. In the event that this is not possible, the Board remains seized of jurisdiction in the matter to resolve any difficulties that might arise in the implementation of the award which the parties are unable to resolve.

However, the parties also agreed that "the Union has reserved the right to argue that the level of misconduct, if any, may have warranted discipline, but not a denial of the probationary appointment based on the plagiarism allegation" While the Board agrees that plagiarism has not been established, we do find that there was conduct worthy of discipline in this case.

Even though the standards of referencing of the Maltby manual were similar, Professor Bowman herself questioned the appropriateness of those standards. Even the expert for the Union, Professor Storr agreed that this was a sloppy piece of work. The Board is aware of the pressures under which the grievor found herself. She was on her first term contract and attempting to teach a great many credit hours while at the same time producing as much research as possible. She admitted she left the preparation of the manual later than she should have and tried to do too much in too little time.

Although understandable, the conduct should not be excused. The preparation of the manual was part of her employment responsibilities and academic obligations and for which she was credited with a certain amount of time. In particular, regarding the inclusion of other faculty member's private lecture notes without going back to original sources and referencing them appropriately her own expert found it, incredibly naive for someone to use lecture notes to prepare written material and sloppy and not particularly scholarly to not go back and check original material." Consequently, the Board finds this conduct worthy of discipline. Considering all the factors, the Board orders a letter of reprimand to be placed in Professor Bowman's personnel file.

The letter of reprimand shall not refer to the issue of plagiarism. Rather, the letter shall indicate that the reproduction of Professors Maltby and Andrusyszyn's private lecture notes in student materials without attribution or referencing to original sources was an error in judgment and inappropriate.

The Board further orders that if no other incidents of discipline occur within twenty-four months of the date of this award or one year prior to the commencement of the grievor's tenure review process, whichever date occurs earlier, the letter of reprimand shall be removed from the grievor's personnel file and destroyed.

For all of the above reasons, the grievance is allowed in part.

Having made our decision, the Board would like to acknowledge the reality that this is a situation that has obviously caused great anguish and concern for all parties involved: the grievor, members of the Department and the University as a whole. The academic community must root out misconduct in academic research whenever it occurs. Every academic has a responsibility to report instances of misconduct; and it is not surprising that suspicions of plagiarism should arouse strong emotions, prompt investigations and lead to administrative action. What this case has shown, however, is that plagiarism is a difficult and complex issue which, as the CAUT document indicates, must be approached with great care and insight. The Board is confident that, despite the pain this case has caused, all the parties to this dispute will have benefited from an investigation of the issues, and that academic life in the Department of Nursing will continue in a collegial and professional way.

It is hoped that the parties will take this opportunity to reconsider certain procedures. For example, it is recommended that one person from outside the department, either appointed or elected, participate in departmental evaluations. It is also recommended that the parties develop clear written standards for materials intended for use in distance delivery education.

We would like to express our thanks to Mr. Mitchell, Mr. Tonn and Ms. Roy for their skill, sensitivity and competence in the presentation of the evidence and argument in this matter and for having provided us with the authorities which we have considered in reaching our decision.

Each of the parties will be responsible for the costs of their nominee and will jointly share the costs of the Chairperson.

s/tjc