
Report of the Ad Hoc Investigatory Committee

To Examine the Situation of **Dr. Morteza Shirkhazadeh** in the Faculty of Engineering & Applied Science at Queen's University

April 2015

Report of the Ad Hoc Investigatory Committee to Examine the Situation of Dr. Morteza Shirkhanzadeh in the Faculty of Engineering & Applied Science at Queen's University

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Preface

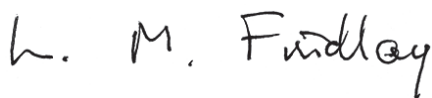
The Ad Hoc Investigatory Committee into the case of Prof. Morteza Shirkhazadeh at Queen's University was tasked with considering whether Prof. Shirkhazadeh's academic freedom was violated as a result of alleged actions taken against him following posts he made on his website. These posts accused certain members of the academic community of engaging in scholarly misconduct. The case raises important questions about the intersections between academic freedom, whistleblowing, and extramural communications.

Following the completion of the Ad Hoc Investigatory Committee's report, CAUT and the Academic Freedom and Tenure Committee were made aware of some significant developments toward a resolution of the matters involving Dr. Shirkhazadeh. A memorandum of settlement was reached between the Queen's University Administration, the Queen's University Faculty Association, and Dr. Shirkhazadeh that dealt with, among other things, issues raised in Recommendations 1, 2, 3 and 4 in the report. CAUT commends the parties for negotiating in good faith to seek a mutually acceptable agreement.

Queen's University has also recently reviewed and revised its Senate Policy on Research Integrity, consistent with Recommendation 5. The new policy adheres to the report's recommendation that complainants be provided a copy of the outcome of an investigation into allegations involving research integrity. Section A d) of the new policy requires that following initial assessment of a complaint, *The Vice-Principal (Research) will inform the respondent and complainant of his/her decision in writing.* Section B h) provides the following:

The Vice-Principal (Research) will provide the complainant with a copy of the final report or a redacted version of the final report if the Vice-Principal (Research) believes it is necessary to so redact the report, within 10 working days of his/her receipt of the final report. Where a redacted version of the report is provided to the complainant, the document should at a minimum describe the investigative process and Investigative Committee findings with respect to the complaint.

Given the resolution of several matters noted in the report, both the Queen's Administration and the Queen's University Faculty Association requested that CAUT not publish the Committee's final report. The Academic Freedom and Tenure Committee discussed this matter extensively, and concluded that, notwithstanding the settlement, the matters raised in the report are of significant interest to the broader academic community. The AF&T Committee recommended publication with an acknowledgement that the Queen's University Administration has shown good faith in seeking a resolution to the issues raised by the report.



Len Findlay, Chair
CAUT Academic Freedom and Tenure Committee



David Robinson, Executive Director
Canadian Association of University Teachers

1 | Background & Context

The Queen's University Faculty Association (QUFA) raised concerns with the Canadian Association of University Teachers (CAUT) over the treatment of Professor Shirkhazadeh by Queen's University. The concerns involved directing Professor Shirkhazadeh to remove posts about alleged academic fraud and misconduct concerning another faculty member he had placed on a publicly accessible website, disciplining him for failure to do so, and initiating harassment proceedings against him for making the allegations against the other faculty member. In response to these concerns, CAUT established an Ad Hoc Investigatory Committee (AHIC).

The terms of reference of the AHIC were to:

- To investigate whether Professor Shirkhazadeh's academic freedom was violated by the University administration's directive that he remove posts from his website <http://littleofficeofintegrity.org> and by its continuing actions in relation to his initiatives to expose research misconduct;
- To determine whether the University administration was justified investigating Professor Shirkhazadeh for harassment based on material he had posted on his web site;
- To determine whether there is a pattern of retaliation against Professor Shirkhazadeh by the University administration, exemplified by the beginning of disciplinary proceedings and the assignment of courses for 2014–15;
- To make any appropriate recommendations.

The members of the AHIC are:

- Dr. Victor M. Catano, Professor, Department of Psychology, St. Mary's University
- Dr. Toni Samek, Professor, School of Library and Information Studies, University of Alberta

The operations of the AHIC were governed by CAUT's *Procedures in Academic Freedom Cases*, which are available on the CAUT website.[†]

On May 30, 2014, Dr. James Turk, the then Executive Director of CAUT, wrote to Dr. Diane Beauchemin, President of QUFA, and Dr. Daniel Wolfe, Principal, Queen's University, announcing the formation of the AHIC, its composition, terms of reference, and operating procedures. Drs. Beauchemin and Wolfe were told they would be contacted by the AHIC and were asked to cooperate by providing relevant documentation that might be needed and to arrange meetings with appropriate individuals who had relevant information to allow the AHIC to obtain a full and fair understanding of the facts. Dr. Leslie Jermyn, Executive Director of QUFA, replied on behalf of QUFA and offered QUFA's support and cooperation to carry out the AHIC investigation. However, on June 3, Principal Wolfe replied to Dr. Turk stating:

The issues involving Dr. Morteza Shirkhazadeh were and continue to be at all material times subject to the terms and conditions of the collective agreement between the University and QUFA. These matters are ongoing. If there is any dispute between the parties as to the manner in which the University is addressing these issues, then the appropriate process through which to deal with such a dispute is through Article 19 of the collective agreement.

Given this reality, CAUT simply has no jurisdiction to conduct any investigation into this matter, and it would be entirely inappropriate for CAUT to do so. As a result, I will not be providing documentation to the CAUT's ad hoc committee and nor will I meet with them to discuss this matter or designate others to do so.

