
Report of the Ad Hoc Investigatory Committee

To Examine the Situations of **Drs. Isla, Van Ingen & Corman, & Messrs. Wood & Fowler** at Brock University

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Report of the Ad Hoc Investigatory Committee to Examine the Situations of Drs. Isla, Van Ingen & Corman, & Messrs. Wood & Fowler at Brock University

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Preamble

This investigation arose as a result of the Brock University Administration's handling of a series of complaints laid under the University's Respectful Work and Learning Environment Policy [RWLEP]¹ against five members of Brock University (henceforth referred to as the respondents), namely Drs. Ana Isla and Cathy Van Ingen (members of the Brock University Faculty Association), Dr. June Corman (then Associate Dean of Social Studies and hence not a member of the Faculty Association), and teaching assistants Ian Wood and Tim Fowler (members of CUPE Local 4207). The complaints were filed by Brock University Roman Catholic Chaplains, Brs. Raoul Masseur and German McKenzie.

The respondents had criticized the University's official involvement in a program called "Solidarity Experiences Abroad" [SEA]. This program is conducted in South America under the auspices of Brock University but is administered by the Brock University Roman Catholic chaplaincy. The respondents objected, among other things, to the religious and political content of the SEA programs, and to Brock University allowing a Brock University program to be administered and provided by a religious organization, arguing that such an arrangement was incompatible with Brock University's character as a secular institution.

Dr. Ana Isla is an Associate Professor jointly appointed to Women's Studies and the Department of Sociology. Originally from Peru, she has a PhD from the Ontario Institute for Studies in Education (OISE). She has been a Brock faculty member since 2003. Dr. Isla is a member of the Brock University Faculty Association [BUFA] and was represented by BUFA in the University proceedings

relating to the allegations brought by Brs. Masseur and McKenzie.²

Dr. Cathy Van Ingen is an Associate Professor in the Department of Kinesiology in the Faculty of Applied Health Sciences. Her expertise is in the cultural studies of sport. She has been a member of the Department of Kinesiology in the Faculty of Applied Health Sciences for the past nine years. In 2011 she was also on the program committee of the Centre for Women and Gender Studies. Like Dr. Isla, Dr. Van Ingen is a member of BUFA and was represented by BUFA in the University proceedings relating to the allegations brought by Brs. Masseur and McKenzie.³

Dr. June Corman is a Professor in the Department of Sociology. Hired in 1991, she has occupied many roles during her tenure at Brock: she has twice served as Chair of the Department of Sociology. She has also served as Director of Women's Studies and of Labour Studies. In 2010 she was appointed for a three year term as Associate Dean Undergraduate Studies. As Associate Dean she was excluded from the bargaining unit and so was not represented by BUFA in the University proceedings relating to the complaints.⁴

Mr. Ian Wood and Mr. Tim Fowler have both had a long history at Brock University beginning as undergraduate and then graduate students. Mr. Wood has been a long serving Teaching Assistant and Mr. Fowler is a Sessional Instructor in Political Science, Labour Studies and Sociology while he completes his doctorate at Carleton University. Both men have been involved with their union, the Canadian Union of Public

¹ The RWLEP came into effect at Brock University on July 1, 2006. Appendix 1.

² Ana Isla, interview, Tuesday, April 16, 2013.

³ Cathy Van Ingen, interview, Thursday, April 18, 2013.

⁴ June Corman, interview, Wednesday, April 17, 2013.

Employees [CUPE], local 4207. In 2013 Mr. Fowler was serving on the CUPE Executive as Treasurer. Both Messrs. Wood and Fowler were represented by their union in the proceedings.⁵

Br. Raoul Masseur was, with the exception of the period from January through September, 2010, when he was on leave, the Roman Catholic Chaplain at Brock University for most of the period of concern to this investigation.⁶ As Chaplain, he was a signatory to the Concordat of 2004. He has been a Consecrated Layman of the Sodality of Christian Life since 1987.⁷

Br. German McKenzie between January and September 2010 was the acting Roman Catholic Chaplain at Brock University. From October 2010 he continued to work as a volunteer in the Diocese's office on campus. Br. McKenzie is a former Superior of the Sodality of the Christian Life in Peru.⁸

In February 2013, Dr. James Turk (then Executive Director of CAUT), acting in accordance with article 6 of the "CAUT Procedures in Academic Freedom Cases"⁹, following consultation with Dr. Wayne Peters (then CAUT President) and Dr. Leonard Findlay (then Chair of the CAUT Academic Freedom and Tenure Committee), established an Ad Hoc Investigatory Committee to examine the situations of the five respondents listed above and to report to CAUT.

⁵ Ian Wood, interview, Tuesday, April 16, 2013 and Tim Fowler, interview, Wednesday, April 17, 2013.

⁶ Brock University, <http://bit.ly/1Q2EXpK>. Accessed on June 14, 2014.

⁷ Brock University, <http://bit.ly/1QLqaPx>. Accessed on June 14, 2014.

⁸ Vic Mucciarone, "SEA Program on Rough Waters," *The Brock Press*, October 31, 2012. <http://bit.ly/1QLqfm8>. Accessed June 30, 2014.

⁹ CAUT, <http://bit.ly/1FFoFSA>.

Chosen to serve on this Investigatory Committee were Dr. John A. Baker, Department of Philosophy, University of Calgary; Dr. Mark Gabbert, Department of History University of Manitoba; and Dr. Penni Stewart, Department of Sociology, York University. Dr. Baker was asked to chair the committee.

The terms of reference of the Committee are as follows:

- To investigate the University's handling of complaints made against faculty members Dr. Ana Isla and Dr. Cathy Van Ingen; Associate Dean Dr. June Corman; and teaching assistants Mr. Ian Wood and Mr. Tim Fowler;
- To examine the University's Respectful Work and Learning Environment Policy and the procedures for handling complaints under the Policy; to determine the appropriateness of the Policy in a university context; and to determine if the procedures for handling complaints under the Policy are consistent with the principles of natural justice;
- To determine whether there were breaches of or threats to the academic freedom of Drs. Isla, Van Ingen and Corman, and Messrs. Wood and Fowler;
- To make any appropriate recommendations.

Dr. Turk informed the five respondents by letter that the Committee had been formed and of the terms of reference of the Committee. These letters were dated February 8, 2013. The President of Brock, Dr. Jack Lightstone, and the President of BUFA, Dr. Linda Rose-Krasnor, were similarly informed in letters of the same date.

On February 28, 2013, President Lightstone replied to Dr. Turk and copied his letter to the members of the

Investigatory Committee. In his letter, President Lightstone stated:

“Your letter indicates that the Committee is operating under ‘The CAUT Procedures in Academic Freedom Cases’ (the ‘CAUT Procedures’). Paragraphs 2 and 3 of those Procedures provide for an assessment by the Executive Director of whether it might be useful to ‘attempt to assist the affected parties and the institution in arriving at a satisfactory resolution of the situation’ and whether ‘a satisfactory resolution of the matter does not seem to be possible through informal negotiation’. It might have been preferable if you had contacted me directly to discuss this matter pursuant to those provisions of CAUT’s Procedures before a decision was made to appoint the Committee but this did not occur.

In any event, we are writing to provide the following information in regard to this matter:

- Rest assured that the University does recognize and respect the matter of academic freedom, in accordance with appropriate principles.
- The University is already in the process of obtaining external advice from those with human rights expertise as to whether or not the complaint could or should actually continue under the University’s Respectful Work and Learning Environment Policy in light of factors such as the dismissal by the Ontario Human Rights Tribunal of a related complaint made under the Human Rights Code and the length of time that has passed since the complaint was filed.
- The University will be undertaking a review of the University’s Respectful Work and Learning Environment Policy with the assistance of stakeholders in the University community,

including the Brock University Faculty Association, and external advice from those with expertise in such matters.”

President Lightstone ended his letter by saying:

“The University’s contact person concerning this matter is Christine Clark Lafleur, Chief Administrative Director in the Office of the President. I would ask that if you or the Committee have any questions or wish to contact the University Administration in connection with this matter that you contact Mrs. Clark Lafleur.”¹⁰

On March 7, 2013, we wrote to each of the complainants and to Dr. Linda Rose-Krasnor (President of BUFA), informing them that the Committee would be in St. Catharines in the third week of April and asking to meet with them. We also wrote in the same vein to Dr. David Whitehead, the BUFA Grievance Officer, who had been the complainants’ primary point of contact in BUFA. All agreed to meet with us.

We requested interviews with:

- President Lightstone;
- Vice Provost and Associate Vice President Student Services Kim Meade;
- Provost and Vice President Academic Murray Knuttila;
- Ms. Lynne Prout (the Brock University Manager of the Office of Human Rights and Equity Services (OHRES), the office which had been dealing with allegations that had been brought against the people listed above as complainants);
- Ms. Christine Lafleur whom President Lightstone had designated as the contact person for the university.

¹⁰ Jack Lightstone letter to James Turk, February 28, 2013.

On April 17, 2013, Ms. Lafleur replied on behalf of all of the above as follows:

“Thank you for your email correspondence to me of yesterday. With respect to your April 16th email message to me as well as your email messages earlier today to Provost and Vice President Academic Murray Knuttila and Vice Provost and Associate Vice President Student Services Kim Meade may I kindly refer to the correspondence sent on behalf of Brock University to CAUT Ad Hoc Investigatory Committee dated April 11, 2013. In this letter we asked that the Committee provide any questions for the University administration in writing through to me in connection with this matter.

Consistent with the University’s April 11th correspondence, I would ask that the Committee provide its questions in writing for the University’s response where appropriate and I will do my best to facilitate response in a timely manner.”¹¹

The Committee spent the week of April 15–19, 2013, in St. Catharines. We held two hour meetings with each of complainants, Drs. Ana Isla, Cathy Van Ingen, June Corman, and graduate students Messrs. Ian Wood and Tim Fowler, BUFA President Dr. Linda Rose-Krasnor, and Grievance Officers Dr. David Whitehead and Dr. Charles Burton.

Some valuable documentation was also provided to us. All of the people we met with agreed to us recording the meetings. Each committee member recorded the meeting.

The Investigatory Committee held a telephone conference call meeting on August 22, 2013. In light of the correspondence from Ms. Lafleur, we decided to abandon attempts to contact Ms. Prout, Dr. Knuttila, and Ms. Meade.

The Investigatory Committee met in Winnipeg from Thursday, January 8, to Sunday, January 10, 2015, to prepare the penultimate draft of our report.

¹¹ Christine Clark Lafleur letter to John Baker, April 11, 2013.

1| Brock University & the Roman Catholic Diocese of St. Catharines

As is well known, there are a number of universities in Canada who are officially linked to the Roman Catholic Church, having been initially founded by Roman Catholic religious orders or dioceses and maintained an ongoing official relationship with the Roman Catholic Church. To our knowledge, however, there are no Canadian secular universities that, as such, have official ties with the Roman Catholic Church or any other religious organizations beyond the provision of facilities for chaplaincies. Brock University, however, is an exception to this rule. It is so on two counts. Firstly, in 2004 it entered into an official “Concordat” with the Roman Catholic Diocese of St. Catharines.¹² Secondly, the University officially associated with the Solidarity Experiences Abroad program, an overseas study program conducted under the auspices of Brock University but administered by the Brock Roman Catholic Chaplains in cooperation with the international Catholic organization Sodality of the Christian Life.¹³ The program was established in 2004.¹⁴

The Solidarity Experiences Abroad (SEA) program provides an opportunity for Brock University students to participate in volunteer placements¹⁵ working with the poor in developing countries. The program has offered experiences in a variety of countries including Peru,

Ecuador, South Africa, Namibia, Costa Rica and Brazil. According to the Brock University website:

“The Solidarity Experiences Abroad (SEA) program is a unique short term international experiential learning opportunity, to explore the realms of social justice and solidarity by connecting career objectives to a series of volunteer and community development projects.

Students are encouraged to engage in a variety of volunteer initiatives, and receive exposure to Latin American, African and/or Asian cultures through hands-on volunteer sustainability work, language classes, cultural outings, lectures, and exposure to spirituality.

Experience working alongside local communities from shantytowns, grass-root institutions and local university students. In just a short time, each SEA participant will learn the power of working together in solidarity and discover the possibility to make an impact in the world using their skills learned at Brock University and in their personal lives.”¹⁶

¹⁶ Brock University, <http://bit.ly/1OGRi4E>. The current website description of the program contains a final paragraph which states:

“SEA is organized through Campus Ministries and the SEA Brock Club. The SEA Brock Club (Solidarity Experiences Abroad Brock Club) is a Brock University student club that develops social justice and solidarity initiatives in the local community and promotes solidarity trips abroad. It also aims to develop a culture of solidarity within Brock University by connecting career objectives of participants with social action. Its aim is to make concrete Brock’s mission to develop ‘Both Sides of the Brain’ as well as to serve our brother and sisters in need. Please note the SEA Brock Club is still in the process of being ratified.”

During the period in question SEA was administered by the Catholic Chaplaincy under the overall supervision of Ms. Kim Meade, Vice-Provost and Associate Vice-President (Student Services). The role of the “SEA Brock Club” is new as is the club.

¹² Concordat, Appendix 2.

¹³ We address issues concerning the Concordat on pp. 38–40.

¹⁴ Brock University, <http://bit.ly/1OGRi4E>.

¹⁵ On the word “placements” here see Finding 5 of the January 27, 2012, “Report of the Internationalization Committee on an investigation of matters relating to the Solidarity Experiences Abroad (SEA) to Latin America” (henceforth “2012 Report of the Internationalization Committee”). Appendix 3.

In accordance with the 2004 Concordat the Diocese is assigned an office on campus. The office is run by a Roman Catholic Chaplain (the Chaplain is appointed by the Bishop of St. Catharines subject to approval by the University). The Diocese's activities on campus include recruiting students for and administering the SEA program. This said, although the SEA program itself has religious/spiritual components, non-religious students are not barred from participating in it.¹⁷

The SEA program is affiliated with the Sodality of Christian life, a religious community founded in Lima, Peru, in 1971 and associated with the Roman Catholic Church. The salient feature of the program is that it is a Brock University program despite its religious affiliation; when the students in the program are in Peru, such things as the infrastructure and trips, field experiences,

and accommodations are provided by "local partners" who belong to the Roman Catholic organization Christian Life Movement which is affiliated with Sodality of Christian Life. The SEA program has also been the vehicle for offering certain Brock University credit courses¹⁸ though we have no reason to believe that the Chaplains or the Christian Life Movement has any input into the content of such credit courses.

As reported above, the present investigation was occasioned by disputes arising when members of the Brock University faculty criticized the University's official involvement with the SEA program. In response, the University's Roman Catholic Chaplains filed a number of complaints against the critics under the University's Respectful Work and Learning Environment Policy.

¹⁷ Human Rights Tribunal of Ontario "Decision" of Mr. Ken Bhattacharjee in the case File Number 2012-11281-I, para. 3. This document is henceforth referred to as "Bhattacharjee 2012 HRTO 1908". Appendix 4. See also Finding 2 of "Report of the Internationalization Committee", Appendix 3.

¹⁸ For example, the course SPMA 4P93, offered in the Faculty of Applied Health Sciences, is described on Brock University website as follows:
"In SPMA 4P93, Sport Management students will apply principles and practices of sport as a development strategy in Peruvian communities to achieve broader social, educational, economic, and humanitarian goals. Students will receive skill development in: communication, relationship building, and leadership as well as program planning, delivery and evaluation ... and so much more!" <http://bit.ly/1P5UjH2>. Accessed February 25, 2015.

2| The Chronology of the Events

2.1 Criticism of & Opposition to the SEA Program in 2006

In 2006 Dr. Ana Isla was approached by a group of six students, all recent SEA participants in Peru, about their concerns with the SEA program. This sequence of events was reported in a letter that Dr. Isla wrote on January 4, 2012, to the Members of the Internationalization Committee, an advisory committee on international programs for students:

“In 2006, 6 students, one male and 5 females, from the Centre for the Environment stepped into my office to brief me on their trip to Peru. They were unknown to me, but they knew that I was originally from Peru. During the conversation, they described several issues and it became clear that they were shocked by the experience for the following reasons:

1. they were not comfortable meeting fundamentalist Catholics, particularly Mr. Luis Fernando Figari, founder of the Sodality of Christian Life, and a group of musicians (called Takillakta del Peru);
2. they were uncomfortable encountering the ideologies and values of the fundamentalist Catholics in the context of a Brock sanctioned trip (“The information presented was shocking in that the position that Mr Figari took on any position, was extremely right wing I was not anticipating such a blatant and right wing interpretation of Christianity”);
3. they were uncomfortable watching and participating in the birth of a child. They also did not know on what grounds the mother had consented to their presence;
4. they were distressed to have Brock sanction volunteer and course work associated with religious organizations and in particular with this specific organization.

These students disclosed to me how disturbed they were. They underscored the ties between the Sodality Family, Sodality of Christian Life, Solidarity in Action, Christian Life Movement and Solidarity Experience Abroad (SEA).

As a result of their research, they:

1. found a picture of a Brock student used to advertise the trips to Peru by the Christian Life Movement in the United Kingdom;
2. found a Brock University logo shown on the website of the Christian Life Movement, suggesting an affiliation with Brock University; and
3. found that the new program Tourism and Environment (ex: Centre for the Environment and Tourism Studies) marketed the SEA field trip for academic credit in which it was described that interested students should contact Professor Tony Ward or Br. Raoul Masseur. This left the impression that either one was able to provide students with academic credit.”¹⁹

One of the six students was Mr. Ian Wood. In his January 4, 2012 letter to the members of the Internationalization Committee in 2012, Mr. Wood reported the following with respect to the 2005 trip:

“1. Students were encouraged to take as many pictures as they wanted to while on the trip, which included pictures of people, including children, living in squatter settlements that were receiving charity

¹⁹ This sequence of events was reported in a letter that Professor Isla wrote to the Members of the Internationalization Committee on January 4, 2012. Appendix 5. See also the similar narrative provided in paragraphs 5–8 of the Bhattacharjee 2012 HRTO 1908. Appendix 4.

from Solidarity in Action Peru (Solidaridad en Marcha Peru), part of the Sodalit Family. Some of the children whose pictures were taken, to my recollection, had nothing to do with the program but lived or played nearby the locations we worked at. Raoul Masseur not only encouraged that students could take images of whomever they pleased without ensuring expressed consent (or, in the case of young children, expressed consent of their parents) but also he encouraged us to share our libraries of pictures upon return to Canada. Some of these pictures I recall being used for recruitment in future years.

2. The construction site in Dos Cruces-San Juan de Miraflores-Lima-Peru that we were working on on behalf of Solidarity in Action, Peru was run quite controversially:

a) There was one person on-site that was in-charge of the construction site. He was a volunteer from the host community. As he was identified to us as the on-site coordinator, he was put into a position where he may have had extensive legal responsibilities under the National Regulations for Building in Peru, or was quite possibly inappropriately taking on the responsibilities of the property owner.

b) As workers on construction sites, we did not have the proper safety equipment nor was there signage — in English or Spanish — for us.

c) As inexperienced masons, we built walls and structures with cement we mixed with rocks and nearby sand in quantities that we could gauge were suitable. Everyone who wanted to could try their bricklaying skills on walls that would later be used as a school for children in the squatter settlements, putting children in real danger (especially in a seismic area).

d) Children were allowed to visit on the construction site, and even participate in construction (see picture).

3. At least two female students working in the nearby Maternity Clinic in San Juan de Miraflores-Lima, Peru, informed me that they could watch live births. One accounted to me that she was invited to prepare the birth with the nurse/doctor by dropping iodine on the opening of the vagina of the woman expecting a child. It was also accounted to me by one of the students that she could not ask for consent due to language barriers, and noticed some preoccupation in the face of the woman as she looked on.

4. The 'cultural activities' of the trip largely occurred with the Sodalit Family. In particular, I recall seeing a musical group called Takillakkta, which integrates members of the Sodality of Christian Life, in a Sodality of Christian Life centre, meeting the 'fraternas', or Marian Community of Reconciliation (Fraternidad Mariana de la Reconciliación), a consecrated group of females of the Sodalit Family, going to the Our Lady of Reconciliation Parish (Nuestra Señora de la Reconciliación), a Sodality of Christian Life run and operated church in Camacho-La Molina-Lima-Perú, a Sodality of Christian Life retreat house in San Borja-Lima-Perú, receiving an 'academic' lecture from a Sodality of Christian Life member (where I first learned the arguments for the evangelization of culture in the context of Perú), and visiting two educational centres 'Villa Caritas' and 'San Pedro' in La Molina-Lima-Peru. Further, I believe that the even Spanish-language training was provided by the NSR Institute, a pedagogical institute run by the Sodalit Family, as it was advertised in SEA Trips in 2008 that Spanish language training in the retreat house would be certified by them.

5. There was very little room for critical exploration of different realities of ourselves and the people we were working with during nightly discussions. In fact, honest concerns about our role as volunteers in these communities emerged in informal discussions among some students but there was a general feeling that bringing these concerns forward was not appropriate given the pressures of group cohesion. Those who were interested in the aspect of poverty were not given space to fully speak intelligently about what they thought about their experiences if it meant contemplation of what we were doing there, or social dynamics within Peru. Questions of the poverty were explained by Raoul as cultural issues. Many times, conversation was closed with a line similar to that of ‘one should not feel guilty about the situation’, as though the concern (from one example) of the relationship between subaltern groups to impoverished conditions was a product of guilt.”²⁰

Dr. Isla reports that she decided that the students’ concerns ought to be “put forward to a higher level of authority” and she approached Dr. Merijeane Morrissey (then Director of Women’s Studies) and the then Chair of Sociology (Dr. June Corman) for advice.²¹

Dr. Corman shared Dr. Isla’s Concerns, and she and Dr. Isla took their concerns to Ms. Kim Meade, Associate Vice-President of Student Services. Ms. Meade was the logical senior member of the Administration to deal with these concerns because her portfolio included Campus Ministries and student volunteer experiences.²²

²⁰ Ian Wood letter to Internationalization Committee, January 4, 2012. Appendix 6.

²¹ Ana Isla letter to Internationalization Committee, January 2, 2012. Appendix 5.

²² June Corman, interview, Wednesday, April 17, 2013.

2.2 The First Investigation of SEA — the 2007 Mandigo Investigation

In the light of these concerns an investigation into the SEA program was initiated. In 2007 a report issued under the authorship of Dr. James Mandigo of the Department of Physical Education and Kinesiology and Ms. Lynne Bubic (later Prout) of the Brock University Office of Human Rights and Equity Services [“OHRES”]. This report was published as “A Solidarity Experience Abroad Program Review Final Report” on February 6, 2007.²³ While the report did not recommend severing Brock’s ties with SEA as Drs. Isla and Corman had hoped²⁴, it did include recommendations about such matters as the process for the selection of students, advance preparation, the program itself, course credit, risk management and follow-up. For example one recommendation dealt with the practice of holding daily prayer sessions:

“Recognizing that daily prayer and religious activities may be offered as part of the program, it is recommended that participants be advised that activities are optional, in order to create an inclusive environment.”²⁵

²³ Solidarity Experiences Abroad Program Review Final Report, February 6, 2007, Dr. James Mandigo and Ms. Lynne Bubic. This is henceforth referred to as the Mandigo Report. Note that Ms. Bubic is the later Ms. Lynne Prout. The contents of this report are described in detail in Ana Isla’s January 4, 2012, letter to the Members of the Internationalization Committee. Appendix 7.

²⁴ Ana Isla letter to Internationalization Committee, January, 2012. Appendix 5.

²⁵ Mandigo Report, page 8. Appendix 7.

The report cautioned that:

“The University recognizes and appreciates the importance of local partners in participating countries to ensure a positive and safe educational experience, and recognizes there is always a need for transparency and background information about such local partners. Because many of the local partners are religious organizations, a Campus Ministries committee should evaluate the suitability of the organization as a partner in SEA. Background information should also be disclosed to participants so they can make an informed decision about their level of involvement in the SEA program.”²⁶

Drs. Isla and Corman were disappointed that the report did not recommend severing Brock University’s ties with SEA.²⁷ They were concerned that the SEA program was administered by an outside religious agency and yet was designated as a Brock University program. They were also troubled by the recognition given in the report to the contribution of an outside program like the SEA program to Brock University’s goal of increasing internationalization. Indeed, the report ended by stating:

“It is recommended that SEA have a clearer link to Brock’s Internationalization Policy (want 10% of grads to have some international experience) as it provides a better opportunity to increase quantity of students getting this than exchange programs.”²⁸

²⁶ Mandigo Report, page 6.

²⁷ June Corman, interview, Wednesday, April 17, 2013.

²⁸ Mandigo Report, page 11.

2.3 Criticism of & Opposition to the SEA Program in 2011

Controversies about the SEA program faded from view until the summer of 2011. At that point, Ian Wood, one of the students who had brought forward concerns in 2006, re-ignited the issue. He raised serious concerns about student safety and the social and political environment in which the program was conducted. He described these concerns in a letter he wrote on January 4, 2012, to the Internationalization Committee as follows:

“After returning from my own visit to Peru in 2005, I noticed that the activities of the Catholic Campus Ministries office seemed centred around activities of the Sodalit Family and its leader: the Solidarity Experiences Abroad trips to his community, the formation of an NGO ‘Solidarity In Action, Inc.’ headed by Raoul [Masseur] that involved his community (including the involvement in the planning of one of his community members, who came from outside of Canada), and efforts to make the texts of Figari available in English.

