Case No.: 709

THE DISCIPLINE APPEALS BOARD OF THE UNIVERSITY TRIBUNAL OF THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on March 12, 2013

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the "Code")

AND IN THE MATTER OF the *University of Toronto Act, 1971*, S.O. 1971, c. 56 as amended S.O. 1978, c. 88

B E T W E E N:

DR. C[redacted] S[redacted]

Appellant

- and -

THE UNIVERSITY OF TORONTO

Respondent

REASONS FOR DECISION

Hearing date: November 2, 2017

Members of the Panel:

Ms. Patricia D.S. Jackson, Chair
Professor Allan Kaplan, Faculty Panel Member
Ms. Wendy Wang, Student Panel Member
Ms. Alena Zelinka, Student Panel Member

Appearances:

Mr. Robert Centa, Counsel to the University of Toronto
Mr. Darryl Singer, Counsel to Dr. C[redacted] S[redacted]
Ms. Nadia Condotta, Counsel to Dr. C[redacted] S[redacted]

In attendance:

Ms. Tina H. Lie, Affiant

Not in attendance:

Dr. C[redacted] S[redacted], Former Student

Charges

1. This case concerns the disposition of charges, initially filed on March 12, 2013, relating to the thesis submitted by Dr. C[redacted]S[redacted] (the "former Student" or the "appellant") for the degree of Doctor of Education in 1996. Those charges were:

> (i) in 1996, you knowingly represented the ideas of another, or the expression of the ideas of another as your own work in the thesis titled "The Effects of Sport Participation on the Academic and Career Aspirations of Black Male Student Athletes in Toronto High Schools" ("Thesis"), which you submitted in conformity with the requirements for the degree of Doctor of Education, contrary to section B.i.1(d) of the Code; and
>
> (ii) in the alternative, by submitting the Thesis, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the Code in order to obtain academic credit or other academic advantage of any kind, contrary to section B.i.3(b) of the Code.

The Decision Below

2. The hearing of the charges by the Panel below was the subject of multiple adjournments, more fully described later in these reasons, all at the request of the former Student. At a hearing on June 20, 2017, the former Student's counsel requested a further adjournment. That adjournment was denied, and the Panel proceeded to hear the evidence.

3. The Panel found that with respect to the former Student's Thesis there were:

> "... portions taken verbatim, or virtually verbatim, from secondary sources without attribution. ... and the secondary sources with the portions taken by [the former Student] without attribution were also highlighted. There were 67 examples – far too numerous to list and describe in this decision but which we attach in a chart prepared by the University, attached as Appendix "C" [and attached to these

Reasons as Appendix "A"]. They range from examples that are several sentences long, to some that are paragraphs long, to some that are pages long – the longest being approximately 9 pages.

Even verbatim, or virtually verbatim, it was also clear that they had been carefully reviewed and altered (or "tailored" as the University put it) to better fit into [the former Student's] Thesis – as opposed to just thoughtlessly or carelessly inserted into [the former Student's] Thesis without attribution. This manifested itself in several ways. First, American spellings of words had often been replaced with their Canadian equivalents (e.g., "honour" for "honor", "travelled" for "traveled"). Second, punctuation and capitalization were frequently changed in [the former Student's] Thesis from the original to what presumably [the former Student] considered more appropriate. Third, American references were frequently replaced with more Canadian or generic descriptions (e.g., "African American" by "Black"). Fourth, when the secondary source had a footnote in it, the style of the footnote in the secondary source had been changed to match the style of footnote that [the former Student] was using in his Thesis. Fifth, even though the secondary source was reproduced verbatim or virtually verbatim without attribution, [the former Student] would occasionally add a few words, not to indicate that it was from a secondary source, but to incorporate the unattributed words into his narrative (e.g., "in my experience"). Moreover, not only were virtually all of these 67 examples not attributed at all (as opposed to merely being incorrectly attributed), but many of the secondary sources were not even listed at all in the bibliography to [the former Student's] Thesis.

4. The Panel also noted that, not surprisingly, the evidence indicated that if the extent of the plagiarism had come to the attention of the University beforehand, the degree in question would never have been conferred.

5. The Panel unanimously concluded that the former Student had violated Section B. i.1(d) of the Code and held that not only ought the former Student to have reasonably known he was committing plagiarism but that he knowingly did so.

6. Upon that finding, the University withdrew the second charge of academic misconduct, and the Panel proceeded to consider the appropriate sanction. The Panel unanimously concluded that the former Student should be given a final course grade of 0 in the course in which the Thesis was submitted, recommended that the former Student's degree be cancelled and recalled, that this be permanently noted on the former Student's academic transcript, and that the University remove the former Student's Thesis from any library, wherever it may be located.

7. The majority of the Panel also recommended that the President of the University recommend to Governing Council that the former Student be expelled. On this last sanction, the Co-Chair dissented, being of the view that expulsion of a student who had completed his studies and received the impugned degree more than 20 years ago was unnecessary and therefore excessive.

Appeal

8. The former Student appeals from this decision and asks that:

(i) the decision on finding and penalty be overturned and that the allegations against him be dismissed or remitted to a new Tribunal Panel for a new hearing; or

(ii) in the alternative, the decision on penalty be set aside and the matter remitted to a new Tribunal Panel for a new hearing on penalty; or

(iii) in the final alternative, that the decision or penalty be set aside and a lesser penalty substituted.

9. In summary, the appellant's position was outlined as follows:

- In light of the appellant's mental health status (described more fully below) the Panel ought to have granted his request for an adjournment.

- The appellant's counsel immediately withdrew and indicated that she did not have instructions on the basis of which she could proceed. Thus, even if the decision to deny the adjournment was reasonable, when counsel withdrew it became unreasonable to proceed in the absence of the former Student or his counsel.

- In any event, once the former Student had been convicted of the offence, the Panel ought to have adjourned to enable the former Student to participate in the penalty phase of the hearing, and the decision not to do so was unreasonable.

- On the latter point, the former Student argues that an adjournment would have permitted him to participate in the penalty phase of the hearing in a manner which might well have influenced the result. In particular, his counsel urged that there might have been mitigating factors with respect to the commission of the offence, although candidly conceded he had no information in this regard, and indeed there was no evidence to suggest that below or on the appeal. It also would have allowed the former Student to lead evidence of the extraordinarily serious impact on him of the penalty the University was seeking. He argues that because he had had an illustrious 20 year career predicated on having the doctorate, its withdrawal after 20 years had an inordinately serious and inappropriate impact, which might have led the Panel not to recommend that result.[1]

10. For the reasons set forth below, we dismiss the appeal.

The History of the Proceedings Below

[1] The appellant's factum also made some reference to the possibility that the Chair of the Tribunal Panel was biased or that the proceedings were tainted by an alleged conflict arising from earlier representation of the former Student by another member of the University counsel's firm. However, his counsel made clear during argument that neither of these was being relied upon as a ground of appeal.

11. In view of the emphasis in this appeal on the Panel's failure to adjourn all or a portion of the hearing on June 20, 2017, it is important to review the history of the proceedings in some detail, which are also summarized in a chronology prepared by the University, attached as Appendix B.

Initial Requests for Delay – March 2013 to February 2014

12. The former Student initially retained a lawyer, Jonathan Shime, to represent him. In the period March 2013 to February 2014 the University through its counsel attempted to schedule the hearing of the charges, but at the former Student's request, agreed to delay the hearing until the fall of 2013, setting a tentative date of October 16, 2013. The former Student's description (through his counsel) was that he was "very broken" and "barely able to function" although it then came to the University's attention that he was giving several media interviews during the period.

13. About a week before the tentatively scheduled hearing date, the former Student's counsel advised that the former Student had discovered documents he intended to use at the hearing, and in light of this late development, the parties agreed to adjourn the hearing tentatively scheduled for October.

First Motion for Disqualification and Abuse of Process – March 2014 to December 2016

14. In early February 2014, Mr. Shime advised that he was no longer acting for the former Student and shortly thereafter a second lawyer, Selwyn Pieters, was retained.

