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[REDACTED]

[REDACTED]

[REDACTED]

11 January 2012

Provost and Vice President Academic
Grant MacEwan University

Dr. Janet Paterson-Weir

Re: your letter of 08 December (suspension and termination)

In reviewing your letter, I observe that around 70 % of your letter pertains to the plagiarism allegation, 10 % pertains to the other issues supporting your decision, and 20 % pertains to your decision to terminate my employment.

I have been advised that people reading your 08 December 2011 letter — FA Executive, FA Grievance Committee, attorney's, etc. — strongly agree that the decision of the Investigative Committee is critical in your decision to terminate my employment. Indeed, you stated at our 08 December meeting that, without the decision of the Investigative Committee, you would not have sufficient grounds for termination. Therefore, I believe your conclusion that my employment should immediately be terminated is premature and violates section 4.5.6.1 of C5051 (Code of Conduct in Research): "...the researcher shall have the right of appeal before any sanctions take affect." Sections 4.5.6.2 to 4.5.6.8 detail the appeal process. Notably, s. 4.5.6.8 states: "Where the sanctions are overturned, the President or designate ... shall take all reasonable steps to repair any damage that the researcher's reputation for scholarly integrity may have suffered by virtue of the complaint."

I have been advised that, on 19 December, Dr. Higgins informed all of Arts and Science that I would not be coming back to MacEwan. Dr. Hilts repeated this to the department and introduced new term instructors who would be teaching classes. Knowledge of my suspension is growing within the MacEwan community. Sections 2.5 and 4.5.5.1 of C5051 expect that the fair procedures will be addressed judiciously and confidentially during the process. My summary suspension directly contributed to my colleagues learning what is occurring and appears contrary to C5051, D1100, D1200, and the principles of natural justice.

Factors you use to justify termination

You letter ties together several factors that you use to justify termination

1. the decision of the Investigative Committee and your additional assessment
2. other disciplinary action: IP agreements and the FOIP allegation
3. your observation that my relationship with some administrators is strained

You stated during the meeting that no single issue is sufficient, but combined they are sufficient to terminate me from MacEwan. *Most of these issues are actively being disputed by myself and/or the Faculty Association.*

- the decision of the Investigative Committee is currently being appealed
- the FOIP allegation is currently the subject of two Faculty Association grievances
- I agree that my relationship with *a few* administrators is strained. This is a large component of the harassment complaint I began in December 2010. Unfortunately, the resolution process is proceeding exceedingly slowly.

These are discussed in detail below.

Decision of the Investigative Committee

Recall that I expressed concern regarding Samantha Kernahan (MacEwan's legal counsel) involvement with the Investigative Committee before, during, and after my meeting with the Committee. Policy C5051 does not provide for Kernahan's involvement, and she is employed by and beholden to MacEwan. I was only permitted one representative (contrary to 4.5.5.4) and not permitted the same level of legal representation nor the same amount of time with the Committee. Surprisingly, *Kernahan's involvement is not mentioned whatsoever in the Investigative Committee's report.*

I overheard Kernahan discussing my textbook and dismissing arguments I made in my written response. As an attorney, she is a persuasive orator. Honestly, I am surprised is that one member of the Investigative Committee concluded that my actions did not constitute plagiarism. (I worry that this person will be a future target.) However, despite Kernahan's involvement,

- *the Committee's was split on whether my actions constitute plagiarism.*
- *the Committee's recommendations suggest that they view my action as a minor infraction.*

Your additional assessment

I understand you have obtained a further review of [REDACTED] outside the scope of the investigation. I am surprised by this. Section 4.5.5 establishes a judicial process, with the Investigative Committee as the investigators and jury and you as the arbiter. Section 4.5.5 gives me full and free opportunity to rebut the complainant (4.5.5.4) and respond to evidence uncovered (4.5.5.7). The Investigative Committee submits their report to you (4.5.5.8), and that you are bound by their report (4.5.5.10).

As noted above, the Investigative Committee's decision was split. Policy C5051 does not provide for you to conduct another investigation to resolve the split decision. I was not aware of your action nor given the opportunity to see and rebut the evidence you collected prior to you acting on it (contrary to C5051 and the principles of natural justice).