One of the first things I investigated about the Sodality of Christian Life came from Raoul’s own mentioning of current events with his movement. Raoul told me that his movement was having difficult times in Puno and to pray for them. It turned out that the incident in question was due to the expulsion of liberation theologians from Puno once Kay Schmalhausen, a Sodality of Christian Life priest, became the Bishop of the Prelature of Juliaca in Puno, and the fact that the locals resisted this expulsion. It was revealed to me through magazine and news readings that the Sodality of Christian Life held a set of politics that were traditionalist and conservative,

such as their open support for polemic Cardinal Cipriani of the Opus Dei, their close affiliations to other conservative movements in the Catholic Church such as those discussed in Miranda's 2011 article *Asedio e intolerancia*, and their open support and sometimes active thwarting of reproductive rights, and gay rights."²⁹

Mr. Wood told us that on September 20, 2011, he wrote to Ms. Kim Meade as the person with overall responsibility for the SEA program detailing his concerns both about the SEA program and about the role of the organization Sodality for Christian Life. At the same time he contacted Dr. Isla.³⁰

Dr. Isla reports that research she did about the organization Sodality of Christian life and materials drawn to her attention by Mr. Wood led her to conclude that "SEA's local partners were not safe places for students participating in the program". Accordingly she informed Dr. Tom Dunk, Dean of the Faculty of Social Sciences, and Dr. June Corman, Associate Dean of the Faculty of Social Sciences, of her concerns about the program.³¹

In his interview with us, Mr. Wood told us that Ms. Meade, acting as the university officer responsible for the SEA program, gave assurances that there would be an at-length investigation of the SEA's "local partners" in Peru. She undertook to refer the issue to Dr. Greg Finn, Vice-Provost and Associate Vice-President

Academic, who was responsible for Student Travel and Safety Policy.³²

Despite these assurances, Mr. Wood and Drs. Isla and Corman felt there was a need to be proactive and they discussed introducing a motion to end ties between the SEA program and the local partners.³³ Dr. Isla accordingly raised the issues with the Brock University Women's Studies [W.I.S.E.] Program Committee on November 25, 2011, and proposed the following motion:

"Whereas there have been documented cases of physical and psychological abuse, classism, sexism, racism and homophobia in activities related to Solidarity Experiences Abroad to Latin America, the Centre for Women's Studies strongly urges Brock University to cease support for the Solidarity Experiences Abroad trips to Latin America and to remove all ties to local partners of these trips (i.e., the Sodality Family, Sodality of Christian Life, Solidarity in Action, Christian Life Movement, etc.)."³⁴

The motion was passed unanimously. The Centre for Women's Studies took the position that:

"As a publicly funded, secular university, one would expect Brock must be duly attentive to any officially sanctioned experiences undertaken by our students, either in a volunteer setting or in a course work setting. Hence we respectfully suggest that Brock University consider phasing out the organization of

²⁹ Ian Wood letter to Internationalization Committee, January 4, 2012. Appendix 6.

³⁰ Ian Wood, interview, Tuesday April 16, 2013.

³¹ Ana Isla letter to Internationalization Committee, January 2, 2012. Appendix 5.

³² Ian Wood, interview, Tuesday, April 16, 2011.

³³ See Ana Isla's January 4, 2012, letter to the Internationalization Committee. Appendix 5.

³⁴ See Bhattacharjee 2012 HRTO 1908, para. 9. Appendix 4. See also the January 27, 2012, "Report of the Internationalization Committee on an investigation of matters relating to the Solidarity Experiences Abroad (SEA) to Latin America". Appendix 3.

international volunteer work through the SEA program and move to build partnerships with volunteer placement organizations that support international declarations on human rights.”

Support for the Women’s Studies position grew when on November 30, 2011, the Department of Sociology, the Executive of the Brock University Faculty Association (BUFA), and Local 4207 of the CUPE passed motions almost identical to that of Women’s Studies.³⁵

It was at about this time that Dr. Cathy Van Ingen became involved. A member of the Department of Kinesiology in the Faculty of Applied Health Sciences, she was also in 2011 on the program committee of the Centre for Women and Gender Studies. Dr. Van Ingen was aware that one of the courses in her own Faculty of Applied Health Sciences (SPMA 4P93 “Sport for Development Field Experience”) was partnered with the SEA program. She offered to facilitate a discussion between Ana Isla, the mover of the November 25, 2011, motion in the Women’s Studies [W.I.S.E.] Program Committee, Dr. Kirsty Spence, the SPMA 4P93 Course Instructor (and Chair of Department of Sport Management), and Dr. Anna Lathrop, Associate Dean Undergraduate Studies, Faculty of Applied Health Sciences.³⁶

Communication between Drs. Spence and Van Ingen continued during January, 2012. Dr. Van Ingen shared with Dr. Spence the Centre for Women’s Studies (W.I.S.E.) motion and the arguments prepared by the

Women’s Studies (W.I.S.E.) Program Committee³⁷ and eventually submitted to the Internationalization Committee Investigation into the SEA program.³⁸

2.4 Response to the Motions

Resistance to calls for the end of the SEA program was quick to appear. On December 7 and 13, 2011, Roman Catholic Chaplain, Br. Raoul Masseur submitted to Ms. Lynne Prout, then Manager of the Brock University Office of Human Rights and Equity Services [OHRES], an allegation under the RWLEP of religious discrimination against Dr. Ana Isla and the Sociology Department.³⁹ On December 16, 2011, Br. Masseur was informed by the OHRES that it would not act on these allegations because, in Br. Masseur’s words, his allegations “did not meet OHRES’s conditions to be accepted” as a complaint.⁴⁰

Also, on December 7, 2011, the then Brock University Provost and Vice President Academic, Dr. Murray Knuttila, wrote to Dr. Shannon Moore, Director of Women’s Studies, and Dr. John Sorensen, Chair of the Department of Sociology, as follows:

³⁷ Centre for Women’s Studies, Summary Report: Solidarity Experiences Abroad, Latin America, Investigation 2011–2012. This report is undated but apparently it was prepared before November 30, 2011. The report is attached as Appendix 8.

³⁸ Cathy Van Ingen email to Charles Burton, February 21, 2013. Cathy Van Ingen also mailed copies of the Women’s W.I.S.E. Summary Report on SEA to Lucie Thibault in the Department of Sport Management. Thibault in turn shared the report with a wider list of faculty in the department.

³⁹ Raoul Masseur reports the existence of these complaints in a letter sent to Ms. Lynne Prout on April 23, 2012. This letter and an attachment are attached as Appendix 9.

⁴⁰ See p. 1 of “Details of Issue” which appears as an attachment in Raoul Masseur’s letter to Lynne Prout, April 23, 2012.

³⁵ Ibid.

³⁶ Cathy Van Ingen email to Charles Burton, February 21, 2013.

“The W.I.S.E. Program Committee passed a motion on November 25, 2011, recommending that Brock University terminate its relationship with the Solidarity Experiences Abroad to Latin America Program. I do not have a copy of the precise motion, nor am I aware of the evidence on which the motion is based; however a memorandum from Professor Cathy Van Ingen to Professor Anna Lathrop dated November 25, 2011, refers to ‘numerous documented cases of abuse against youth and women perpetrated by the Solidat Family’.”⁴¹

Dr. Knuttila then quotes the motion passed by the Department of Sociology on November 30, 2011, and states that:

“Given the seriousness of these allegations it is imperative that these allegations be thoroughly investigated. The responsibilities of my office includes protection of Brock students while ensuring adherence to tenets of natural justice when there is an allegation of malfeasance or wrongdoing. To that end I will ask the International Advisory Committee to investigate.”⁴²

The Internationalization Advisory Committee, he comments, “is a committee struck by the Provost to advise on international matters”. He states that “its membership includes the Vice-President Research, Dean of Graduate Studies, Dean of Social Sciences, Dean of Business, Director of International Services and Brock International, and a representative from the Library” but states that “[i]n this instance, given their past involvement with this file, neither the Vice-Provost

Students Affairs nor the Director of International Services will sit on the Committee”.⁴³ He adds that “[i]n order to ensure there is no possibility of a perception of bias, I will chair the committee”.⁴⁴

Dr. Knuttila also reported that he had asked Dr. Greg Finn, Vice-Provost Academic, to establish and chair a Committee “under the rubric of our Student Travel and Safety Policy” with a mandate to “undertake a separate and independent investigation of this matter and to make recommendations with regard to Brock’s relationship to Solidarity Experiences Abroad to Latin America.”⁴⁵

The five respondents informed the Investigatory Committee that they never heard from this Committee. We have no evidence that the Finn Committee ever submitted a report to the Provost.

Dr. Knuttila further stated to Drs. Moore and Sorensen:

“In each case the Investigations will need to examine all the evidence from whatever source you have at your disposal and that informed your actions. As I noted, the W. I. S. E. Motion and the Sociology Department motion each makes reference to documented cases of abuse which are presumably the grounds for our termination of our relationship with Solidarity Experiences Abroad to [sic] Latin America. I will need any and all such documented evidence and any such evidence and documentation will be treated in strict confidence, subject only to the requirements of natural justice which allow any individual accused of wrongdoing or malfeasance the right to confront

⁴¹ Murray Knuttila memo to Shannon Moore and John Sorenson, December 7, 2011. Appendix 10. Among others, the memo was copied to Raoul Masseur.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid

and address the evidence in which an accusation or allegation is made; therefore all material will be shared with the other parties.”⁴⁶

In January 2012, the Internationalization Committee received written submissions⁴⁷ from Dr. Isla and Mr. Ian Wood, and heard oral submissions from Dr. Isla, the Department of Sociology, the Centre for Women and Gender Studies, and Br. Raoul Masseur.⁴⁸

On January 27, 2012, the Internationalization Committee issued its report, which found that:

“To the extent that the motions and Summary Document from W.I.S.E. (Women Studies Program Committee) suggested that Brock University sever all connections with Solidarity Experiences Abroad to Latin America program, *the Committee determined that there was no compelling evidence to support such an action and further affirms its support for this partnership subject to the conditions below.* In the opinion of the Committee no substantial evidence was presented that participation in the SEA program posed any substantial or immediate risk to mature consenting adults.”⁴⁹ [Italics added]

⁴⁶ Ibid.

⁴⁷ As noted earlier, Professor Isla’s letter of January 4, 2012, and Mr. Wood’s letter of January 4, 2012, are attached as Appendices 5 and 6 respectively.

⁴⁸ See Bhattacharjee 2012 HRTO 1908, para. 9. We also include as Appendices 11 Raoul Masseur’s submission of January 12, 2012 (this submission was accompanied by a binder of roughly 70 pages of supplementary materials). We have also included as Appendix 12 a response which Ian Wood wrote in reply to that presentation and to Raoul Masseur’s written submission.

⁴⁹ Report of the Internationalization Committee on an investigation of matters relating to the Solidarity Experiences Abroad (SEA) to Latin America, January 27, 2012. Appendix 3.

While the committee rejected claims that the SEA program should be abandoned because it posed dangers to students, it nevertheless stipulated that potential participants in the program be made aware of its religious affiliations but also that students without such affiliations were welcome. The committee mandated better procedures for photo permissions and that all participants act in accordance with Tri-Council guidelines for research with human subjects.⁵⁰

On the key issue of the propriety of Brock’s official involvement with the church based SEA program, the Committee noted that:

“The Committee heard an argument that all student experiential and educational trips involving students from the so-called ‘geopolitical-economic North’ to the ‘geo-political-economic South’ were inappropriate and extensions of colonialism. In addition it was suggested that secular universities such as Brock should not entertain partnerships with faith-based organizations. The Committee recognized that while there are academic debates about these issues it is beyond the scope of the committee’s mandate to declare an institutional position on them. Moreover, it determined that these issues were not germane to the specific matters relating to the motions before it.”⁵¹

On January 26, 2012, that is, the day before the release of the Internationalization Committee’s Report, Br. Masseur’s colleague, Br. German McKenzie, filed a RWLEP complaint with the OHRES alleging that Dr. Isla had harassed and discriminated against him because of his Catholic religious beliefs. Specifically, he objected to the comments that he alleged Dr. Isla had

⁵⁰ Ibid.

⁵¹ Ibid.

made about him in the motion passed at the November 30, 2011, meeting of the Department of Sociology, in the explanatory letter that he claimed she circulated to various Departments of the University, and in the presentation that she made to the Internationalization Committee. He alleged that Dr. Isla was targeting him because he was a pro-life opponent of abortion. He asserted his right to hold such beliefs as an expression of his right to religious freedom.⁵²

On February 10, 2012, the University OHRES dismissed Br. McKenzie's January 26, 2012, complaint on the grounds that:

"After reviewing the allegations in your complaint, it is determined that the allegations failed to demonstrate the required elements of discrimination, harassment, personal harassment or psychological harassment. In particular, a pattern of specific behaviours by the alleged respondent that are directed towards you specifically and which may be characterized as fitting the definitions under the RWLEP is not present. As the behaviour is currently described in your documentation, it is not vexatious as defined under the RWLEP. Rather, on the face of your documentation, the actions of the respondent may be characterized as a legitimate expression of her academic freedom and use of existing avenues for the hearing and resolution of her concerns."⁵³

At this point, the University had no doubt that the critics of the SEA Program were simply exercising their academic freedom rights to criticize the University.

2.5 Further Expressions of Opposition to the SEA Program at "Occupy Brock"

In early 2012, an "Occupy Brock" movement emerged at Brock University: similar movements were appearing throughout North America and elsewhere. At an "Occupy Brock" demonstration held on campus on February 1, 2012, Drs. Isla and Corman and Mr. Ian Wood "occupied" the speaker's corner and publicly voiced their concerns about the Brock University affiliation with the SEA program and spoke in support of the above quoted motions. Dr. Corman argued that a secular publicly funded university had no business outsourcing its programs to a private corporation and especially not to a private religious corporation. She said "We ask [the University] to take a stand and only officially sanction volunteer opportunities with non-religious organizations" ... "[a]nd that in fact, all course work opportunities at Brock also not be involved with specific religious organizations".⁵⁴

Subsequently, on February 13, 2012, Dr. Corman refused to buy a rose from a student selling roses as part of a fund raising drive for SEA. Before walking away from the table, Dr. Corman told the students that she opposed the SEA program. Her remarks to the students were later cited as part of Br. Masseur's RWLEP complaint of April 23, 2012 in which Dr. Corman was denounced as a "Faculty Bully".⁵⁵

Also during the Occupy Brock events on February 13 and 14, 2012, Messrs. Wood and Fowler (who had

⁵² Bhattacharjee 2012 HRTO 1908, para. 14. Appendix 4.

⁵³ Bhattacharjee 2012 HRTO 1908, para. 16.

⁵⁴ Bryan Medland, "Occupy Brock", *The Brock Press*, February 6, 2012. <http://bit.ly/1M2eMLA>. Accessed August 7, 2014.

⁵⁵ Brother Masseur's letter to Lynne Prout of OHRES, April 23, 2012. Appendix 9.

agreed to come along to help) handed out leaflets critical of the SEA program. They occupied a table near where students supporting SEA were selling roses. The leaflet described what it called the Sodality of Christian Life and questioned Brock's ties to the group.⁵⁶

Reacting to these events, student fundraisers contacted Br. Masseur. As one student wrote to Br. Masseur, "Then in the afternoon two males came by our table (around 2) and start [sic] to force the people who were buying flowers for us to take a flyer that had the same charges that you were faced with earlier in the year."⁵⁷ Students identified Mr. Fowler to Br. Masseur. The next day the leafleting continued. Until this leafleting, Tim Fowler had not been involved in the protest against the SEA program.⁵⁸

In the meantime, the SEA controversy was picked up by the Catholic press. On February 17, 2012, an article entitled "Student fundraisers harassed over ties with Christian Life Movement" appeared in the Catholic News Agency. The article included the following statements:

"The protesters who call themselves 'occupy Brock', appear to be linked to a campaign by Ana Isla — an Associate Professor in Women's Studies at the school who has been working to halt the university's Solidarity Experiences Abroad (SEA) Program.

Isla has said that she opposes the program because it was created through the work of Catholic Campus minister and member of the Christian Life Movement Brother Raoul Masseur

⁵⁶ The Sodality of Christian Life Record flyer. Appendix 14.

⁵⁷ Nicole Studenny email to Raoul Masseur, February 14, 2012. Appendix 13.

⁵⁸ Tim Fowler, interview, Wednesday, April 17, 2013.

Brother Masseur and other parties involved [sic] Isla's attempts to remove the SEA program have submitted religious discrimination claims to the school, which are currently being processed by the Office of Human Rights at Brock University."⁵⁹

Subsequently, on March 14, 2012, Brock Provost Dr. Murray Knuttila wrote to the Catholic News Agency requesting that the February 17 article be withdrawn from the CNA site:

"I write as the Provost and Vice-President Academic at Brock University to express concern and objections with regard to the item I attach below. The item makes statements with regard to a faculty member at Brock University, Professor Ana Isla. One paragraph states that some protesters 'appear to be linked' to Professor Isla, while another paragraph claims she is opposed to a program because of who created it. The first is an unsupported allegation without evidence and the second is, from the information I have, simply not true.

It is true that two academic units at Brock expressed their concerns publically with regard to Brock's involvement with a particular experiential field-learning program with which Brother Masseur is associated; however in none of the communication I received was Professor Isla explicitly mentioned. Brock University's Internationalization Committee handled the matter internally and made certain recommendations; however it is also my duty and responsibility to protect the academic freedom of Brock faculty and their right to express diverse opinions without fear or favor, and without being publicly singled out for potential abuse or reprimand.

⁵⁹ CNA, <http://bit.ly/1MH0rqw>. Accessed March 3, 2015.

The fact that vitriolic statements follow the time in question exposes Professor Isla to public humiliation and abuse as a result for the references to her in the item.”⁶⁰

It is, however, important to note that, as late as two weeks before OHRES accepted Br. Masseur’s complaint, Brock’s Provost was defending Dr. Isla’s academic freedom rights, though the defence was in a private letter to the Catholic News Agency that was never copied to Dr. Isla.

Ironically, on the same day (March 14, 2012) that Dr. Knuttila defended Dr. Isla’s right to academic freedom, he also wrote to Br. Raoul Masseur saying:

“I write as the Provost and Academic-Vice President at Brock University to express my personal regrets with regard to any negative personal impact that may have resulted from recent events at Brock University with regard to the Solidarity Experiences Abroad Program and the Program to Latin America with which you are affiliated.

As you know, Brock University’s commitment to academic freedom allows members of the university community to participate in the free exchange of ideas and debates; however some of the accusations that were apparently made and public pronouncements of some of those involved may be seen to cast aspersion on your character and good name.

If this is the case, I offer my heartfelt and sincere personal apology and regrets. Rest assured that everything in my experience here at Brock University

in dealing with you and everything that I have personally heard about you leads to the conclusion that you are a person of great integrity and that you hold the best interests of our students as paramount in the conduct of your office. To repeat, I hereby offer my personal apology for any injury that you and your good name might have suffered as we worked through this difficult matter. I look forward to continuing to work with you in the best interests of our students. I wish you peace.”⁶¹

As noted, Dr. Knuttila did *not* write to Dr. Isla. However, some months later on October 27, 2012, when Mr. Kevin Cavanagh, Brock University Director, Communications and Public Affairs, drew Dr. Knuttila’s attention to an October 28, 2012, article entitled “Catholic justice program under attack at Brock” that had been posted on The Catholic Register⁶², Dr. Knuttila responded that:

“None of this helps. BOTH sides need to stop already. Missing from this ‘report’ is knowledge of the fact that I sent a letter last [year] asking them to cease and desist with what I thought were scurrilous attacks on Anna [*sic*]. Had they contacted me I would have indicated that I did what I must do, defend the right of my faculty members to hold political views and to, in appropriate manners and means, express them. I find the language here, ‘badger volunteers’, ‘complained of Isla’s rhetoric’, and the claim that the so-called Occupy Brock movement was CUPE financed and that it bolstered Isla’s campaign, unsupported by fact and unhelpful, if not offensive.

⁶⁰ Murray Knuttila letter to the Catholic News Agency, March 14, 2012. Appendix 14.

⁶¹ Murray Knuttila letter, dated March 14, 2012, is attached as Appendix 15.

⁶² Catholic Register, <http://bit.ly/1Q8sYbX>. Accessed August 7, 2014.

Isla's colleagues have already contacted me this morning asking for a meeting to discuss the possibility of ending formal relationships with any faith-based organization that supports or operates field trips.

I am not suggesting we respond in any manner, but I did want you to understand my position that each side of this 'debate' simply seems to want to get the last word in. Remember the old kids' game of 'touch you last', it could go on forever!"⁶³

2.6 Submission of a Further Complaint by Br. Masseur (with Br. McKenzie as Co-Complainant)

On April 23, 2012, Br. Raoul Masseur sent OHRES Manager Lynne Prout a binder which he claimed contained "more information" about "bully action" [*sic*] of which, he alleged, certain "SEA participants" were "victims" on February 13 and 14 [of 2012]. In the letter⁶⁴ he states that the materials in the binder "supplement" the complaint he had laid on December 7, 2011, and his appeal of the OHRES refusal to take this complaint forward under the RWLEP. He further asks that "the three groups of documents ... be considered as a whole" (presumably he is here referring to the documents he had submitted in his December 7 complaint, in his appeal of the refusal to take that complaint forward, and in the

materials in the rest of the April 23 letter and the binder attached to it).⁶⁵

On the second page of his letter Br. Masseur also requested that:

"Because of the risk that new strategies intend to block next year's SEA 2013 Programs I think that with the harassment investigation case Interim Measures (Respectful Work and Learning Environment Policies #47) should be taken to protect us."⁶⁶

Nothing more was heard of the request for interim measures, and so we assume that the request was not acted on. Br. Masseur's submission of April 23 expands his complaint to include as respondents not only Dr. Isla (the sole subject of the earlier complaints), but also Drs. June Corman and Cathy Van Ingen and Messrs. Ian Woods and Tim Fowler. In this latest version of his complaint, he now alleges that these five respondents were guilty of personal and psychological harassment, and of bullying. It is clear that Dr. Isla is alleged to have been guilty of religious discrimination, but it is not clear whether this is also alleged of the other respondents. It is clear from the letter that at least some of the alleged bullying was alleged to have taken place at the "Occupy Brock" incidents, but it is not clear whether the earlier protests against the SEA program were also being alleged to have constituted bullying or harassment.

⁶³ Murray Knuttila email to Kevin Cavanagh, October 29, 2012.

⁶⁴ Raoul Masseur letter to Lynne Prout, April 23, 2012, together with the attachment to that letter headed "Details of Issue". Appendix 9.

⁶⁵ *Ibid.* His exact words were:

"As per our last conversation in your office, I am sending you a binder with more information about the bully action that SEA participants were victims the last February 13th and 14th, which supplements my application of December 7th, 2011, and my appeal of February 6th, 2012. I would ask for these three groups of documents to be considered as a whole."*[sic]*

⁶⁶ *Ibid.*

Finally, Br. Masseur requests that OHRES “include Mr. German McKenzie as claimant, along myself [sic]”.

Though OHRES had rejected two earlier complaints against Ana Isla, this latest complaint was accepted. On May 10, 2012, each of the respondents received a letter from OHRES Director Lynne Prout indicating that the complaint by Br. Raoul Masseur and German McKenzie had been accepted as of April 27, 2012, and that each of the respondents had been included as a respondent in the complaint. In her letter, Ms. Prout said that:

“... at this time I would like to meet with you at your earliest convenience to provide you with a copy of that complaint, to discuss the process for investigation of complaints under the RWLEP, and to answer any questions you may have. The RWLEP can be found at <http://www.Brocku.ca/human-rights/policies-procedures>.”⁶⁷

One of the respondents, Dr. Corman, initially requested an immediate meeting with Ms. Prout, but then cancelled “until I have a written statement of claim”.⁶⁸ Under the terms of the RWLEP, such a statement should have been provided within ten days of the complaint’s acceptance.

On May 14, 2012 Dr. Corman wrote again to Ms. Prout on behalf of all five respondents. She again requested a written statement of the concerns of Brs. Masseur and McKenzie, and asked that the claims against all five be dealt with simultaneously. She also asked Ms. Prout to recuse herself from the case in light of her “previous review of the relationship between Solidarity Experience Abroad and Brock University”, a reference to Ms Prout’s

having been one of the two members of the 2007 Mandigo investigation of the SEA program.⁶⁹

Ms. Prout responded the same day assenting to the first two requests and offering to arrange delivery of the documents.⁷⁰ On the question of recusing herself from the processing of the allegations, Ms. Prout offered to “consider that request and what alternative arrangements might be possible”. She stated:

“I’m not sure if you are aware of the potential investigation processes utilized by the office, but staff of the office do not conduct investigations or make determinations of fact. Rather this is done by the investigator(s). This might alleviate potential concerns.”⁷¹

In any event Ms. Prout did not recuse herself nor, to our knowledge, did she address the issue again.

There was apparently no further contact between the respondents and the OHRES until September 11, 2012, when Dr. Corman wrote again to Ms. Prout requesting information on “the status of the claim filed by Mr. Masseur and Mr. Mckenzie. I do not want this claim lingering along”.⁷² Ms. Prout replied on September 19, 2012, and said that, given the “complexity of the case ... I have recommended to senior administration that we utilize a professional external investigator for this file”. Ms. Prout also in the same email stated that “As you may be aware, the RWLEP has been through a review process which has not yet been concluded. It has resulted

⁶⁷ Lynne Prout email to Ana Isla et al., May 10, 2012

⁶⁸ June Corman email to Lynne Prout, May 14, 2012, 12:15 pm.

⁶⁹ June Corman email to Lynne Prout, May 14, 2012, 11:41 am.

⁷⁰ Lynne Prout email to June Corman, May 14, 2012, 12:47 pm.

⁷¹ Lynne Prout email to June Corman, May 14, 2012, 12:47 pm.

⁷² June Corman email to Lynne Prout, September 11, 2012, 12:28 pm.

in a lack of clarity about procedures for conducting investigations.”⁷³

Dr. Corman replied⁷⁴ and the next day requested a meeting to discuss the complaint.⁷⁵ Ms. Prout replied in the affirmative and requested schedules. By mid-October a full six months had passed since the complaint had been accepted by OHRES, but no meeting had taken place. As a matter of fact, no meeting was *ever* scheduled for the respondents and no respondent was ever interviewed. No written version of the complaint had been provided to the respondents, despite the fact that the policy required such provision in a timely manner.

At the beginning of October, 2012, Dr. Corman, concerned that as an administrator excluded from the union she was unique among the respondents in having no one to represent her interests, again wrote to Ms. Prout with a formal request for a personal advisor under section 24 of the RWLEP.⁷⁶ Ms. Prout wrote the next day that it was up to Dr. Corman to find someone to represent her: “In previous instances, folks have used a colleague that they confide in. The aim is for folks to have some personal support during the process.”⁷⁷

⁷³ Lynne Prout email to June Corman, September 19, 2012, 10:46 am.

⁷⁴ June Corman email to Lynne Prout, September 19, 2012, 2:45 pm.

⁷⁵ June Corman email to Lynne Prout, September 20, 2012, 10:11 am.

⁷⁶ June Corman email to Lynne Prout, October 3, 2012, 10:56 am. As noted earlier, June Corman’s difficulty with representation was a consequence of her exclusion from the BUFA bargaining unit as an administrator. The relevant sentence in section 24 of the RWLEP states:

“Any person involved in the complaint process may seek assistance, support or representation from another person of her/his choice, *such as a union observer/representative ...*”
[Italics added]

⁷⁷ Lynne Prout email to June Corman, October 4, 2012, 11:32 am.

Dr. Corman also wrote to President Jack Lightstone requesting support for her defence regarding the RWLEP complaint. She locates her concerns squarely within the purview of her role as Associate Dean:

“As a faculty member and as an Associate Dean, Undergraduate in the Faculty of Social-Sciences, I have made numerous efforts to disengage Brock Volunteer and Course-work from specific religious denominations. Of course, religious groups can have access to the campus to recruit students to volunteer within their organization but this volunteer work ought not be considered a Brock volunteer opportunity. I have not fully determined my position on the involvement of religious groups with course work but, at a minimum, this aspect of the course should be made public and be cleared through UPC and Senate as part of the normal process of course approval.