15. The former Student then (approximately a year after the charges were filed by the University) brought a motion seeking an order:

> (i) removing Paliare Roland as counsel for the University due to an alleged conflict of interest because a partner of that firm had previously acted for the former Student in connection with his employment (the "First Disqualification Motion") and

(ii) staying the proceeding as an abuse of process (the "First Abuse of Process Motion").

16. Because of the allegation of conflict of interest, the University retained a second counsel, Ben Zarnett of Goodmans LLP, to argue the motions and deal with associated matters. The University opposed the First Disqualification Motion and the relief sought on the grounds that any conflict had been waived by the former Student prior to the University retaining Paliare Roland, and (2) that he had been represented by prior independent counsel for almost a year during which time he had full knowledge of the facts that formed the basis of First Disqualification Motion and had not raised any conflict on the part of the Paliare Roland.

17. In July 2014, Chair Paul Morrison heard and decided a motion for directions from the University and released a decision ordering the former Student to produce certain documents and to comply with a protocol to address the question of potential privilege associated with those documents.

18. In October 2014, the former Student delivered a set of documents in response that did not comply with the direction. There was a dispute over the scope of disclosure and over the next several months the parties through their counsel attempted to resolve the production issues.

19. Those issues had not been resolved when in April of 2015 the former Student's counsel, Mr. Pieters, sent the University a letter identifying a new issue described as the "ultimate limitation period" which he said would have to be resolved before proceeding with the other motions. The University's position was that the issue had no merit, and was raised solely for the purpose of delay and should be dealt with as part of the pending motions.

20. This led to a case conference in August of 2015 at which Chair Morrison directed the parties to file further materials regarding the outstanding issues.

21. The former Student never complied with this order. Shortly before he was to file those materials, his counsel advised the University that he no longer represented the former Student, and shortly thereafter the former Student sought an extension of time to comply.

22. Before a case conference could be held to resolve the issues of timing and production, the former Student raised a suggestion that Chair Morrison was biased as a result of the fact that his firm acted for the Ontario College of Teachers in the prosecution of the former Student in August 2015.

23. Shortly thereafter Chair Morrison withdrew. In a decision which recorded his conclusion, he said he had been unaware of his firm's retainer for the College; that the firm had erected a confidentiality screen so that he had no knowledge of the discipline case whatsoever; and that on the basis of the applicable law with respect to bias he had no hesitation in recording that he saw no basis for any suggestion of actual or apprehended bias in his role as Chair. However, he concluded, it was in the interests of transparency and that justice not only be done but seen to be done that he withdraw.

24. In early 2016, Chair Fishbein was appointed to replace Chair Morrison and the University requested a case conference to address production issues and pending motions. In early February, the former Student advised the Tribunal that he had not yet retained a lawyer, that he intended to pursue his motions but that (without further explanation) he would not be available until late April or May of 2016. A case conference was therefore scheduled for April 29, 2016, one of the dates on which the former Student indicated he was available. In correspondence confirming this date, the Tribunal reminded the former Student that there were 2 outstanding production orders made against him which should be complied with by the date of the case conference.

25. Two weeks before the scheduled case conference the former Student (who had not yet complied with the production orders) wrote to the University and the Tribunal to advise that he was "navigating 2 personal issues and therefore request[ed] a 6-8 month

adjournment", which request was opposed by the University. The former Student submitted in support of his request a medical note from a doctor stating, in its entirety:

> [The former Student] is my patient. He has been unable to work for medical reasons.
>
> He is under a great deal of stress and he needs to disengage for a period of time to get his professional activities in order.
>
> He will follow up with me as appropriate.

26. On April 26th, 2016, over the objection of the University, Chair Fishbein granted the former Student's request for an adjournment. In subsequently issued reasons, he noted that the medical note submitted by the former Student was deficient in a number of respects, in that it:

(i) provided no information about the timing or the extent of the doctor's treatment of the former Student;

(ii) provided no medical diagnosis, information about treatment or prognosis. It did not say what "period of time" would be required for the former Student to "get his professional activities in order" or even define what the latter term meant. Nor did it say what the former Student was doing or the relationship of stress to it;

(iii) contained no information to suggest the doctor was told this note would be used at the University Tribunal or for what purpose;

(iv) provided no opinion of the former Student's inability to participate in the case conference or in further proceedings, nor any information as to what accommodations might alleviate any concerns if there were any; and

(v) there was no reference to or substantiation in the note of the former Student's reference to post-traumatic stress disorder, depression, or hopelessness.

27. Chair Fishbein also noted that the hearing had been paralyzed by the former Student's motions and cautioned as follows:

> 21. Again, notwithstanding that there may not be immediate urgency in these proceedings, *they cannot be held in a state of paralysis that they have been*, whether that has been [the former Student's] deliberate intention or not. It is [the former Student] who has made the disqualification motion. It is [the former Student] who has failed to comply with the production order. It is [the former Student] who has not yet retained counsel. All of this notwithstanding frequent indulgences and extensions granted to [the former Student]. *Simple noncompliance by [the former Student] with these directions and just ignoring them cannot indefinitely prevent these proceedings from continuing.* I caution [the former Student] that neither the *Code* nor any rule of law necessarily requires [the former Student] be represented by counsel for these proceedings (regardless of how preferable that may be for everyone, not just [the former Student]). *I further caution that the* Code *explicitly envisages that the Tribunal may proceed in his absence provided he has proper notice*. (Emphasis added.)

28. The adjournment request was then granted on condition that the former Student provide "better and sufficient" medical evidence by May 24, 2016, and that a further case conference be scheduled within 3 months. Chair Fishbein specifically noted that the further hearing would be peremptory and that, subject to whatever might arise out of the doctor's note or completely unforeseen circumstances, no further adjournments or indulgences would be granted to the former Student without the University's consent.

29. In late May, 2016, the former Student provided 2 additional medical notes from the same doctor, who appeared to be a general practitioner. The doctor noted that the former Student had been under his care for a number of years, that multiple circumstances including the threat of imminent disciplinary action were "triggers for suicidal thoughts", that he was arranging mental health support to develop a diagnosis

and plan for the former Student and that he should "not participate in any disciplinary hearings/proceedings at this time".

30. On June 13, 2016, Chair Fishbein released an interim decision noting that most of the deficiencies he earlier noted concerning the medical correspondence continued to exist and that the former Student had repeatedly failed "to provide a compelling or justifiable basis to indefinitely adjourn the proceeding". Nonetheless, he granted the former Student a further adjournment to a scheduled case conference on August 29, 2016.

31. On August 21, 2016, eight days before the scheduled case conference, the former Student advised the Tribunal that he was scheduled for a psychiatric appointment on September 13, 2016, and that he would provide a psychiatric assessment shortly thereafter. The University took the position that in light of these repeated requests to delay the proceeding, the former Student's motion should be treated as abandoned and the Tribunal should schedule the Hearing on the merits.

32. The case conference took place as scheduled on August 29, 2016, and the former Student did not attend. Over the University's objection, Chair Fishbein granted a further adjournment of the case conference to October 5, 2016, stating that the adjournment was granted "as a last indulgence only because [the former Student's] psychiatric appointment is only 2 weeks away". He made it clear that the October 5, 2016 date was peremptory and directed the former Student to provide the results of the psychiatric assessment by September 30, 2016.

33. In September, the University brought a motion to be heard at the hearing scheduled for October 5 to dismiss the First Disqualification Motion and the First Abuse of Process Motion, or in the alternative an order that the motions be permanently stayed or deemed abandoned.

34. On October 2, 2016, three days before the case conference, the former Student wrote to the Tribunal as follows:

> "Dear Mr. Chair.

> I have been diagnosed with "Major Depressive Disorder". A full confidential report is available from my family doctor. I will make arrangements to provide you with the assessment and the accompanying note advising me not to participate in these proceedings.
>
> Given my precarious mental health I am doing the best I can to meet your deadlines. Your continued patience and understanding are appreciated."