[†] <http://www.caut.ca/about-us/caut-policy/lists/administrative-procedures-guidelines/caut-procedures-in-academic-freedom-cases>

As a result of Principal Wolfe's refusal to cooperate with the AHIC, our investigation is based on documents supplied by Dr. Jermyn and Dr. Shirkhazadeh. We also visited Queen's on September 11–13, 2014 and met with officials of QUFA, Dr. Shirkhazadeh and several Queen's faculty members. The information obtained from these members informed our report with respect to the AHIC terms of reference.

Brief History of Events

To understand the current situation, one needs to understand the history of events involving Professor Shirkhazadeh, Queen's University and allegations of research misconduct. Since 2004 Professor Shirkhazadeh has been concerned over academic fraud and misconduct. Over the years he has made a number of allegations involving colleagues at Queen's University. These allegations mostly involve allegations of data falsification, data fabrication and redundant publication. Professor Shirkhazadeh directed these allegations to administrative and executive officers at Queen's. The allegations involved the Queen's University Experiments in Liquid Diffusion carried out by contract with the Canadian Space Agency and the Natural Science and Engineering Council of Canada (NSERC).

Professor Shirkhazadeh also brought his concerns to the attention of NSERC, a participant in the *Tri-Council Policy: Integrity in Research and Scholarship*. Under the Policy, NSERC, in turn, asked Queen's to conduct the investigation. In the United States, charges of research fraud and misconduct involving federal granting agencies are referred to an independent agency for investigation, not back to the university where the allegations originated. Queen's conducted an investigation and concluded that no fraud or misconduct had taken place. The report from the investigation was never sent to Professor Shirkhazadeh.

Professor Shirkhazadeh did not accept the conclusions, or the very process, of the Queen's investigation and continued to pursue the matter over the years. In 2006, NSERC's Committee on Professional Scientific Integrity reviewed the Queen's investigation and found it to be seriously lacking in thoroughness, and expressed concern that it was not conducted sufficiently at arm's length. It went on to say that the documents presented by Professor Shirkhazadeh provided sufficient evidence of serious misconduct to warrant a number of sanctions be imposed by NSERC. However, NSERC did not take any action in response to legal threats from lawyers representing the researcher charged with the misconduct and closed the file.

Starting in 2009 and ending in 2011, Professor Shirkhazadeh submitted new allegations to NSERC concerning fraud and misconduct and institutional non-compliance with NSERC policy. NSERC replied in 2010 that the file was closed and did not investigate the new charges. Suffice to say that Professor Shirkhazadeh continued to pursue the allegations through a series of letters and emails to various individuals and officials at Queen's including the Chair of the Board of Governors and to NSERC.

Then Academic Vice-President Silverman wrote to Professor Shirkhazadeh on January 3, 2011 about his recent conduct, primarily the prolonged email exchanges with a Dean that were copied to many faculty members. Dr. Silverman claimed that the emails were unwelcome and considered to be harassing under University policies and the QUFA Collective Agreement. Dr. Silverman wrote:

Accordingly, you are hereby directed to cease the course of conduct described above. Failure to adhere to this direction will likely result in my initiating an investigation under Article 20 of the QUFA Agreement which could lead to discipline. I trust that this step will not be required.

Finally, I note that you have been discussing a number of issues in the media which pertain to the University and a number of its representatives. Please ensure that you do not defame the University or any of its representatives in these communications.

Queen's publically responded to Professor Shirkhazadeh's claims in April 2011 and defended its handling of the complaints. Professor Shirkhazadeh persisted in his criticism of the University's response to his allegations and the nature of their investigation. Dr. Silverman wrote to Professor Shirkhazadeh on May 30, 2011 advising him that his:

Repeated, repetitious, unwelcome, harassing and accusatory emails have given rise to concerns about the safety and security of certain individuals to whom you have directed these emails and those who work with these individuals. These emails have caused some individuals to feel insecure in their workplace and become fearful for their personal safety. The University has a duty to ensure that its employees not only are, but reasonably perceive that they are safe in the workplace.

As a consequence Dr. Silverman prohibited Professor Shirkhazadeh from communicating with a number of named individuals and from entering certain Queen's buildings, unless he was accompanied by security when necessarily using a building to teach a class. Failure to adhere to this directive would lead to Queen's laying harassment charges with the police. Dr. Silverman also instructed Queen's IT Services to block any emails from the *blue skies* account that Professor Shirkhazadeh had used to send the alleged threatening emails to Queen's staff.

In May 2012, Professor Shirkhazadeh created a website, *The Little Office of Research Integrity* (LORI) on which he began to publicize cases he believes to be examples of fraud or misconduct. The website does not identify Professor Shirkhazadeh as the owner or author of the site, although it is fairly well known at Queen's that he is responsible for the site and postings on it. Initially, the postings on LORI were directed primarily at his dispute with Queen's over handling of the allegations surrounding the NSERC case, the Canada Space Agency and Professor Y, who was the lead researcher. Professor Y is now deceased.

Subsequently, Professor Shirkhazadeh received allegations of fraud and misconduct on the part of Professor X, a well-respected member of the Queen's community, and several of Professor X's colleagues. The allegations involved charges of plagiarism and redundant publication, among others. Professor Shirkhazadeh investigated the allegations and posted them on LORI in the fall of 2012. He did not report these to the University, as he believed the faculty member who brought them to his attention had forwarded to the Administration. Professor Shirkhazadeh continued his investigation involving Professor X and submitted several allegations of research misconduct through December 2013, posting these allegations on the LORI website. Almost all of the posts on LORI involve Professor X or his research colleagues.