The immediacy of your decision to terminate appears contrary to sections 2.5, 4.5.5.1, 4.5.6.1, and 4.5.6.8 of C5051, and also hinders my ability to appeal.

Plagiarism allegation

I humbly thank you for realizing that context is important when determining plagiarism and that it is inevitable that commonalities exist between textbooks that teach and assess similar material.

You state that “when identical or almost identical wording ... [or] the same amounts and volumes are used in conjunction with a question addressing the same chemical reaction[sic] steps beyond reference to common knowledge and becomes the use of someone else's work.” I believe this reduces the number of supposedly plagiarized questions to 4 of 500. Recall that Pearson Education and Dr. Higgins originally alleged that 22 questions were plagiarized in March 2011. In June, Dr. Higgins submitted only 7 of those 22.

One of the conditions for using my draft textbook at MacEwan was to ensure that student learning was the same, independent of which textbook they used. To assess this, I adapted a few of the assigned questions from *General Chemistry* into [REDACTED]. If you wish to find the questions that were adapted from Petrucci, look for the ones that were assigned in *General Chemistry* (Petrucci, 8th edition). (Dr. Higgins was informed of this on 01 April 2011.) It is clear that my intention was not to plagiarize, but to have similar assignments for students using my textbook to students using the other textbook.

Jon Siegel argues that *intent* is a critical consideration when determining if plagiarism has occurred (jsiegel.blogspot.com/2010/02/plagiarisms-defenses.html). Like the parent who accidentally puts something in their pocket while consoling their child and leaves the store (www.consol.ca/Plagiarism.pdf), I adapted questions from Petrucci to maintain the same level of rigor.

Is the parent guilty of theft? *Not according to the criminal code — there was no intent.*

Am I guilty of plagiarism? *There was no intent.*

Like the parent, I have repeatedly recognized my error and offered to revise the questions. This was communicated to Dr. Higgins on 01 April 2011, the Investigative Committee on 12 July and 21 September, and to you on 02 December.

Pearson Education themselves indicates that plagiarism and copyright are often misunderstood concepts that vary with context. (The Pearson Education document was provided to the Investigative Committee on 21 September.)

An independent IP attorney concluded that “a review of the facts in this matter leads me to the conclusion that the [REDACTED] Questions do not constitute a copyright infringement [the basis of plagiarism] of the Petrucci textbook.” (The legal opinion was provided to the Investigative Committee on 21 September.)

Vj g document at www.consol.ca/Plagiarism.pdf details numerous contexts where verbatim copying and use another’s documents without citation is the established practice, not plagiarism.

Simply, there is a difference of opinion as to whether my actions constitute plagiarism. This is mirrored in the Investigative Committee’s split decision and the differing opinions amongst professionals. I have repeatedly offered and agreed to review all the questions and revise as necessary. I don’t believe termination is the appropriate disciplinary action for action that is squarely in a grey area and where I have been exceedingly cooperative.

I have attached several examples that again illustrate the weakness of the plagiarism allegation.

Formal reprimand?

Your letter of 08 December indicates I received a “formal reprimand for unprofessional and unacceptable behaviour and a ... final letter of warning”. Both documents form part of your basis for termination. I am unable to identify the ‘formal reprimand’ and wonder if you refer to Dr. Higgins’ 25 January 2011 letter? I ask because no-where in the 25 January letter does it indicate that the letter is a reprimand or disciplinary. Contrasting this is Dr. Higgins’ 01 April letter — the ‘final letter of warning’ — which clearly indicates the letter is disciplinary.

Furthermore, neither the FA or my attorney considered the 25 January letter to be disciplinary and I cannot find any other letter that is close to a ‘formal reprimand’. In the 25 January letter, Dr. Higgins starts, “This letter is intended to summarize our discussion, outline my concerns, and to again seek your suggestions as to how we might best move forward to achieve an improvement in our working relationship.”

On 08 March, Jerry Zdril advised,

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Date: Tue, 8 Mar 2011 11:31
From: Jerry Zdril
To: [REDACTED]
Cc: Shahidul Islam, Sean Hillman, Bob Graves
Subject: FA response
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...
1. We are sending a letter to Human Resources requesting that they clarify
whether the Memo dated January 25, 2011 is, as we read it, a Letter of Advice and
Suggestion, rather than a Letter of Reprimand. In the event, they consider this
letter as reprimand and [are likely] to use [it] in potential future disciplinary
action, we’ll file a grievance.
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Since no grievance was filed, the letter is evidently not the formal reprimand you refer to.