35. The former Student also attached a copy of a report from Dr. Ahmed Jehnaan Illyas, which he did not provide to the University.

36. On October 5, 2016, the day of the scheduled case conference, the former Student sent a further email to the Tribunal which said:

> "Dear Mr. Lang
>
> Please pass these confidential documents on to the Chair.
>
> I am drowning in depression and doing my best to respond to this invasive scrutiny of the most intimate and private details of my mental health.
>
> I have attached the confidential psyc. assessment for the Chair.
>
> I am unable to participate in these proceedings."

37. The former Student did not attend the October 5, 2016 case conference. The University took the position that the Chair should not take into account any of the documents and submissions that had not been provided to the University (and to which the University could therefore not respond). However, again over the objections of the University, Chair Fishbein adjourned the hearing to December 1, 2016. He also ordered that the medical reports which the former Student relied upon to be provided to the University. He concluded:

> "Yet again, I have erred on the side of [the former Student's] health – but [the former Student] is specifically warned that, short of compelling medical reasons, his non-cooperation, and continued ignoring or flaunting of the

> Tribunal's procedural directions will not be permitted to result in a *de facto* indefinite stay of these charges against him."

38. On November 11, 2016 the University delivered materials in respect of the scheduled case conference, including a report of Dr. Lisa Ramshaw, a forensic psychiatrist at the Centre for Addiction and Mental Health, who had reviewed all the medical documentation submitted by the former Student.

39. Her report concluded that the medical documents were "insufficient to conclude that [the former Student] is psychiatrically incapable of participating in the proceedings". This conclusion was explained in part as follows:

> In the letters and report there was no noted collateral information from Dr. S[redacted]'s friends, family or recent employer to either doctor. There were also no comments about the reliability of his self-report. This is particularly important in light of the disconnect between his apparent ability to work in Chicago and travel, and his apparent inability to attend at or participate in his hearings or to produce the documents requested. Further, while his self-reported symptoms are in keeping with a Major Depressive Episode, the symptoms are subjective. There was no comment about how the depression had specifically impacted his daily function. While Dr. Zizzo indicated that he was unable to participate in the proceedings, it remains unclear why this is the case, given his other abilities. It is also unclear what the "guarded prognosis" is referred to in Dr. Illyas' report, in the context of being untreated at that time.
>
> Further, the letters and the report do not describe or consider important information that would be necessary to conclude that [the former Student] is psychiatrically incapable of participating in the proceedings, including (a) information from his employer (including more details about this start date and hours, his role and daily function, and any problems he may be having); (b) further information about his personality style, function, and mental state from other collateral sources (including family, friends and his therapist, Ms. Van Impe); (c) whether he is taking the recommended medication and

> whether he is engaged in the recommended non-medical treatments; and (d) information about the impact of such treatment on his depression and substance abuse problems.

40. The day before the scheduled case conference, well after the deadline for correspondence on behalf of the former Student, a letter was received from Warren Kinsella of the Daisy Group, who described himself as a long-time advisor and friend to the former Student, stating:

> As you are perhaps aware, [the former Student] has been diagnosed by several medical professionals to be in the grip of deep depression – before, during and after his time as the Director of the Toronto District School Board.
>
> It was this impairment, this medically diagnosed deep depression, that persuaded [the former Student's] doctors to insist that he stay away from the U of T's process.
>
> We are concerned that such a process may violate the principles of natural justice. We are concerned that it denied [the former Student] the opportunity to be heard in a way that did not worsen his mental and emotional state.

41. Accompanying that letter was another letter from the former Student's doctor that indicated the former Student had started a treatment plan and suggested as follows:

> I would *suggest* that [the former Student] not participate in the disciplinary hearing during his treatment phase as *it will possibly complicate his recovery.*
>
> I remain under the direction of the psychiatrist and will re-refer [the former Student] back to psychiatry if we require further treatment recommendation or guidance. (Emphasis added.)

42. The December 1, 2016 case conference took place as scheduled. The former Student did not attend. Chair Fishbein declined to grant a further adjournment on the basis of allegations concerning the former Student's medical condition. He noted, notwithstanding the comments of the Daisy Group, that it was not correct to suggest that the former Student's doctors "insist he stay away from the U of T's process", and that indeed no doctor had given such insistence. He noted that the doctor's letter that

accompanied the most request merely "suggested" that the former Student not participate in the disciplinary hearing. Finally, Chair Fishbein noted the number of respects in which Dr. Ramshaw had concluded, unequivocally, that the material provided by the former Student was "insufficient to conclude that he is psychiatrically incapable of participating in the proceedings". He noted that although the report on those deficiencies had been provided to the former Student well before the December 1, 2016 hearing there had been no response from the former Student or his doctors to rebut or answer any of the concerns raised by Dr. Ramshaw. He concluded that in the circumstances he was no longer prepared to continue adjourning the case conference over the objections of the University as he had repeatedly done in the past.

43. Chair Fishbein then dismissed all of the former Student's motions and shortly thereafter released written reasons in which he held that:

(i) the former Student was at best a former client of Paliare Roland when the University sought to retain the firm in connection with the academic discipline matter;

(ii) the two Paliare Roland retainers dealt with separate and unrelated matters;

(iii) Paliare Roland could not have had any confidential information about the academic discipline matter;

(iv) Paliare Roland imposed an ethical wall between the former Student's former counsel and discipline counsel for the University, and there was no evidence that this measure was ineffective or compromised;

(v) Paliare Roland provided full disclosure of the unrelated retainer to the former Student who immediately contacted his independent counsel, Mr. Shime, who had been retained to represent him in the discipline matter;

(vi) it was more than fair to say that the former Student had waived or consented to any possible conflict and behaved in a manner to demonstrate that waiver or consent;

(vii) even on the record advanced by the former Student there was no conflict of interest on the part of discipline counsel, Paliare Roland, and the First Disqualification Motion should be dismissed on the grounds that it had been abandoned and on the merits;

(viii) the First Abuse of Process Motion had been abandoned and there was in any event no basis for an abuse of process motion that was ever clearly or adequately set forth.

Hearing on Charges and Penalty - January to June 20, 2017

44. Chair Fishbein also ordered the hearing on the merits to commence on February 16, 2017 and a Notice of Hearing to that effect was sent to the former Student. The December 6, 2016 Notice explicitly provided that:

> You may choose to attend the hearing with or without representation, or not attend at all. *If you do not attend, the hearing may take place without you and you will not be entitled to further notice of the proceeding.* ...
>
> If the Panel finds you guilty, it will then be asked to determine an appropriate penalty. (Emphasis in the original.)

45. On February 6, 2017, ten days before the scheduled hearing on the merits, the former Student retained a third lawyer, Carol Shirtliff-Hinds. This counsel wrote to the Tribunal advising that the former Student would be seeking an adjournment of the hearing, a request opposed by the University.

46. "With a great degree of reluctance" Chair Fishbein once again agreed to the adjournment and rescheduled the hearing for April 18, 2017, a date agreed to by all counsel. He also scheduled a case conference for February 28, 2017 (a date and time

agreed to by all counsel) to ascertain the scope of the dispute on the merits. Chair Fishbein described his conclusion on the adjournment as follows:

> It is difficult to say that the University will be substantially prejudiced by a further 8-week delay, as unpalatable as it may be. The consequences to [the former Student] may be extremely severe and, even if extremely belatedly and with not much explanation for his delay, he has finally sought counsel , which will not only be beneficial to him but of assistance to the processing of these charges and certainly the light in which their outcome will be viewed. If only barely, I have decided to exercise my discretion to grant this adjournment. *But as was stressed to counsel the hearing on April 18 will be regarded as peremptory regardless of whether [the former Student] has counsel or not (recognizing that I've already said this about previous hearings even if it inadvertently was omitted from the December 16th decision).* Barring completely unforeseen or unpredictable circumstances, the hearing will proceed on the merits on that day. Counsel for [the former Student] has repeatedly assured me that she will be able to proceed on the merits on that day and has advised me that as she is representing [the former Student] *pro bono* no issue of [the former Student's] ability to afford a lawyer will be raised as it has been in the past. (Emphasis added.)