As a result of my efforts to institute the policy on volunteering (which would resemble the official policy of the University of Regina), two of the Lay-Brothers are accusing me of bullying and disrespectful behavior.”⁷⁸

President Lightstone responded briefly, advising Dr. Corman to check the University’s web pages for information on resources provided by the OHRES. He added: “Should their help be deficient, please contact me as the office is accountable to the President.”⁷⁹

On October 12, 2012 Dr. Corman advised the President that OHRES had been of no help and asked: “As

⁷⁸ June Corman email to Jack Lightstone, October 3, 2012, 11:10 am.

⁷⁹ Jack Lightstone email to June Corman, October 11, 2012 4:27 pm.

Associate Dean to whom do I turn for assistance?”⁸⁰

Later the same morning, Dr. Corman wrote again to the President laying out her concerns that advocating policy changes in the course of her work as an Associate Dean ought not to leave her vulnerable to charges of disrespect and harassment. She said:

“Dear Jack

I take very seriously the charges levied against me at the Office of Human Rights and Equity Services. This case raises important precedents for all Associate Deans and Deans at Brock University. Were the Administration not to make legal resources available to me and consequently it was determined that my actions were in fact a contravention of the respectful Workplace Policy at Brock, many Associate Deans and deans would be bewildered as to the back-up they might expect were they to attempt to change policies that affected opposing interest groups.

The claim against me is directly related to the policy changes that I am advocating regarding whether Brock’s volunteer opportunities should be those offered by religious groups. I have clearly made my position known to the International Committee, at an event on campus and to individuals on campus. I intend to further pursue these goals despite what I am interpreting to be attempts to silence me and other like-minded members of the Brock Community.

Given the absence of legal representation offered to me by the Office of Human Rights and Equity Services, I am formally requesting legal representation paid by Brock University. If the law firm, on retainer by Brock, is not appropriate, I can source my own lawyer. I would appreciate hearing

from you as soon as possible given that this case may proceed in the near future.

In the meantime, I feel silenced in my role as Associate Dean to pursue this policy change or any other change of Brock policy given the vulnerability of exposure to future ‘mischief’ claims by those who may disagree with my positions on Brock policies.”⁸¹

The Committee has no record of a response to this request.

After receiving Ms. Prout’s letter of May 10, 2012, Dr. Van Ingen made contact with the other respondents in the case and with BUFA who provided her with representation. Dr. Van Ingen also informed her Dean, Dr. Neil McCartney, of the complaint. Dr. Van Ingen told us that Dean McCartney had apparently already advised members of the Faculty not to discuss the issue with students or others until after the Internationalization Committee had reported.⁸²

Having been informed by Ms. Prout that Br. Masseur’s April 23, 2012, complaint had been allowed to proceed, Messrs. Wood and Fowler immediately sought union representation. The RWLEP is incorporated into the CUPE 4207 Collective Agreement. For example under article 5.02 “the Parties recognize their rights and responsibilities under the University’s Respectful Work and Learning Environment Policy (RWLEP)”. And in article 5.05 it is stated that:

“The Union and the Employer agree that all employees of the University are responsible to adhere to the University’s RWLEP. Complaints shall be dealt with in accordance with the policy. A claim that the

⁸⁰ June Corman email to Jack Lightstone, October 12, 9:01 am.

⁸¹ June Corman email to Jack Lightstone, October 12, 2012, 11:41 am.

⁸² Cathy Van Ingen, interview, Thursday, April 18, 2013.

University's application of the RWLEP is inconsistent with either this policy or this Collective agreement shall be initiated at Stage 2 of the grievance procedure. Members of the Union are entitled to Union representation in all stages of the RWLEP processes."⁸³

Article 11.05 states that:

"In any disciplinary investigation where the University requires the attendance of a Bargaining Unit member, the University will schedule the meeting during the member's regular working hours or compensate the member at their appropriate rate of pay for time spent attending the meeting."⁸⁴

Mr. Wood wrote to Ms. Prout on May 14, 2012, asking if these meetings would be remunerated.⁸⁵ Ms. Prout responded on June 5, 2012, that she had been advised by Human Resources that her "request for a meeting with you does not fit within the meaning of Article 11.05."⁸⁶

Over the summer and into the fall of 2012, Mr. Wood and Mr. Fowler along with their CUPE representative remained resolute that remuneration was required if there was to be a meeting. In the end there never was a meeting nor were Mr. Fowler or Mr. Wood ever interviewed although the incident dragged on until the spring of 2013 when the file was finally closed. Both Mr. Fowler and Mr. Wood declined to meet with an external investigator. Their union, CUPE Local 4207, filed a grievance.⁸⁷

⁸³ CUPE local 4207 Collective Agreement, July 1, 2010–July 1, 2013.

⁸⁴ CUPE Local 4207 Collective Agreement.

⁸⁵ Ian Wood email to Lynne Prout, May 14, 2012, 5:47 pm.

⁸⁶ Lynne Prout email to Ian Wood, June 05, 2012, 10:10 am.

⁸⁷ Tim Fowler, interview, Wednesday, April 17, 2013.

2.7 Complaint of Br. McKenzie to the Human Rights Tribunal of Ontario

On April 4, 2012 (that is, before Br. Masseur's revised RWLEP complaint of April 23, 2012) Br. German McKenzie had filed an Application with the Human Rights Tribunal of Ontario (HRTO).⁸⁸ In it he alleged that Dr. Isla had "discriminated against him with respect to employment because of his creed."⁸⁹

Br. McKenzie specifically argued:

1. The respondent had proposed motions at meetings of the Centre for Women and Gender Studies and the Department of Sociology, motions which accused Br. McKenzie of (a) racism, classism, homophobia, and sexism, and sexual, physical and psychological abuse of youth and women, and (b) using the University's academic programs and other resources for purposes other than the services of the Roman Catholic Chaplain.

2. The only proof that the respondent had provided to substantiate her charges against him was his links to the Sodalit Family. He admitted that he has links to the Sodalit Family, but denied the truth of any of

⁸⁸ Bhattacharjee 2012 HRTO 1908, para. 1. Appendix 4. The "application" was filed under section 34 of the *Ontario Human Rights Code*, R.S.O. 1990, c. H.19. Section 34 of the *Code* covers "Applications by Person". Section 34 (1) states, "If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2". Section 45.2 makes provision for the Tribunal to order monetary compensation or non-monetary compensation. It also authorizes the Tribunal to issue "[a]n order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act".

⁸⁹ *Ibid.*, para. 1.

respondent's charges. In his view, the charges constituted harassment.

3. He believes that the respondent targeted him because he is a pro-life Catholic who is opposed to abortion, not because she is concerned about the safety of students who participate in the *SEA* program. Specifically, he stated that the respondent discriminated against him because he believes 'in this sacredness of life from conception to natural death'.

4. The University's OHRES dismissed his complaint because its definition of discrimination is too narrow, and it has 'a too broad a notion of academic freedom that supports bullying'.⁹⁰

In response to Br. McKenzie's complaint the Human Rights Tribunal ordered that "a summary hearing be held by teleconference to decide whether the Application should be dismissed on a preliminary basis because it has no reasonable prospect of success".⁹¹ On June 7, 2012, the Tribunal issued a Notice of Summary Hearing to the parties, which informed them that the hearing was scheduled for September 17, 2012.⁹²

Although the parties were notified of this order in the spring, Dr. Isla was away in Peru on a research trip at the time and only found out that a complaint had been brought against her on her return to Ontario in late August. Following her return from Peru, on August 28, 2012, Dr. Isla accompanied by her BUFA Representative, Dr. Charles Burton, met with President Jack Lightstone and Mr. Varujan Gharakhanian,

Director of Employee and Faculty Relations, to request legal representation.⁹³ This request was refused and Dr. Isla was forced to rely on her own resources in securing legal advice on the formulation of her response to Br. McKenzie's complaint to the Human Rights Tribunal.⁹⁴

On September 10, 2012, Dr. Isla filed a Response to Br. McKenzie's Application.⁹⁵ In this response she denied that she was in an employment relationship with Br. McKenzie and denied she had discriminated against him because of his creed. She claimed that "all of her activities which the applicant is complaining about involved the exercise of her protected right of freedom of expression in the context of the University". She stated that:

"Br. McKenzie's sensitivity to legitimate discussion and debate are not proof of harassment or discrimination, and that his Application is an attempt to silence opposition to his point of view, and stifle criticism of an organization to which he belongs."⁹⁶

On September 17, 2012, the Summary Hearing of the Human Rights Tribunal was held by teleconference as scheduled. Br. McKenzie filed supporting documents in advance of the hearing, as did the University (further to its Request to Intervene relation to the question of whether Br. McKenzie was in an employment relationship with the University).⁹⁷

⁹⁰ Bhattacharjee 2012 HRTO 1908, para. 17.

⁹¹ *Ibid.*, para. 1.

⁹² *Ibid.*, para. 19.

⁹³ Charles Burton email to Varujan Gharakhanian, September 6, 2012, 11:46 am.

⁹⁴ Varujan Gharakhanian email to Ana Isla, September 6, 2012, 1:36pm.

⁹⁵ Professor Isla's response to Br. Masseur's. Appendix 18.

⁹⁶ This summary of actions by the Human Rights Tribunal is given in paragraphs 19–23 of Bhattacharjee 2012 HRTO 1908. Appendix 4.

⁹⁷ *Ibid.*, para. 23.

The function of the Summary Hearing of the Tribunal was “to decide whether the Application should be dismissed on a preliminary basis because it had no reasonable prospect of success”. In the event, Adjudicator Bhattacharjee decided that Br. McKenzie’s complaint should be “dismissed on a preliminary basis because it had no reasonable prospect of success”.⁹⁸

On October 9, 2012, Adjudicator Bhattacharjee issued written reasons for his decision. He ruled that:

“... even if the applicant’s factual allegations are true, the Application does not have a reasonable prospect of success because what he alleges cannot be reasonably considered to amount to a *Code* violation.”⁹⁹

Adjudicator Bhattacharjee notes that the case involves “competing rights”. He states that, on the one hand, Br. McKenzie had claimed that it is his right to be free from harassment and discrimination based on creed in the workplace or a service environment as “the overriding value in this case”. On the other hand, Dr. Isla had “identified her right to academic freedom and freedom of expression as the overriding value in this case”. In response Br. McKenzie had argued that:

“the principles of academic freedom and freedom of expression should not be so broad as to allow the respondent to make statements about him which are disrespectful and intolerant and constitute bullying.”¹⁰⁰

Adjudicator Bhattacharjee sets out the basic framework for how to arbitrate between these “competing rights” as follows:

⁹⁸ Ibid., para. 19.

⁹⁹ Ibid., para. 30.

¹⁰⁰ Ibid., para. 32.

“(a) that ‘ambiguity in the scope of *Code* rights should be resolved in favour of protecting matters at the core of the rights and freedoms in the Canadian Charter of Rights and Freedoms’;¹⁰¹

(b) that ‘freedom of expression is a fundamental freedom’ and indeed is recognized in Section 2 (b) of the Charter and *a fortiori* is at the core of the rights and freedom in the Charter;¹⁰²

(c) that ‘expression which is merely unpopular, distasteful or contrary to the mainstream, or merely offends, shocks or disturbs the State or any sector of the population, is protected by the guarantee of freedom of expression’;¹⁰³

(d) that ‘with respect to academic freedom, it is well-established the courts and tribunals should be restrained in intervening in the affairs of a university in any circumstance where what is at issue is expression and communication made in the context of an exploration of ideas, the matter how controversial or provocative those ideas may be’;¹⁰⁴

(e) that ‘the principle of academic freedom does not override an organisation or person’s obligations under the *Code*’ and ‘academic freedom is not a licence to discriminate against another person because of his or her religious beliefs’.¹⁰⁵

Taking into account all these points, Adjudicator Bhattacharjee concluded:

“This said, in my view, given the importance of academic freedom and freedom of expression in a university setting, it will be rare for this Tribunal to

¹⁰¹ Ibid., para. 33.

¹⁰² Ibid., para. 34.

¹⁰³ Ibid.

¹⁰⁴ Ibid., para. 35.

¹⁰⁵ Ibid.

intervene where there are allegations of discrimination in relation to what another person has said during a public debate on social, political, and/or religious issues in a university.”¹⁰⁶

The details of Adjudicator Bhattacharjee’s judgement in this case can be consulted in Appendix 4. Suffice it to say that he found that Br. McKenzie’s rights had not been infringed. There was, of course, no question that Br. McKenzie had the right to hold the views he did and to support the SEA program. It was equally the case that Dr. Isla had the right to criticize those beliefs.

Adjudicator Bhattacharjee concluded that the dispute at hand had arisen from a perfectly ordinary debate over matters of the sort that were covered by protections for freedom of expression found in the Charter of Rights. As such, any intervention by the HRTO would be likely to erode that freedom. The mere fact of Br. McKenzie’s having found Dr. Isla’s position and statement to have been “offensive and hurtful” was not sufficient to warrant any charge of discrimination or of harassment under the *Ontario Human Rights Code*.¹⁰⁷

In summary, Adjudicator Bhattacharjee rejected both Br. McKenzie’s allegation that Dr. Isla had “discriminated against him with respect to employment because of his creed” and his allegation that Dr. Isla’s actions in relation to him constituted “harassment in the workplace”. In doing so he strongly affirmed the importance of academic freedom and freedom of expression to the proper functioning of a university. His decision should be understood as registering the unique character and requirements of the university as a workplace where academic freedom and freedom of expression overlap and strengthen one another.

¹⁰⁶ *Ibid.*, para. 35.

¹⁰⁷ *Ibid.*, paras. 38–9, 41–43.

2.8 Events Subsequent to the Dismissal of the Human Rights Complaint against Dr. Isla

Though Adjudicator Bhattacharjee had affirmed Dr. Isla’s free speech and academic freedom rights to express her critical views of the SEA Program, his decision had no immediate impact on the processing of Br. Masseur’s complaint under the RWLEP. At OHRES, Ms. Prout had still not made provisions for an investigation of the complaint she had accepted the previous April. On September 19, 2012, Ms. Prout informed Dr. Corman that she was seeking permission to hire an *external* investigator.¹⁰⁸ She indicated given the “complexity of the case . . . I have recommended to senior administration that we utilize a professional external investigator for this file”. Ms. Prout also stated that “As you may be aware, the RWLEP has been through a review process which has not yet been concluded. It has resulted in a lack of clarity about procedures for conducting investigations”.¹⁰⁹ Dr. Corman responded that pending consultation with the other respondents, she might not agree to an external investigator.¹¹⁰

On January 29, 2013, Ms. Prout wrote to the respondents as follows:

“Hello Anna [*sic*], June, Cathy, Ian and Tim,

I am writing to confirm that I have now received direction from senior administration regarding the process to be used for the investigation of the

¹⁰⁸ Lynne Prout email to June Corman, September 19, 2012, 10:46 am.

¹⁰⁹ Lynne Prout email to June Corman, September 19, 2012, 10:46 am.

¹¹⁰ June Corman email to Lynne Prout, September 19, 2012, 2:44 pm.

complaint filed by Raoul Masseur and German McKenzie. As you are aware, I had made a recommendation/request that we utilize an external, professional investigator for this matter. I now have permission to do so, and had been advised to use Ms. Jane Richardson. I've attached Ms. Richardson's bio for your information. The University is in the process of contracting with Miss Richardson for her services, following which I will provide her with all complaint documents. Once she has had the opportunity to review them, I will assist her in setting up interviews with all parties on this matter and she will proceed with the investigation. She will be proceeding in accordance with the process outlined in the Respectful Work and Learning Environment Policy (RWLEP – secs. 58-67). Once she has completed her investigation, she will prepare a draft report which all parties will have an opportunity to review before it is finalised.

Please note that the RWLEP (sec. 19) requires all parties to the investigation to keep this matter confidential. I will be in touch to arrange interview times on behalf of Ms. Richardson when she is ready to proceed.

Lynne”¹¹¹

On January 29, 2013, Tim Fowler emailed Ms. Prout stating that he would not consent to the use of an external investigator because this was a violation of the RWLEP policy.¹¹²

On January 30, 2012, Dr. Corman wrote similarly in an

email to Ms Prout:

“Dear Lynne,

Please consider this email my formal response to your invitation.

First, I decline the invitation to participate in a process that involves an external investigator, as is my understanding of my right under the policy.

Second, I dispute the issues raised by Raoul Masseur and German McKenzie warrant an investigation under the policy. I understand that your office can choose to pursue or choose not to pursue claims.¹¹³

I encourage your office to re-examine the merit of moving this case forward. I have never spoken to either of these men and I have never mentioned either name in a public setting. I am not aware that we have ever been in the same room together.

In public, I have criticized Brock's policy to 'contract out' block volunteer opportunities to non-Brock organisations and in particular with organizations that are of a religious nature. Many people may disagree with my concerns in this regard and I welcome a public conversation. But I see no merit in this conversation happening within your office. I am bewildered by how any of my actions can be conceived as either 'discrimination' or 'bullying' or that any of my actions could match any other criteria set out by the policy.

I formally ask you to reconsider whether RWLEP should take on this case as filed against me. I look forward to hearing from you.”¹¹⁴

¹¹¹ Lynne Prout email to June Corman et al., January 29, 2013, 8:51 am.

¹¹² Tim Fowler email to Lynne Prout, January 29, 2013, 9:02 am.

¹¹³ June Corman in this paragraph is clearly correct. See sections 42–45 of the RWLEP.

¹¹⁴ June Corman email to Lynne Prout, January 30, 2013, 2:32 pm.

As all this was unfolding, the Brock situation became known to CAUT. On February 8, 2013, Dr. James Turk wrote to President Lightstone informing him of the creation of the CAUT Investigatory Committee. On March 13, 2013, that is, just over a month later, Ms. Prout, on behalf of the OHRES, wrote to Dr. Corman as follows:

“Dear Dr. Corman,

Re: RWLEP complaints of McKenzie and Masseur

Please be advised that the University has obtained legal advice regarding the impact of the decision of the Human Rights Tribunal in the Application filed by Mr. McKenzie. Based on this advice, we have determined that the findings of the Tribunal are determinative of the above noted complaints and that the University is not obliged under the RWLEP to proceed with an investigation.

Therefore, we will be closing our files in connection with both complaints.

Sincerely,

Lynne Prout, Manager, Human Rights and Equity Services.”¹¹⁵

This OHRES decision came just *one* month after Dr. Turk informed the President of the creation of the CAUT Investigatory Committee; but it came fully *six* months from the time that Adjudicator Bhattacharjee announced his decision that Br. McKenzie’s allegation that Dr. Isla had “discriminated against him with respect to employments because of his creed” should be “dismissed on a preliminary basis because it had no reasonable prospect of success”¹¹⁶ and *five* months after Adjudicator Bhattacharjee issued his written reasons.¹¹⁷

¹¹⁵ Lynne Prout letter to June Corman, March 13, 2013.

¹¹⁶ Adjudicator Bhattacharjee’s ruling at the Summary Hearing was issued on September 17, 2012.

¹¹⁷ Adjudicator Bhattacharjee’s written decision was issued on October 9, 2012. Appendix 4.

3 | The Handling by Brock University of the Allegations against the Respondents

3.1 Preliminary Comments

As the Brock University RWLEP rightly states, discriminatory, harassing, and bullying behaviour are unacceptable in the university.¹¹⁸ Moreover, employees have a legal right¹¹⁹ not to be subjected to such behaviour and employers have legal duties in relation to the inhibition or prevention of such behaviour.¹²⁰ If only for these reasons, it is extremely important that whatever policies and procedures are in fact in place in the university be applied in a “timely and efficient manner”¹²¹, with full respect for the principles of natural justice, with intelligence and sensitivity to the complexity of situations in which such issues can arise in a university context, and with the utmost respect for the principles of academic freedom.¹²²

It is also essential that the policies and procedures that the university has in place for addressing such issues both be appropriate for use in a university context and be consistent with the principles of substantive natural justice.¹²³

¹¹⁸ See, for example, sections 3 and 4 of the RWLEP for a statement to this effect.

¹¹⁹ See, for example, the *Ontario Human Rights Code*, R.S.O. 1990, Chapter H. 19, Part I, sections 5 (1) and (2).

¹²⁰ See, for example, the *Ontario Occupational Health and Safety Act*, section 32.0.1(b) and (c).

¹²¹ See section 4 of the RWLEP.

¹²² See the third of the terms of reference of this Investigatory Committee, page 5.

¹²³ See the second of the terms of reference of this Investigatory Committee, page 5.

3.2 The Steps in the RWLEP Procedures for the Handling of Complaints

The RWLEP Procedures for addressing allegations of discrimination, harassment, and bullying [sections 19-73] envisage the process as falling into three “stages”: “personal resolution” [sections 30-34], “individual resolution” [sections 35-40], and “formal resolution” [sections 41-67], the latter addressing what are referred to as “formal complaints”.¹²⁴ As is already clear¹²⁵, when Br. Masseur (with Br. McKenzie as co-complainant) filed their complaints against Dr. Isla and the other four respondents, it was assumed by all parties that these allegations would be treated as “formal complaints” to be addressed using the processes described in sections 41-67 of the RWLEP.¹²⁶

Within and across each step set out in the RWLEP the importance of timeliness, efficiency and fairness in handling allegations of discrimination, harassment and bullying is emphasized. This theme is first taken up in section 4 of the RWLEP:

“Harassment and discrimination violate an individual’s human rights and run contrary to the

¹²⁴ For this phrase see section 41 of the RWLEP.

¹²⁵ It seems clear that the same was true of the allegations by Br. Masseur and Br. McKenzie described in Section 2. See the first paragraph of section 2.4. These allegations it will be remembered were not accepted by the OHRES.

¹²⁶ Certainly Br. Masseur seems to have assumed this, since on page 2 of the April 23, 2012, letter he sent to Ms. Prout making his allegations, he said, “Because of the risk that new strategies intend [sic] to block next year’s SEA 2013 Programs I think that with the harassment investigation case Interim Measures (Respectful Work and Learning Environment Policies #47) should be taken to protect us”. The resort to “Interim Measures” of the kind set out in section 47 of the RWLEP seems only to be available under formal procedures of the RWLEP.

University's fundamental values. *Brock University will act promptly and efficiently to deal with these behaviours.* It will endeavour to ensure that individuals who believe that they have been subjected to harassment or discrimination are able to express concerns and register complaints without fear of retaliation or reprisal. The University will exercise care to protect and respect the rights of both the complainant and the respondent.” [Italics added]

3.3 Failures of Due Process in Handling the Masseur/Mckenzie Complaint

The Lack of “Timeliness” & “Promptness” in Addressing the Allegations

The allegations by Br. Masseur (with Br. McKenzie as co-complainant) were accepted on April 27, 2012. Step 3 of the formal process requires that respondents be informed within ten days of the details of the complaint and the procedures to be followed.¹²⁷ On May 10, 2012, the OHRES informed the respondents that it had accepted a formal complaint against them.¹²⁸ But the respondents were not informed of *the procedure to be followed in the resolution of the complaint* until January 29, 2013, when Ms. Prout, informed the respondents that there would be a single external investigator.¹²⁹ This was fully nine months after the receipt of the formal complaint, an extraordinary violation of the ten working day limit stipulated in

¹²⁷ See section 44 of the RWLEP Procedures.

¹²⁸ See section 2.6.

¹²⁹ As reported in section 2.6 above, on September 19, 2012, Lynne Prout had written to June Corman (with copies to the other respondents) informing her that she (Ms. Prout) was seeking permission to appoint an *external* investigator.

section 44 of the RWLEP. During these nine months the respondents were left in limbo, unclear what was happening to the processing of the complaint against them. To say that this was a violation of section 44 of the RWLEP procedures would be, to say the least of it, an understatement. Moreover the formal process mandates the appointment of an internal three person investigation committee.¹³⁰ Instead, in a clear failure to comply with the procedures set out in the RWLEP, the OHRES attempted to use a single external investigator to conduct the investigation. This approach was rejected by the five respondents and seemingly abandoned by the OHRES.

The failure to appoint an internal three person investigation team was a sin of omission; the attempt to appoint an external single person to conduct the investigation was a sin of commission. The excuse offered by Ms. Prout for countenancing such deviation from the procedures was that the case was “complex”: she added: “As you may be aware, the RWLEP has been through a review process which has not yet been concluded. It has resulted in a lack of clarity about procedures for conducting investigations”.¹³¹ This excuse was, of course, quite inadequate since the wording of sections 54-56 is completely clear on this matter and, anyway, no revisions of any parts of the RWLEP Procedures had been approved.

Timeliness & the Ending of the Formal Process

On March 13, 2013, just one month after the creation of this CAUT Investigatory Committee, Ms. Prout wrote to the respondents saying that “... the University has

¹³⁰ See section 54 of the RWLEP.

¹³¹ Lynne Prout email to June Corman, September 19, 2012, 10:46 am.

obtained legal advice regarding the impact of the decision of the Human Rights Tribunal in the Application filed by Mr. McKenzie” and that “[b]ased on this advice, we have determined that the findings of the Tribunal are determinative of the above noted complaints and that the University is not obliged under the RWLEP to proceed with an investigation” and finally, that “therefore, we will be closing our files in connection with both complaints”.¹³²

Ms. Prout’s letter was silent on the question of why it took the University so long reach its conclusion. We note also that Brock University Administration rendered their decision a full *eleven* months after the RWLEP complaints by Br. Masseur (with Br. McKenzie as co-complainant) were accepted by the OHRES.

There is no question that there were serious failures on the part of the OHRES to observe the RWLEP’s provisions for timeliness as well as serious failures to comply with the steps set out in the policy for the handling of formal complaints.

Confidentiality

While the respondents were waiting to get the information to which they were entitled under the policy they were also inhibited from defending themselves publicly by the confidentiality provisions of the policy. Indeed, the confidentiality provisions made the OHRES’s failure to act in a timely manner especially unfair to the respondents.

Section 19 “Confidentiality” appears as the very first section in the RWLEP Procedures for processing formal complaints and the section is very strongly worded:

¹³² Lynne Prout letters to June Corman, Ana Isla, Cathy Van Ingen, Tim Fowler, Ian Wood, March 13, 2013.

confidentiality is said to be “critical” in all procedures under the RWLEP and is to be “maintained at all times”. The only listed exception to the requirement to keep everything confidential is when “safety of members is at risk or legal obligations require disclosure of information”; otherwise, “everyone will be strictly required not to discuss the complaint with colleagues or friends”. The section closes with the threat that “[b]reach of confidentiality may give rise to investigation under this policy and procedures and to *disciplinary action*”.¹³³ [Italics added]

The heavy emphasis on the requirement of confidentiality was echoed in the OHRES’s communications with the respondents: even *after* the publication of Adjudicator Bhattacharjee’s decision on the Human Rights Application by Br. McKenzie, Ms. Prout in her January 29, 2013, letter informing the respondents that the University had decided to use an external investigator reiterated the requirement:

“... Please note that the RWLEP (sec. 19) requires all parties to the investigation to keep this matter confidential ...”¹³⁴

Because of the insistent demands for confidentiality several of the respondents came to believe that section 19 with its threat of discipline for violations of confidentiality imposed constraints not only on their right to seek support and advice from colleagues and

¹³³ The threat of disciplinary action is a threat that comes much closer to home for employees of the University than for people in the position of Brs. Masseur and McKenzie, who were *not* employees of the University. The only response to breach of confidentiality feasible in the cases of the Brothers would be that set out in sections 50–53, the sections governing the behaviour of “Visitors, Volunteers or Course Participants on Campus”, viz., “removal from the University”.