Recent Events

On April 7, 2014, Professor Shirkhazadeh received two letters from the University Administration. The first from Dr. Alan Harrison, Provost and Vice-President Academic, contained a directive to remove certain posts from LORI that pertained to fraud and misconduct on the part of Professor X. By way of explanation Dr. Harrison said:

You are, I believe, aware that an investigation was recently conducted with respect to these allegations you have made against the individuals named above. The investigation did not make findings that support the allegations contained within the materials noted below; I am, therefore, directing you to remove the specified materials.

The letter went on to instruct Professor Shirkhazadeh not to have any type of contact with the individuals named in the LORI posts. As well, Professor Shirkhazadeh would be subject to discipline should he not comply with the directive. Professor Shirkhazadeh did not receive a copy of the redacted report apparently mentioned in Dr. Harrison's letter until June 4, 2014.

It is not at all clear to which investigation Dr. Harrison was referring, the allegations that were examined, or who did the investigation. This becomes more important as the second letter from Dr. Steven Liss, Vice Principal (Research), appears to contradict that all of Professor Shirkhazadeh's complaints had been resolved. In that April 7 letter, Dr. Liss states:

This letter is being provided to you to confirm receipt of your most recent research misconduct allegations dated February 25, 2014, February 28, 2014, and March 7, 2014, against [Professor X].

Since November 2012, you have submitted numerous, serial allegations of research misconduct against [Professor X] and his colleagues. In this regard, we acknowledge receipt of no fewer than 15 complaints from you. Having regard for this pattern, the University will, in accordance with its institutional responsibility to do so, now assume full responsibility for investigating the body of [Professor X's] research as a whole and will follow the procedures outlined in the Queen's University Senate Policy on Integrity in Research.

Thus, on the advice of the Secretariat on Responsible Conduct of Research and of our legal counsel, the University will neither accept nor acknowledge any further allegations from you concerning [Professor X's] research if the subject matter of the allegations precedes the date of this letter.

Professor Shirkhazadeh took exception to the directive and consulted with QUFA. The argument over the appropriateness of the directive carried on into the spring and summer. On April 29, 2014 Professor Shirkhazadeh and Dr. Leslie Jermyn, Executive Director of QUFA, met with Dr. Harrison, Vice-President Academic, Dr. Dan Bradshaw, Associate Vice-Principal (Faculty Relations), and Dr. Cynthia Fekken, Associate Vice-Principal (Research). At that meeting Professor Shirkhazadeh confirmed he had no intention of removing the posts from the LORI website and that he would continue to post new allegations of misconduct, should he discover them.

Later that day, Dr. Jermyn emailed Dr. Harrison and Dr. Bradshaw that Professor Shirkhazadeh was willing to correct any errors on the LORI website and was willing to meet to review the reasons for the requests to delete specific post on LORI. Dr. Bradshaw responded to Dr. Jermyn's email on May 2 stating that Dr. Harrison had given the reasons for his order in the April 7 letter to Professor Shirkhazadeh and that the order remained in place.

In April, Professor Shirkhazadeh was assigned a course to teach the following year in 2014–15. This was a third year engineering course for which Professor Shirkhazadeh had no background and argued he would need graduate training to properly teach. On April 20 Professor Shirkhazadeh wrote a detailed response to the Head of his Department articulating the reasons why he was not qualified to teach the course. The course remained assigned to Professor Shirkhazadeh until

there was a change in Heads during the summer. On July 24, the new Head restored Professor Shirkhazadeh's previous teaching assignments. Professor Shirkhazadeh believed that the new teaching assignment was retaliation for his continued allegations against Professor X.

On April 28, Professor Shirkhazadeh received two more letters from the administration at Queen's. The first from Dr. Harrison informed Professor Shirkhazadeh that he had initiated an investigation under Article 21.3 of the Collective Agreement into possible personal/workplace harassment under Article 21.2.1 of the Collective Agreement and the Ontario Occupational Health and Safety Act to determine if Professor Shirkhazadeh had engaged in workplace harassment through *materials and assertions you have made regarding employees of Queen's University on the Little Office of Research Integrity website*[†]. Mr. Cory Boyd, a Toronto lawyer, was appointed as the investigator.

The second April 28 letter from Dr. Harrison asked Professor Shirkhazadeh to correct a *misrepresentation* that Professor Shirkhazadeh apparently made to Ryerson University about what was being investigated by Queen's regarding a jointly authored paper involving Professor X and a member of Ryerson faculty. Professor Shirkhazadeh complied with this directive by emailing on April 29 the person at Ryerson with an apology and copying Dr. Harrison on the email.

Dr. Harrison wrote to Professor Shirkhazadeh on May 7, 2014 noting that a reprimand would be forthcoming for failure to remove the posts. Dr. Harrison issued the written reprimand on June 3 and gave Professor Shirkhazadeh 10 days in which to remove the contentious posts, or further disciplinary action would

follow. Dr. Harrison expanded on his April 7 letter in referring to the investigation that had taken place: *The materials that my letter of April 7, 2014, asked you to remove from the website entitled Little Office of Research Integrity are allegations, or pertain to allegations, that you made as per the Queen's University Senate Policy on Integrity in Research. My letter also informed you that an investigation of these allegations had been conducted, and that the investigation's findings did not support the allegations contained within the materials that I directed you to remove from the website.*

The investigation of these particular allegations was conducted by the Research Integrity Investigative Committee. By copy of this letter, and with regard to this investigation, I am asking Cynthia Fekken, Associate Vice-Principal (Research), to provide you with a copy of the report that she prepared on behalf of the Committee. This report was prepared in confidence for Steven Liss, Vice-Principal (Research), as a consequence of which there may be redactions in the version of the report that is provided to you. Notwithstanding these redactions, you are expected to keep the report and its contents in confidence. You may, however, review the report with Leslie Jermyn, your QUFA representative, on the understanding that you maintain responsibility for keeping it in confidence.