47. At the February 28, 2017 case conference, Ms. Shirtliff-Hinds advised that the former Student intended to bring at least three applications before the hearing on the merits. Chair Fishbein directed that the applications be filed in writing no later than March 17, 2017 and that counsel for the former Student advise the University of any witnesses or additional evidence proposed to be called. To accommodate the applications, Chair Fishbein directed that the hearing on April 18, 2017 start at an earlier time.

48. A revised February 16, 2017 Notice of Hearing (Peremptory) was delivered on March 2 to the former Student which stated in part:

> As per the Chair's Case Management Interim Decision dated February 15, 2017 ... *this [April 18, 2017] hearing is* ***peremptory*** *regardless of whether you have counsel or not.*

> You may choose to attend the hearing with or without representation. *If you do not attend the hearing may take place without you and you will not be entitled to further notice in the proceeding...*
>
> If the Panel finds you guilty, it will then be asked to determine an appropriate penalty. (Emphasis in the original.)

49. On March 17, 2017, the former Student filed the motions to be heard at the start of the hearing. He sought:

(i) the recusal of Chair Fishbein due to a reasonable apprehension of bias ("the Recusal Motion");

(ii) the disqualification of Paliare Roland as counsel for the University (the "Second Disqualification Motion"); and

(iii) an order staying the Tribunal proceedings as an abuse of process (the "Second Abuse of Process Motion").

50. The University advised that it intended to move to strike the former Student's Second Disqualification and Abuse of Process Motions and asked that they be heard with the Recusal Motion in advance of the April 18, 2017 hearing date.

51. On March 28, 2017 a case conference was held at which Chair Fishbein scheduled a hearing of the motions for April 6, 2017, subject to Ms. Shirtliff-Hinds consulting with the former Student as to his availability for the hearing.

52. The next day, Ms. Shirtliff-Hinds advised that the former Student would not make himself available on April 6, 2017 but wanted to be present and asserted that it was his right to do so. The University urged that the hearing proceed notwithstanding and that if the former Student could not attend personally he could participate by Skype.

53. This led to a further case conference at which Chair Fishbein rejected the former Student's argument that the notice of the April 6, 2017 hearing was not reasonable or that there would be unfairness or prejudice to participation by Skype. Nonetheless, he

decided "to extend the benefit of any limited doubt ... about any conceivable unfairness to [the former Student]". He therefore directed the motions to be heard as expeditiously as possible on April 18, 2017.

54. As a result of a subsequent dispute about how the hearing would unfold on April 18, 2017 a case conference was held on April 12, 2017. At that time Chair Fishbein concluded that the hearing on the merits should commence on April 18, 2017 (depending on the outcome of the motions) and also that there "would only be a single evidentiary hearing". In this respect he rejected the former Student's submission that the hearing of the motion should be bifurcated to address any evidence relevant to the Second Abuse of Process Motion separately from the evidence on the merits. At a hearing on April 18, 2017, with the former Student in attendance, Chair Fishbein heard and dismissed the Second Disqualification Motion, and the Recusal Motion, and allowed the Second Abuse of Process Motion to proceed as part of the hearing on the merits.

55. In reasons released subsequently, Chair Fishbein:

(i) rejected the argument that the use of certain language (for example "torture" or "tortuous") in prior decisions disclosed cumulatively a reasonable apprehension of bias, noting that there was not (nor could there be) any allegation that the impugned language was inaccurate;

(ii) noted that in all but one case the former Student had succeeded in hearings before him over the vigorous opposition of the University, a strong indication that he had no bias against the former Student; and

(iii) relied upon the case law that established adjudicators have a duty not to yield to unfounded claims of bias and repeated adjournment requests with the resultant delay and additional cost to litigants and the system.

56. Chair Fishbein also granted the University's motion to dismiss the Second Disqualification Motion on the grounds that it had been previously considered and decided.

57. Finally, he held that the Second Abuse of Process Motion had not been fully argued and determined in the earlier proceedings and therefore should proceed as part of the hearing on the merits.

58. After consultation with the parties, Chair Fishbein scheduled June 20, 21, 22 and 26, 2017 for a hearing on the merits.

59. Again, a April 19, 2017 Notice of Hearing – Continuation was delivered to the former Student which said, in part:

> You may choose to attend the hearing with or without representation. *If you do not attend, the hearing may take place without you and you will not be entitled to further notice of the proceeding. ....*
>
> If the Panel finds you guilty, it will then be asked to determine an appropriate penalty. (Emphasis in the original.)

The former Student applies for judicial review and seeks an adjournment

60. On May 18, 2017 the former Student commenced an application for judicial review challenging Chair Fishbein's decisions on the motions. In the factum delivered in support of this application he said that he should be allowed to re-litigate the issue in the Disqualification Motion on the basis that he should be able to have "it actually be argued by him now that he is mentally able to deal with the matter".

61. Shortly thereafter, the former Student gave an interview to a former Chair of the Toronto District School Board which was posted online. During the course of the interview he said: "I'm on the mend and, again, inspired by the outpouring of support from family and friends and supporters. So I'm – I'm ready to fight..." concerning his thesis, while acknowledging some problems he indicated he intended to "vigorously defend" his thesis to the University and again noted "I'm here today doing this video and fighting back. As I said, I'm on the mend."

62. Subsequently, the former Student took the position that the hearing on the merits, scheduled for June 20, 2017, should be adjourned pending the outcome of the judicial review application. The University opposed this request and characterized it as a ploy to further delay the Tribunal hearings.

63. At a case conference on June 1, 2017, Chair Fishbein denied the request for an adjournment and in reasons subsequently released June 8, 2017. In the subsequent reasons, Chair Fishbein held that "adjudicative efficiency and an appropriate allocation of resources, particularly in long-delayed proceedings like these, in my view dictate no adjournment".

The Former Student unsuccessfully asks the Divisional Court to stay the Tribunal Proceeding

64. The former Student then retained another lawyer who advised that he intended to bring an urgent motion to the Divisional Court on June 16, 2017 to stay the Tribunal proceeding. In response, the University brought a cross-motion to quash the application for judicial review.

65. It is to be noted that nowhere in the Divisional Court materials did the former Student suggest he was incapable of attending the hearing or instructing counsel and there was no suggestion that he was incapable of swearing to the truth of the contents of the affidavit filed in support of the proceeding.

66. The former Student's motion to stay and the University's cross-motion was heard on June 16, 2017. On June 19, the day before the Tribunal hearing was scheduled to start, the court advised counsel that the former Student's motion to stay had been dismissed and the University's cross-motion to quash allowed, with reasons to follow.

67. In the result, the hearing on the merits was set to proceed the next day, June 20, 2017, as set forth in the Notice previously delivered to the former Student.

The Hearing on the Merits – June 20, 2017

68. On June 20, 2017 the former Student did not attend the hearing. His counsel did and advised that the former Student had "mental health issues" and that she now had conflicting and therefore not clear instructions. She requested an adjournment, saying she was unable to continue. She advised that if the Panel decided to proceed with the hearing she would not participate because she believed that she could not ethically do so. She said that the former Student "continues to see a doctor", but that although she had asked for additional medical documentation she had not received any.

69. As it noted in its subsequently released reasons, the Panel pressed counsel for more information as to the nature of the medical issue, but counsel was not able to provide any further information than the medical notes and assessment that had been provided earlier in 2016 (that Chair Fishbein had previously determined to be an inadequate basis for an adjournment).

70. The Panel then adjourned briefly to allow counsel to contact the former Student to determine how soon he could provide medical information to support the adjournment request. After speaking with the former Student, counsel advised that he had had "an anxiety attack yesterday" and could perhaps provide substantiation that he was unable to proceed by the end of the week.

71. After recessing to consider the submissions, the Panel unanimously determined not to grant the adjournment.

72. The reasons for this decision are contained in the Panel's reasons for decision on liability and penalty, all of which were dated July 10, 2017.