¹³⁴ See section 2.8 above.

friends but even on their right to be represented by their union in their preparation of responses to the allegations brought against them, this despite the statement in section 24 that:

“Any person involved in the complaint process may seek assistance, support or representation from another person of her/his choice, such as a union observer/representative or student ombudsperson.”

Sections 19 and 24 are arguably worded in ways that invite misunderstanding of what rights respondents have to consult with others about their cases. Any confusion might have been alleviated had OHRES personnel made it absolutely clear to the respondents from the outset that they had a right to seek advice and representation from union representatives or from others, as in the case of Dr. Corman who was not a member of the BUFA.¹³⁵

The way OHRES handled the complaints against the five respondents apparently left Drs. Van Ingen and Isla believing that it was the view of the OHRES staff that for these two professors to contact their union could put them in conflict with section 19. The union was equally concerned about the confidentiality language in section 19, for in grievances on behalf of Drs. Isla and Van Ingen it alleged that the University had violated the Collective Agreement

“... by using the reference to the provisions of confidentiality contained in the RWLEP to prevent [Dr. Isla and Dr. Van Ingen] from exercising [their] right to communicate with BUFA, and to prevent BUFA officers from investigating the claim made by its member[s] (contemporaneously with the

complainant publicizing the fact that he had filed a ‘complaint’ with the OHRES on a major press agency reaching people all over the world).”¹³⁶

Whatever the confusions may have been about the Policy’s confidentiality provisions, the failure to deal with the complaint in a timely fashion meant that the provisions were especially onerous in Dr. Isla’s case: despite the fact that she knew she had been vindicated before the Human Rights Commission, she remained silenced by the provisions of the RWLEP while being subjected to continuing attacks in the media both here in Canada and in Peru.

The media attacks on Dr. Isla began in the December of 2011 and continued throughout 2012 and 2013. Undoubtedly until May, 2012, Dr. Isla could have replied to these attacks without coming into jeopardy because of the demands for confidentiality in the RWLEP Procedures. But after May, 2012, when she and the other respondents were made aware of the complaints by Br. Masseur (with Br. McKenzie as co-complainant) this would not have been possible without falling foul of section 19 of the RWLEP. Thus, even after Dr. Isla had been vindicated in the Human Rights Complaint before Adjudicator Bhattacharjee on September 17, 2012, she was still subject to press attacks to which she could not respond because of the RWLEP confidentiality provisions.

For example, on October 26, 2012, in an article entitled “Catholic justice program under attack at Brock”, Michael Swan stated:

¹³⁵ Under section 24 of the RWLEP it is a duty of the OHRES “to advise the parties about personal advisors available to them on campus”.

¹³⁶ Dated February 7, 2013. These are attached to this Report as Appendices 17 and 18 respectively. See further section 4 below.

“A Woman’s Studies Professor at Brock University in St. Catharines, Ont., is within her rights to criticize and badger volunteers who work at a Catholic-inspired social justice program on campus, the Ontario Human Rights Tribunal has ruled.”¹³⁷

In a final flourish Swan remarked that “Isla’s campaign against SEA was bolstered last year by the CUPE-financed Occupy Brock movement on campus.”¹³⁸

Then on November 7, 2012, The Catholic Register posted an article by Joanne McGarry entitled “Speech is not free on our campuses” which stated:

“As reported in the Oct. 28 issue of The Catholic Register, a Catholic chaplaincy program at Brock University has faced harassment due to ties to the Sodalit movement, which a women’s studies professor claimed was affiliated with ‘far right’ and ‘cult-like’ Catholic organizations in Peru. Despite a ruling from Brock’s administration that the accusations are unfounded and the relationship between the university and SEA has been beneficial to the university, *incidents of harassment continued, including an episode where a fundraising event was shut down by hecklers*. The Ontario Human Rights Tribunal subsequently dismissed a claim of religious discrimination against the professor, ruling that her actions fell within the realm of academic freedom. (The CCRL had an advisory role in the case at the request of one of the volunteer chaplains.)

¹³⁷ The article was published in the *Catholic Register*. This was last checked on July 27th, 2014 and reprinted on the St. Catharines Diocese website. <http://bit.ly/1YPcclC>. Accessed July 27, 2014.

¹³⁸ Ana Isla *could* not respond to these claims without coming up against the insistent confidentiality demands of section 19 of the RWLEP Procedures.

The tribunal’s assertion that the professor’s actions do not constitute religious discrimination is certainly arguable [*sic*: presumably they mean ‘questionable’]; harassment took place and it’s impossible to see any basis for it other than religious affiliation. Some of the academics who opposed the chaplaincy initiative stated their case more plainly when they declared point-blank at a rally in 2011 that they don’t want organizations with religious ties offering any work programs or volunteer experiences on campus.”¹³⁹
[Italics added]

As with Dr. Isla, the RWLEP policy had the effect of silencing Dr. Van Ingen in a number of different respects making it impossible for her to talk about these matters to students who came to her for advice, to her colleagues in the Faculty of Applied Health Sciences and in her own department, or to the broader Brock community. Remarkably, the complaint against Dr. Van Ingen seems to be that she harassed Raoul Masseur and German McKenzie by signing onto the W.I.S.E. Motions and by sending emails to coordinate meetings.

While Dr. Corman experienced the same feeling of isolation and of being silenced as did the other respondents, her unique position as an Associate Dean made her vulnerable in two dimensions. First she had no effective counsel or representation, and, despite her repeated attempts to request assistance, was offered none.¹⁴⁰ This is a serious failure on the employer’s part to fulfill its responsibilities to an employee. Telling her that most people are represented by their union but that in its absence she should find a personal friend or confidante (as she was apparently instructed by the OHRES) is

¹³⁹ Catholic Register, <http://bit.ly/1jAe3ur>. Accessed July 27th, 2014. The CCRL is the Catholic Civil Rights League.

¹⁴⁰ See section 2.6.

entirely inadequate. Dr. Corman's isolation was further exacerbated by the repeated and intimidating demands that confidentiality when involved in a RWLEP complaint was absolutely obligatory for all participants. This created a highly stressful and harmful situation.

Although Mr. Fowler and Mr. Wood, unlike Dr. Corman, both had representation from their union throughout the process, they could not be certain of the ongoing repercussions. In a world of precarious labour, it is all too easy for an employer to jettison troublesome or outspoken sessional employees. In this case the inordinate length of time it took to process the claim and the repeated reminders of the requirement for confidentiality adds to the impression that the RWLEP complaint process constituted an attempt to silence or shut down protests from an increasingly determined group. In their attempts to draw Brock's attention to issues that they found of great concern, Mr. Fowler and Mr. Wood were exercising their freedom of expression as members of the Brock University Community. When campus protests like Occupy Brock, which are a familiar scene across Canada, become a victim of a regulatory apparatus like the RWLEP the likely outcome is a chill on all expressive freedom.

3.4 Section 68 of the RWLEP Procedures

Any review of how the employer handled the complaints against the respondents in this case entails a review of the actions of the staff of the Office of Human Rights and Equity Services. Certainly, the possibility of complaints against the RWLEP staff is anticipated in section 68 of the Policy where it is stated that:

“Complaints brought against staff of the Office of Human Rights and Equity Services under this policy shall be brought to the Office of the President, who

shall oversee the application of these procedures to the complaint. Where appropriate and the parties agree, an independent third party shall be appointed to attempt informal resolution between the parties. Where formal resolution procedures are required, the process for staff outlined in this procedure shall be used and the President shall take over the responsibilities normally taken by staff of the Office of Human Rights and Equity Services.”

On May 14, 2012, Dr. Corman wrote to Ms. Prout on behalf of all five respondents. She requested a written statement of the concerns of Drs. Masseur and McKenzie, and asked that the claims against all five be dealt with simultaneously. Dr. Corman also asked Ms. Prout to recuse herself from the case — in light of her having been a participant in the earlier Mandigo investigation of the SEA program.¹⁴¹ Ms. Prout refused to recuse herself on the grounds that “staff of the office do not conduct investigations or make determinations of fact. Rather this is done by the investigator(s). This might alleviate potential concerns.”¹⁴²

In our judgement Ms. Prout ought to have recused herself. By her refusal to do so, we believe that Ms. Prout was in breach of the principle of procedural natural justice which forbids her to act as a judge in her own case. This said, we note that in Arbitrator Kenneth P. Swan's April 8, 2015, rulings on the BUFA “Article 10 Complaints against Professors Isla and Van Ingen” grievance¹⁴³, Arbitrator Swan states:

“Applying the usual test, I do not believe that a reasonable and informed person would conclude that

¹⁴¹ June Corman email to Lynne Prout, May 14, 2012, 11:41 am.

¹⁴² June Corman email to Lynne Prout, May 5, 2012, 11:41 am.

¹⁴³ For Arbitrator Swan's Award on this grievance, see further section 4.

having participated in an earlier phase of the dispute between Professor Isla and Br. Masseur about the propriety of running the SEA program under the aegis of the University would give rise to a reasonable apprehension of bias on Mr. Prout's part, given the limited role to be played by the OHRES in processing the complaints."¹⁴⁴

As a separate point, as we have noted above, Ms. Prout's failure to carry out the provisions of the RWLEP in a timely manner was a serious failure that resulted in unfairness to the respondents. On May 6, 2015, President Lightstone wrote to CAUT Executive Director Robinson responding to the Investigatory Committee's Report and in that letter he stated "Arbitrator Swan issued a declaratory statement that the timelines set out in the RWLEP were not followed in this instance". He then states that "This issue has been addressed in its entirety". The Investigatory Committee is unclear about the import of President Lightstone's statement.

3.5 Providing Legal Representation for Dr. Isla

As noted in section 2.7 above, when Br. McKenzie filed his Application with the Human Rights Tribunal of Ontario (HRTO) against Dr. Isla, Dr. Isla wrote to Dr. Lightstone seeking legal representation and advice in the proceedings before the Tribunal.¹⁴⁵ She stated that:

"[i]n the course of doing my job I have taken certain stands that appear to [be] disagreeable to German McKenzie. Mr. McKenzie has chosen to pursue a claim against me to the Human Rights Tribunal Of Ontario [sic]."

¹⁴⁴ Pages 30–31.

¹⁴⁵ Letter. Appendix 19.

In preparing for the Human Rights Tribunal hearing, BUFA along with Dr. Isla requested that the University provide legal representation and support for Dr. Isla. Dr. Charles Burton, Assistant Grievance Officer for BUFA, and Dr. Isla met with President Lightstone and Mr. Varujan Gharakhanian, the Director of Faculty and Employee Relations, on August 29 to make the request for support.¹⁴⁶

On September 6, 2012, Dr. Isla learned that the employer would provide neither support nor legal representation.¹⁴⁷ The reason given for this decision was that, in the employer's view the actions of Dr. Isla about which the Human Rights Complaint had been submitted fell outside the "scope of her employment" under Article 47 [Legal Liability] of the Collective Agreement.¹⁴⁸ Clause 1 of Article 47 states:

"The University shall maintain liability insurance of not less than five million dollars (\$5,000,000) insuring members who are acting within the scope of their employment against liability claims."

This decision by the University was of great concern to BUFA and on September 10, 2012, BUFA filed a grievance alleging that "the employer had failed to provide liability insurance including legal representation on behalf of Professor Isla at the Human Rights Tribunal". On January 21, 2013, the grievance proceeded to Stage 2 of the grievance process as set out in Article 10 [Complaints, Grievances and Arbitration] of the Collective Agreement. The matter was referred to

¹⁴⁶ Charles Burton email to Varujan Gharakhanian, September 6, 2012, 11:46 am.

¹⁴⁷ Varujan Gharakhanian email to Professor Isla, September 6, 2012, 1:36 pm.

¹⁴⁸ See the email dated September 6th, 2012, from Varujan Gharakhanian to Ana Isla.

arbitration on March 14, 2013¹⁴⁹, and hearings took place before Arbitrator Paula Knopf on August 19 and August 21, 2013, and February 11, April 14 and April 22, 2014. Arbitrator Knopf issued a written Award on May 6, 2014.¹⁵⁰

In examining the actions of the University in relation to Dr. Isla's request for legal representation three separate questions must be considered, namely whether Dr. Isla's actions in opposing the SEA program were actions within the scope of her employment; whether the University had an obligation under the Collective Agreement to provide legal representation for her when facing the allegations of discrimination before the Ontario Human Rights Tribunal; and whether the University acted "reasonably and fairly" in refusing to provide legal representation for Dr. Isla under Article 47.

In our view, Dr. Isla's actions and statements opposing the SEA program were within the scope of her employment.

Article 11 [Academic Freedom] of the 2011–2014 Collective Agreement contains the statement that:

"11.04 Faculty members shall be: free in the choice and pursuit of research and in publishing the results and conclusions thereof; free in the choice and pursuit of teaching methods and content, consistent with the explicit rights and responsibilities of Senate as outlined in the Act (see Article 4.03 Policies and Practices); free to discuss and criticize, including criticism of the University and the Union; and they shall be free from censorship by the Parties."

Article 11.04 needs to be read in conjunction with Article 12 [Rights and Responsibilities of Members] of the 2011–2014 Collective Agreement which begins by stating that:

"12.01 Faculty members have the right and responsibility to engage in teaching; research and scholarship or creative work; and service to the University and the Union."¹⁵¹

"Service" is defined in the first sentence of the first paragraph of article 12.06 (b):

"12.06 (b) Service to the University is performed by members through participation in the deliberative and/or decision-making bodies of the University, and through sharing the necessary administrative work of their departments, the University or the Union."¹⁵²

It is therefore clear that Dr. Isla had the right to criticize the University's participation in the SEA program and when she brought the motions to her departments she was, among other things, merely fulfilling her duty to participate in the "deliberative and/or decision making bodies of the University". We conclude from this that the University's notion of "scope of employment" was unacceptably narrow.

It is our view that, in refusing to provide legal representation for Dr. Isla before the Human Rights Tribunal on the grounds that Dr. Isla's actions in opposing the SEA program were outside the scope of her employment, the Brock University Administration failed to uphold and protect Dr. Isla's academic freedom rights as set out in Article 11.

¹⁴⁹ Linda Rose-Krasnor letter to Arbitrator Paula Knopf.

¹⁵⁰ Award, <http://canlii.ca/t/g6wdn>.

¹⁵¹ BUFA Collective Agreement 2011–2014.

¹⁵² Ibid.

In the light of our reasoning above, we concur with the view of the twenty nine faculty who in their open letter to President Lightstone objected that by interpreting the “scope of employment” of Dr. Isla in such a restricted manner the University jeopardized:

“... the right of all faculty members to play an active role in reviewing and challenging university programs and policies that they deem to be contrary to the interests of our students and the reputation of our university.”¹⁵³

Our position on the matter of Dr. Isla’s “scope of employment” is consistent with that of Arbitrator Paula Knopf in her Arbitral Award. In her Award, Arbitrator Knopf begins by stating that “... after the Grievor’s testimony revealed that her comments and actions did fall within the scope of her employment, the University withdrew this defence ...”¹⁵⁴ and she later stated that “... the University’s stated reasons for refusing the Grievor’s request [for legal representation] make little sense. She was at all times acting within the scope of her employment.”¹⁵⁵

Turning to the question of the University’s obligation to provide legal representation for Dr. Isla before the Ontario Human Rights Tribunal Arbitrator Knopf stated:

“Therefore, the issue that remained for determination was whether the Collective Agreement obligated the University to provide liability insurance and/or legal representation for the Grievor in the circumstances of her having to defend against an accusation that she had violated the *Human Rights Code*.”

¹⁵³ Open letter to Dr. Lightstone, September 26, 2012. Appendix 20.

¹⁵⁴ Page 1.

¹⁵⁵ Page 41.

Arbitrator Knopf reported that:

“The University disputed the grievance on the basis that the Collective Agreement does not include a promise to provide indemnity or provide legal representation in the event of a Human Rights action. Further, or in the alternative, the University asserted that the evidence of bargaining history would establish that the Association is estopped from asserting the claim that it is making in this case.”¹⁵⁶

There followed a close examination by Arbitrator Knopf not only of the principles governing how Collective Agreements are to be interpreted¹⁵⁷ but also “consideration of the parallel universe of insurance law where there are also ‘fundamental rules’ for the interpretation of [liability insurance] policies” and in particular when human rights issues are at issue.¹⁵⁸ Having canvassed these principles Arbitrator Knopf turned to the question of how these principles apply to the Brock University Collective Agreement¹⁵⁹, concluding that:

“... on the basis of the foregoing, it must be concluded that Article 47’s promise of general liability insurance cannot be read to include indemnification for a legal defence or damages in the event of an allegation of a breach of the Human Rights Code. This would appear to be the impact of the words of the Collective Agreement.”

She then turned to the second claim by the University, that is, the claim that “the evidence of bargaining history would establish that the Association is estopped from asserting the claim that it is making in this case”. She

¹⁵⁶ Page 1.

¹⁵⁷ See pages 22–25.

¹⁵⁸ See pages 25–29.

¹⁵⁹ See pages 29–39.

reasoned¹⁶⁰ that, in the light of the way in which the law of estoppel needs to be applied¹⁶¹, her conclusion above about how Article 47 is to be interpreted “is also supported by reference to the extrinsic evidence” — and in particular the evidence about the bargaining history of Article 47 [Legal Liability].¹⁶²

In the final paragraph of her Award, Arbitrator Knopf summarizes her reasoning on this question thus:

“In summary, it has been concluded that the Collective Agreement created no contractual obligation to provide liability insurance to cover allegations of Human Rights violations.”¹⁶³

Notwithstanding her conclusion that the University did not have an obligation under the collective agreement to provide legal representation to Dr. Isla, Arbitrator Knopf goes on to consider whether it was fair and reasonable for the University to deny this representation. Here she reports that BUFA argued that “even if there was no contractual obligation to provide legal support to [Dr. Isla], the University acted unreasonably and unfairly in its exercise of management’s rights by refusing to support her or defend her against the allegations”, but the University took the position that “it is simply a matter of managerial discretion to decide when or if it will defend a member of this bargaining unit against Human Rights allegations.”¹⁶⁴

Arbitrator Knopf argued firstly that the exercise of management’s rights at Brock University is subject to certain standards. She argued this as follows:¹⁶⁵

¹⁶⁰ See pages 34–39.

¹⁶¹ See pages 34–36.

¹⁶² Page 34.

¹⁶³ See pages 42–43.

¹⁶⁴ Page 40.

¹⁶⁵ Ibid.

“(a) Article 2 (*Purposes*) of the Collective Agreement ‘is a joint acknowledgement that the objects and purposes of the University include ‘the intellectual, social, ethical and physical development of its members, and the betterment of society’; that in order to the fulfill these objectives and purposes the University community has to ‘apply the soundest intellectual judgments and values in its practices, in the treatment of its members, and in the nurture and care of its resources.’

(b) When this Article ‘is read in conjunction with the Management Rights clause of the Collective Agreement, it must be concluded that the University has agreed to exercise its rights, including its discretionary rights, reasonably, fairly and in a manner that is consistent with ‘sound intellectual judgment’ with regard to the treatment of the university community.

(c) Correspondingly, ‘[w]hile this does not create any specific rights, it does set the standard for the exercise of management’s rights.’

(d) Further, ‘[t]his conclusion is consistent with the principle that an exercise of managerial discretion requires consideration of the merits of each individual case, which includes becoming informed with regard to all material factors and not being influenced by extraneous or irrelevant considerations.’

She next states that, though “the University was in a difficult position” for various reasons (time constraints and “the complexities of the issues and the intricacies of insurance coverage”), nevertheless “the evidence in this case does not support a conclusion that the Grievor’s situation was given full or reasonable consideration”. As evidence for *this* statement Arbitrator Knopf notes the following points:

“(e) ‘[T]he University did not consult with the insurer about this issue to seek coverage’,

(f) ‘There is no evidence that the University made an effort to inform itself why the Grievor had taken the actions she did with regard to the Program.’

(g) ‘There is no explanation why it was unaware that the Grievor was acting on the instructions of her Associate Dean.’

(h) ‘[T]he University’s stated reasons for refusing the Grievor’s request make little sense. She was at all times acting within the scope of her employment. Her letter requesting support on August 28th, 2012 stated clearly, ‘In the course of doing my job, I have taken certain stands that appear to *[sic]* disagreeable to [the complainant in the Human Rights action].’ The Grievor’s assertion was easily verifiable.’

(i) ‘Further, there is no legal support for the University’s saying that Article 47 does not require the University to act for an employee against whom litigation has been commenced.’”

In the light of these considerations, Arbitrator Knopf states:

“(j) ‘[W]hen the evidence leads to a conclusion that relevant information could and should have been sought and considered, this leaves an arbitrator with the duty to declare that an uninformed decision was not reasonable.’”¹⁶⁶

And in her final paragraph she states:

“[I]t has also been declared that under the very particular circumstances of this case, the University failed to reasonably and fairly exercise its discretion in deciding not to provide legal assistance to the Grievor in support of her defence at the Human Rights Tribunal. Therefore, the grievance is allowed, in part.”

We agree with Arbitrator Knopf’s conclusion on this matter. Her reasoning on management rights draws attention to the importance of having language in collective agreements that, like the Brock wording, clarifies as much as possible the principles that must regulate the exercise of management discretion.

¹⁶⁶ Page 42.

4| BUFA's Actions in Relation to the RWLEP

To appreciate and understand the actions of BUFA in response to the University Administration's handling of complaints laid under the RWLEP against its members it is important to be clear about the history of BUFA's stance in relation to Article 8 of the Collective Agreement and to the RWLEP. Moreover, in deciding the three grievances discussed below, Arbitrator Kenneth P. Swan found that, together with Article 3 [Management Rights], Article 8 is central to the issues at stake in the arbitration.¹⁶⁷

The RWLEP was first adopted at Brock University in 2006. A version of the RWLEP was incorporated into Article 8 of the 2008–2011 BUFA Collective Agreement where it was referred to under the title "Abuse of Professional Authority, Respectful Work and Learning Environment". In negotiating the 2011–2014 Collective Agreement all direct reference to the RWLEP was omitted and instead a new version of Article 8 [Harassment and Discrimination] was negotiated. There were good reasons for BUFA to take these steps.

The version of the Collective Agreement that was in force at the time of the events addressed in this report was the 2011–2014 version. Article 8.01 in that version states:

"8.01 General:

The University shall provide and the Parties shall cooperate in creating and maintaining a work and learning environment that is free of harassment or discrimination as defined in the *Ontario Human Rights Code* and that is free from workplace harassment as defined in the *Occupational Health and Safety Act*. This encompasses relationships involved in teaching, the

provision of library services, administrative and/or supervisory relationships with students, faculty members, professional librarians and academic or other support staff."

This clause makes clear that the definitions of discrimination and harassment that applied to BUFA members at the time of the events addressed in this report are those stated in the *Ontario Human Rights Code* and the *Ontario Occupational Health and Safety Act*.

The various clauses that make up the rest of the Article 8 of the 2011–2014 Collective Agreement spell out the ways in which the Collective Agreement is to govern the development, implementation and operation of policies introduced under Article 8.01. Thus clause 8.02(a) affirms the overriding role of the Collective Agreement in these matters. It states:

"8.02 (a) Any policy of the University concerning the investigation of allegations of a violation of the *Human Rights Code*, or the investigation of allegations of sexual, workplace, or other form of harassment or bullying on the part of a member *must conform to the requirements of the Collective Agreement*. In the case of any contradiction or inconsistency between any such policy and this Collective Agreement, *the terms of this Agreement shall prevail*." [Italics added]

The other clauses making up 8.02 stipulate the various ways in which the Collective Agreement has this overriding role. Thus 8.02(b) states that "[a]ny policy governing matters of the kind described in 8.02(a) *or its application* can be grieved ... and remitted to arbitration as provided in Article 10 [Complaints, Grievances and Arbitration]" [Italics added]; Article 8.02(c) states that any discipline that arises from any policy of the kind described in 8.02(a) will follow the procedures described in Article 9 [Discipline] or Article 23 [Dismissal]; 8.02(d)

¹⁶⁷ See Arbitrator Swan's Award, April 8, 2015, page 18. <http://bit.ly/1LmiJQX>.

states that amendments to policies of the kind described in 8.01 must follow the procedures set out in Article 4 [Policies and Practices]; and 8.02(e) states that in any investigations carried out under Article 8 both the complainant and/or the respondent are entitled to be accompanied by a Union representative at all stages of the process.

These provisions reflected BUFA's view that the procedural safeguards provided for in the RWLEP are weaker than those provided for in the Collective Agreement and that therefore the RWLEP procedures should not be used when dealing with complaints against faculty members.

Under the 2011–2014 version of the Collective Agreement, if a BUFA member is accused of harassment or discrimination (as defined in Article 8.01), then, according to article 8.0(e), the member is “entitled to be accompanied by a Union representative at all stages of the process” and “[t]he Union may be represented by legal counsel.” Moreover, if after investigation the University decides to discipline the BUFA member, then the procedures as set out in Article 9 [Discipline] become applicable and the BUFA member's rights in these procedures are as set out in that Article. But these provisions leave untouched the right of the University to follow the investigative procedures as set out in the RWLEP.

In contrast in the 2014–2017 version of the Collective Agreement Article 9 [Discipline] states:

- “9.01 (a) Discipline shall be for just cause only
- (b) All situations that could result in any discipline against a member shall be investigated and dealt with in accordance with this Article.”

In other words, under the 2014–2017 version of the Collective Agreement, if BUFA members were accused of harassment or discrimination, the appropriate administrator would have to determine whether a complaint would be accepted, the respondent would be provided with all the relevant information, and the matter would be dealt with under the provisions of the grievance procedure like any matter of discipline. This approach would be more likely to ensure due process and adequate representation for the respondent from the outset — a great improvement over the use of the current procedures as set out in the RWLEP.