I would appreciate knowing which document is the ‘formal reprimand’.

Extrajudicial ‘Private Investigations’

Dr. Higgins repeatedly failed to follow established policies and processes in his ‘private investigations’ (term coined by Brian Pearson, Director of Human Resources). Further defending Dr. Higgins’, Pearson stated that, ‘administration has the sole discretion to determine if and when a policy is activated.’ It is non-sequitor that administration makes rules guiding their actions and then chooses not to follow them. I believe that, during his private investigations, Dr. Higgins violated policies C5051, D1100, D1200, the principles of natural justice, and the Canadian Charter of Human Rights in his actions.

- Dr. Higgins’ investigation into IP agreements I made with students — agreements that are recommended by MacEwan policies — occurred without student complaints, without cause, and failed to follow C5051. Dr. Higgins acted as the complainant, investigator, and arbiter.
- Dr. Higgins’ investigation into the FOIP allegation failed to involve the appropriate MacEwan personnel — personnel that are *required* to investigate and impose discipline, according to the MacEwan FOIP officer. Based on the information provided by the Faculty Association, the FOIP officer believes my actions constitute a minor FOIP breach, if a breach at all, and would be treated as ‘a learning opportunity’. This is in stark contrast to Dr. Higgins’ conclusion that my actions are an egregious breach, worthy of suspension and threats of termination. Dr. Higgins acted as the investigator and arbiter. If there are no student complaints (I have not been provided with them, despite requesting them), then Dr. Higgins is also the complainant. An investigation into Dr. Higgins handling of the FOIP investigation and his disciplinary action identified several substantial errors in process. (These were documented and provided to you by the FA on 12 October 2011.) Two grievances on this issue are currently proceeding to arbitration.
- Dr. Higgins’ ‘private investigation’ into the plagiarism allegation was proceeding towards my termination in April 2011 until I inquired why C5051 wasn’t being followed. Dr. Higgins immediately dropped his ‘private investigation’ and filed a complaint under C5051. During his ‘private investigation’, Dr. Higgins acted as the complainant, investigator, and arbiter. After filing a complaint under C5051, he continued to assert himself as an investigator by imposing his assessment matrix on the Investigative Committee. An independent IP attorney has stated that Dr. Higgins’ matrix “is of little value in assessing copyright infringement as ... this approach has been rejected by the Courts in Canada.” I have repeatedly stated that Dr. Higgins’ matrix would erroneously find plagiarism if applied to questions selected from other texts — questions that have coexisted for decades.

Dr. Hilts’ ulterior motives

Dr. Hilts led the committee that chose a different general chemistry textbook in summer 2011. Many faculty, myself included, spent considerable time meeting and deciding on what material to teach, the instructional order, and selecting assignment questions for the new textbook. The expectation is always that all faculty use the agreed to instructional material and sequence for the benefit of student learning and the laboratory program. (I did this with [REDACTED])

which contributed to my adapting questions from Petrucci.) Yet despite coordinating the change, Dr. Hilts required that his students purchase his workbook and taught from his workbook. *Dr. Hilts' workbook is based on General Chemistry, by Petrucci, the old textbook!* Dr. Hilts did not revise his workbook to the new textbook nor did he teach using the new instructional order.

For Winter 2012, the MacEwan Bookstore lists Dr. Hilts' workbook for every section of CHEM 101, 102, 103, and 105!

Why is a workbook based on an unused textbook listed for every section of first-year chemistry?

Possible answer: every sale results in approximately 25 \$ of profit split between Dr. Hilts and Pearson Education. I submit that this draws into question Dr. Hilts' and Pearson Education's motives for wanting [REDACTED] removed as competition. Additionally, Dr. Hilts is advocating for Chemistry to revert to the Petrucci textbook in Fall 2012.