73. The Panel did not accept counsel's attempt to conflate "mental health 'issues'" with an actual disability or incapacity to participate in the proceedings. They did not doubt that the proceedings would engender anxiety, stress or some degree of depression in the former Student. That the proceedings have raised "mental health issues" for him had been a repeated refrain from the former Student, his counsel, and/or his

representatives. However, on every occasion where the former Student had been granted an indulgence or an adjournment to medically substantiate that he was actually disabled or incapacitated to such a degree that he was unable to participate in the proceedings he failed adequately or satisfactorily to do so (as detailed above).

74. The Panel also noted that not only had the former Student been able to swear an affidavit in support of his unsuccessful motion to stay this proceeding before the Divisional Court, no issue of the former Student's health or ability to give instructions was raised in those proceedings.

75. Finally, the Panel noted that it had not been advised in the face of explicit questions that the former Student was hospitalized or under immediate medical supervision but only told that no medical corroboration could be obtained for almost five days, with no indication of the form or nature of whatever medical corroboration might be forthcoming. Indeed, the Panel noted that the fact that "no medical corroboration could be obtained for almost five days [led] to the not unreasonable inference that he was neither under immediate medical supervision nor suffering from any acute crisis". The Panel also noted that waiting until the end of the week for medical corroboration would lead to the cancelling of at least three scheduled days of hearing, and would virtually assure that the hearing would not resume for several months. The Panel concluded:

> 12. In the end, absent any (let alone clear and compelling) medical evidence (and in reviewing the history of the prior proceedings and interlocutory decisions [the former Student] could not possibly say he was unaware of both the need for such medical evidence or the required contents of such medical evidence), in all of the circumstances, we were not prepared to exercise our jurisdiction to grant an adjournment.

76. After the Tribunal announced its decision not to adjourn, counsel for the former Student withdrew.

77. The Tribunal proceeded to hear evidence and make the conclusions on liability and penalty that have been detailed at the outset of these Reasons for Decision.

Our Decision on the Appeal

78. The *Code* provides wide powers for the Discipline Appeals Board to modify a decision imposed by a Tribunal Panel:

> E.7. The Discipline Appeals Board shall have the power,
>
> (a) to dismiss an appeal summarily and without formal hearing if it determines that the appeal is frivolous, vexatious or without foundation;
>
> (b) in circumstances which the Tribunal members hearing the appeal consider to be exceptional, to order a new hearing; and
>
> (c) in any other case, to affirm, reverse, quash, vary or modify the verdict, penalty or sanction appealed from and substitute any verdict, penalty or sanction that could have been given or imposed at trial.

79. Notwithstanding these broad powers, Discipline Appeals Board cases have generally analyzed decisions under appeal to examine whether the Tribunal Panel made an error in the application of general administrative law, the interpretation or application of a large body of University Tribunal and Appeals Board cases, or in fact-finding particularly where the findings are unsupported by any evidence.

80. In other words, the jurisdiction on appeal is broader than simply asking the question whether the decision below was unreasonable. It extends to examining whether the decision below represents a significant error of principle or law, including with respect to the application of established principles drawn from the Tribunal's trial and appellate jurisprudence.

81. In the result, Discipline Appeal Board Panels have made decisions based on these principles, rather than whether they would have decided cases differently themselves.

82. This deference to the findings of a Tribunal Panel is particularly appropriate in relation to the conduct of the hearing and in particular the decision whether or not to grant a request for an adjournment. The decision to grant or deny one falls squarely

within the discretion of the panel hearing the case. Natural justice and procedural fairness can only be said to be infringed where the Panel exercised its discretion in an unreasonable or non-judicious fashion.[2]

83. In any event, in this case we conclude that the decisions complained of on this appeal were not unreasonable, contrary to legal principle, unsupported by the evidence, or injudicious. Indeed, even if we were to ask ourselves the question of whether we would have granted the adjournment, for the reasons elaborated below we would come to the same conclusion as the Panel.

(a) The Decision not to Adjourn all or part of the June 20, 2017 Hearing

84. The former Student argues that:

(i) the June 20, 2017 hearing was the first peremptory hearing date and given the "medical evidence that attendance at the hearing would be harmful to his health" the Panel ought not to have proceeded in his absence, and to do so was a breach of procedural fairness and natural justice;

(ii) in any event, once his counsel withdrew and he was thus unrepresented it could not possibly have been reasonable to proceed. The effective result was to deny the former Student a fair opportunity to make submissions on either the alleged academic misconduct or the penalty imposed; and

(iii) in any event, procedural fairness required the Panel to adjourn before its determination of penalty. Not to do so was unreasonable and in breach of procedural fairness. It was "no secret what the University would be asking for" in the way of penalty, so that the Panel must have been aware that the former Student's career would be entirely in jeopardy. He should therefore have been given the opportunity to lead evidence of mitigating factors with respect to the

[2] See for example *Senjule v. LSUC*, 2013 ONSC 218 (Div. Ct.) at paras. 20-22

commission of the offence and/or the draconian and serious impact on him of the revocation of the degree which it was known the University would ask for.

85. The Court of Appeal has given a useful and "non-exhaustive list of procedural and substantive considerations" that may factor into a decision to grant or refuse an adjournment:

> A non-exhaustive list of procedural and substantive considerations in deciding whether to grant or refuse an adjournment can be derived from these cases. *Factors which may support the denial of an adjournment may include a lack of compliance with prior court orders, previous adjournments that have been granted to the application, previous peremptory hearing dates, the desirability of having the matter decided and a finding that the applicant is seeking to manipulate the system by orchestrating delay.* Factors which may favour the granting of an adjournment include the fact that the consequences of the hearing are serious, that the applicant would be prejudiced if the request were not granted, and a finding that the applicant was honestly seeking to exercise his right to counsel and had been represented in the proceedings up until the time of the adjournment request. *In weighing these factors, the timeliness of the request, the applicant's reasons for being unable to proceed on the scheduled date and the length of the requested adjournment should also be considered.*[3] (Emphasis added)

86. As set forth above, and referred to further below, all of the factors supporting the denial of an adjournment exist in this case, and the factors which might favour the granting of an adjournment had in fact led to multiple adjournments of the proceedings prior to the June 20th hearing.

87. As set forth in the history of proceedings above, and contrary to the former Student's submissions, the June 20, 2017 hearing was not the first peremptory hearing date he had been given. Indeed, the evidence indicates he had been given numerous indulgences and adjournments, in many cases on the express statement that the next hearing date (which the former Student missed) was peremptory, and frequently with descriptions that effectively amounted to the same warning. In virtually every case, the

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[3] *The Law Society of Upper Canada vs. Igbinosun*, 2009 ONCA 484 at para. 37

former Student was also specifically advised that general statements that he had "mental health issues" or that his medical condition meant that participation would be harmful to him was not a sufficient basis upon which to obtain an adjournment. He was specifically advised on more than one occasion (for example see paragraphs 26, 30, 39 and 42 above) of the medical evidence that would be required to demonstrate his inability to participate in the proceedings. The need for clear and compelling medical evidence of the inability of the former Student to participate in the proceedings was only reinforced by the number of times the former Student claimed his condition precluded attendance, but was unwilling or unable to demonstrate that and yet requested further adjournments. Yet when the peremptory hearing commenced on June 20, not only was there no hint of any such evidence, the most the former Student could proffer was that something might be forthcoming five days later.

88. The former Student has never, even to date, provided medical evidence that he had a medical condition which incapacitated him from participating in the proceedings.

89. We share the view of the Panel that it is not surprising that the seriousness of these proceedings and the potential consequences for the former Student were such that they caused him great stress and anxiety, and that stress and anxiety would be lessened if he were not required to attend to answer to the charges. But that is not a basis upon which the proceedings could be adjourned – let alone continuously adjourned.