As noted earlier, BUFA initially became involved in the critique of the SEA program when on November 25, 2011, the BUFA Executive endorsed the motion put forward by the Centre for Women and Gender Studies calling on Brock University to sever ties with the SEA program.¹⁶⁸

In light of the sequence of events outlined in sections 2.4 to 2.6 above, on February 7, 2013, BUFA filed two grievances, one on behalf Dr. Van Ingen and one on behalf of Dr. Isla¹⁶⁹, the latter being in addition to the grievance already filed about the University's refusal to provide legal representation before the Human Rights Tribunal as discussed in section 3.5 above.

In each of these two grievances BUFA listed ten issues as being in dispute concerning the University Administration's handling of the RWLEP complaints against Drs. Isla and Van Ingen. BUFA claimed that the grounds on which the University accepted the complaint made by Br. Masseur under the RWLEP were “invalid” insofar as accepting the April, 2012, complaint on these

¹⁶⁸ See section 2.3.

¹⁶⁹ Appendices 17 and 18 respectively.

grounds was contrary to the University's duty to exercise its management's rights reasonably and fairly (see Article 3), and violated BUFA's members' rights under various other provisions of the Collective Agreement. The remaining points in the grievances dealt with the allegedly flawed process followed by the OHRES in processing the complaint, with the inadequate vetting of the complaint, with the inappropriate use of the confidentiality requirement, with the attempt to appoint an external investigator in violation of the RWLEP policy, and with a conflict of interest arising from the participation of the OHRES officer, Ms. Prout, who had had prior organizational involvement as a co-author of the 2007 SEA Report but who had failed to recuse herself from any role relating to the complaint against Dr. Isla and Dr. Van Ingen.

These two grievances were referred to arbitration on March 5, 2013.¹⁷⁰

On March 26, 2013, BUFA submitted "revised" grievances on behalf of Dr. Isla and Van Ingen, listing fourteen points as being in dispute but differing from the February 7, 2013, grievances primarily in being framed in a way which took account of the closing of the files on Brs. Masseur's and McKenzie's RWLEP complaints against the five respondents. On April 3, 2013, the University objected to the submission of revisions to the grievances and on April 4, 2013, BUFA responded to the objection, at the same time filing a "policy" grievance alleging that the University Administration had violated the collective agreement:

"1. by refusing to fulfill its obligations under the Collective Agreement and the *Ontario Labour Relations Act* by considering the Office of the Human Rights and Equity Services as an autonomous decisional body different from the employer as it appears from the correspondence sent by email from Varujan Gharakhanian to Lynne Prout, dated March 20, 2013, and copied to David Whitehead, BUFA grievance officer;

2. by refusing BUFA the right to be notified of decisions that have an important impact on the rights of its members; and

3. by using the reference to the provisions of confidentiality contained in the RWLEP to prevent bargaining unit members from exercising their right to communicate with BUFA."¹⁷¹

On April 9, 2013, the parties agreed that the three grievances should be "consolidated" and heard before Arbitrator Kenneth P. Swan.¹⁷² Accordingly, hearings before Arbitrator Kenneth P. Swan took place on October 3, 2013, and on February 21, March 31, June 6 and August 22, 2014. Arbitrator Swan's Award was issued on April 8, 2015.

In his Award, Arbitrator Swan accepted BUFA's argument that the RWLEP can be contested in cases where the policy is breached "in its own terms". He agreed with BUFA that the procedures set out in the RWLEP for processing complaints were not complied with at several points. He concluded that:

¹⁷⁰ The description of the sequence of events described in this and the next two paragraphs is taken from Arbitrator Swan's Award, April 8, 2015, page 1.

¹⁷¹ BUFA Formal Complaint under Article 10 of the Collective Agreement re: the University's Actions Concerning the Respectful Work and Learning Environment Policy Complaints against BUFA's Members, April 4, 2013. Appendix 22.

¹⁷² See Arbitrator Swan's Award, April 8, 2015, page 1.

“... [T]he prescribed process was departed from in several aspects. There are time limits set out for the investigation stage that were not adhered to, and consent was not sought to extend the time. The proposal for an outside investigator was contrary to the policy, and again there was no attempt to seek consent to pursue that approach.”¹⁷³

Arbitrator Swan also accepted the Union’s claim that it has the right to contest the operation of the RWLEP where its operation allegedly breaches the terms of the Collective Agreement. He found that the ways in which the OHRES enforced the Confidentiality section of the RWLEP interfered with the right of the Union to advise and represent its members when those members are the subject of complaints under the RWLEP.¹⁷⁴ He ruled that, in so acting the OHRES infringed the right of a respondent in any investigation carried out under Article 8.01 “to be accompanied by a Union representative at all stages of the process”. Arbitrator Swan thus ruled that the University had breached Article 8.02 (e) of the Collective Agreement.

Arbitrator Swan further found that the ways in which the OHRES insisted on compliance with the confidentiality section (section 19) of the RWLEP infringed the academic freedom rights of the respondents thus breaching Article 11. He reported that both Drs. Isla and Van Ingen testified that “they felt that they were being silenced by the confidentiality requirement, of which they were reminded from time to time in communications from the OHRES”; Dr. Isla “felt constrained from repeating the concerns that she had earlier expressed, and particularly so given the threat of disciplinary action set out in paragraph 19 of the

RWLEP”; and Dr. Van Ingen “declined to participate in meetings addressing the subject because, once the complaint had been accepted for investigation, she felt the University ‘did not have my back’”.¹⁷⁵ He stated that:

“[t]o whatever extent a requirement of confidentiality contradicts or is inconsistent with academic freedom as protected by Article 11, Article 11 must prevail pursuant to paragraph 8.02(a) (Academic freedom) of the Collective Agreement.”¹⁷⁶

Arbitrator Swan also ruled that the union can grieve any of the employer’s actions under the RWLEP that the union believes are unreasonable or unfair.¹⁷⁷ He states that the question of whether in a given case the employer exercised its management rights “fairly and reasonably” (as is required in Article 3 of the Collective Agreement) should be judged by a standard that both granted management a certain degree of deference but also applied “norms of procedural fairness developed in many different kinds of cases, including judicial review proceedings.”¹⁷⁸ He saw no “significant difference between reviewing the administration of the RWLEP on a reasonableness standard, and the courts reviewing the operation of a similar dispute resolution process on the reasonableness standard established in recent jurisprudence.”¹⁷⁹

In applying this standard of reasonableness, Arbitrator Swan considered the question whether the OHRES’s decision to “accept” and to send to investigation the complaints that had previously been rejected was “reasonable”. He had earlier ruled that the acceptance of

¹⁷³ Ibid., page 2.

¹⁷⁴ See pages 26–29.

¹⁷⁵ See pages 26–27.

¹⁷⁶ Page 27.

¹⁷⁷ See pages 32–35.

¹⁷⁸ Page 32.

¹⁷⁹ Page 33.

these complaints in April, 2012, did count as a “reconsideration” of the complaints rather than as an “appeal” and that there was no provision in the RWLEP to send such complaints to investigation once they had been rejected.¹⁸⁰ That said, he noted that:

“The OHRES has only an advisory and a gatekeeper function under the RWLEP. It does not make decisions on the merits of a complaint, but only decides if they can properly proceed through to the investigation stage.”¹⁸¹

He reasoned that this “argues for considerable deference to permit the OHRES to perform its functions without excessive oversight”¹⁸² even though “the subject matter of the RWLEP is harassment and discrimination” and hence “how such complaints are handled can have serious consequences and may compromise the personal and professional interests of either complainants or respondents”.¹⁸³

Applying this standard for assessing decisions for reasonableness and fairness he stated that:

“I am therefore of the view that, whatever I may think of the decision to let the complaint as ultimately drafted go on to the investigation stage, I should not try to assess whether it was correct to do so, but only whether it was reasonable. On that standard of review, I cannot find that the decision itself was unreasonable. There was a body of evidence before the OHRES that could justify sending the matter on for investigation.”¹⁸⁴

Thus, although Arbitrator Swan did rule that, in applying procedures set out in the RWLEP, the University, acting through the OHRES, *did* at various points breach the Collective Agreement¹⁸⁵ and he gave this ruling without raising the question of whether in so acting they acted “reasonably”, nevertheless here he ruled that, despite there being no language in the Collective Agreement and nothing in the RWLEP to provide a basis for sending to investigation complaints that had previously been rejected, “he could not find the decision was unreasonable”.¹⁸⁶

We cannot concur with this ruling at least in relation to Drs. Isla and Van Ingen. Arbitrator Swan’s reasoning on pages 21-25 of his Award amply establishes that the complaints about Dr. Isla and Van Ingen which the OHRES decided to send to investigation in April, 2012 were materially the same as those that had been rejected in December, 2011, and January, 2012; that, though section 72 of the RWLEP does make provision for appeals of such decisions, the appeal procedures do not appear to apply directly to the complainants;¹⁸⁷ and that the RWLEP does *not* make provision for reconsideration of OHRES decisions about whether to send to investigation complaints in the absence of appeal under section 72 of the RWLEP. Under the circumstances we would conclude that the actions of OHRES in question were “unreasonable”.

But that said, while Arbitrator Swan decided that he could not find “that the decision itself was unreasonable”,

¹⁸⁰ Page 25.

¹⁸¹ Pages 33–34.

¹⁸² Page 34.

¹⁸³ He cites *Renaud v. Attorney General of Canada*, 2013 FC 18.

¹⁸⁴ Page 34.

¹⁸⁵ For example, by failing to comply with time limits set in the RWLEP, by proposing to use an outside investigator contrary to the provision of the RWLEP, and by infringing the respondents’ academic freedom rights in the way the OHRES applied the confidentiality clause of the RWLEP.

¹⁸⁶ Page 34.

¹⁸⁷ Page 25.

he reached a different conclusion when he applied the standard of fairness. He ruled that at two points OHRES did not act fairly.¹⁸⁸

Firstly, Arbitration Swan ruled that:

“On the basis of all of the evidence, I am ... satisfied that the confidentiality requirement was applied inequitably. The complainants were not subjected to the same admonitions that the respondents and the Union received, and the OHRES did not always subject itself to the same strictures in its dealings with the University administrators.”¹⁸⁹

Secondly, in relation to the decision by OHRES to “accept” the April, 2012, revised version of Brs. Masseur and McKenzie’s complaints, he ruled:

“[T]he process by which the decision [to ‘accept’ the complaint] was made was, in my view, unfair. I have detailed the unfair aspects above, but in summary the substitution of a reconsideration process for the appeal specified in the RWLEP had the result of keeping the entire iterative process away from the knowledge of the respondents until the decision had been taken; and the stringent and unequal application of the confidentiality provisions hampered the Union in representing its members.”¹⁹⁰

While we have noted certain disagreements with Arbitrator Swan’s finding when applying the standard of

reasonableness and when considering the question of Ms. Prout’s failure to recuse herself in this matter (see section 3.4 above), for the most part this Award affirms our findings. In addition, though we do not agree with his findings on reasonableness, we are nevertheless impressed by his taking seriously the provisions of the management rights clause and applying the standards of reasonableness and fairness in a careful way. All of this said, we note that in his summary of the procedural defects of the employer’s actions, Arbitrator Swan remarks that:

“Since there was in fact no investigation, some of these concerns are moot, but the impact on the respondents was that they remained for much longer than necessary under the cloud of an impending investigation which *unfairly imposed limitations on their freedom of expression.*”¹⁹¹ [Italics added]

Understandably, Arbitrator Swan does not enter into a discussion of the relation between academic freedom and the right to freedom of expression guaranteed to all Canadians under the Charter of Rights. As a matter of clarification, however, it should be noted that in silencing Professors Isla and Van Ingen the employer was guilty of a double infringement of their academic freedom. On the one hand, given the unfair imposition of the confidentiality provisions in the RWLEP, the respondents felt prohibited from continuing to exercise their intramural academic freedom to criticize the

¹⁸⁸ Page 34.

¹⁸⁹ Page 30. See pages 27-29 for his review of the evidence for these claims.

¹⁹⁰ Page 34–35. See pages 21–25 for his reasons for this claim.

¹⁹¹ Page 35.

University's SEA program.¹⁹² On the other hand, they were equally unable to exercise their rights to extramural speech in the public realm with respect to this issue. The right to extramural freedom of expression without fear of retaliation from the employer is a fundamental principle of academic freedom which the actions of the University in this case also infringed.¹⁹³ In so far as it is the duty of the university to protect academic freedom, it is the duty of the university to protect *all* of these freedoms. Given the history of the treatment of the respondents by the Brock University Administration under the RWLEP, it is clear that both the intramural and the extramural academic freedom rights of the faculty respondents were infringed.

¹⁹² CAUT has long defined academic freedom as including this intramural right. Clause 2 of the CAUT Policy on Academic Freedom states:
"Academic freedom includes the right, without restriction by prescribed doctrine, to freedom to teach and discuss; freedom to carry out research and disseminate and publish the results thereof; freedom to produce and perform creative works; freedom to engage in service to the institution and the community; *freedom to express one's opinion about the institution, its administration, and the system in which one works*; freedom to acquire, preserve, and provide access to documentary material in all formats; and freedom to participate in professional and representative academic bodies. *Academic freedom always entails freedom from institutional censorship.*" [Italics added]
<http://bit.ly/1ioGvgX>. The right is included in the great majority of academic freedom clauses in Canadian university Collective Agreements.

¹⁹³ Article 4 of the CAUT Policy on Academic Freedom states:
"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."

5| The RWLEP as an Instrument for Handling Complaints of Discrimination, Harassment & Bullying in a University Context

“Respectful workplace” regulation has become a preoccupation of employers across North America and the post-secondary sector is no exception. A number of Canadian Universities have adopted policies that, in the words of the first sentence of the Brock RWLEP, aim to assure:

“[the] building and maintaining [of] a diverse and inclusive community where our students, staff, faculty, course participants, volunteers and visitors can work and learn in an environment that *respects the dignity and worth of members of the [University] community*.”¹⁹⁴ [Italics added]

Such policies have attempted to describe a respectful workplace, define behaviour that is judged invidious to such a workplace, establish procedures for investigating complaints arising from such behaviours, and provide for disciplining those found guilty of violating the policy.

Respectful Workplace Policies must be partly understood against the background of provincial legislation relating to harassment in the workplace. In 2009, Ontario Bill 168 amended section 32.0.1 of the *Ontario Occupational Health and Safety Act* [OHSA] to include definitions of “workplace harassment” and “workplace violence”. The *Act* defines “Workplace harassment” as “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome”. The new section 32.0.1 of the amended OHSA requires that employers develop “policies” relating to workplace harassment and workplace violence, and

new sections 32.0.2 and 32.0.6 require that employers develop “programs” for the implementation of these policies.¹⁹⁵ The OHSA’s definition of harassment is identical to that in the *Ontario Human Rights Code*¹⁹⁶: the code prohibits harassment on the basis of a range of protected grounds such as race, gender, sex and sexual orientation, and ancestry.

While setting out definitions, the legislation does not stipulate the specific content of the policies that must be put in place to prevent and address harassment. The implication is that such policies will vary with the needs and nature of the workplace in question. It follows that when assessing the appropriateness of any such policy for institutions of post-secondary education, it is necessary to be clear about the fundamental regulating principles of such a workplace. In the case of a university, a fundamental regulating principle is the foundational importance of protections for academic freedom. A central question for this investigation was, therefore, whether the framing and procedures of Brock University’s RWLEP were compatible with academic freedom generally and with BUFA’s Article 11 which sets out the Parties’ agreement on academic freedom at Brock.

Few would disagree that academic freedom lies at the heart of the university’s mission. It is universally accepted that without academic freedom in post-secondary institutions the advancement and dissemination of knowledge in the public good would be threatened. Teaching and research must be covered by

¹⁹⁴ RWLEP, page 1. Brock University was one of the first Canadian universities to introduce such a policy. The RWLEP was approved by the Board of Trustees of Brock University on November 24, 2005, and it took effect on July 1, 2006. It was apparently revised in March, 2007.

¹⁹⁵ Bill 168, *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace)*, 2009). <http://bit.ly/1QMPq83>.

¹⁹⁶ Consolidated law, <http://bit.ly/1GkyFLW>. The provisions are set out in Part I.

strong academic freedom policies. But also key to the exercise of academic freedom is the protection of intramural and extramural speech. As the CAUT policy states: “Academic freedom includes ... freedom to express one’s opinion about the institution, its administration, and the system in which one works ...” and “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.”¹⁹⁷

While academic freedom, which is a professional right unique to academic staff, should not be confused with rights to freedom of expression which accrue to individuals from the Charter, the two freedoms overlap importantly to create a robust web of protection. Academic freedom can only flourish in an environment in which the right to express one’s views is respected, however distasteful they may be and how wrongheaded are the opinions expressed. Any policy that seeks to restrict debate and constrain speech puts academic freedom and expression rights in peril.¹⁹⁸

There is, of course, conflicting opinion over the extent to which the Charter of Rights applies to universities. That said, we adopt Professor Jamie Cameron’s argument that respect for “Charter values” is crucial to the university’s proper functioning as an institution devoted to the

dissemination and advancement of knowledge.¹⁹⁹ An example of the application of such values arises in the present case as central to the decision by Ontario Human Rights Adjudicator Bhattacharjee to deny Br. McKenzie’s complaint that Dr. Isla had discriminated against him. In framing his decision, Adjudicator Bhattacharjee invoked the Charter protections of freedom of expression, noting that:

“... expression which is merely unpopular, distasteful or contrary to the mainstream, or merely offends, shocks or disturbs the State or any sector of the population, is protected by the guarantee of freedom of expression.”²⁰⁰

He went on to conclude that:

“... given the importance of academic freedom and freedom of expression in a university setting, it will be rare for this Tribunal to intervene where there are allegations of discrimination in relation to what another person has said during a public debate on social, political, and/or religious issues in a university.”

A year later in the *Whatcott* decision, the Supreme Court further defined the threshold for limits on freedom of expression in the public sphere: it struck down the provision of the *Saskatchewan Human Rights Code* that outlawed “expression that ridicules, belittles or otherwise affronts the dignity of”, arguing that such expression did “not rise to the level of ardent and extreme feelings constituting hatred required to uphold

¹⁹⁷ CAUT, <http://bit.ly/1ioGvgX>. Accessed February 25, 2015.

¹⁹⁸ See also Brock Senate “Statement on Respectful Dialogue and Freedom of Expression,” approved May 11, 2011, where the issue of “respect” is also problematic. <http://bit.ly/1FKxpGV>. Accessed February 20, 2015.

¹⁹⁹ See Jamie Cameron, “Giving and Taking Offence: Civility, Respect, and Academic Freedom,” in *Academic Freedom in Conflict: The Struggle Over Free Speech Rights in the University*, ed. James L. Turk (Toronto: James Lorimer, 2014), 287-304.

²⁰⁰ Bhattacharjee 2012 HRTO 1908, para. 34.

the constitutionality of a prohibition of expression in human rights legislation”.²⁰¹

The values affirmed in the Charter are implicitly echoed in the language on academic freedom found in the Collective Agreement between Brock University and the Brock University Faculty Association. In Article 11, academic freedom is defined as:

“a) The freedom to examine, question, teach, and learn, and it involves the right to investigate, speculate, and comment publicly without deference to prescribed doctrine. The Parties agree that they will not infringe upon or abridge the academic freedom of any member of the University community.

b) The right to academic freedom does not permit members of the University Community to infringe upon the academic freedom of other members.”²⁰²

These principles are elaborated on in articles 11.02 through 11.05. For example, article 11.02 states:

“Academic freedom does not require neutrality in expression or attitude. Rather, academic freedom makes commitment possible and may result in strong statements of beliefs and positions. The credibility and acceptability of the principle depend on that freedom being used in a manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge. Likewise these freedoms do not confer legal immunity or legal defense by the University for positions that members may take which are not specifically sanctioned by the University.”²⁰³

²⁰¹ Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11.

²⁰² BUFA Collective Agreement July 1, 2011–June 30, 2014.

²⁰³ Ibid.

Article 11.04 and 11.05 further defines the rights of Faculty and librarians. Article 11.04 states:

“Faculty members shall be: free in the choice and pursuit of research and in publishing the results and conclusions thereof; free in the choice and pursuit of teaching methods and content, consistent with the explicit rights and responsibilities of Senate as outlined in the Act (see Article 4.03 — Policies and Practices²⁰⁴); free to discuss and criticize, including criticism of the University and the Union; and they shall be free from censorship by the Parties.”²⁰⁵

It is notable that there are no references to “respect” and “civility” in the materials on academic freedom and freedom of expression referenced here. Moreover, such language relating to “civility” and “respect” is also absent from both the *Ontario Human Rights Code* and the *Ontario Health and Safety Act*. We repeat: the collective agreement’s language in Article 11 is a strong endorsement of academic freedom and related freedom of expression as fundamental to the university’s functioning.

The goal of respectful workplace policies is to regulate expression. As such, they risk undercutting the principles of academic freedom and free expression which are, as we have said, fundamental regulating principles of university life. If there are to be such respectful workplace policies, then they must put respect for academic freedom and freedom of expression front and centre as explicit limits against which any provision of the RWLEP must be read. There would, of course, be a stipulation that academic freedom does not protect

²⁰⁴ Article 4.03 states: “The Parties agree that the provisions of this Agreement shall not operate so as to infringe upon the powers of Senate as set out in the Act.”

²⁰⁵ Ibid.

against illegal behaviour and hence cannot protect expression or behaviour that violates legal prohibition of harassment, discrimination, or hate speech. Otherwise, the principles of academic freedom and related freedom of expression must prevail.

The matters of “respect” and “civility”, on the other hand, have no legal definition and no standing in legislation but are standards introduced by employers for their own purposes. Here, at the very least, there should be a clear distinction between the level of respect due to individuals as *persons* and that due to any *ideas* that individuals may have. It is one thing to say that academic freedom does not cover persistent shouting or intimidating behaviour. It is quite another thing to imply that ideas or opinions with which one does not agree must be treated with respect in the course of academic debate, in the classroom, or in other forums, whether extramural or intramural.

Such a distinction between persons and ideas is in practice difficult to make. The language in Article 11.02 rightly affirms that in exercising academic freedom there must be no requirement of neutrality either in the substance of what is claimed or in the modes of expression used either in stating and defending one’s own claims or in opposing the claims of others. Clearly, some claims, theories, and patterns of reasoning can be taken to be deeply flawed and indeed erroneous. In such cases, the principles of academic freedom require that an academic holding such a view be free to say so without “let or hindrance”: certainly, the research, teaching, and academic governance needs of the modern secular university require this freedom subject only to the restrictions imposed by law. It can be deeply hurtful, damaging to one’s confidence, intimidating and humiliating to realize that a colleague or a teacher has concluded that one’s opinions, views or academic work

are flawed or erroneous and has said so in so many words. Such criticisms may be unwanted; they may seem on some interpretations to be insulting, not to say disrespectful, and to affect one’s dignity. All of these effects are possible, however, without there being an inappropriate exercise of an academic’s rights to free expression or academic freedom.

Even if a respectful workplace policy were properly drafted to distinguish between persons and ideas, it is hard to imagine avoiding another problem, namely the difficulties arising from the risk that the test of acceptable behaviour will be a subjective one. The problem is that this opens the way to a standard that assumes that if the complainant feels his or her dignity or self-esteem has been wounded, then it is to be assumed that an offense has taken place.²⁰⁶

Such difficulties are inherent in the drafting of respectful workplace policies, and the Brock policy is no exception. The very first sentence affirms the importance of creating an environment that “respects the dignity and worth of members of the Brock community”.²⁰⁷ While properly singling out harassment and discrimination as prohibited behaviours, the document places a heavy emphasis on respect and dignity. This is true right from the outset, where the statement of the purpose of the policy includes “fostering respect” which rides along on the coattails of the quite different legal obligations to avoid discrimination and harassment. There is no hint at the outset that the policy must be read with a high regard for academic freedom and freedom of expression as

²⁰⁶ On the dangers of subjectivism to be avoided in jurisprudence, see *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, paras. 33, 34, 36.

²⁰⁷ Brock University RWLEP 2007, page 1.

setting limits to “fostering respect”.²⁰⁸ In fact, academic freedom is only mentioned once in the main body of the text of the RWLEP and that is at the bottom of page 3 where it appears as “the commitment to academic freedom and freedom of thought, inquiry and expression among its members that may result in respectful disagreements regarding beliefs or principles”.²⁰⁹ So, in the first and only reference to academic freedom in the main body of the RWLEP, academic freedom is introduced not as a regulating principle but as just another element of university life and, moreover, one which must itself be regulated by an ill-defined commitment to respect with all the related problems that we have noted above.

Apart from the reference to academic freedom discussed in the last paragraph, the policy refers to academic freedom at two other places in the document’s Appendix. First, the proper exercise of academic freedom is excluded from the list of definitions of “psychological harassment” in the following terms:

“the legitimate (i.e., [sic] not discriminatory, arbitrary or abusive) exercise of academic freedom, freedom of thought and inquiry, and expression in teaching and research which may result in respectful disagreements regarding beliefs or principles.”²¹⁰

Once again, the ambiguous phrase “respectful disagreements” appears; and no clear indication here or elsewhere is given of what an “arbitrary” or “abusive” use

of academic freedom might be.²¹¹ Moreover, contrary to the provisions of the collective agreement defining academic freedom as the freedom to criticize the university, the implication in the passage quoted above is that academic freedom covers only teaching and research.

Secondly, the following behaviour is excluded from the definition of bullying:

“Bullying does not include legitimate, constructive and fair criticism of a faculty member, staff member or student’s performance/behaviour or the legitimate (i.e., not discriminatory, arbitrary or abusive) exercise of academic freedom, freedom of thought and inquiry, and expression in teaching and research.”²¹²

Here, again, the lack of clarity about what is “arbitrary” or “abusive” continues; and there is again the implicit implication that the exercise of academic freedom to the areas of teaching and research and does not include either criticism of the institution or freedom of extramural speech. The essential point here is that wherever a supposed affirmation of academic freedom is made, it is always limited in its coverage and hedged about with vague qualifiers that undercut its defence and raise doubts about its fundamental importance.

The difficulty is that respectful workplace policies and civility policies expand the meaning of “harassment” and “discrimination” from that given in the OHSa and the

²⁰⁸ Ibid.

²⁰⁹ Ibid., page 3.

²¹⁰ Ibid., page 16.

²¹¹ In the same passage, however, it is stipulated that “respectfully expressing a disagreement or stating a contrary but reasonable point of view” is acceptable, which helps very little and in the definition of “Personal Harassment”, it is stipulated that the offensive actions that “diminish the dignity” of the victim include only those that “serve no legitimate work or academic related purpose”, a helpful phrase which unfortunately does not appear elsewhere in the document (Ibid., pp. 2–3).

²¹² Ibid., page 16.

