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29 September 2011

Provost and Executive Vice-President Academic
Grant MacEwan University

Dr. Janet Paterson-Weir

Re: actions of the Investigative Committee during their investigation

On 20 June 2011, you struck an Investigative Committee to investigate Dr. Higgins' allegation that questions in my draft introductory textbook, [REDACTED] were plagiarized from *General Chemistry* by Petrucci.

The Policy statement of C5051 states, "The University ... will investigate any allegations of misconduct in a fair, unbiased and timely manner in keeping with the principles of natural justice." Furthermore, sections 4.5.5.4 and 4.5.5.7 state that I have the right to "full and free opportunity to rebut the complainant" and the "opportunity to respond to any evidence uncovered by the investigation committee."

I am concerned with the process conducted by the Investigative Committee, because:

1. My ability to respond to the complaint has been unfairly limited in several ways.
2. The Investigative Committee has engaged in actions that strongly suggest the Committee is not impartial, including permitting the complainant to be directly involved in the investigation.

1. Response to the Complaint

A. Informal Resolution

The Investigative Committee has engaged in no serious effort to resolve the complaint. It proceeded to the formal investigative stage with no comment on why a previous resolution was unacceptable.

B. Representation

The Investigative Committee did not permit me to have more than one representative in the meeting on 23 August 2011, contrary to s. 4.5.5 of policy C5051, leading to confusion regarding which section of the policy was even engaged at that time. The Committee was provided with incorrect information from Dr. Susan May and Samantha Kernahan (MacEwan's legal counsel) regarding the correspondence related to the number of representatives permitted.

C. Evidence and Argument

The Investigative Committee met privately with Dr. Higgins (who has acted as both complainant and investigator). I have requested but so far not been provided with the evidence and arguments he presented during those meetings. I am therefore restricted from having “full and free opportunity to rebut the complainant” and “an opportunity to respond to any evidence uncovered by the investigation committee”.

Furthermore, Samantha Kernahan, whose role in the investigation has not been made clear to me, was active in some parts of the investigative committee proceedings. This created an inequitable situation where the Committee had legal representation but I did not, and her active involvement in the proceedings seems to be in contravention of section 4.5.5.2, which specifies the composition of the Committee. Again, I have requested but so far not been provided with the evidence and arguments she presented during those meetings.

2. The Partiality of the Investigation Committee

A. Structure of the Process

The Investigative Committee has not stated how it will determine whether or not plagiarism occurred, nor what its working definition of plagiarism is in these circumstances. Knowledge of the mechanism and terms of reference is important to defend against the allegation.

B. Matrix developed by Dr. Higgins

The Investigative Committee has apparently accepted Dr. Higgins’ ‘matrix’ for examining texts alleged to have been plagiarized. There is no indication that the Investigation Committee had this tool validated. A review by an intellectual property lawyer found that Dr. Higgins’ matrix “is of little value in assessing copyright infringement as ... [his] approach has been rejected by the Courts in Canada.” This review also argued that copyright infringement should be viewed within the context of the entire work, not a small or non-representative sample thereof.

C. Dr. Higgins as an investigator

Policy C5051 identifies four distinct roles in the complaint process: complainant, respondent (researcher), investigative committee, and arbiter. Sections 4.5.5.2, 4.5.5.3, and 4.5.5.10 require that different people or groups of people occupy these roles. This separation of responsibility ensures the greatest degree of impartiality and fairness and is consistent with the principles of natural justice. By applying his matrix to the questions in his C5051 complaint, and participating in the investigation by making representations to the Investigative Committee, Dr. Higgins has asserted himself as an investigator and may have biased the Investigative Committee.

D. Assignment provided to the reviewers

The Investigative Committee retained professional chemists to review seven questions without providing them with the context of the texts in which they were found, nor the background on the stage of development of the text. The Investigative Committee also distributed Dr. Higgins' unvalidated matrix to the reviewers. As far as I know, the reviewers were not provided with any information as to the concepts that affect determinations of plagiarism and copyright, including originality, common knowledge, creativity, established practices, and intent. Again, plagiarism should be assessed within the context of the entire work, and not a small or non-representative sample thereof. In my view, the Investigative Committee has done what researchers are required to avoid: ask a question in a way that prompts a favoured answer.

Conclusion

It concerns me that these events may have prejudiced the process, prejudiced the reviewers, and prejudiced the Investigative Committee to the point that it is impossible for me to receive a fair, impartial, and unbiased investigation from the current Investigative Committee. In consultation with the Faculty Association and external legal counsel, I request that MacEwan disband the investigation currently convened under C5051, and consider reconstituting the Committee.

If you believe a meeting may aid in understanding these concerns, I am prepared to meet at your convenience.

Thank-you,

cc Dr. Susan May, Associate Vice President Academic and Research
MacEwan Faculty Association

My academic philosophy is to support and advocate for practices that serve the long-term best interests of students, faculty, MacEwan, and society. By providing students with the best education and best possible learning environment, MacEwan graduates enter and continue in the workforce. Their distinguished service to their employer and to society builds MacEwan's reputation and ensures the longevity of MacEwan.