90. This conclusion is not affected by his counsel's decision to withdraw when the last requested adjournment was not granted. In the first place, we are not prepared to conclude, as the former Student appeared to invite us to do, that the former Student was not aware that if the adjournment was granted his counsel would not remain in attendance. In the absence of any evidence one way or the other we must assume that counsel had advised the client that this would be the result of a failure to obtain an adjournment and (apparently) a failure to provide instructions on what was to be done once the adjournment was not granted.

91. Moreover, the former Student had repeatedly been advised, most recently in the Notice for the June 20, 2017 hearing, that he could choose to attend the hearing with or without representation, but that if he did not attend, the hearing might take place without him and he would not be entitled to any further notice. He had received multiple similar warnings with respect to previously scheduled hearings.

92. We also conclude that it was neither erroneous nor unreasonable for the Panel to proceed to the sanction phase of the hearing, following its determination that the former Student was guilty of the charge.

93. The hearing scheduled for June 20th was to deal with both the liability and, if the former Student was convicted, penalty phase of the proceeding.

94. The Tribunal's *Rules of Practice and Procedure* make clear that a person who does not attend a hearing of which they have had notice is not entitled to further notice of different stages of the proceeding:

> Rule 17
>
> Where notice of an oral hearing, electronic hearing, or written hearing has been given to a person in accordance with this rule, and the person does not attend at or does not participate in the hearing, *the Panel may proceed in the absence of the person or without the person's participation and the person is not entitled to any further notice of the proceeding.* (Emphasis added.)

95. Even more importantly, the former Student had multiple instances of notice that the penalty hearing would proceed immediately after the hearing of the charges. The six Notices of Hearing he had been given, including the Notice of Hearing for the June 20, 2017 hearing warned him that "if the panel finds you guilty, it will then be asked to determine an appropriate penalty"[4]. In addition, on multiple occasions Chair Fishbein's decisions reinforced the same warning.

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[4] In addition to the examples set forth at paragraphs 43, 48 and 59 above, Notices of Hearing dated June 10, 2014 and March 2, 2017 contained the same notification that upon conviction the Panel would proceed to consider penalty.

96. Moreover, the University did not call any additional evidence in support of its argument on penalty, so there could be no basis for a suggestion of non-disclosure to the former Student. As well, with the Notice of Hearing he was given a copy of the *Code* which set out the sanctions the Panel could impose upon him, and a link to the website containing past Tribunal decisions that would permit him to assess the potential penalty he would be facing.

97. We conclude there is no reasonable basis for an argument that the former Student was not afforded reasonable notice before the Tribunal considered his penalty, as he alleged, or the opportunity to research analogous cases to examine penalties imposed and determine whether his penalty was reasonable, as he also alleges.

98. In any event, the former Student has failed to demonstrate a basis upon which it could be concluded that if the Panel had not proceeded directly to a hearing on sanction a variation of the penalty might be imposed.

99. In his written submissions, the former Student asserted that if he had been given the opportunity he would have called character evidence and provided letters of support at the penalty phase of the hearing. In oral submissions, his counsel candidly agreed that he was unable to provide any such evidence, or particulars of what that evidence would be. Nor did he provide any authority to suggest that such evidence would warrant a different penalty from the one imposed.

100. He did argue that the former Student had achieved "illustrious things" and a "lofty position" with the result that the revocation of his PhD would have a much greater impact than had the plagiarism been discovered when it first occurred. In our view, this amounts to an argument that a student who succeeds in concealing an offence for a long period of time is entitled to a lesser penalty than one whose offence is discovered immediately. We do not find this argument persuasive. Indeed, one might reasonably say that a student who has had 20 or more years of benefit arising from the plagiarism he initially committed should receive a greater penalty than one whose offence is discovered immediately and before that benefit arises.

101. We find the Panel's conclusion to recommend the cancellation and recall of the former Student's degree not unreasonable and indeed appropriate. We agree with the University that character evidence and letters of support could not reasonably be expected to make a difference to this sanction.

102. Plagiarism, particularly plagiarism of the nature and extent found in the former Student's thesis is a very serious offence. However, apart from admitting to plagiarism at his initial meeting with the Dean's designate, as the Panel noted, the former Student has not demonstrated any real remorse or an appreciation of the gravity of his misconduct that might persuade the Panel to mitigate the usual and regular sanctions imposed by the Tribunal in these circumstances.

103. Indeed, in all cases before the Tribunal where plagiarism was found at a graduate level thesis the decisions have recommended cancellation of the student's degree, except in the one case where the plagiarism was discovered before the degree was conferred and expulsion was recommended. That this would be the expected result of a conviction on a charge of this sort was in effect acknowledged by the former Student, whose counsel acknowledged that there could be "no surprise about the seriousness of the penalty the University would be asking for".

104. The propriety of the cancellation of the degree was reinforced by the unequivocal evidence of Professor De Nil that had plagiarism been detected before the former Student received his degree, the degree would never have been conferred. This seems to us to be absolutely unsurprising.

105. In all of the circumstances we conclude that the Panel's decision to proceed to assess the penalty, and to determine that the former Student should be given a final course grade of 0 in the course in which the thesis was submitted and to recommend that the former Student's degree be cancelled and recalled was neither procedurally unfair nor unreasonable. Indeed, we think it was correct.

106. As noted above, a majority of the Panel also recommended that the President of the University recommend to Governing Council that the former Student be expelled due to the egregiousness of the former Student's academic misconduct. The Co-Chair dissented, viewing expulsion of a student who completed his studies and received the impugned degree more than 20 years ago unnecessary, and therefore excessive. We cannot say that either of these conclusions is unreasonable. We leave them undisturbed for further consideration by Governing Council.

February 2, 2018

Patricia D.S. Jackson, Chair
on behalf of the Appeals Board Panel

APPENDIX A

Allegation	Thesis Page Number	Source	Is Source Cited for this passage?	Is Source Listed in Bibliography?	Note
1.	2-3	Alladin (Tab 1)	No	No	
2.	7-8	Coakley & White (Tab 2)	No	No	
3.	9	Spreitzer (Tab 3)	No	No	
4.	10	Troyna (Tab 4)	Yes	Yes	
5.	11	Troyna (Tab 4)	Yes	Yes	
6.	18-19	Harris (Tab 5)	No	Yes	
7.	19	Sellers (Tab 6)	No	No	
8.	19-20	Harris (Tab 5)	No	Yes	
9.	20	Sellers (Tab 6)	No	No	Cite in thesis is to a different Sellers article.
10.	22	Sellers (Tab 6)	No	No	
11.	23-27	Harris (Tab 7)	No	No	Cite in thesis is to different Harris article.
12.	28-32	Harris (Tab 7)	No	No	Cite in thesis is to different Harris article.
13.	33	Fejgin (Tab 8)	No	No	
14.	34	Fejgin (Tab 8)	No	No	
15.	36	Fernandez-Balboa (Tab 9)	Yes	Yes	
16.	36-37	Snyder & Spreitzer (Tab 10)	No	Yes	Cite in thesis (to Gaston and Edwards) appears to be incorrect.
17.	39	Edwards (Tab 11)	No	No	Cite in thesis is to different Harris article.
18.	44-45	United Church of Canada (Tab 12)	No	No	Cites in thesis (to Novogrodsky) appear to be incorrect.
19.	54	Velez & Fernandez (Tab 13)	No	No	
20.	59	Holland (Tab 14)	No	No	

Allegation	Thesis Page Number	Source	Is Source Cited for this passage?	Is Source Listed in Bibliography?	Note
21.	59	Ascher (Tab 15)	No	No	
22.	60	Ascher (Tab 15)	No	No	
23.	61	Ascher (Tab 15)	No	No	
24.	61	Ascher (Tab 15)	No	No	
25.	62	Ascher (Tab 15)	No	No	Cite in thesis (to Ogbu) appears to be incorrect.
26.	62	Ascher (Tab 15)	No	No	
27.	63	Ascher (Tab 15)	No	No	
28.	64	Ascher (Tab 15)	No	No	
29.	65	Slavin and Madden (Tab 16)	Yes	Yes	
30.	65	Cummins (Tab 17)	No	No	Cite in thesis is to a different Cummins article.
31.	65-69	Harris (Tab 7)	No	No	Cite in thesis is to a different Harris article – one para. is block quoted with correct page reference, but not to the source article (which does not appear in bibliography)
32.	69	Edwards (Tab 18)	No	No	
33.	69-70	Sailes (Tab 19)	Yes	Yes	
34.	74	Spreitzer & Snyder (Tab 20)	No	No	
35.	74-75	Edwards (Tab 18)	No	No	Cite in thesis is to a different Edwards article
36.	75	Ebony (Tab 21)	No	No	Cite in thesis is to Edwards.
37.	75-76	Harrison (Tab 22)	No	Yes	
38.	77-78	Harrison (Tab 22)	Yes	Yes	