OHRC to behaviour that is merely offensive or distasteful.²¹³ There are no minimum standards of harm required in respectful workplace policies and no requirement for the use of objective measures. Rudeness in these policies may be treated as formally as the offense of “offering a better grade for sexual favours”. In Brock’s RWLEP policy, *Personal Harassment* may include, among other behaviours, “messages to or about a person, including voice mail, email, online chat or posted on a website, that are offensive, insulting or cause discomfort”.²¹⁴ This is an unacceptably low threshold of harm when set against the Supreme Court’s Whatcott decision that

“expression that ‘ridicules, belittles or otherwise affronts the dignity of’ does not rise to the level of ardent and extreme feelings constituting hatred required to uphold the constitutionality of a prohibition of expression in human rights legislation.”²¹⁵

But it is not only the low threshold of harm that ought to alarm us. It is also the subjective understanding of what counts as harm. In the Brock RWLEP, the onus is mainly on the complainant who must decide (in concert with the OHRES) whether she or he has experienced “discomfort” or “offence”. Within the policy there is no overt standard of reasonableness or other objective standard required.

It is important, then, to be clear that the RWLEP goes far beyond what is required by the OHSA and in so

doing it moves into legally uncharted waters. Whereas the OHSA and OHRC definitions of the kinds of prohibited behaviour when appealed to in legal proceedings will be treated in ways guided and constrained by the canons of judicial propriety established by common law practice and precedent as appropriate²¹⁶, the RWLEP definitions when appealed to in the procedures set out in the RWLEP are not, apparently, constrained by similar canons. In legal proceedings under the OHSA and the OHRC the canons of legal propriety will require and bring to bear the common law requirements of objectivity and reasonableness: no such explicit provisions are included in the RWLEP procedures. Moreover, in including prohibitions of “personal” and “psychological” harassment in its listing of prohibited behaviour, the RWLEP introduces norms of behaviour that in effect decouple the prohibition of harassment from the legally defined notions of harassment or discrimination as found in the OHSA and the OHRC and in effect come to require something like “civility” or “politeness” in the University both in relations between academic staff and non-academic staff and students and in relations between academic staff and their academic colleagues. All this is further complicated because what civility entails varies from culture to culture and because the standards are imposed on a post-secondary setting in which the primary consideration must be what is essential to teaching, research and collegial institutional governance. Yet as it stands, concerns for “dignity”, “respect”, and “self-esteem” threaten to trump everything with determinations of violation too likely to be based on subjectivity rather than any objective test.

²¹³ See Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11, where it is made clear that expansions like this are unacceptable expansions.

²¹⁴ Brock RWLEP policy 2007.

²¹⁵ Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11.

²¹⁶ See earlier in this section for the dangers here.

As for the situation before us, the respondents in this case were never provided with a full explanation in writing of the complaints against them. As we know, two earlier attempts to bring complaints against Dr. Isla were rejected by the OHRES. We are left to ponder why the OHRES then accepted the complaint that Br. Masseur filed in April 2012. Perhaps this change of mind was prompted by the expression of subjective distress on the part of the students involved in fundraising for SEA during the Occupy Brock events. In any case, the complaint was eventually dropped, ostensibly due to the decision of the Ontario Human Rights Tribunal to reject Br. McKenzie's charge against Dr. Isla. It is reasonable to assume that the RWLEP contributed to a climate in which such unfounded complaints could arise.

Our conclusion is that policies like the Brock RWLEP do more harm than good. Universities have a legal obligation to address the need to avoid discrimination

and harassment in the forms defined by law. They should, therefore, devise policies limited to these matters as defined by legislation and interpreted by the courts. They should not impose ill-defined obligations of respect and civility under cover of meeting legal obligations to address harassment and discrimination as legally defined. Earlier in this report we have also discussed the issues arising from provisions relating to investigations under the policy and to the confidentiality provisions. In our view, these difficulties could be avoided by leaving it to the regular discipline and grievance procedures to handle cases of alleged harassment and discrimination. This would assure that both respondents and complainants would have guarantees of due process and natural justice through the normal arbitration procedures established under collective agreements. This process is much superior to relying on an investigator in a process where the evidence and witnesses can never be directly examined by any of the parties and where only any discipline imposed can be grieved.

6 | The “Concordat” between Brock University & the Diocese of St. Catharines

Although we have concluded that the respondents in this case were perfectly entitled to criticize the SEA program, it is not our task to assess the validity of those criticisms. We do, however, think that the issue of the appropriateness of a secular public institution like Brock University engaging itself officially with a religious organization needs to be addressed. As noted in section 1 of this Report, Brock University is in the peculiar situation of having signed a “Concordat” with the local Roman Catholic Archdiocese²¹⁷, an official relationship that formed part of the context in which the SEA program achieved status as a recognized Brock program.

Some of the terms of the agreement between the University and the Diocese could be interpreted innocently as falling within the tradition common at many universities whereby the university provides opportunities for religious and spiritual support for students. The Concordat includes two such agreements: the assignment of an Office for the Roman Catholic Diocese on campus and the tradition of the appointment of a Roman Catholic Chaplain by the Bishop of Saint Catharines and with the approval of Brock University.

But the Concordat goes further and defines the relation between the University and the Diocese as a long term “Partnership and Association” and states:

“Brock University and the Roman Catholic Diocese of Saint Catharines recognize their common aim in promoting culture and integral human development. Due to this, a new era of agreements and collaboration may be fostered together in the future, in Canada and overseas.”²¹⁸

²¹⁷ Concordat between Brock University and the Roman Catholic Diocese of Saint Catherines (undated document). Appendix 2

²¹⁸ Ibid.

The phrase “integral human development” is a phrase introduced by Pope Paul VI in 1967 for a particular conception of “development”. Like conventional conceptions of development, the conception of *integral human development* is “in favour of economic growth, technological innovation and the implementation of social programmes”; but *integral human development* goes further and, in the words of a contemporary commentator:

“... emphasizes the religious goal of reconciling humanity and God through the creation of a human family over these more material social and economic issues, it cannot be equated to secular development theory.”²¹⁹

The implication here is that in signing this “Concordat” the University has in some sense endorsed this particular religious conception of human development.

Secondly, the Concordat also states that:

“Our two institutions may also celebrate the development of policies in continuous improvement in order to express the mutual respect of our aims and traditions. Also the presence of co-operative programs and projects in Health, Education, Business and other Faculties at Brock, and in all the realms of our institutions, with budgets, funds, sharing of international connections, etc.”

This suggests a University commitment to respect a certain set of religious positions and principles. This

²¹⁹ Ludovic Bertina, “The Catholic Doctrine of ‘Integral Human Development’ and its Influence on the International Development Community (abstract)”, *International Development Policy | Revue internationale de politique de développement* [Online], volume 4, 2013. Accessed July 10, 2014. The online text is a translation of the original paper which was in French.

quotation should be read through the lens of the espousal of the Roman Catholic doctrine of “integral human development” outlined above.²²⁰

Perhaps even more strikingly, the Concordat includes the statement that:

“Brock University and the Diocese of Saint Catharines acknowledge the respective authorities of the other Institution and its Mission Statements.”²²¹

This mutual “acknowledgement of authority” means that, on one hand, the Diocese “acknowledges authority” of Brock University’s mission statement that “Brock University flourishes through the scholarly, creative, and professional achievements of its students, faculty and staff... As a diverse and inclusive community, we contribute positively to Canada and beyond through our imagination, innovation and commitment”. On other hand, and more strikingly, Brock University “acknowledges the authority of the Diocese and its mission”, as set out in the *Gravissimum Educationis* proclaimed by Pope Paul VI October 28, 1965. Footnote 3 of the Concordat quotes from section 10 *Gravissimum Educationis* as follows:

“... The Church is concerned also with schools of a higher level, especially colleges and universities... that by their very constitution individual subjects be pursued according to their own principles, method, and liberty of scientific inquiry, in such a way that an ever deepening understanding in these fields may be obtained and that, *as questions that are new and current are raised and investigations carefully made according to*

*the example of the doctors of the Church, there may be a deeper realization of the harmony of faith and science.”*²²²
[Italics added]

This passage may simply be a way of noting the independence of the two institutions, each with its own ethos. But it is at the very least problematic for the University to assent to a document that could be taken to mean affirmation of the goal of achieving “a deeper realization of the harmony of faith and science”.

Finally, the University and Diocese pledge that there will be “many more years of harmonious association, partnership and collaboration for the integral development of the people under our responsibilities”.²²³ Here again, knowingly or not, the University is assenting to a statement that has a particular theological meaning.

²²⁰ Concordat between Brock University and the Roman Catholic Diocese of Saint Catharines.

²²¹ Ibid.

²²² <http://bit.ly/1PzE25>. Accessed January 24, 2015. The Concordat quotes selectively. The full quotation with emphasis omitted is as follows:

“... The Church is concerned also with schools of a higher level, especially colleges and universities. In those schools that dependent on her she intends that by their very constitution individual subjects be pursued according to their own principles, method, and liberty of scientific inquiry, in such a way that an ever deepening understanding in these fields may be obtained and that, as questions that are new and current are raised and investigations carefully made according to the example of the doctors of the Church and especially of St. Thomas Aquinas, ... there may be a deeper realization of the harmony of faith and science. Thus there is accomplished a public and enduring and pervasive influence of the Christian mind in the furtherance of culture and the students of these institutions are molded into men truly outstanding in their training, ready to undertake weighty responsibilities in society and witness to the faith in the world.”

²²³ Ibid.

Insofar as the Concordat creates a special relationship between Brock and the Diocese of Saint Catharines, and insofar as the document could be read as upholding particular Christian and specifically Roman Catholic values, the University can be seen as itself embracing a religious perspective within a secular setting. The document goes further than a merely symbolic commitment, however, for it refers to funds, budgets and shared international commitments. In this context, the institutional commitment to the Solidarity Experience Abroad [SEA] program could be seen as a notable example of “partnership and collaboration” promised in the Concordat.

The question that arises is both *what* obligations were taken on in signing this agreement and *whether* Brock University or indeed *any* public secular university ought to have entered into *any* agreement like the Concordat. This question was raised by the respondents with the President of Brock. Drs. June Corman, Ana Isla and Charles Burton, representing BUFA, met with President Jack Lightstone on September, 2012, and took with them a copy of the Concordat. They reported to us in

interviews that they had the distinct impression that the President was taken by surprise at the existence of the agreement. We note further that on our reading of section 13b of the Brock Act the Brock University Senate has jurisdiction over matters like the signing of agreements like the Concordat, since that agreement concerns the educational policy of the University; but we do not know whether or not the Brock Senate approved the Concordat.

In summary, it is the view of the Investigatory Committee that it is, to say the least, highly problematic for a secular, public university to have an official agreement with a religious organization that implies both some form of official relationship with that organization and the acceptance of a particular religious view on a matter such as human development. Instead, the university must eschew such engagements, maintaining its autonomy and leaving it to members of the university community to form their own views and commitments on such matters in accordance with the principles of academic freedom.

7| Findings & Recommendations

7.1 Findings

1. That, in failing to process the allegations of Brs. Masseur and McKenzie in a timely manner as required by sections 4, 23, and 44 of the RWLEP, the Brock University OHRES was in breach of the principles of procedural natural justice in its handling of those allegations.
2. That, once having decided in accordance with section 42 of the RWLEP to treat the allegations of Brs. Masseur and McKenzie as a formal complaint, the failure by the OHRES to appoint an internal investigation team to examine these formal complaints as required by section 56 and to do so in a timely manner as required by sections 4, 23 and 44 of the RWLEP, the Brock University OHRES was in breach of the principles of procedural natural justice in its handling of those formal complaints.
3. That, in failing to appoint an *internal* investigation team, with membership satisfying the criteria set out sections 54-57 of the RWLEP and instead, attempting to appoint an external one person investigator, the Brock University OHRES failed to observe due process and was correspondingly in breach of the principles of procedural natural justice.
4. That, in failing to appoint an internal investigation team and hence failing to ensure that a draft report and final reports were prepared and submitted to both complainants and respondents, the OHRES failed to give the respondents an opportunity to respond to such reports, thereby breaching in particular the principle of procedural natural justice that requires that the other side be heard.
5. That, in failing to make clear to Drs. Isla and Van Ingen that, despite the wording of section 19 (“Confidentiality”) of the RWLEP, they had a right to contact and seek advice from BUFA, the OHRES acted in ways that seriously impinged on their academic freedom rights and their rights under the Collective Agreement.
6. That, in failing to make clear to Messrs. Fowler and Wood that, despite the wording of section 19 (“Confidentiality”) of the RWLEP, they had a right to contact and seek advice from their union CUPE Local 4207, the OHRES acted in ways that seriously impinged on their academic freedom rights and their rights under the collective agreement.
7. That, in failing to arrange legal representation (or, failing that, an advisor) for Dr. Corman²²⁴, the OHRES was guilty of infringing (then) Associate Dean Corman’s academic freedom rights.
8. That President Lightstone, in failing to arrange for representation of Dr. Corman when the OHRES failed to provide an advisor or a legal representative, was guilty of infringing (then) Associate Dean Corman’s academic freedom rights.
9. That, in failing to provide legal representation for Dr. Isla in the proceedings before the Human Rights Tribunal, the Brock University Administration was guilty of infringing Dr. Isla’s rights under the Collective Agreement and her academic freedom rights.

²²⁴ As required by the second sentence of section 24 of the RWLEP.

10. That, in refusing to recuse herself from the roles assigned by the provisions of the RWLEP Procedures to the OHRES staff in handling the complaints filed by Brs. Masseur and McKenzie, Ms. Prout was in breach of the principle of procedural natural justice which affirms no one should be a judge in their own case.

7.2 Recommendations

1. That there should be a formal apology to the five respondents that were the subject of this investigation, this apology being given by the President of the University on behalf of the University. This apology should make reference not only:
 - (a) to the fact that the OHRES failed to follow the procedures as set out in the RWLEP and thereby failed to comply with the principles of natural justice but also
 - (b) to the fact that in their processing of the allegations the University Administration infringed the academic freedom and free speech rights of the respondents.
2. That those present and past actions of the OHRES that are or have taken place under the auspices of the RWLEP should be audited and that in this audit particular attention should be paid to the following:
 - (a) any occasions on which the OHRES has failed or is failing to process the allegations in a timely manner as required by sections 4, 23, and 44 of the RWLEP;
 - (b) any occasions on which the OHRES has failed or is failing to comply with such specific timelines as are set out in the RWLEP;
 - (c) any occasions on which the requirements concerning confidentiality in section 19 of the RWLEP have had or are having the effect of intimidating or silencing respondents to formal complaints initiated under the terms of the RWLEP;
 - (d) any occasions on which the OHRES has failed or is failing when processing a formal complaint to set up an internal investigation committee as required by section 56 of the RWLEP, that committee constituted in the manner required by sections 54-57 of the RWLEP;
 - (e) any occasions on which the OHRES has or is seeking advice from senior Administration contrary to the second sentence of section 23 of the RWLEP.
3. That the RWLEP be abrogated and, in its place, that, as required by section 32.01.1 of the *Ontario Occupational Health and Safety Act* as amended in Bill 168 (2009), the employer should develop a policy with respect to workplace violence and workplace harassment, this policy explicitly recognizing the definitions of 'workplace violence' and 'workplace harassment' provided in subsection 1(1) and that, as required by section 32.0.2 of the *Ontario Occupational Health and Safety Act* as amended by Bill 168 (2009), the employer should develop a program to implement the workplace violence policy.

4. That the Board of Governors abrogate the Concordat and that the Senate endorse this abrogation.
5. That the Board of Governors and the Senate of Brock University should adopt a policy which states that Brock University, as a public secular university, will not endorse or allow to be offered under its auspices any specific volunteer or community service programs that are provided by any faith based organization. A logical conclusion is that Brock would then cease “official” inclusion of the SEA program. This would not prevent the university from providing lists of such programs without in any way endorsing them.
6. That CAUT develop policy or advice for member associations highlighting the threats posed by respectful workplace policies, and recommending ways where such policies are adopted that they are limited in coverage to behaviours prohibited by relevant legislation.

List of Appendices

Appendix 1

Text of the Brock University Respectful Work and Learning Environment Policy. Henceforth cited as RWLEP.

Appendix 2

The 2004 Concordat between the Roman Catholic Diocese of St. Catharines and Brock University. This is cited as “the Concordat”.

Appendix 3

January 27, 2012, “Report of the Internationalization Committee on an investigation of matters relating to the Solidarity Experiences Abroad (SEA) to Latin America”. This is cited as “2012 Report of the Internationalization Committee”.

Appendix 4

The Human Rights Tribunal of Ontario “Decision” of Mr. Ken Bhattacharjee in the case File Number 2012-11281-I. This is henceforth cited as “Bhattacharjee 2012 HRTO 1908”.

Appendix 5

Professor Isla’s letter of January 4, 2012, to the Members of the Internationalization Committee, Brock University.

Appendix 6

Ian Wood, letter to Internationalization Committee, January 4, 2012.

Appendix 7

The Mandigo-Bubic Review of SEA — Final Report, February 6, 2007.

Appendix 8

Centre for Women’s Studies Summary Report: Solidarity Experiences Abroad, Latin America, Investigation 2011–2012. The report is undated.

Appendix 9: Letter of April 23, 2012, from Br. Raoul Masseur to Ms. Lynne Prout, Manager of OHRES. In this letter Br. Masseur sets out a series of complaints against Drs. Isla, Van Ingen and Corman, and Messrs. Wood and Fowler.

Appendix 10

Murray Knuttila memo to Shannon Moore and John Sorenson, December 7, 2011.

Appendix 11

Raoul Masseur’s written submission of January 12th, 2012, to the Internationalization Committee. The submission was accompanied by a binder of roughly 70 pages of supplementary materials.

Appendix 12

A response which Ian Wood wrote in reply to Raoul Masseur’s written submission and oral presentation.

Appendix 13

Email of February 14, 2012, from Ms. Nicole Studenny to Br. Masseur.

Appendix 14

March 14, 2012, letter from Provost Knuttila to the Catholic News Agency.

Appendix 15

March 14, 2012, letter from Provost Knuttila to Br. Masseur.

Appendix 16

Professor Isla's response to the HRTO.

Appendix 17

BUFA, February 7, 2013, formal complaint on behalf of Professor Isla.

Appendix 18

BUFA, February 7, 2013, formal complaint on behalf of Van Ingen.

Appendix 19

August 28, 2012, letter from Isla to President Lightstone requesting legal representation.

Appendix 20

Open letter to Dr. Jack Lightstone, September 26, 2012.

Appendix 21

BUFA, April 4, 2013, Formal Complaint under Article 10 of the Collective Agreement re: the University's Actions against Professors Ana Isla and Cathy Van Ingen.

Appendix 22

BUFA, April 4, 2013, Formal Complaint under Article 10 of the Collective Agreement re: the University's Actions Concerning the Respectful Work and Learning Environment Policy Complaints against BUFA's Members.

Appendix 1



Respectful Work and Learning Environment Policy

Category:	Office of the President; Office of Human Rights and Equity Services
Number:	
Responsibility:	Office of Human Rights and Equity Services
Approval:	Board of Trustees
Approval Date:	November 24, 2005
Issue Date:	Issued (July 1, 2006), revised March 2007
Next Review:	July 2008

INTRODUCTION

Brock University is committed to building and maintaining a diverse and inclusive community where our students, staff, faculty, course participants, volunteers and visitors can work and learn in an environment that respects the dignity and worth of members of the Brock community.

Acknowledgements: Brock University, the Special Harassment Prevention Policy Task Force and the Office of Human Rights and Equity Services, wish to acknowledge the following institutions, whose related policies and procedures provided important assistance, ideas and background in the development of this policy: University of Manitoba, Guelph University, Queen's University, Sheridan College, University of British Columbia, University of Kent, University of Strathclyde, University of Sussex, and University of Bradford.

PURPOSE

The purpose of this policy is to:

- Develop and support a work and learning culture that values diversity and inclusion, fosters respect, and does not tolerate prejudice, discrimination, harassment and/or bullying;
- Outline rights, responsibilities and types of behaviour which fall within the scope of this policy;
- Make provision for support services, including training and awareness initiatives, to promote a respectful work and learning environment; and
- Outline procedures for handling and resolving complaints when this policy is breached by discrimination, harassment and/or bullying.

This policy does not cover issues of academic integrity, which may be covered under other policies and procedures of the University.

SCOPE

This policy applies to:

- All students, course participants, staff, faculty, and volunteers of Brock University.
- Any visitors to Brock University.

This policy is in effect at all times – fifty-two (52) weeks per year, seven (7) days per week, twenty-four (24) hours per day, and is not limited to working days.

POLICY

Definitions

1. No policy document can give a full description and definition of behaviours that fall within the meaning of harassment and bullying. Appendix A lists examples of behaviours that can fall within these definitions and training opportunities will be offered by the Office of Human Rights and Equity Services for members of the Brock community to explore these in more depth.

“Alternative Dispute Resolution” means a process that parties can use to reach their own agreement without going to court or trial, and can include mediation, negotiation, facilitation, settlement conferences, and other dispute resolution techniques. The Office of Human Rights and Equity Services shall normally conduct Alternative Dispute Resolution of matters falling under this policy.

“Brock University premises” means building and lands owned, leased, operated, controlled or supervised by the University.

“Bullying” means persistent, offensive, abusive, intimidating or insulting behaviour, abuse of power and/or unfair punitive sanctions which makes the recipient feel upset, threatened, humiliated and/or vulnerable, which undermines the recipient’s self-confidence and/or reduces the recipient’s feelings of self-esteem and self-worth, and which may cause the recipient to suffer stress. Bullying can take many forms; please see Appendix A for examples.

“Course participants” means a person registered in a course or program of study offered through Continuing Education (Department of Community Services) or English as a Second Language Services Division, or any person who is auditing any course or program at Brock University.

“Disability” as set out in the Ontario Human Rights Code, means,

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act.

“Discrimination” means differential treatment of an individual or group which is based on a personal characteristic (such as gender, race, creed, disability, and/or sexual or gender orientation) of that individual or group, and which has an adverse impact on them.

“Faculty” means teaching and/or research staff of the University, including Professors, Librarians, Associate Professors, Assistant Professors, Adjunct Professors, Lecturers, and Part-time Instructors.

“Harassment” means a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Single acts of sufficient severity may also constitute harassment.

“Human Rights Harassment” means engaging in a course of vexatious comment or conduct that is known to be or ought reasonably to be known to be unwelcome to an individual or group, whether intended or not, based on: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, gender identification, sexual orientation, age, marital status, family status, disability, record of offences (in employment only), and receipt of public assistance (in accommodation only) as defined by the Ontario Human Rights Code.

“Human Rights Discrimination” means differential treatment of an individual or group which is based on a personal characteristic of that individual or group and which has an adverse impact on them. Personal characteristics include: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, gender identification, sexual orientation, age, marital status, family status, disability, record of offences (in employment only), and receipt of public assistance (in accommodation only) as defined by the Ontario Human Rights Code.

“Managers” means faculty or staff who supervise other employees of the University.

“Personal Harassment” means one or a series of objectionable and unwelcome comments or conduct directed toward a specific person or group of persons which diminish the dignity of the recipient(s) and serve no legitimate

work or academic related purpose, and/or have the effect of creating an intimidating, humiliating or hostile work or learning environment. Personal harassment can take many forms; please see Appendix A for examples.

“Psychological Harassment” means any vexatious behaviour in the form of repeated and hostile or unwanted conduct, comments, actions or gestures, that affects an individual’s dignity or psychological or physical integrity and that results in a harmful work or learning environment for the individual. Psychological harassment can take many forms; please see Appendix A for examples.

“Senior Administration” includes the President, Vice Presidents, Chief Information Officer, Associate Vice Presidents, Executive Directors, Deans, and Librarian.

“Senior Managers” includes Directors, Registrar, Associate Deans, Associate Directors, and Assistant Directors who manage departments.

“Sexual Harassment” is deemed to include, but is not restricted to:

- (a) any unwanted attention of a sexually-oriented or gender-oriented nature directed at an individual or group by another individual or group of the same or opposite sex who knows, or ought reasonably know, that this attention is unwanted;
- (b) any implied or expressed promise of reward for complying with a sexually-oriented request or advance;
- (c) any implied or expressed threat of reprisal for refusing to comply with an implied or expressed sexually-oriented request;
- (d) any behaviour, verbal or physical, of a gender- or sexually-oriented nature that interferes with the academic or work environment of an individual or group or creates an intimidating or hostile atmosphere.

“Staff” means any person employed by the University (except “Faculty” as defined above), whether full or part time. Students may also be employed as staff of the University and shall be treated as “staff” under this policy where an incident occurs within the scope of their employment.

“Student” means a person who is registered in a course of study approved by the Senate; engaged in any academic work which leads to the recording and/or issue of a mark, grade or statement of performance by the appropriate authority in the University or another institution; entitled to a valid student card who is between sessions but is entitled because of student status to use University facilities; and/or participating in the Intensive English Language Program. Staff of the University may also be students at the University. Staff shall be treated as a “student” under this policy where an incident occurs while they are acting within their role as a student and outside the scope of their employment.

“Vexatious” means lacking a sufficient ground and only serving to annoy and distress.

“Visitor” means a person who is attending Brock University premises for educational, employment, recreational or other purposes but is not a student, course participant, staff or faculty member of the university, as defined by this policy. This would include: members of the local community attending events held on campus or making use of recreational facilities on campus, guests of students, staff and faculty, guests of Conference Services staying in residence accommodation, and contractors or other persons working on Brock University premises but not employed by Brock University.

“Volunteer” means a person who provides services to the University for which they are not being paid. Where a volunteer is also a student, staff or faculty member, they will be treated as a “student”, “staff” and “faculty” member under this policy.

“Working Days” means Mondays to Fridays, excluding Saturdays, Sundays and paid holidays observed by the University.

2. Brock University supports equity, diversity and the dignity of all people. The University promotes equality in our learning programs, services and employment and in the conduct of the University’s affairs.

The University recognizes the following:

- A richly diverse society in Ontario, as well as beyond;
- A duty to act in a manner consistent with existing legislation regarding human rights;
- A commitment to academic freedom and freedom of thought, inquiry, and expression among its members that may result in respectful disagreements regarding beliefs or principles.

3. Brock University opposes behaviour that is likely to undermine the dignity, self-esteem or productivity of any of its members and prohibits any form of discrimination or harassment whether it occurs on University property or in conjunction with University-related activities. Therefore, Brock University is committed to an inclusive and respectful work and learning environment, free from:

- Human rights discrimination or harassment;
- Sexual harassment; and
- Personal harassment, psychological harassment and bullying.

4. Harassment and discrimination violate an individual's human rights and run contrary to the University's fundamental values. Brock University will act promptly and efficiently to deal with these behaviours. It will endeavour to ensure that individuals who believe that they have been subjected to harassment or discrimination are able to express concerns and register complaints without fear of retaliation or reprisal. The University will exercise care to protect and respect the rights of both the complainant and the respondent.