Please note that the University is under no obligation to provide you with this report, and we do so on a without prejudice or precedent basis. I am asking that you be provided with the report in the hope that the information therein may lead you to comply with my directive and thereby avoid the imposition of further discipline.

The Queen's Senate Policy on Integrity in Research provides that the respondent to a complaint of fraud and misconduct receive a copy of the final report of an investigation committee within 10 working days of the Vice-Principal (Research) having received the report.

[†] <http://littleofficeofintegrity.org/>

There is no requirement under the Senate policy that the complainant receive a copy of the investigative report. We believe this to be a defect in the Queen's policy. The Senate policy makes provision for a respondent to appeal any outcome but does not address the rights of complainants who believe that the procedure was biased or improperly carried out.

Professor Shirkhazadeh received the redacted report, *Reports of the Research Integrity Investigating Committee*, dated November 2013, on June 4. Upon review of the report, Professor Shirkhazadeh initiated a series of emails from June 5 to 10, to Dr. Harrison and/or Dr. Fekken, chair of the Investigating Committee, regarding the accuracy of the report and the compliance of the structure of the Investigating Committee with both the Tri-Council Policy and Queen's Senate Policy. The substance of Professor Shirkhazadeh allegations were that the Investigative Committee did not investigate his charges of plagiarism against Professor X and that the structure of the Committee was not in compliance with the noted policies in that it did not include a member external to Queen's.

After reviewing the posts on LORI with Professor Shirkhazadeh that were the subject of Dr. Harrison's April 7 letter, Dr. Jermyn, on behalf of QUFA, wrote to Dr. Harrison on June 10 attaching an Excel spreadsheet of all the posts on LORI. The spreadsheet detailed the nature of the posting, i.e., whether they were an allegation, whether they were investigated and reported on, and the reason for keeping the post on the website. The letter outlined why Dr. Harrison's directive was unclear and in error in many ways. For example, Professor Shirkhazadeh could not know that 11 of the allegations mentioned in Dr. Harrison's April 7 letter had been investigated, as he did not receive the redacted Report till June 4. The letter also noted that three posts

were edited to remove personal information about Professor X. Dr. Jermyn asked for a meeting to discuss the posts and that the written reprimand be removed from Professor Shirkhazadeh's file. Dr. Harrison replied on June 12 that his original directive remained in force.

Dr. Fekken replied to the various emails from Professor Shirkhazadeh on July 4 and confirmed that the allegations of plagiarism were not a subject of the recently completed investigation as they were now subject to another ongoing investigation initiated April 7, 2014. In her email of July 4, Dr. Fekken implicitly confirmed that the Investigating Committee did not include a member external to Queen's. She noted that 11 people refused to be involved on the Committee with more indicating they were afraid they would be singled out by Professor Shirkhazadeh should they participate. She seemed to argue that a professor emeritus who was added to the Committee satisfied the external requirement.

On June 10, QUFA received notice that Queen's had initiated a harassment investigation along with a list of particulars that were raised against Professor Shirkhazadeh. As indicated in Dr. Harrison's April 28 letter, Mr. Boyd was charged with looking into the allegations of fraud and misconduct that Professor Shirkhazadeh had posted on the LORI website since October 2012 and failure to remove the posts as directed on April 7, 2014. There is no evidence that the investigation was initiated by a complaint from any of the individuals named in the allegations, as no such complaints were ever forwarded to Professor Shirkhazadeh. In a June 17 letter to Dr. Bradshaw, Dr. Jermyn initiates grievance over the discipline handed to Professor Shirkhazadeh and the initiation of the harassment charges. She states that the document of particulars she received:

... merely repeat facts and suppositions about Professor Shirkhazadeh's own allegations without clarifying how or why these are either workplace harassment or harassment contrary to human rights. This is a spurious investigation designed to find the respondent guilty without having to prove that any harassment has occurred.

Dr. Jermyn asked for clarification of the harassment charges but none were forthcoming. She and Professor Shirkhazadeh met with Mr. Boyd on June 18 for three hours addressing the harassment charges. Review of the notes taken at that meeting by Dr. Jermyn and Professor Shirkhazadeh verify that no individual other than Queen's officials initiated the investigation. There were no complaints made by individuals named on the LORI website. In the meeting, Dr. Jermyn characterized the charges and investigation as retaliation against a whistleblower. The bulk of the meeting addressed specific allegations posted on the LORI website. On June 20, Professor Shirkhazadeh provided Mr. Boyd with written comments concerning harassment allegations. Professor Shirkhazadeh is informed on August 1 that Mr. Boyd has concluded he is guilty of workplace harassment and provided with a redacted copy of Mr. Boyd's report. Dr. Harrison sets Aug 26 as a date for imposing discipline related to the harassment finding.

On July 4, 2014 Dr. Harrison initiated a second discipline, a one-day suspension with pay and indicated that further discipline would follow if the posts were not removed by July 11. In response, Professor Shirkhazadeh, on a without prejudice basis, removed the posts on July 10, 2014. QUFA filed grievance over the second discipline on July 22; Step 1 of the grievance process occurred on August 22.

On August 26 QUFA proposed a settlement to the two grievances and the harassment charge. In September, a day or so before the AHIC was on campus, the University replied with a counter offer. As of now both parties have been in discussions concerning a memorandum of settlement regarding the two discipline issues and the harassment charge. We have not been privy to the settlement offer as the University asked that it remain confidential between the parties.

2 | Was Dr. Shirkhazadeh's Academic Freedom Violated?

CAUT's Policy on Academic Freedom states in part:

4 All academic staff have the right to freedom of thought, conscience, religion, expression, assembly, and association and the right to liberty and security of the person and freedom of movement. Academic staff must not be hindered or impeded in exercising their civil rights as individuals including the right to contribute to social change through free expression of opinion on matters of public interest. Academic staff must not suffer any institutional penalties because of the exercise of such rights.