Allegation	Thesis Page Number	Source	Is Source Cited for this passage?	Is Source Listed in Bibliography?	Note
39.	80	Gaston (Tab 23)	No	Yes	
40.	82	Sailes (Tab 24)	No	No	
41.	84	Marsh (Tab 25)	No	No	
42.	144	Holland and Andre (Tab 26)	No	No	
43.	146	Holland and Andre (Tab 26)	No	No	
44.	146	Spreitzer (Tab 3)	No	No	
45.	147	Spreitzer (Tab 3)	No	No	
46.	153	Eitzen and Purdy (Tab 27)	No	No	
47.	153	Harrison (Tab 22)	No	Yes	
48.	153-154	Messner (Tab 28)	No	No	
49.	155	Good (Tab 29)	No	No	
50.	156	Good (Tab 29)	No	No	An article by Brophy & Good appears in the Bibliography, but it does not appear to be this article.
51.	156-157	McCombs (Tab 30)	No	No	
52.	157-158	Harrison (Tab 22)	No	Yes	
53.	158	Troyna (Tab 4)	Yes	Yes	
54.	161	Harrison (Tab 22)	No	Yes	
55.	161-162	Harrison (Tab 22)	Yes	Yes	
56.	164-165	Essed (Tab 31)	No	Yes	
57.	167-169	Sellers (Tab 6)	No	No	
58.	169-170	Fernandez-Balboa (Tab 9)	No	Yes	
59.	171-172	Eitzen and Purdy (Tab 27)	No	No	

Allegation	Thesis Page Number	Source	Is Source Cited for this passage?	Is Source Listed in Bibliography?	Note
60.	172	Eitzen and Purdy (Tab 27)	No	No	
61.	174	Nocera (Tab 32)	No	No	
62.	177-178	Eitzen and Purdy (Tab 27)	No	No	Cite in thesis is to a different Eitzen article
63.	178	Eitzen and Purdy (Tab 27)	No	No	
64.	178	Edwards (Tab 11)	No	No	Cite in thesis is to a different Edwards article
65.	179	Eitzen and Purdy (Tab 27)	No	No	Cite in thesis (to Edwards) appears to be incorrect
66.	184	Siegel (Tab 33)	No	No	
67.	189	Winbush (Tab 34)	No	No	

APPENDIX B

Chronology of proceedings in U of T and C[redacted] S[redacted] – References to Tina Lie Affidavit

Date	Event
March 12, 2013	Provost files charges under the *Code of Behaviour on Academic Matters* **(Ex 2)**
March 13, 2013	Dr. S[redacted] requests that the Provost delay the proceedings so that Dr. S[redacted] can "deal with an urgent family matter". **(Ex 3-4)**
April to May 2013	Dr. S[redacted]'s first lawyer, Jonathan Shime, requests that the matter be put on hold due to Dr. S[redacted]'s health issues **(Ex 5-6)**
June 2013	Provost attempts to schedule hearing on the charges. Dr. S[redacted] asks to schedule the hearing for a date in October 2013 and Provost agrees **(Ex 7-9)**
July 25, 2013	Dr. S[redacted] gives interviews to the media, which include references to his ongoing job search **(Ex 11-12)**
August 2013	Parties agree to hold October 16, 2013 for a hearing on the charges **(Ex 15-16)**
October 8-9, 2013	Dr. S[redacted] provides new information and documents, which results in adjournment of October 16, 2013 hearing **(Ex 17)**
October 2013 to January 2014	Provost conducts further investigations due to new information received from Dr. S[redacted] and parties discuss potential joint retainer of forensic document examiner
Mid February 2014	Provost attempts to schedule hearing for March or April 2014 **(Ex 21, 23)** Mr. Shime advises the Provost that he and Dr. S[redacted] have "amicably ended [their] relationship" **(Ex 22)**
February 24, 2014	Dr. S[redacted] retains his second lawyer , Selwyn Pieters, who advises that Dr. S[redacted] intends to raise conflict of interest allegation against Paliare Roland Provost denies allegation **(Ex 24-25)**
March 17, 2014	Dr. S[redacted] brings motion before Tribunal for disqualification of Paliare Roland as counsel for the University and for a stay (on the grounds of abuse of process) **(Ex 26)**
April to May 2014	Parties attempt to reach agreement on protocol for Dr. S[redacted]'s disqualification motion. No agreement is reached. The Provost brings a motion for directions to obtain documents necessary to respond to Dr. S[redacted]'s disqualification motion. The motion for directions is scheduled for July 15, 2014 **(Ex 28-29)**
Mid to Late July 2014	Chair of Tribunal, Paul Schabas, withdraws as Chair of Tribunal **(Ex 31)** New Chair, Paul Morrison, is appointed as Chair of Tribunal **(Ex 32)**
July 25, 2014	Case conference is held with Chair Morrison to address procedural issues. Chair Morrison releases Case Management Direction, directing motion for directions to be heard in writing **(Ex 33)**

Chronology of proceedings in U of T and C[redacted] S[redacted] – References to Tina Lie Affidavit

Date	Event
September 8, 2014	Chair Morrison releases Motion Decision on motion for directions, ordering Dr. S[redacted] to produce documents and to comply with protocol for assertions of privilege, which required Dr. S[redacted] to provide a list of documents over which he asserted privilege and a brief statement of the basis for the claim of privilege **(Ex 34)**
October 16, 2014	Dr. S[redacted] produces documents in response to Motion Decision of September 8, 2014 Provost has concerns with scope of disclosure and privilege assertions
Late October 2014 to February 2015	Parties attempt to reach a resolution on production and privilege issues
March 25, 2015	Provost suggests "streamlined" approach to deal with issues relating to Dr. S[redacted]'s disqualification motion **(Ex 35)**
April 23, 2015	Dr. S[redacted] raises a new defence based on the "ultimate limitation period" for the first time and suggests that issue should be addressed first **(Ex 36)**
May 8, 2015	Provost writes to Dr. S[redacted] to respond to the new "ultimate limitation period" issue **(Ex 37)**
July 8, 2015	Provost requests case conference with Chair Morrison to address Dr. S[redacted]'s failure to disclose certain documents and his assertion of privilege of documents ordered produced by Chair Morrison **(Ex 39)**
August 25, 2015	Case conference held with Chair Morrison
August 27, 2015	Chair Morrison releases Case Management Decision directing Dr. S[redacted] to provide further materials to substantiate his assertion of privilege over documents and that he do so by October 19, 2015 **(Ex 40)** To this day, Dr. S[redacted] has never complied with this Case Management Direction
October 5, 2015	Mr. Pieters advises that he no longer represents Dr. S[redacted] **(Ex 41)**
October 19, 2015	Dr. S[redacted] advises he intends to pursue disqualification motion but needs an extension **(Ex 43)** Provost requests case conference with Chair Morrison **(Ex 44)**
November 11, 2015	Chair Morrison withdraws as Chair because of allegation raised by Dr. S[redacted] of a reasonable apprehension of bias **(Ex 46)**
January 2016	New Chair, Bernard Fishbein, appointed as Chair of the Tribunal. Chair Fishbein requests dates from parties for a case conference **(Ex 47-49)**

Chronology of proceedings in U of T and C[redacted] S[redacted] – References to Tina Lie Affidavit