Identity of student

Your letter, for the first time, questions who complained to Dr. Higgins in January 2011. During my 01 February meeting with Dr. Higgins, Dr. Higgins stated that it was two students not in my class who complained about the 17 January 2011 email and then made vague suggestions about plagiarism (the students provided no evidence). I repeated Dr. Higgins statement regularly in correspondence. You now assert that it was students in my class who met with Dr. Higgins. I can assure you that the students who met with Dr. Higgins to complain about the 17 January 2011 email were *not* from my class: the email of 17 January only went to students not in my class.

University governance

You are quite correct that a university generally functions through collegial governance based on mutual respect. At MacEwan, this is partially articulated in policy C5054 (Academic Freedom), and articulated in documents I have submitted:

Policy C5054 (Academic Freedom) gives faculty the freedoms to engage in scholarly activity, to develop curricula and instructional material, to question University procedures and policies, and to propose and to work for changes without fear of censure, undue interference, harassment, or reprisal.

However, some MacEwan administrators rules using fear. Already, the threat of not passing probation is used to control probationary faculty outside the classroom. Already, MacEwan faculty and staff are afraid to complain. Formal complaints (grievances) are actively dissuaded by colleagues. My termination will send a shock-wave through the faculty, telling them that no-one is safe to engage in the freedoms articulated in C5054.

I submit that, dating back to 2009, my treatment by Dr. Higgins, Dr. Sullivan, and Dr. Hilts has not been collegial, professional, or respectful. For example, I believe it reasonable for professionals to accept that differences of opinion occur and that those professionals can agree to disagree. I no longer have this ability. If I disagree, I am 'wrong' and it is held against me.

Continuing employment at MacEwan

Your letter lists several conditions necessary for me to continue at MacEwan:

1. “affected students and departmental members will be informed about the Committee’s findings.”
2. “I am directed to purge any plagiarized matter ... from materials which I am [developing].”
3. I am to avoid any repetition of this practice and to seek advice and assistance if uncertain.

Regarding 1: this is currently underway through rumors. When you do formally inform people, I request you give them a copy of the Committee’s report with the member’s names redacted, emphasize that it was a split decision, and inform them of Kernahan’s involvement.

Regarding 2: I offered and agreed to do this in correspondence to Dr. Higgins on 01 April 2011, the Investigative Committee on 12 July and 21 September, and to you on 02 December.

Regarding 3: This is sound advise. I have already spent considerable time investigating plagiarism on my own. Professional academic conversation is usually valuable.

Despite disagreeing as to whether the actions constitute plagiarism, I have repeatedly agreed that the questions should be changed. I will again agree to the conditions you have listed. Indeed, I have endeavoured to conclude the plagiarism issue several times. MacEwan administration continues to demand the same conditions that I have repeatedly agreed to, yet refuses to accept them when offered, and continually escalates these matters.

Mobbing

For four years prior to fall 2010, I had the support of all levels of administration for the development of [REDACTED]. In October 2010 and without notice, Dr. Hilts and Dr. Higgins turned on [REDACTED] going so far as to categorically state that the project was *never* recognized or supported by MacEwan. These and other administrators initiated and conducted an increasingly viscous and malicious campaign to impede and discredit me, my scholarly activity, my instruction, and create a hostile work environment. Their escalating actions include (in approximate chronological order)

- Dr. Hilts informing me that he is required to forward all issues involving me to the Dean
- Dr. Hilts informing me on two occasions (September and December 2011) that ‘the Dean is looking for reasons to get rid of you’
- Dr. Sullivan refusing to recognize the development of [REDACTED] as scholarly activity on my annual report
- Dr. Sullivan refusing to accept that the students working on [REDACTED] were engaged in scholarly activity
- Dr. Hilts accusing me of violating an agreement regarding the use of [REDACTED] at MacEwan and using this as a basis for developing Textbook Adoption Criteria (TAC)
- Dr. Hilts and Dr. Higgins covertly and overtly influencing the TAC committee so that the TAC targets only [REDACTED]