The Collective Agreement between QUFA and Queen's states:

(b) Members have the right to academic freedom which shall include the freedom, individually or collectively, to develop and transmit knowledge and opinion through research, study, discussion, documentation, production, creation, teaching, lecturing and publication, regardless of prescribed or official doctrine, and without limitation or constriction by institutional censorship; and

(c) The Parties agree to uphold and to protect the principles of academic freedom, not to infringe upon or abridge academic freedom as set out in this Article, and to use all reasonable means in their power to protect that freedom when it is threatened.

14.2 Academic freedom includes the following interacting freedoms: freedom to teach, freedom to research, freedom to publish, freedom of expression, freedom to acquire materials. Academic freedom ensures that

(a) Members teaching courses have the right to the free expression of their views, and may choose course content, use teaching methods and refer to materials without censorship or reference or adherence to prescribed doctrine;

(b) Members have the freedom to carry out scholarly research without reference or adherence to prescribed doctrine;

(c) Members have the right to publish the results of their research without interference or censorship by the institution, its agents or others;

(d) Members have the right to freedom of expression, including the right to criticize the government of the day, the administration of the institution, or the Association; and

(e) Members have the freedom to exercise professional judgment in the acquisition of materials, and in ensuring that these materials are freely accessible to all for bona fide teaching and research purposes, no matter how controversial these materials may be.

Are the Postings by Professor Shirkhazadeh on the LORI Website Protected by Academic Freedom?

Professor Shirkhazadeh is not listed as the owner or author of the LORI website. There is no information on the site concerning the person or persons operating the site. It might be argued by some, including the Administration, that without an explicit acknowledgement that the website is part of an academic endeavor, the material posted might not be protected by either the CAUT Policy or the Queen's-QUFA Collective Agreement. If so, would Professor Shirkhazadeh's postings be protected by academic freedom? Or, would the postings be expressions of free speech not covered by academic freedom, since there is no information on LORI that a Queen's academic produced them?

Even if we were to accept this argument, we do not believe it applies in the current case. It was well-known to the Administration at Queen's that the LORI website was developed and maintained by Professor Shirkhazadeh. It was also known that he used the website to pursue his allegations of fraud and misconduct at Queen's after he was banned from communicating with certain members of the Queen's community, and

because he met with continued resistance from the Queen's administration to investigate his allegations of fraud and misconduct. The fact that the University directed removal of postings from the LORI website indicates that it accepted that Professor Shirkhazadeh took those actions in accordance with his duties and responsibilities as an academic at Queen's; otherwise, they should have had no concerns over the website and left it to civil litigation to remove any unwarranted postings. Therefore, the directive from the Provost on April 7, 2014 serves to establish that the postings are protected under both CAUT Policy and the Queen's-QUFA Collective Agreement Article on academic freedom.

Depending on the circumstances, academic freedom may not provide a defence to defamation. Both Queen's Administrators and QUFA warned Professor Shirkhazadeh about the risks of defamation. We note that Professor Shirkhazadeh has not been sued for defamation; he has readily removed or modified postings in response to comments from the targets of the posts and includes a section on LORI for *retractions*.

We conclude that on the documentary evidence Queen's may have violated Professor Shirkhazadeh's academic freedom by directing him to remove his postings that alleged fraud and misconduct on the part of employees of Queen's. We recognize that the Provost's actions may have been consistent with Article 17 of the Collective Agreement.

Was There Justification for the Administration to Order Removal of the Posts from the LORI Website?

In his directive of April 7, 2014, Dr. Harrison notes that a recently conducted investigation into Professor Shirkhazadeh's allegations did not substantiate them. In his June 3 letter imposing discipline for failure to remove the posts, Dr. Harrison states that the University had an obligation to protect the reputations of persons subject to unfounded allegations but never specified the policy or articles of the Collective Agreement under which he was acting. In his May 7 letter Dr. Harrison does reference an investigation that exonerated Professor X from the allegations brought by Professor Shirkhazadeh. We note that Professor Shirkhazadeh has challenged the legitimacy of the Investigating Committee and its conclusions. Regardless, Dr. Harrison never identified his actions as being consistent with Articles 17.5.1 and 17.5.2 of the Collective Agreement which state:

17.5.1 The University shall take such steps as may be necessary and reasonable to

(a) protect the reputation and credibility of Members wrongfully accused of fraud or misconduct in academic research and scholarly activity, including written notification of the decision to all agencies, publishers, or individuals who were informed by the University of the investigation;

17.5.2 The University shall, where practicable, take disciplinary action against Members, employees or students who make unfounded allegations of fraud or misconduct in academic research and scholarly activity that are reckless, malicious or not in good faith.

Similarly, there has been no identification of actions being consistent with the Senate Policy on Integrity in Research that states in Article 8 b, a practice similar to the one identified in Article 17.5.1(a):

8 b. If an allegation of misconduct was not supported the University shall protect the reputation and credibility of members wrongfully accused including written notification of findings to all agencies, publishers, or individuals who are known by the University to have been informed of the allegation or investigation.

We find it very unusual that a report into Professor Shirkhazadeh's allegations, dated November 2013 that dismisses most of the allegations, is not mentioned to Professor Shirkhazadeh until April 2014 and a redacted copy given to him only in June 2014. Neither was Professor Shirkhazadeh told that any possible discipline would be forthcoming under Article 17.5.2.