Date	Event
February 2016	Dr. S[redacted] advises he intends to pursue disqualification motion but is unavailable until late April or May 2016 for case conference **(Ex 50)** At the same time, Dr. S[redacted] gives interview to media about a new book he has written **(Ex 51)** Case conference is ultimately scheduled for April 29, 2016
April 18, 2016	Dr. S[redacted] requests 6-8 month adjournment of case conference because he has been unable to retain counsel and is navigating "two personal issues" **(Ex 52)** Provost opposes adjournment request **(Ex 53)**
April 20, 2016	Dr. S[redacted] provides medical note in support of adjournment request (note from Dr. Zizzo dated April 14, 2016) **(Ex 54)** Provost continues to oppose adjournment request on the basis that the medical note is inadequate and is insufficient to justify an adjournment **(Ex 55)**
April 26, 2016	Over Provost's objection, Chair Fishbein grants adjournment of case conference scheduled for April 29, 2016 **(Ex 56)**
May 4, 2016	Chair Fishbein releases Adjournment Decision, directing Dr. S[redacted] to provide better doctor's note by May 24, 2016, if he wishes a further adjournment **(Ex 57)**
May 24 and 31, 2016	Dr. S[redacted] provides further medical notes in support of adjournment request (notes from Dr. Zizzo dated May 16 and 30, 2016) **(Ex 58-59)** Provost takes position that the further medical notes are inadequate to justify continued adjournment of hearing **(Ex 60)**
June 13, 2016	Chair Fishbein releases Interim Decision finding that Dr. S[redacted] has failed to provide sufficient basis to indefinitely adjourn the proceedings. Chair Fishbein schedules case conference for August 29, 2016 **(Ex 62)**
August 21, 2016	Dr. S[redacted] writes to Tribunal, advising that he is scheduled for psychiatric appointment on September 13, 2016 **(Ex 63)**
August 23, 2016	Provost takes the position that Dr. S[redacted]'s disqualification motion should be treated as abandoned and parties should proceed to schedule hearing on the charges **(Ex 64)**
August 29, 2016	Case conference is held with Chair Fishbein. Dr. S[redacted] does not attend. Over Provost's objection, Chair Fishbein declines to proceed in Dr. S[redacted]'s absence
September 1, 2016	Chair Fishbein releases Interim Decision, granting a further adjournment to October 5, 2016 and directing Dr. S[redacted] to file psychiatric assessment by September 30, 2016 **(Ex 65)**

Chronology of proceedings in U of T and C[redacted] S[redacted] – References to Tina Lie Affidavit

Date	Event
September 27, 2016	Provost brings motion for an order dismissing Dr. S[redacted]'s disqualification motion returnable at the hearing on October 5, 2016 **(Ex 71)** Dr. S[redacted] does not comply with deadline to file psychiatric assessment by September 30, 2015
October 2 and 5, 2016	Dr. S[redacted] writes to Tribunal, advising that he has been diagnosed with major depressive disorder and is unable to participate in the proceeding, and attaching medical report (reports from Dr. Illyas dated September 13, 2016) **(Ex 67-69)**
October 5, 2016	Case conference is held with Chair Fishbein. Dr. S[redacted] does not attend. Over Provost's objection, Chair Fishbein grants a further adjournment of the case conference and the hearing of Provost's motion to dismiss
October 19, 2016	Chair Fishbein releases Interim Decision on adjournment, directing parties to file submissions and adjourning hearing of October 5, 2016 to December 1, 2015 **(Ex 70)**
November 11, 2016	Provost files responding medical report (report of Dr. Ramshaw dated November 10, 2016) **(Ex 71)** Dr. S[redacted] does not file reply materials within deadline **(Ex 77)**
November 30, 2016	Advisor to Dr. S[redacted] (Warren Kinsella) writes to Tribunal on Dr. S[redacted]s behalf, advising that Dr. S[redacted] will not attend hearing on December 1, 2016 and attaching additional medical note (note from Dr. Zizzo dated October 31, 2016) **(Ex 73)**
December 1, 2016	Case conference is held with Chair Fishbein. Dr. S[redacted] does not attend. Chair Fishbein orders hearing to proceed in Dr. S[redacted]'s absence and dismisses Dr. S[redacted]'s disqualification motion and orders the hearing on the charges to proceed on February 17, 2017 **(Ex 75-76)**
December 19, 2016	Chair Fishbein releases Interim Decision on dismissal of Dr. S[redacted]'s disqualification motion **(Ex 77)**
January 16-17, 2017	Dr. S[redacted] gives media interviews **(Ex 78-79)**
February 6, 2017	Dr. S[redacted] retains his third lawyer, Carol Shirtliff-Hinds, and requests adjournment of February 17, 2017 hearing **(Ex 80)** Provost opposes request for adjournment **(Ex 81)**
February 13, 2017	Case conference is held with Chair Fishbein to address adjournment request. Over Provost's objection, Chair Fishbein grants Dr. S[redacted]'s request, directing case conference to be held on February 28, 2017, and adjourning hearing of the charges to April 18, 2017 **(Ex 82-83)**

Chronology of proceedings in U of T and C[redacted] S[redacted] – References to Tina Lie Affidavit

Date	Event
February 15, 2017	Chair Fishbein releases Case Management Interim Decision on the adjournment request **(Ex 82)**
February 28, 2017	Case conference is held with Chair Fishbein. Dr. S[redacted] advises that he intends to bring at least three applications before the hearing on the charges
March 1, 2017	Chair Fishbein releases Case Management Interim Decision, directing earlier start time for hearing on April 18, 2017 to accommodate Dr. S[redacted]'s applications **(Ex 84-85)**
March 17-21, 2017	Dr. S[redacted] brings motion seeking (1) recusal of Chair Fishbein; (2) disqualification of Paliare Roland; and (3) a stay of proceedings due to an abuse of process created primarily by delay **(Ex 86)** Provost requests case conference to schedule motions to strike Dr. S[redacted]'s disqualification and abuse of process motions as an abuse of process **(Ex 89)**
March 28, 2017	Case conference is held with Chair Fishbein, who directs that outstanding motions will be held on April 6, 2017, subject to Dr. S[redacted]'s availability **(Ex 90)**
March 29, 2017	Case conference is held with Chair Fishbein because Dr. S[redacted] claims he unavailable on April 6, 2017, and he refuses to participate by Skype. Chair Fishbein denies Provost's request to continue with motions on April 6, 2017, but provided directions for the hearing of the motions on April 18, 2017 **(Ex 92)**
April 12, 2017	Case conference is held with Chair Fishbein. Chair directs that hearing on the charges will start on April 18, 2017, after the outstanding motions (depending on outcome of motions) **(Ex 95)**
April 18, 2017	Hearing is held. Chair Fishbein dismisses Dr. S[redacted]'s recusal motion, grants Provost's motion to strike Dr. S[redacted]'s disqualification motion and allows Dr. S[redacted]'s abuse of process motion to proceed as part of hearing on the charges. Hearing dates for the charges set for June 20, 21, 22 and 26, 2017 **(Ex 96)**
May 17, 2017	Chair Fishbein releases Interim Decision on motions **(Ex 97)**
May 18-31, 2017	Dr. S[redacted] informs Provost that he intends to bring application for judicial review and hearing on the charges should not proceed while application is pending **(Ex 98)** Provost opposes adjournment request **(Ex 100)**
May 23, 2016	Dr. S[redacted] gives interview, which is posted online **(Ex 105-106)**
June 1, 2017	Case conference is held to address Dr. S[redacted]'s request to adjourn hearing scheduled for June 20, 2017. Chair Fishbein denies adjournment request
June 6, 2017	Dr. S[redacted] informs Provost and Divisional Court that he intends to bring an urgent motion for stay of the Tribunal proceeding on June 16, 2017 **(Ex 103)**

Chronology of proceedings in U of T and C[redacted] S[redacted] – References to Tina Lie Affidavit

Date	Event
June 8, 2017	Chair Fishbein releases Interim Decision on adjournment request **(Ex 102)**