- Dr. Higgins adamantly and repeatedly stated that [REDACTED] was never recognized or supported by MacEwan
- Dr. Higgins using MacEwan policies and procedures against [REDACTED] despite declaring that [REDACTED] has never been recognized or supported by MacEwan
- Dr. Hilts' conversations with his *circle of friends*: spreading rumors about me, my scholarly activities, and hinting at my imminent termination to my colleagues
- Dr. Hilts not distributing departmental information to me and those supporting me, nor consulting with me and those supporting me regarding departmental decisions
- Dr. Hilts and Dr. Higgins encouraging those supporting me to distance themselves from me
- Dr. Higgins subverting my paid medical leave into a suspension without pay by blocking all access to MacEwan and stopping my pay
- Dr. Higgins withholding my annual pay increment
- Dr. Sullivan voiding my holidays, despite me having ten months to take them
- Dr. Higgins' 'private investigations' associated with the IP agreements, FOIP allegation, and plagiarism allegation, and his interaction with the Investigative Committee
- Brian Pearson declaring that, 'administration has the sole discretion to determine if and when a policy is activated' to justify the 'private investigations' conducted by Dr. Higgins
- administration cancelling or refusing to offer the senior level courses I developed, restricting me to teaching first-year chemistry
- Samantha Kernahan's clandestine involvement with the Investigative Committee
- **Dr. Paterson-Weir summarily suspending me, pending termination. This occurred prior to the conclusion of the harassment complaints, the grievances, and prior to the plagiarism appeal being heard (in violation of policy C5051 and natural justice).**

The decision of several administrators to suddenly turn against me and my scholarly activity confounds me. My attempts to resolve issues and my concerns regarding process have been dismissed. The aggressiveness and tenacity with which they pursue my termination is scary. This despite growing evidence that the allegations are unfounded and/or grossly exaggerated.

I recently discovered a connection between the issues: ***workplace mobbing***.

Dr. Linda Shallcross, Queensland University of Technology, www.workplacemobbing.com

Workplace mobbing is a 'virus' or a 'cancer' that spreads through malicious gossip, rumour, hearsay, and unfounded accusations. It is done with deliberate intent to have those targeted 'eliminated' or 'forced out' of their employment.

Workplace mobbing is an abusive form of psychological torture.

Those targeted are often:

- *Change agents*
- *High achievers*
- *Enthusiastic*
- *Known for their commitment to human rights*
- *Whistleblowers*

Dr. Kenneth Westhues, University of Waterloo, arts.uwaterloo.ca/~kwesthue/mobbing.htm

If professors despise a colleague to the point of feeling desperate need to put the colleague down ... the more clever and effective strategy is to wear the target down emotionally by shunning, gossip, ridicule, bureaucratic hassles, and withholding of deserved rewards. ... If the target refuses to leave or acquiesce, ... the object [becomes] to destroy the good name that is any professor's main resource.

Public censure by the university administration leaves the target stigmatized for life. Formal dismissal with attendant publicity is elimination in its most conclusive form.

Most of the mobbing targets I have studied were dumbstruck that such impassioned collective opprobrium could be heaped on them. ... They trusted overmuch in reason, truth, goodness, and written guarantees of academic freedom and tenure.

Anton Hout, OvercomeBullying.org

Mobbing occurs in environments conducive to its development: ... *workplaces with poor management lacking in conflict resolution skills* and lacking in awareness about mobbing and its consequences. *Worse still are workplaces where management knowingly utilizes mobbing tactics as a means to eliminate staff* in spite of the, sometimes fatal, devastation it causes.

[Mobbing] is a dysfunctional group response to the abuse of one of its members. *Rather than address the abuse, the group instead seeks to silence and destroy the messenger.* It is like a disease that causes the body's immune system to destroy healthy parts of itself.

All the above authors document how mobbing completely destroys the victim personally and professionally and occasionally leads to the victim's suicide.

Hout provides a checklist of symptoms associated with mobbing. *I match 28 of 33.*

Dr. Westhues provides a checklist to assess if mobbing is occurring. *I match 14 of 16.*

Why?