5. Brock University will establish mechanisms to give effect to this Policy including:

- Development and staffing of the Office of Human Rights and Equity Services which will be responsible for the administration of this policy and procedures, including advising individual complainants about their rights and options under this policy and procedures, and overseeing investigations conducted under this policy and procedures
- Make training available for faculty, staff, students and volunteers, related to harassment and discrimination;
- Establish and implement awareness programs designed to enhance awareness of the Respectful Work and Learning Environment Policy and procedures relating to it.

6. Each year a report will be prepared by the Office of Human Rights and Equity Services and made available to the University community concerning the number, type and disposition of cases and on educational and other activities related to the Policy. A copy of this report shall be forwarded to the Planning, Finance and Human Resources Committee of the Board of Trustees annually.

7. While Brock University supports the use of alternative dispute resolution for the informal resolution of problems associated with such behaviour, it considers harassment and discrimination in all forms to be serious offences. Where breaches of this policy have been found and cannot be resolved through alternative dispute resolution practices, such behaviour may attract discipline and sanctions in accordance with university codes of conduct for students, human resources policies, procedures and practices, and relevant collective agreements.

Rights and Responsibilities

8. Each individual has the right to participate, learn, and work in an environment that promotes equal opportunities and prohibits all forms of harassment and discrimination.

9. Brock University and all members of the University community share the responsibility of establishing and maintaining a climate of respect within this community and to address any situations in which respect is lacking. This means not engaging in, allowing, condoning or ignoring behaviour contrary to this Policy. This policy is not meant to interfere with mutually acceptable social interactions that are an important part of a comfortable working and academic environment.

10. Faculty, staff, students, course participants, volunteers and visitors have the right to:

- An environment which supports them in their work and study and which is free from discrimination, harassment and/or bullying
- Access this Policy and its procedures for dealing with breaches and complaints
- Be supported in a sensitive and confidential manner, when addressing breaches and complaints, by members of the University who have been given relevant training
- Attend training opportunities related to diversity awareness and this policy and procedures

11. Faculty, staff, students, course participants, volunteers and visitors have the responsibility, as individuals and managers:

- For their own behaviour and actions
- To recognize and support the right of all individuals to dignity at work and study and to maintain an environment in which this can flourish

- To familiarize themselves with this policy, which may include attending training appropriate to their position within the University
 - To take the initiative in identifying bullying and harassment and to take reasonable corrective or preventative action in accordance with this policy and its procedures. The University has a duty of care under Health and Safety, Employment and Human Rights legislation. Therefore, faculty and staff cannot ignore unacceptable behaviour and are encouraged to bring to the attention of the appropriate level of management any harassment they might themselves receive or witness. This policy does not inhibit firm but fair management.
12. Senior administration and senior managers have the responsibility to:
- Communicate this policy to their faculty and staff and encourage all faculty and staff to attend relevant training related to this policy and its procedures
 - Ensure that where it is necessary to take remedial or disciplinary action against a member of faculty, staff, student, course participant, volunteer or visitor, this is done fairly and in accordance with the disciplinary measures within relevant collective agreements and University procedures.
13. The Students' Union has the responsibility, with the University:
- To promote student awareness about their behaviour and their personal responsibilities under this policy and procedures.
14. The University recognizes its responsibility to ensure that every person in its community is protected from unlawful discrimination and harassment in accordance with the Ontario Human Rights Code. Any action, or failure to act, that results in harassment or discrimination on any of the grounds enumerated under the Code will not be tolerated by the University.

Accountability

15. The Office of Human Rights and Equity Services is responsible for:
- Communication of this policy,
 - Administration of this policy and related procedures,
 - Interpretation of this policy, and
 - Advising the President that a formal review of this policy is required.
16. The Office of Human Rights and Equity Services reports directly to the Office of the President.

Review

17. A formal policy review will be conducted every two (2) years. The next scheduled review date for this policy is July, 2008.

Effect on Previous Statements

18. This Policy supersedes:
- All previous Board Policies and resolutions on the subject matter herein;
 - All previous Administrative Policies and directives on the subject matter contained herein; and
 - Brock University Sexual Harassment Policy and Procedures (1991).

RELATED POLICIES

- AIDS Policy Document
- A Policy on the Accommodation of Persons with Disabilities in Employment Opportunities
- Code of Student Conduct and Disciplinary Procedures in Non-Academic Matters
- Employment Equity Policy
- Residence Community Guiding Principles
- Staff Grievance Procedure
- Collective Agreements

RESPECTFUL WORK AND LEARNING ENVIRONMENT PROCEDURES

Confidentiality

19. Confidentiality is critical in all procedures under this Policy. Because of the particular sensitivity of discrimination, harassment and bullying complaints, and their consequences, confidentiality is of the utmost importance and will be maintained at all times, unless the safety of members of our community are at risk or legal obligations require disclosure of information. Maintaining confidentiality benefits everyone involved in the complaint process. Those making complaints should not discuss the matter other than with the appropriate parties. Those involved in dealing with the complaints will make every effort to maintain confidentiality of information and will disclose only where absolutely necessary. Wherever possible, the complainant will be consulted before any disclosure of information is made. The importance of confidentiality will be stressed to all those involved in an investigation and everyone will be strictly required not to discuss the complaint with colleagues or friends. Breaches of confidentiality may give rise to investigation under this policy and procedures and to disciplinary action.

20. Confidentiality does not mean anonymity. In the instance of acting on a complaint, a fundamental principle is that the respondent must be informed of who has made the allegations, and the specific nature of the allegations, at the earliest possible point in the process.

Personal Safety

21. Where there exists a clear, serious, and immediate threat to safety of an individual or the community, the University has a legal duty to warn any community members at risk. This may mean, for the purposes of safety, the procedures outlined in this policy, including confidentiality, will be set aside. In addition, action to address an urgent or emergency situation may be taken by Campus Security Services and/or senior administration under other policies or Codes of Conduct in order to protect the community from such a threat.

Standard of Proof

22. The standard of proof to be applied in making formal decisions under this policy is based on a “balance of probabilities”, the same standard used in human rights inquiries and civil law matters.

Role of the Office of Human Rights and Equity Services

23. Cases of discrimination, harassment and bullying are best addressed promptly and locally. For this reason, the University has created the Office of Human Rights and Equity Services. The staff of the Office of Human Rights and Equity Services act outside official reporting lines and treat all contacts with confidentiality (unless members of our community are at serious risk or legal obligations require disclosure of information). A contact with the Office of Human Rights and Equity Services need not lead to further action, but it is recommended that members of the Brock community seek their advice sooner rather than later if they suspect they are being subjected to discrimination, harassment and/or bullying, to prevent a situation from deteriorating. The role of the Office of Human Rights and Equity Services is to:

- Offer a “listening ear” to complainants,
- Offer support, guidance and advice to the complainant as to whether the alleged behaviour falls within this policy,
- Outline and advise the complainant on options for resolving the problem, including personal resolution, informal resolution using alternative dispute resolution measures, or pursuing more formal resolution,
- Assist the parties to informally resolve matters, as required,
- Appoint an investigation team, as required, and coordinate the investigation process in a consistent, timely and fair manner, although staff of the Office of Human Rights and Equity Services does not participate or influence the content and/or outcome of any investigation,
- Assist those with supervisory responsibilities in the resolution of human rights concerns,
- Make referrals to other University departments or outside organizations who can further support or assist the complainant in resolving the matter, and
- Bring to the attention of those in positions of responsibility any University policy, procedures or practices that appear to discriminate against individuals or groups based on prohibited grounds.

Personal Advisors

24. Any person involved in the complaint process may seek assistance, support or representation from another person of her/his choice, such as a union observer/representative or student ombudsperson. The Office of Human Rights and Equity Services shall advise the parties about possible personal advisors available to them on campus.

Prior to the formal resolution stage, such personal advisors may participate in the process as observers and/or representatives; however, the actual parties to the process must be present and participate. When a personal advisor will attend and/or represent a party to a complaint, that party must advise the Office of Human Rights and Equity Services. Staff of the Office of Human Rights and Equity Services may not act as personal advisors.

25. Participation and/or representation by personal advisors at the formal resolution stage shall be determined by the procedures of the formal process used and are subject to provisions regarding representation as set out in applicable collective agreements and/or other university policies or codes of conduct.

Stages of Complaint

26. The following process describes three stages: personal resolution, informal resolution and formal resolution. Action taken by a complainant, or that will be discussed with a complainant, will depend on the circumstances of the case. In all but the most serious cases, the University would hope that the matter could be resolved through the personal resolution or informal resolution stages. The aim is to arrive at a constructive and mutually acceptable outcome wherever possible.

27. All complaints must be initiated within six (6) months (120 working days) of the incident occurring. In extenuating circumstances a complaint filed beyond the six-month limitation may be considered at the sole discretion of the Office of Human Rights and Equity Services.

28. Any of the time frames for the steps outlined below may be extended upon mutual agreement of the parties. In extenuating circumstances, the Office of Human Rights and Equity Services may also extend a time frame. In all cases, the Office of Human Rights and Equity Services will advise the parties of the reason for and period of the extension.

29. A complainant has the right to withdraw a complaint at any stage in this process. The University may continue to act on the issue identified in the complaint in order to comply with its legal obligations.

Personal Resolution

30. Any faculty member, staff member, student, course participant, volunteer or visitor who believes that she or he has experienced or witnessed discrimination, harassment and/or bullying should contact the Office of Human Rights and Equity Services for advice and assistance in resolving the matter.

31. Any faculty member, staff member, student, course participant, volunteer or visitor who believes that she or he has experienced or witnessed discrimination, harassment and/or bullying should take direct action, if possible, to make it clear to the person causing the offence that such behaviour is inappropriate, unacceptable, unwelcome and should not be repeated. A prior meeting with staff of the Office of Human Rights and Equity Services can help in preparing that person to address the other party, whether in person or in writing.

32. Any faculty member, staff member, student, course participant, volunteer or visitor who believes that she or he has experienced or witnessed discrimination, harassment and/or bullying should keep a personal record of the details of any alleged incidents of discrimination, harassment and/or bullying, including:

- Date and time
- Place
- Name and status of other person involved
- A specific account of what happened – be as detailed as possible
- The effect of the incident
- Names of any witnesses
- Action taken including any person to whom the incident has been reported and any attempts at personal resolution

It is important that such a record be kept for each incident and that it is made as soon after the event as possible. Where possible, any correspondence (letters, memos, notes, emails) relating to the incidents should also be kept. Such records should be brought to the Office of Human Rights and Equity Services when seeking advice and assistance in resolving the matter. Managers who witness or receive complaints of discrimination, harassment and/or bullying from faculty or staff should also keep a record of the alleged incident and forward that record to the Office of Human Rights and Equity Services. Staff from Campus Security Services and the Department of Residences who witness or receive complaints of discrimination, harassment and/or bullying from students should

also keep a record of the alleged incident and forward that record to the Office of Human Rights and Equity Services.

33. Where:

- an attempt at personal resolution does not succeed,
- the behaviour continues,
- the behaviour is of a more serious nature than can be dealt with by personal resolution, or
- personal resolution is not appropriate to the specific case,

then the faculty member, staff member or student should make a complaint to the Office of Human Rights and Equity Services. A complaint will then prompt attempts at informal resolution or formal resolution procedures, depending on the circumstances of the case.

34. The Office of Human Rights and Equity Services will document and retain all contacts as confidential documents.

Informal Resolution

35. Informal resolution will attempt to be conciliatory rather than adversarial. It is important for both parties to retain their dignity, and for practical solutions to be found to enable the parties to continue to work and study together.

36. Where a complaint of discrimination, harassment, and/or bullying has been made, the Office of Human Rights and Equity Services will make contact with the respondent to discuss the complaint. If the respondent refuses to meet or fails to respond to the request for a meeting within ten (10) working days of the request, the Office of Human Rights and Equity Services will report the refusal or failure to the appropriate person for disciplinary action against the respondent.

37. In the first instance, the Office of Human Rights and Equity Services will explore the use of alternative dispute resolution with the parties to resolve the matter. Where the parties agree, the Office of Human Rights and Equity Services will work together with the parties to resolve the matter. Any information obtained during alternative dispute resolution or an attempted settlement arising from the process is without prejudice and will not be introduced automatically as evidence in any subsequent investigation or hearing. Staff of the Office of Human Rights and Equity Services participating in the alternative dispute resolution process cannot be compelled to provide evidence in any future or concurrent university proceeding regarding any information disclosed during the alternative dispute resolution process.

38. If an informal resolution, acceptable to both parties, is reached, then the Office of Human Rights and Equity Services will send written communication to both parties, setting out the understandings and/or agreement. Receipt of this written communication and confirmation in writing regarding the agreement must be acknowledged by both parties. The Office of Human Rights and Equity Services will then assist in bringing about whatever administrative or other action is needed to implement the resolution. Where a complaint is resolved informally, the Office of Human Rights and Equity Services will retain the complaint as a confidential document and no reference to its existence will be contained in either the complainant's or the respondent's official student or personnel file.

39. Informal resolution shall normally be completed within eight (8) weeks (40 working days) of the Office of Human Rights and Equity Services making contact with the respondent to discuss the matter.

40. Where:

- alternative dispute resolution measures do not succeed,
- both parties are not willing to attempt informal resolution,
- the behaviour continues,
- the behaviour is of a more serious nature than can be dealt with by informal resolution, or
- informal resolution is not appropriate to the specific case,

then the matter will move to formal resolution procedures.

Formal Resolution

41. Failing resolution of the matter through personal or informal resolution, the complainant shall submit a formal complaint in writing, requesting formal resolution, to the Office of Human Rights and Equity Services.

42. The decision on whether or not to proceed with formal resolution shall be made by the Office of Human Rights and Equity Services. On receiving a formal complaint, the Office of Human Rights and Equity Services will determine if:

- The University has jurisdiction,
- The allegations fall within the scope of this policy,
- The most recent alleged incident occurred within the past six (6) months (120 working days),
- There are any safety risks or health concerns that require immediate action.

43. If the Office of Human Rights and Equity Services decides not to proceed, the complainant shall be informed in writing and provided with information on her/his right to appeal this decision as outlined in this Policy.

44. If the Office of Human Rights and Equity Services decides to proceed, the respondent shall be notified within ten (10) working days of receipt of the formal complaint. The respondent shall be provided with details of the complaint and advised of the procedure to be followed in the resolution of the complaint.

45. The Office of Human Rights and Equity Services will advise both the complainant and the respondent of support services available which they may wish to consult.

46. Nothing in this procedure precludes senior administration from invoking an investigation in accordance with these procedures in a situation where the University reasonably believes that discrimination, harassment and/or bullying may have occurred, even though no person has complained about a violation of this policy.

Interim Measures

47. After a complaint is made, the Office of Human Rights and Equity Services, in consultation with the appropriate supervisory or academic personnel, will determine if any immediate action or interim measures are required to protect the University, its community or any of its members, and/or the integrity of the process. These measures may include limiting access to facilities, making arrangements for alternative grading or supervisory relationships, or discontinuing contact between the complainant and the respondent during the period of the proceedings. Interim measures, if required, are to be implemented by the appropriate University personnel. Both parties shall be notified of any interim measures required. Note that any interim measures are not intended as discipline or a transfer within the meaning of any collective agreement or policy. In addition, where a complaint proceeds to the formal resolution stage, interim measures may also be enacted as part of formal resolution processes under the procedures governing that process.

Resolution of Formal Complaints Against a Student

48. Formal complaints against a student shall be dealt with as alleged breaches of residence and/or campus codes of conduct. As such, staff of the Office of Human Rights and Equity Services will refer the matter to Campus Security Services, Department of Residence, and/or the Student Conduct and Activities Officer, for investigation, adjudication and sanction, under the appropriate code of conduct. The Office of Human Rights and Equity Services shall play an advisory role in ensuring that the investigation and adjudication of complaints against students are handled in a manner consistent with the spirit and procedures within this policy.

Resolution of Formal Complaints Against a Faculty or Staff Member

49. Formal complaints against faculty and staff shall be dealt with under this policy and in accordance with appropriate collective agreements and Department of Human Resources and Environment, Health and Safety policies.

Resolution of Formal Complaints Against Visitors, Volunteers or Course Participants on Campus

50. Brock University recognizes that many individuals who are not faculty, staff or students, visit its premises for a variety of reasons. These individuals may include visitors, volunteers, or course participants, as defined in this policy.

51. As set out earlier, this policy applies to all persons visiting Brock University premises.

52. Where a formal complaint is made against a visitor, volunteer or course participant, the Office of Human Rights and Equity Services will consult with affected parties and relevant University staff, managers, and/or senior administration to determine whether that person should simply be removed from University campus or whether an investigation under this policy is appropriate. In determining how to act, the following factors will be considered:

- The severity and frequency of the actions complained about

- Any continuing threat or risk to the University community
- The person's reason for being on University premises and whether that person has any continuing need to be on University premises
- The person's response to the complaint and willingness to resolve the matter
- The University's duty to provide a safe and healthy work and learning environment for its faculty, staff and students, and its obligations under Human Rights, Employment and Health and Safety legislation.

53. Where an investigation is completed under this policy and the investigation team recommends sanctions, the Office of Human Rights and Equity Services, together with senior administration will ensure that those sanctions are carried out. Should the person refuse to participate in the investigation or resulting sanctions, or should the behaviour continue, the University retains its right to have that person removed from campus as part of its continuing duty to provide a safe and healthy work and learning environment for its faculty, staff and students.

Investigation Team

54. To make sure that formal complaints can be dealt with in a fair, equitable and consistent manner, an investigation will take place by an internal investigation team. The investigation team will be comprised of three people who have been professionally trained to conduct an investigation according to these procedures. The University will establish a pool of internal investigators to participate in the resolution of complaints. The Office of Human Rights and Equity Services will seek volunteers and nominations on an annual basis from student, staff and faculty groups of the University. Volunteers and nominees will be short-listed and selected by a committee composed of the Vice President, Academic, the Vice President, Finance and Administration, the Associate Vice President, Student Services, the Executive Director of Human Resources and Environment, Health and Safety and a staff member from the Office of Human Rights and Equity Services. In addition, the number of investigators in the pool will be determined by the selection committee, but shall include a minimum of fifteen (15) potential investigators. A term within the investigation pool will be three years, renewable annually, and any individual may hold up to five consecutive terms. To avoid the potential for conflict of interest, the following persons are not eligible to be investigators under this policy:

- members of senior administration
- members of any union executive
- staff of the Office of Human Rights and Equity Services
- students who are part of the University Discipline Panel
- Student Ombudsperson

55. Those selected as investigators under this policy, together with any staff from Campus Security Services and the Department of Residences who are responsible for the investigation of discrimination, harassment and/or bullying, will receive training in how to conduct such investigations, as arranged by the Office of Human Rights and Equity Services and Human Resources and Environment, Health and Safety.

56. When a written formal complaint has been filed, the Office of Human Rights and Equity Services will establish an investigation team composed of three investigators from the pool and will notify the parties of the composition of the investigation team. Wherever possible, the make up of the investigation team shall include an investigator from the same stakeholder group as each of the parties (ie. where a complaint is made by a student against a faculty member, the investigation team would include a faculty investigator and a student investigator). Once an investigation team has been formed, the investigators will select a Chair and will disclose to one another any potential conflicts of interest that they have with any of the parties to the formal complaint. The investigation team, with assistance from the Office of Human Rights and Equity Services, will determine whether a declared potential conflict of interest will result in replacement of the member in question. The nature and circumstances of all declared potential conflicts of interest, together with the team's conclusions regarding the matter, will be noted in writing in any report created by the Chair concerning the formal complaint. Any party to a formal complaint may challenge the appointment of one or more investigators on the ground that the individual has a potential conflict of interest in the outcome of the matter or that there is a reasonable apprehension of bias on her/his part. A party raising the challenge will submit it in writing to the Office of Human Rights and Equity Services, who will make a decision with regard to the potential for conflict of interest within five (5) working days of having received the challenge. That decision will be final. Details of the challenge and the decision shall be noted in writing in the final report of the investigation team.

57. The investigation team will attempt to make all decisions by complete agreement. Where this is not possible, the team will vote on the issue and abide by a majority decision.

Investigation Process

58. The investigation team may decide to suspend any investigation in the event that the situation is appropriate for, and the parties mutually decide to attempt, alternative dispute resolution through the Office of Human Rights and Equity Services. Should alternative dispute resolution not be successful, the investigation team will restart the investigation.

59. The investigation team may decide to postpone, suspend or cancel any investigation if its continuance would duplicate or prejudice another proceeding or bring the administration of this policy and procedures into disrepute. In coming to a decision, the investigation team will consider such factors as:

- The University's responsibility to provide an environment free from harassment and discrimination,
- The recognition that grievances may be filed simultaneously with complaints in order to comply with negotiated timelines (should a complainant under these circumstances elect to grieve a human rights matter under her/his collective agreement or other policy established by the University rather than through this policy and procedures, the University reserves the right to continue with its own investigation to address the matter in compliance with its obligations under the Ontario Human Rights Code),
- Other legal procedures that may be initiated to protect statutory rights, and
- The wishes of the parties.

60. Once the investigation team has been appointed, the Office of Human Rights and Equity Services will make all relevant documentation collected about the complaint available to the team. The Chair will then devise a written investigation plan under which it will interview the complainant, the respondent, and all witnesses whom the investigation team determines to have any information relevant to the complaint. In addition, the investigation team will list those persons who, although named as witnesses, in its view had no information bearing on the complaint or were not available for interview. If it appears to the team that other persons not named by the parties may have information related to the complaint, every effort should be made to interview those potential witnesses. It may also be necessary to re-interview the parties before issuing the draft report.

61. During the investigation, every attempt will be made to interview the complainant first. Usually the respondent will be interviewed second because she/he has the right to reply fully to the allegations made against her/him and to name her/his witnesses. If a party or witness declines to participate in an investigation, the investigation process will proceed to a conclusion and the investigation team will prepare a draft report. The investigation team will meet with each of the parties to review the draft report and to provide the parties with an opportunity to provide clarification or response. Once finalized, the report any resulting recommendations will be forwarded to the appropriate person(s) with supervisory responsibilities. In all circumstances, interviews with witnesses will occur after the complainant and the respondent have been given an opportunity to be interviewed.

Investigation Time Frame

62. The investigation shall be completed within eight (8) weeks (40 working days). Time that elapses during the suspension of an investigation, as set out above, will not be included when calculating this time limitation. The results of the investigation shall be summarized in a report to the Office of Human Rights and Equity Services and shall include a determination as to whether this Policy has been breached and recommendations as to sanctions for the respondent. The Office of Human Rights and Equity Services will provide each party with a copy of the report.

Investigation Results and Reports

63. Once the investigation is complete, the Chair of the investigation team will prepare a draft report that shall be reviewed with each of the parties detailing:

- Allegations giving rise to the formal complaint,
- Grounds in this policy that have allegedly been violated,
- Any responses of the respondent and complainant,
- Findings of fact,
- One of four recommendations:
 1. that the case be closed on the grounds of insufficient evidence of a breach of this policy,
 2. that a settlement be reached without the possibility of disciplinary action,
 3. that procedures be initiated that could result in disciplinary action against the respondent for breach of this policy,
 4. that procedures be initiated that could result in disciplinary action against the complainant on the grounds of frivolous, vexatious, malicious, or bad faith complaint.

The outcome of any subsequent process is independent of the recommendations of the investigation team.

64. The complainant and respondent have the right to comment in writing on the draft report before a final report is issued. Their written comments must be submitted to the investigation team within five (5) working days of the receipt of the draft report. Based on the results of the investigation and the responses to the draft report, the investigation team will prepare a final report. The final report will be submitted to the Office of Human Rights and Equity Services who will distribute it to the parties.

65. Where the final report recommends that disciplinary procedures be initiated against either party, the Office of Human Rights and Equity Services will forward a copy of the report to Human Resources and Environment, Health and Safety for disciplinary sanctions. Such sanctions will be imposed in accordance with any collective agreement pertaining to the respondent. Human Resources and Environment, Health and Safety will report back to the Office of Human Rights and Equity Services once disciplinary sanctions have been determined and applied. Human Resources and Environment, Health and Safety may include the final report and documentation regarding sanctions in the respondent's official personnel or student file, in accordance with existing policies, agreements or contracts with the various University groups.

66. Where the final report recommends settlement without disciplinary action, the Office of Human Rights and Equity Services will work with the parties to effect the terms of that settlement.

67. Where the final report finds no breach of this policy, the matter shall be considered resolved and no information shall be forwarded to Human Resources and Environment, Health and Safety or placed in the official personnel or student file of the respondent.

Complaints Against Staff of the Office of Human Rights and Equity Services

68. Complaints brought against staff of the Office of Human Rights and Equity Services under this policy shall be brought to the Office of the President, who shall oversee the application of these procedures to the complaint. Where appropriate and the parties agree, an independent third party shall be appointed to attempt informal resolution between the parties. Where formal resolution procedures are required, the process for staff outlined in this procedure shall be used and the President shall take over the responsibilities normally taken by staff of the Office of Human Rights and Equity Services.

Bad Faith Allegations

69. It is a violation of this policy for any person to:

- make a frivolous, vexatious, malicious or bad allegation,
- initiate a procedure under this policy in bad faith, or
- influence an ongoing procedure under this policy in bad faith.

A written complaint that a bad faith allegation or action has been made will be treated as a formal complaint under this policy. If such a complaint is substantiated, it will be subject to the same consequences as complaints of discrimination, harassment and/or bullying.

Reprisals

70. It is a violation of this policy for any person to retaliate or take reprisals against individuals because they have participated in a process using this policy. Written allegations of retaliation or reprisals will be treated as a formal complaint under this policy. If such a complaint is substantiated, it will be subject to the same consequences as complaints of discrimination, harassment and/or bullying and may also be grounds for the use of interim measures as set out in these procedures.

Whistleblower Protection

71. A member of the Brock community who comes forward in good faith with reports or concerns about compliance with University policies or procedures shall not be subject to reprisal or retaliation for making such a report. Any such reprisal or retaliation shall be considered harassment under this policy.

Appeal Procedures

72. If, through Informal Measures and Formal Measures, the matter is not resolved to the satisfaction of the complainant or the respondent, either of them will have recourse to the grievance or appeal process for her/his constituency, as follows:

- The grievance procedure for faculty under the Collective Agreement between Brock University and the Brock University Faculty Association,
- The grievance procedures for unionized staff under their collective agreements,

- The Staff Grievance Procedure for non-unionized staff,
 - The appeal procedures set out in the various codes of conduct for students.
- These appeal procedures also apply for decisions of the Office of Human Rights and Equity Services in the administration of these procedures.

Files of the Office of Human Rights and Equity Services

73. After formal resolution of the complaint, the Office of Human Rights and Equity Services will retain the complaint and all supporting documentation, including the final report as a confidential document.