We are at a loss to understand why the Provost did not cite Article 17.5.1 or the Senate Policy in directing Professor Shirkhazadeh to remove certain posts from the LORI website. If the allegations were unfounded then the Provost did have a right under the Collective Agreement to have them removed. However, many of the posts on LORI were not related to the unfounded allegations and were related to accusations of plagiarism that were upheld in the November 2014 report. Nonetheless, the Provost's directive was Draconian in ordering all of the posts to be removed and threatened additional discipline until Professor Shirkhazadeh took down all the posts.

By directing removal of posts that were not related to protecting the reputation and credibility of Professor X under Article 17.5.1, the Provost violated Professor Shirkhazadeh's academic freedom.

If the Provost had made it clear in a timely fashion that his actions were in accord with Article 17, Professor Shirkhazadeh should have removed the posts rather than engage in a dispute about the structure and findings of the Investigative Committee. The correct course of action would have been to *submit and grieve*, that is, comply with an order he believed to be wrong and file grievance over violation of his right to academic freedom.

3| Was the Administration Justified in Investigating Dr. Shirkhazadeh?

On April 28, 2014, Dr. Harrison initiated an investigation as to whether the postings of Professor Shirkhazadeh concerning the alleged fraud and misconduct of Professor X constituted workplace harassment under the terms of the Collective Agreement. An outside investigator, C. Boyd, interviewed Professor Shirkhazadeh on June 18 for three hours. Professor Shirkhazadeh followed up with written submission on June 20. Mr. Boyd concluded that Professor Shirkhazadeh was guilty of harassment based on the posts on LORI alleging academic fraud and misconduct. Discipline may be forthcoming over this matter, but has not yet been imposed. The Queen's-QUFA Collective Agreement states:

21.2 Personal/Workplace Harassment

21.2.1 For the purposes of this Agreement, Personal or Workplace Harassment is

(a) oral, written, or physical behaviour or visual display that, when viewed objectively, is of a bullying, intimidating, or abusive nature; or

(b) oral, written, or physical behaviour or visual display that, when viewed objectively, is persistent, and which the instigator knows or ought reasonably to know, creates an intimidating or hostile working or learning environment.

21.2.2 Personal or Workplace Harassment can also be the cumulative effect of the action described in Article 21.2.1.

21.2.3 The reasonable exercise of administrative authority does not of itself constitute Personal or Workplace Harassment. Administrative authority will not be exercised in any way that constitutes Personal or Workplace Harassment. Communication of negative assessments arising from the exercise of academic judgment does not of itself constitute Personal or Workplace Harassment.

This was not the first instance of Professor Shirkhazadeh being threatened with a harassment investigation based on his allegations of academic fraud and misconduct on the part of other Queen's employees. The former Academic Vice-President, Dr. Silverman, had suggested Professor Shirkhazadeh was guilty of workplace harassment in his letter of January 3, 2011; he never initiated an investigation. He did, however, use this as the reason he banned Professor Shirkhazadeh from certain buildings and ordered that emails he sent to Queen's employees from his *blue skies* account be deleted by the Queen's IT service. Without a proper investigation under Article 21, we believe that the actions of Queen's University, through its Provost, constituted censorship against Professor Shirkhazadeh. Professor Shirkhazadeh and QUFA should have grieved this form of discipline, and still should as those bans remain in place.

Article 9 of the Senate Policy on Integrity in Research states in part:

The University will take reasonable steps to protect complainants who make allegations in good faith or whom it calls at witnesses. It is expected by the University that no member of the Queen's community will retaliate against a person making allegations in good faith. If retaliation is suspected it should be reported to the Vice-Principal (Research).

Article 5 of the Senate Policy on Integrity in Research states in part:

The University will take action against those who make unfounded allegations of fraud or misconduct that are reckless, malicious or not in good faith.

Based on the documents we were given access to and that we have carefully reviewed, we find no evidence Professor Shirkhazadeh has ever been accused of making unfounded allegations that were reckless,

malicious, or not made in good faith. Similarly, in our interviews neither Professor Shirkhazadeh nor QUFA representatives ever indicated that University administrators raised the issue of Professor Shirkhazadeh's allegations not having been made in good faith. Rather, his allegations have now led to a Senate investigation of Professor X's entire body of work. While we have not seen the November 2013 Report stemming from the investigation into Professor Shirkhazadeh's allegations against Professor X, we do not believe it contains any comments that the Investigating Committee felt that any unfounded allegations were reckless, malicious or not made in good faith.

Our evidence-based findings indicate the charges of harassment against Professor Shirkhazadeh were not brought by individuals alleged to have engaged in academic fraud and misconduct, but by administrators at Queen's. Looking at the sequence of events, the recent harassment charge is coincident with Dr. Harrison's directive to remove posts from LORI and threats of discipline if that directive were not followed. We believe that the harassment charges were initiated by the administration to silence Professor Shirkhazadeh from making any further allegations of academic fraud and misconduct and proving an embarrassment to Queen's. We believe that the charges of harassment are not justified; we are unaware of any evidence that the targets of the LORI posts initiated the harassment investigation. The sequence of events suggests that Queen's administration simply had enough of a whistleblower. A whistleblower is usually an employee of a public or private agency that brings to the attention of the public or those in authority some form of wrongdoing on the part of the organization or people in it. A classic response to whistleblowing is retaliation, generally in the form of dismissal of the employee where that can readily

occur. The prevalence of retaliation has led to legislation designed to protect whistleblowers, among these the *Public Service of Ontario Act, 2006*. The Queen's administrators appear to have wanted to put an end to further allegations coming from Professor Shirkhazadeh and used whatever means they could think of to silence Professor Shirkhazadeh. Because there were apparently no grounds to argue that Professor Shirkhazadeh's allegations were reckless, malicious or not made in good faith, and dismissal would not have been easy to accomplish under the Collective Agreement with QUFA.