Very often, the target has little idea why they became a target. Occasionally, the story comes out after the fact, as it did for Dr. Nancy Olivieri. Dr. Olivieri was a senior medical researcher at the University of Toronto. In 1996, Dr. Olivieri discovered serious side effects with a drug produced by Apotex Pharmaceuticals. She wanted to discontinue the drug trial and inform the patients. She received the support of the Research Ethics Board to do so. Suddenly and very publicly, the institution closed Dr. Olivieri's lab and terminated her from the University. It was subsequently discovered that Apotex was planning to donate millions to the university for a new research facility. It was discovered that UofT administration and Apotex Pharmaceuticals conspired and

acted to remove Dr. Olivieri and discredit her and her research as punishment for disclosing the problems with the drug. Numerous independent investigations vindicated Dr. Olivieri and condemned the University of Toronto. One report, from the Canadian Association of University Teachers (CAUT), is available at www.caut.ca/uploads/OlivieriInquiryOverview.pdf

I believe I can identify the cause of why I am being targeted.

Prior to 2009, I had a very positive relationship with administration. Conversations were positive, professional, and administrators recognized and supported my scholarly activities. I was active on Academic Council, the Student Success committee, Faculty Association Executive, chemistry outreach programs, and numerous other committees and activities.

In 2009, MacEwan was beginning the transition to a degree granting university. As the VP Professional Affairs for the MacEwan Faculty Association (FA), I published two articles advocating for change within administration at MacEwan. One article advocated for change of MacEwan administration to a university-style structure: term appointed administrators, with a maximum number of terms. (The current model is permanent administrative appointments.) A second article reported that administration had changed administrative policies, removing the mere suggestion that administrators should teach. I argued this was not in the best interests of MacEwan and advocated for the change to be reversed and strengthened to encourage or require administrators to teach. Neither of these — moving from permanent to term administrative appointments or administrators teaching — would be well received by administrators.

Policy C5054 (Academic Freedom) gives faculty the freedoms to engage in scholarly activity, to develop curricula and instructional material, to question University procedures and policies, and to propose and to work for changes without fear of censure, undue interference, harassment, or reprisal.

Shortly thereafter, administration began identifying ‘issues’. Small issues at first, but escalating in both frequency and severity. All were treated as egregious.

For Pearson Education and Dr. Hilts, removing [REDACTED] would remove a threat to their income and restore Dr. Hilts’ prestige of having the most significant publication in our department.

Summary

My mobbing is, in part, characterized by an abandonment of policy and process and escalating actions to satisfy the groups’ objective: the termination and destruction of [REDACTED]

Mobbing is not in the best interests of Grant MacEwan University.

Dr. Paterson-Weir: I am concerned that you are being drawn into the group engaged in mobbing.

- Your decision to get another review could be interpreted as attempting to solidify the split decision of the Investigative Committee and construct grounds for termination.
- The decision to immediately terminate me violates policy and process.
- Summary termination undermines the ongoing grievances and the harassment complaint. The implications are that administration has unilaterally decided they are without merit and/or that administration doesn't want external investigators identifying errors by or imposing decisions onto MacEwan administration.

Resolving any one of the grievances or the harassment complaint or the plagiarism appeal in my favour would seriously undermine the already weak justifications for terminating me.

Prior to 2009, my time at MacEwan had been largely uneventful. In fall 2010, Dr. Sullivan, Dr. Hilts, and Dr. Higgins suddenly and aggressively targeted me and my scholarly activity. I had done nothing different in fall 2010 than in any other term using [REDACTED]. Since then, I have faced numerous accusations that are now being used to justify termination. The Faculty Association and I have repeatedly questioned the veracity and severity of these accusations in detailed letters and grievances. The aversion to resolving issues amicably is consistent with academic mobbing.

It is my understanding that administration has a duty to present clear and cogent evidence to prove guilt and justify termination. Neither I nor my confidants believe administration has done this. I understand that neither the Faculty Association Executive nor the Faculty Association Grievance Committee believe administration has done this. The numerous policy and process violations are consistent with academic mobbing.

Progressive discipline is a reasonable expectation of any employee. I did not receive a 'formal reprimand'. Several substantial errors were documented in Dr. Higgins' 'final warning'. The neutrality of the Investigative Committee was questioned. The Investigative Committee view's my action as a minor infraction. The exaggeration of issues is consistent with academic mobbing.

In conclusion, I submit that my termination is warranted by the facts nor justifiable in policy or law. I do not see how it is in MacEwan's best interest to terminate my employment.

I believe and submit that the appropriate course of action is for all disciplinary measures to be held in abeyance until all grievances, complaints, and appeals are resolved.

cc David Atkinson, President
MacEwan Faculty Association