Could one argue that Queen's had an obligation to investigate harassment against Queen's employees whether or not the latter initiated the complaint? Most, but not all, of the posts on LORI involve Professor X or his colleagues. In his interview with C. Boyd, Professor Shirkhazadeh acknowledged that he did not actively pursue investigations of fraud and misconduct against others outside Queen's. As he told the AHIC, he did not have the resources to do that. Furthermore, another colleague brought the allegations against Professor X to Professor Shirkhazadeh's attention. As far as we can tell there has not been any animosity or interaction between Professor Shirkhazadeh and Professor X that might have led to targeting Professor X for any form of harassment on the part of Professor Shirkhazadeh. Although Mr. Boyd has concluded that Professor Shirkhazadeh is guilty of harassment, we are not privy to that report. Furthermore, the fact that Queen's has initiated an investigation into the total body of work of Professor X suggests that the allegations of Professor Shirkhazadeh have credence and are not based on harassment.

4 | Is There a Pattern of Retaliation against Dr. Shirkhazadeh by the Administration?

Based on the history of events chronicled above, we believe that the actions of the Queen's Administration in issuing discipline and charging Professor Shirkhazadeh with harassment were in response to his allegations of academic fraud and misconduct against employees of Queen's that go back to 2004. For whatever reason, the Administration appears to have reached a tipping point in April 2014 and to have decided that it had to put an end to further allegations on the part of Professor Shirkhazadeh. The behaviour of Queen's Administration in this matter is a typical reaction of an organization that has to deal with issues brought to it by a whistleblower. Rather than deal with the allegations in a fair and impartial manner, it seeks to silence the whistleblower to preserve its own reputation. We conclude that there is a pattern of retaliation against Professor Shirkhazadeh in response to his allegations of fraud and misconduct.

During these events Professor Shirkhazadeh was assigned a course by his department head that he had never before taught. He objected to the assignment. Eventually Professor Shirkhazadeh was reassigned to teach another course that he had previously taught. There is no evidence that we have seen which suggests that this course was given to Professor Shirkhazadeh in retaliation, although Professor Shirkhazadeh believes that to be the case.

5| Recommendations

1. **That the Provost rescind his directive requiring Professor Shirkhazadeh to remove posts from the LORI website alleging fraud and misconduct, unless those posts have been shown to be unwarranted through a properly constituted investigatory committee** — We have reviewed the correspondence among Professor Shirkhazadeh, QUFA, the Provost, and the Associate Vice-Principal (Research). That correspondence raises many questions about whether the Report of the Investigatory Committee dated November 2013 was carried out in a fair manner that followed the procedures and committee structure called for by the Tri-Council policies. Professor Shirkhazadeh should be allowed, under his right of academic freedom as specified in the Collective Agreement, to post material on his LORI website, subject to any properly constituted committee determining that an allegation was unwarranted. Professor Shirkhazadeh is aware that any postings may be subject to legal action by those named in the posts for defamation.
2. **That Queen's provide assurances that any investigation into fraud and misconduct will be carried out in accordance with the procedures specified by the Tri-Council memorandum with universities** — The failure of Queen's to carry out the investigation into Professor Shirkhazadeh's allegations with the procedures specified in the Tri-Council memorandum raised the issue of procedural unfairness for both the complainant and respondent. It led to Professor Shirkhazadeh's refusal to accept the findings of the investigatory report and to continue to list his posts on the LORI website.
3. **That Queen's remove the discipline and harassment charges from Professor Shirkhazadeh's file** — As we have stated above, we believe that the charges of discipline and harassment were retaliation against Professor Shirkhazadeh for his whistleblowing. We appreciate that these charges are under negotiation with QUFA as part of settling all three issues; we believe, however, that these matters must be expunged from Professor Shirkhazadeh's personnel file. While Professor Shirkhazadeh should have responded to the directives in a more conciliatory manner, we understand his frustration at being made a target and his reactions to the directives. We believe that the incidents giving rise to the discipline and harassment investigation are without merit and made in response to illegal requests on the part of the Provost.
4. **That Queen's remove the ban on Professor Shirkhazadeh from entering certain campus buildings and his *blue skies* email account** — We are also concerned that the building and email bans imposed on Professor Shirkhazadeh are improper and without consideration of his rights. Unless the Administration can demonstrate that these bans are still warranted, they must be removed immediately. Should the Administration continue to uphold these bans, QUFA should grieve their continued imposition as a violation of Professor Shirkhazadeh's rights and obligations and academic freedom under the Collective Agreement.

5. That Queen's University review its Senate Policy on Integrity in Research in light of the events surrounding the allegations made by Professor Shirkhazadeh

— As we noted above, the Policy does not require a copy of any outcome of the Senate Investigative Committee or notification of dismissal of a complaint be given to the complainant, but only to the respondent. We believe that this practice is both unwise and unfair. It creates the appearance, as it has done in this case, of protecting the respondent regardless of the merits of the decision, coupled with the failure to inform the complainant. The inevitable result is frustration on the part of the complainant and persistence in pursuing the allegations. The investigation must be seen to adhere to principles of procedural fairness by following established rules of conduct. We are not convinced that this happened in the current case. While we recognize the need for confidentiality with respect to certain matters being investigated, we believe that there needs to be more openness and transparency with respect to the Senate Policy on Integrity in Research.

6. That QUFA review Article 17 and Article 21 in the context of their use against Professor Shirkhazadeh to determine if they should be amended in future negotiations

— Article 17.5.1 specifies the steps the University must take to protect the rights, positions and reputations of faculty members bringing forward allegations of wrongdoing, to minimize disruptions to their teaching, research and service, and to their careers. It may be useful to explicitly address the issue of retaliation that might be brought against a member for making allegations of misconduct. The charge of harassment against Professor Shirkhazadeh was brought under Article 21.2 of the Collective

Agreement. It is unclear under Article 21 who has the right to bring a charge of harassment. Article 21 addresses only the role of Members, not the Administration in bringing a charge, and in this case the charge was initiated by the Administration, not a Member. The Administration may bring charges under the University's Harassment/Discrimination Complaint Policy and Procedure, but personal/workplace harassment of the type alleged in this case is excluded from the definition of discrimination/harassment presented in Article B1 of that policy.

7. That CAUT develop a policy on whistleblowing and its protection under academic freedom

— We believe that CAUT should affirm the role of whistleblowers in reporting misconduct in academic activities. We believe that the actions taken against Professor Shirkhazadeh were retaliation for his allegations of scientific fraud and misconduct made against prominent members of the Queen's community. Policies and Collective Agreement clauses on academic freedom provide a defence against the discipline issued to Professor Shirkhazadeh; however, we think it may be appropriate to develop a policy/model clause on whistleblowing that includes protection for the employee making the charges. These may be modeled on legislation that has been adopted by the federal and several provincial governments. We believe that CAUT should affirm that whistleblowers perform a valuable service, and launch a dialog about their rights and responsibilities by developing these policies and clauses.

8. That CAUT review its existing policy documents, particularly the *Policy Statement on Academic Freedom and Electronic Communication*, and model clauses to determine if a new policy/model clause are needed with respect to social media —

This case raises questions about the involvement of faculty with external electronic communication, including through social media, vis. a vis. their academic rights. Our review of existing policies suggest that they are limited to use of electronic communication within the academy and do not extend to the digital reality of the blogosphere. Several Canadian universities have developed their own guidelines specifically on the use of social media; these may not be as supportive of the academic freedom of academic staff. As well, faculty engaging in the use of social media may not be aware of the potential *reach* of the Administration with respect to postings/tweets etc. made outside the confines of the academy. Are those postings covered by academic freedom if the faculty member does not indicate they were acting in their role as an academic?

Professor Shirkhazadeh created the LORI website apart from Queen's University. He did not identify himself as the owner of the site in the belief that this would insulate him from the Queen's administration. At the same time, by creating the website without establishing a relationship to his role as a faculty member at Queen's might make it possible for some to contest whether his postings on the site were protected by academic freedom. Even accepting this, the University, however, took it upon itself to link the website to his employment and resolved any argument that his postings were protected by academic freedom.

There are several recent court and arbitral decisions involving employees outside of the academic setting posting material on social media. For example, an employee makes disparaging remarks about the employer or the company and the employer disciplines the employee. These decisions have ruled that the employer had the right to initiate discipline. However, these cases have not involved academics or an academic freedom defence. The questions we raise for CAUT and its member associations are the following: are existing academic freedom clauses and policies strong enough to protect the expressions of academic staff through social media; are specific policies and clauses needed; and, what are the limits of academic freedom, if any, in these situations? In addressing these matters, CAUT should reaffirm its support for the fundamental principles of free speech and academic freedom in any media that are the foundation for open and transparent universities and colleges, and continue to value and defend access to information in any format that enables critical public discourse.

9. That CAUT lobby the federal government and Tri-Council agencies to establish an independent board that investigates allegations of fraud and misconduct in research rather than having universities investigate claims made against their own members —

Instances of academic fraud and misconduct are not rare events. There have been several high profile cases across Canada that have undermined integrity in scientific research. Different countries have adopted different ways of dealing with academic fraud and misconduct. In the United States, the federal government has created an oversight agency, the *Office of Research Integrity (ORI)*, to investigate and deal with charges of scientific fraud and misconduct. In particular, it receives allegations

concerning misconduct related to federal grant supported research. ORI panels that are external to any university or agency involved in the allegation carry out the investigations. As well Denmark, Sweden, Norway and Finland have established similar investigative bodies. In the UK, the UK medical Research Council has developed procedures for dealing with allegations of medical fraud or misconduct.

In Canada, the Tri-Council granting agencies have established a uniform policy that requires universities or institutions whose staff receive grant funds to establish impartial and accountable procedures through which they themselves investigate allegations of fraud and misconduct. The procedures must be acceptable to the university community. As allegations of fraud and misconduct can destroy careers and damage institutional standing and reputation, it is imperative that universities and research institutes have procedures to determine the *prima facie* validity of claims to minimize publication of false accusations. Where there appears to be a valid claim, the university should ensure that there is a fair and independent way of adjudicating the matter in a timely manner.

While Queen's has established policies to investigate academic fraud and misconduct that were endorsed by the University Senate and form part of the Collective Agreement with QUFA, this case suggests that the implementation of those procedures may not have been optimal with respect to composition of committees, calling of evidence, timeliness of investigations, and reporting the results of investigations. In the latter case, this has been to the detriment of both Professor Shirkhazadeh and Professor X. The delays in dealing with Professor

Shirkhazadeh's allegations against senior professors, and the actions of the university toward Professor Shirkhazadeh in issuing discipline and harassment proceedings have the appearance of overtly defensive actions designed to protect the target of the allegations rather than to investigate them in a fair and impartial manner.

The proceedings in this case suggest that the Tri-Council model does not function properly; the investigative body must be arm's length from the home university of either the accuser or target of the allegation. We believe that it is time to establish a national body that receives and investigates allegations of fraud and misconduct related to the granting agencies. We believe that had such a national body investigated the allegations made by Professor Shirkhazadeh against Professor X, they would have either been upheld or dismissed in a timely fashion and rigorous manner, rather than dragging on to the detriment of both professors and Queen's as is the case now.