RESPECTFUL WORK AND LEARNING ENVIRONMENT POLICY APPENDIX A

Human Rights Harassment

“Racial Harassment” is a form of Human Rights Harassment. It is any behaviour, deliberate or otherwise, relating to race, colour, ethnic or national origin, directed at an individual or group, which is found to be offensive or objectionable to the recipient and which creates an intimidating, hostile or offensive environment. Some examples include:

- physical assault or unwelcome physical contact
- verbal abuse, threats, derogatory name-calling, racist slurs, insults and/or jokes
- ridicule of an individual on racial or cultural grounds
- comments which imply that race impairs the person’s ability
- exclusion from normal workplace interactions or social events
- unfair allocation of work and/or responsibilities
- racist graffiti, insignia, objects or pictures or display and/or publication of racist material
- inciting others to commit any of the above (sections 318 and 319 of the Criminal Code of Canada explicitly prohibit acts inciting hatred or violence towards any group on the basis of race, colour, and ethnic origin)

“Harassment on the basis of Sexual Orientation and/or Gender Identity” is a form of Human Rights Harassment. It is any behaviour, deliberate or otherwise, relating to an individual’s sexual orientation and/or gender identity, or perceived orientation/identity, directed at an individual or group, which is found to be offensive or objectionable to the recipient and which creates an intimidating, hostile or offensive environment. This form of human rights harassment often stems from homophobia and heterosexism. Homophobia means harassing, prejudicial treatment of, or negative attitudes about, lesbian, gay, bisexual, trans-identified, transgendered, inter-sexed, two-spirited, or queer (LGBTQ) persons and those perceived to be of these sexual orientations or gender identities. Homophobia includes a range of feelings and behaviours from discomfort and fear to disgust, hatred and violence. Heterosexism is based on societal values that dictate that everyone is, or should be, heterosexual. Some examples of this form of harassment include:

- “gay-bashing” or physical violence, including sexual violence
- making derogatory comments, innuendos, insults, slurs, jokes or threats about sexual orientation or sexual practice, including voice mail, email, online chat or posted on a website
- silencing talk of sexual or gender diversity
- forcing people to “come out” or to “stay in the closet” (disclose or hide their sexual orientation)
- linking homosexuality with pedophilia (child abuse)
- accusing LGBTQ persons of “recruiting” others to join in their sexual orientation
- defacing notices, posters or property with homophobic graffiti
- removing or defacing notices, posters, postcards, or other property of the Positive Space Campaign or other awareness initiatives on campus
- rejecting or excluding individuals or groups because of their sexual orientation or gender identity
- treating the sexual orientations or gender identities of LGBTQ persons as less valid than those of heterosexuals
- behaving as though all LGBTQ people have AIDS or other sexually transmitted diseases or are responsible for the spread of them

“Harassment on the basis of Disability” is a form of Human Rights Harassment. It is any behaviour, deliberate or otherwise, relating to a person’s disability (as defined in the Ontario Human Rights Code), directed at an individual or group, which is found to be offensive or objectionable to the recipient and which creates an intimidating, hostile or offensive environment, except where bona fide and reasonable cause exists, or where it is based on bona fide and reasonable requirements or qualifications. Some examples include:

- offensive or demeaning remarks, jokes, innuendos or other types of verbal abuse about a person’s ability or disability, directed at an individual or group
- rejecting or excluding individuals or groups because of their disability
- teasing or pranks about a person’s disability
- hostility towards a person who is disabled
- using a person’s disability to demoralize, demean or deskill them
- failing to provide reasonable accommodation for an individual’s disability

- intentionally creating and/or using barriers to prevent participation of a person with a disability
- ridiculing a person for the effects that a disability, illness or medication to treat a disability or illness, have on that person's appearance and/or behaviour

Sexual Harassment

"Sexual Harassment" can be psychological or physical and examples include, but are not restricted to:

- suggestive or demeaning remarks, jokes, innuendos or other types of verbal abuse of a sexual or sexist nature directed at an individual or group
- offensive or derogatory language alluding to a person's private life or sexual behaviour or orientation by innuendo, jokes, or remarks
- graphic or suggestive comments or taunting about an individual's appearance, characteristics, or clothing
- engaging in a course of vexatious comment or conduct of a sexual nature that is unwelcome
- pressing an individual to accept unwelcome invitations, including repeated telephone calls, letters, or emails
- compromising invitations and provocative suggestions
- unwanted requests for sexual favours
- leering, ogling, or other sexually oriented gestures
- deliberate physical contact to which the individual has not consented or had the opportunity to object to, unnecessary or inappropriate touching and/or offensive gestures
- sexual assault (an offence under section 271 of the Criminal Code of Canada)
- the production, display, or distribution of pornographic or other sexually offensive or derogatory pictures or material

It is recognized that both women and men can suffer sexual harassment and that sexual harassment can also occur between members of the same sex.

Personal Harassment, Psychological Harassment and Bullying

"Personal Harassment" is deemed to include, but is not restricted to:

- repeated or continuous incidents of yelling, screaming or name-calling
- repeated or continuous threats to terminate employment or contracts for reasons unrelated to performance
- repeated or continuous threats to withdraw funding, scholarships or advancement opportunities for reasons unrelated to performance
- comments addressed to a person which have the effect of undermining a person's role in the workplace or classroom
- repeated remarks, gibes or insults in reference to personal traits or appearance
- invasion of privacy or practical jokes causing physical or mental distress
- pressure to become involved in anti-social or criminal behaviour
- messages to or about a person, including voice mail, email, online chat or posted on a website, that are offensive, insulting or cause discomfort
- posting or display of materials, photos, images, and/or graffiti, including by electronic means, which may cause humiliation, offence or embarrassment (except where such display is for academic purposes and is a legitimate exercise of academic freedom and expression in teaching and research)

"Psychological Harassment" is deemed to include, but is not restricted to:

- unreasonably questioning someone's abilities and skills, when not related to appropriate evaluation of performance
- insulting a person by use of degrading comments or obscenities
- unreasonably casting doubt on a person's decision making, when not related to appropriate evaluation of performance
- making a person perform useless, humiliating or demeaning tasks that are not reasonably expected to be part of that person's employment
- unreasonably ceasing to give a person work on an on-going basis
- excluding or isolating a person by making others avoid her/him
- ignoring a person in the workplace or classroom
- threatening or abusive language (oral or written, including voice mail, email, online chats and comments posted on websites)

- excessive criticism of a person's work or their private lives, when not related to appropriate evaluation of performance
- preventing a person from expressing herself/himself
- intrusion by pestering, spying or stalking

Personal or psychological harassment do not include:

- the legitimate (ie. not discriminatory, arbitrary or abusive) use of management rights in cases of promotion, demotion or suspension
- the legitimate right and responsibility of managers to conduct ongoing evaluation of employee performance, attendance or discipline at work, which may include reasonable negative and constructive criticism of performance and/or may result in reasonable changes to a person's job duties or responsibilities as a result of a poor evaluation
- the legitimate right of union members and officials to reasonably conduct grievance investigations, file grievances, conduct inspections, lawfully picket, negotiate with the University and, without limiting the aforementioned, generally conduct union business
- the legitimate right and responsibility of faculty and staff members to correct inappropriate student behaviour, insist on order in the classroom, and evict, as necessary, those who disrupt order in the classroom
- respectfully expressing disagreement or stating a contrary but reasonable point of view
- the legitimate (ie. not discriminatory, arbitrary or abusive) exercise of academic freedom, freedom of thought and inquiry, and expression in teaching and research which may result in respectful disagreements regarding beliefs or principles

“Bullying” is the misuse of power or position to persistently criticize and condemn; to openly humiliate and undermine an individual's ability until this person becomes so fearful that their confidence crumbles and they lose belief in themselves. These attacks on the individual are normally sudden, irrational, unpredictable and usually unfair. Bullying damages individuals' health and lives and also undermines productivity and effective work relationships. Bullying can occur when professional abrasiveness becomes tainted with personal vindictiveness – when criticism is destructive not constructive, is criticism of the person rather than her/his mistakes, publicly humiliates rather than privately corrects and results in a person feeling threatened or compromised. It is recognized that bullying can range from extreme and obvious behaviour to behaviour which is subtle and seemingly innocuous. Bullying is deemed to include, but is not restricted to:

- physically abusive or aggressive behaviour such as pushing, hitting, finger pointing or standing close to an individual in an aggressive manner
- verbally abusive behaviour such as yelling, insults, threats and name calling
- ostracism/exclusion, or conversely, excessive supervision
- undermining of the individual's position by changing work objectives/guidelines without consultation, setting unreasonable, unrealistic or impossible goals/targets, taking credit for the individual's work, deriding the individual's work to managers, or sabotaging the individual's work
- removing areas of responsibility, without justification, and giving people menial or trivial tasks to do instead
- unreasonable refusal to delegate authority and responsibility
- withholding information
- spreading malicious rumours or lies
- picking on people and unreasonably criticizing their performance
- impeding an individual's efforts at promotions or transfers
- messages, including voice mail, electronic mail, online chats, and comments posted on websites, that are threatening, derisory or defamatory

“Academic bullying” is a particular form of bullying that universities must guard against, and includes asserting a position of intellectual superiority in an aggressive, abusive or offensive manner, making threats of academic failure, or public sarcasm and humiliation.

Bullying does not include legitimate, constructive and fair criticism of a faculty member, staff member or student's performance/behaviour or the legitimate (ie. not discriminatory, arbitrary or abusive) exercise of academic freedom, freedom of thought and inquiry, and expression in teaching and research. The University will not condone bullying under the guise of “strong management” but, conversely, regards an assertive management style as acceptable provided that faculty, staff and students are treated with respect and dignity.

Appendix 2

Concordat Between Brock University and the Roman Catholic Diocese of Saint Catharines

In the joyful context of the Fortieth Anniversary of the founding of Brock University the signing of this **Concordat**¹ celebrates more than twenty five years of fruitful relations between Brock University and the Roman Catholic Diocese of Saint Catharines.

Historically, it is the first document signed between these large institutions, defining its long term relationship as a **Partnership and Association**.

Brock University and the Roman Catholic Diocese of Saint Catharines recognize their common aim in promoting culture² and integral human development. Due to this, a new era of agreements and collaboration may be fostered together in the future, in Canada and overseas.

The traditional assignment of an Office for the Roman Catholic Diocese of Saint Catharines on campus in Brock University, associated to Campus Ministries of Brock University is a gesture of this relationship. In the same way the Diocese of Saint Catharines has been committed to the spiritual and cultural development of students, faculty and staff of Brock University.

The academic excellence of Brock University and safe environment for Roman Catholic students has opened doors for Brock University to reach out to the Diocese of Saint Catharines, in particular those involved in ongoing education.

¹ Technical word that names Agreements signed between large Institutions or Countries with the Roman Catholic Church worldwide.

² Culture is defined as the knowledge and/or set of criteria coming out from humanity's understanding of the world, gained by responding to the fundamental questions of life and reality. This culture is expressed in all the fields of reality such as science, arts, faith, technology, architecture, relationship organizations, nature, etc. In 1980 the Holy Father John Paul II delivered a discourse to UNESCO regarding education and culture. In it he says: "*L'homme intégral, sujet de la culture* . Nous tous ici présents, nous nous rencontrons sur le terrain de la culture. . . Nous nous rencontrons par le fait même autour de l'homme et, en un certain sens, en lui, en l'homme. Cet homme, qui s'exprime et s'objective dans et par la culture, est unique, complet et indivisible. Il est à la fois sujet et artisan de la culture. On ne peut dès lors l'envisager uniquement comme la résultante de toutes les conditions concrètes de son existence, comme la résultante."

In this way the Roman Catholic Diocese of Saint Catharines celebrates the tradition of the appointment of the Roman Catholic Chaplain/Campus minister by the Bishop of Saint Catharines and the approval by Brock University.

Our two institutions may also celebrate the development of policies in continuous improvement in order to express the mutual respect of our aims and traditions. Also the presence of co-operative programs and projects in Health, Education, Business and other Faculties at Brock, and in all the realms of our institutions, with budgets, funds, sharing of international connections, etc.

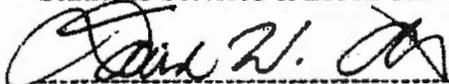
Brock University and the Diocese of Saint Catharines acknowledge the respective authorities of the other Institution and its Mission Statements³.

Our two institutions pledge many more years of harmonious association, partnership and collaboration for the integral development of the people under our responsibilities.

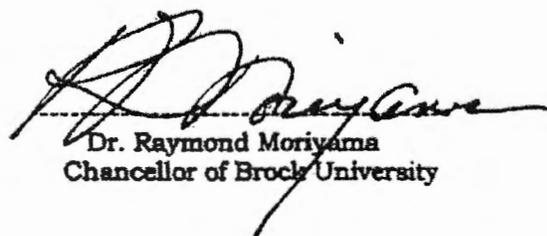
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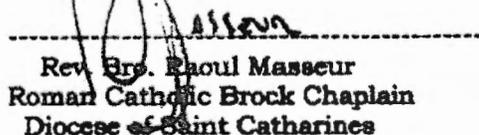
Ms. Kim Meade
Associate Vice-President,
Students Services of Brock University



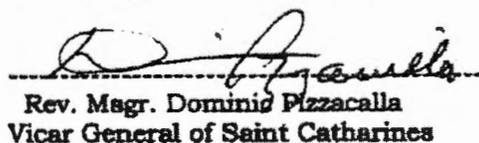
Dr. David Atkinson
President of Brock University



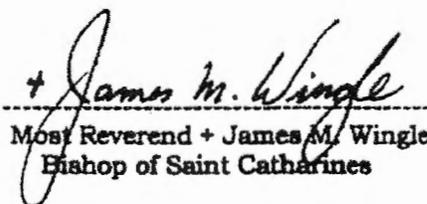
Dr. Raymond Moriyama
Chancellor of Brock University



Rev. Bro. Raoul Masseur
Roman Catholic Brock Chaplain
Diocese of Saint Catharines



Rev. Magr. Dominio Pizzacalla
Vicar General of Saint Catharines



+ James M. Wingle
Most Reverend + James M. Wingle
Bishop of Saint Catharines

³ Brock University Mission Statement: Brock University flourishes through the scholarly, creative, and professional achievements of its students, faculty and staff. Offering a range of undergraduate and graduate programs, Brock fosters teaching and research of the highest quality. As a diverse and inclusive community, we contribute positively to Canada and beyond through our imagination, innovation and commitment. May 2004.

The Document *Gravissimum Educationis* proclaimed by Pope Paul VI on October 28, 1965 says: "... The Church is concerned also with schools of a higher level, especially colleges and universities... that by their very constitution individual subjects be pursued according to their own principles, method, and liberty of scientific inquiry, in such a way that an ever deeper understanding in these fields may be obtained and that, as questions that are new and current are raised and investigations carefully made according to the example of the doctors of the Church... there may be a deeper realization of the harmony of faith and science." GE10.

Appendix 3

Report of the Internationalization Committee on an investigation of matters relating to the Solidarity Experiences Abroad (SEA) to Latin America.

Report Date: January 27, 2012

Committee Members:

Dr. Karen Bordonaro, Brock University Library.

Dr. Thomas Dunk, Dean of Social Sciences

Dr. Gary Libben, Vice-President Research

Dr. Murray Knuttila, Provost and VP Academic (Chair)

Dr. Mike Plyley, Dean of Graduate Studies

Ms. Sheila Young, Director of Brock International

Background

The Woman's Studies (W.I.S.E.) Program Committee passed a motion on November 25, 2011 recommending that Brock University terminate its relationship with the Solidarity Experiences Abroad to Latin America program. The motion reads:

Whereas there have been documented cases of physical and psychological abuse, classism, sexism, racism and homophobia in activities related to Solidarity Experiences Abroad to Latin America, the Centre for Women's Studies strongly urges Brock University to cease support for the Solidarity Experiences Abroad trips to Latin America and remove all ties to local partners of these trips (i.e., the Sodalit Family, Sodality of Christian Life, Solidarity in Action, Christian Life Movement, etc.).

On November 30, 2011 the Department of Sociology passed a similar motion, differing only with the words "the Department of Sociology" replacing "the Centre for Women's Studies".

A subsequent document, "Centre For Women's Studies Summary Report: Solidarity Experiences Abroad, Latin America, Investigation 2011-2012" was presented as the Centre for Women's Studies, Summary Report on the matter. It contained the following recommendation:

As a publicly funded, secular university, one would expect Brock must be duly attentive to any officially sanctioned experiences undertaken by our students, either in a volunteer setting or in a course work setting. **Hence we respectfully suggest that Brock University consider phasing out the organization of international volunteer work through the SEA program and move to build partnerships with volunteer placement**

organizations that support international declarations on human rights. (Emphasis in original)

Committee Actions

Although the motions and the allegations therein were not sent directly to the Office of the Provost, they were circulated within the University Community and as a result came to the attention of the Provost. Given the seriousness of the allegations in the motions, the Provost convened a meeting of the Internationalization Committee as soon as the motions came to light. At an initial meeting of the Committee on December 19, 2011 the Committee discussed the motions and decided to ask the Units that had passed the motions to provide supporting evidence with regard to the allegations. In the opinion of the Committee the relationship between the SEA Program and Br. Raoul Masseur, the Catholic Chaplain in the Brock Faith and Life Centre, made Br. Masseur an interested party in the investigation. As a result the Committee decided that Br. Raoul Masseur be informed that the Committee was discussing the motions and that he be offered an opportunity to respond.

The Provost subsequently requested the Director of the W.I.S.E Program and the Head of Department of Sociology to provide any and all the evidence from whatever sources they had at their disposal that might have informed their actions in passing the motions. As noted, Br. Raoul Masseur was deemed an interested party in the investigation; therefore he was informed that the Committee was investigating the allegations and was invited to present evidence to the Committee should he so wish.

The Committee took every step possible to ensure that the investigation adhered to the tenets of natural justice. In this regard the Committee considered that the evidence before it was confidential; however it recognized that natural justice requires that any individual accused of wrong doing or malfeasance has the right to confront and address the evidence on which an accusation or allegation is made. Accordingly, all parties were informed that all material would be made available to and shared among all interested parties.

The date of January 4, 2012 was set as a date for the receipt of evidence and information. The evidence was placed in binders housed in the Office of the Provost and all parties were provided ample opportunity to access all the materials received. The Committee met again on January 18, 2012 and heard from a delegation led by the Director of the W.I.S.E program and the Head of Department of Sociology, and then from Br. Masseur and a colleague from the Faith and Life Centre. The Committee began its deliberations following the departure of the delegations; however it determined that some additional information was required. The Provost was instructed to collect additional information on other complaints, the

consent form that individuals applying for the SEA Program sign, and the question of granting credit for experiential learning.

A final meeting of the Committee was held on January 25 at which time several decisions were made.

Committee Findings

- 1) To the extent that the motions and Summary Document from WISE suggested that Brock University sever all connections with Solidarity Experiences Abroad to Latin America program, the Committee determined that there was no compelling evidence to support such an action and further affirms its support for this partnership subject to the conditions below. In the opinion of the Committee no substantial evidence was presented that participation in the SEA program posed any substantial or immediate risk to mature consenting adults. For those trips that had already been arranged at the time of this memo, the Committee recommends the trip proceed subject only to condition 2 below. In this regard the Committee recommends that an additional letter go to all students with the information suggested in item 2 below. Going forward all trips must meet conditions 2, 3, 4 and 5 below.
- 2) In the interest of ensuring that participants are fully aware of the nature of all partners in experiential educational programs, including the SEA Program, the Committee instructed the Provost to ensure that the application form include a clear statement of the partner's mandate and affiliation. In the case of SEA, the Committee suggests the application provide a statement equivalent to:
 - The Solidarity Experiences Abroad Program is affiliated with the Christian Life Movement affiliated with the Roman Catholic Church.
 - No religious affiliation is required for participation; however students might encounter others with attachments to a variety of faith traditions.
- 3) In the interest of ensuring the welfare and safety of both student participants and the local populations in recipient communities, and to ensure adherence to Canadian ethical standards and requirements, the Committee instructed the Provost to ensure that all partners utilize the ethical guidelines provided in the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*. (<http://www.pre.ethics.gc.ca/eng/policy-politique/initiatives/tcps2-eptc2/Default/>). The Committee particularly notes the importance of the terms and conditions of Article 8.3(a) that focus specifically on Multijurisdictional research.
- 4) The Committee instructed the Provost to ask all partner organizations that include photo use permission forms to make

sure there is clarity between permission to take photos during the field experience and the subsequent use of any such photos. The Committee was concerned that permission granted in advance of a trip does not offer an adequate opportunity for individuals to control the use of photos in which they appear.

- 5) The Committee urges all partners to examine the use of the word “placement”. In a number of academic settings placement has a specific meaning, as in clinical placements, which may not correspond with its use in some of the information relating to experiential learning situations.
- 6) The Committee heard an argument that all student experiential and educational trips involving students from the so-called “geo-political-economic North” to the “geo-political-economic South” were inappropriate and extensions of colonialism. In addition it was suggested that secular universities such as Brock should not entertain partnerships with faith-based organizations. The Committee recognized that while there are academic debates about these issues it is beyond the scope of the committee's mandate to declare an institutional position on them. Moreover, it determined that these issues were not germane to the specific matters relating to the motions before it.

Appendix 4



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

German McKenzie

Applicant

-and-

Ana Isla

Respondent

DECISION

Adjudicator: Ken Bhattacharjee

Date: October 9, 2012

File Number: 2012-11281-I

Citation: 2012 HRTO 1908

Indexed as: **McKenzie v. Isla**

APPEARANCES

German McKenzie, Applicant)))	Self-represented
Ana Isla, Respondent)))	Self-represented
Brock University, Proposed Intervenor)))	Brenda Bowlby, Counsel

INTRODUCTION

[1] The applicant filed an Application under s. 34 of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”), which alleged that the respondent discriminated against him with respect to employment because of his creed. The purpose of this Decision is to decide whether the Application should be dismissed on a preliminary basis because it has no reasonable prospect of success. A summary hearing was held where the parties were afforded the opportunity to make oral submissions on this issue.

BACKGROUND

[2] The events at issue in this case occurred at Brock University (the “University”) in St. Catharines, and centre around a program called Solidarity Experiences Abroad (“SEA”), which offers students the opportunity to participate in volunteer placements working with the poor in developing countries.

[3] Pursuant to an Agreement between the University and the Roman Catholic Diocese of St. Catharines, the Diocese is assigned an office on campus, which is run by a Roman Catholic Chaplain. The Chaplain is appointed by the Bishop of St. Catharines and approved by the University. The Diocese’s activities on campus include recruiting students for, and administering, the SEA program. The SEA program has religious/spiritual components, but non-religious students are not barred from participating in it.

[4] The Roman Catholic Chaplain at the University is Br. Raoul Masseur. However, between January and September 2010, the applicant was the acting Chaplain, and since October 2010, he has continued to work as a volunteer in the Diocese’s office on campus. The applicant administered the SEA program during his tenure as acting Chaplain, and continues to support the program.

[5] The respondent, who is a professor in the Department of Sociology and the

Centre for Women and Gender Studies of the University, was and is an active opponent of the SEA program. In late 2011 and early 2012, she led a campaign to pressure the University to end its relationship with the program. According to the respondent, the SEA program has ties to “far-right”, “cult like” Catholic organizations, which actively oppose abortion rights, women’s rights, gay and lesbian rights, liberation theology, and other progressive causes. She also states that there are documented cases where leaders or members of these organizations have sexually, psychologically and/or physically abused young people. She believes that the University, which is a publicly-funded, secular organization, should only support volunteer abroad programs which are secular.

[6] On November 30, 2011, the respondent proposed a motion at a faculty meeting in the Department of Sociology, which stated:

Sociology moves that Brock University cease the Solidarity Experience Abroad Trips to Latin America and remove all ties to local partners of these trips (i.e. the Sodalit Family, Sodality of Christian Life, Solidarity in Action, Christian Life Movement, etc.) because: The Sodalit Family have been documented to engage in psychological and physical abuse against youth. Brock students are embedded in this community while away on trips to Latin America as work placements, cultural activities, and sleeping arrangements occur on sites operated or owned by the Sodalit Family linked to Catholic Chaplains at Brock (i.e. Raoul Masseur and German Mackenzie).

[7] In an explanatory letter supporting her motion, the respondent also stated:

In Canada, since 2003, Sodality of Christian Life lay-member Raoul Masseur, and former Superior General of the Sodality of Christian Life in Peru German Mackenzie have operated the Catholic Chaplaincy of the Faith and Life Centre (ex-Campus Ministries) at Brock University. They have used academic programs... and, more generally, public university resources (including institutional credibility) in order to recruit students for “Solidarity Experience Abroad” trips and to grow their movement in Canada and Latin America.

[8] The Department of Sociology subsequently adopted a motion, which stated:

Whereas there have been documented cases of physical and

psychological abuse, classism, sexism, racism and homophobia in activities related to Solidarity Experiences Abroad to Latin America, the Department of Sociology urges Brock University to cease support for the Solidarity Experiences Abroad trips to Latin America and remove all ties to local partners of these trips (i.e. the Sodalit Family, Sodality of Christian Life, Solidarity in Action, Christian Life Movement, etc.)

The Centre for Women and Gender Studies adopted a similar motion. The Brock University Faculty Association and the Canadian Union of Public Employees, Local 4207, also endorsed the motion.

[9] In December 2011, the University's Provost and Vice President, Academic (the "Provost"), convened a committee to investigate the allegations in the motions. In January 2012, the committee accepted written submissions and evidence and heard oral submissions from the respondent, the Department of Sociology, the Centre for Women and Gender Studies, and the Roman Catholic Chaplain (Br. Masseur). In a letter to the committee, the respondent complained that Br. Masseur had personally attacked her in an e-mail sent to his supporters in 2006, and, more recently, certain Catholic media linked to the Sodality of Christian Life have "scandalously attacked" her, because of her opposition to the SEA program.

[10] In his letter to the committee, Br. Masseur described the respondent as having "radical secular views" inspired by Karl Marx, which are not shared by all academics at the University. He also alleged that she had publicly accused him of promoting racism, sexism, homophobia, and sexual, physical and psychological abuse of youth, which, in his view, were "slanders" and not "freedom of speech".

[11] In his letter, Br. Masseur also denied that students on volunteer placements stay in accommodation run by the Sodalit Family, or that the Sodalit Family promotes or condones psychological or physical abuse. He admitted that there have been two cases of sexual misconduct committed by members of the Sodalit Family, but that the individuals involved represent 0.25% of the organization's religiously consecrated members over a 40-year period, and that their actions were repudiated by the

organization.

[12] Br. Masseur also stated that the Catholic Church has hundreds of thousands of members who spend their entire lives serving the poor and defending human dignity, and that religious organizations have been more effective and less corrupt in addressing poverty than secular or government-based organizations.

[13] In support of his arguments, Br. Masseur cited a study which found that the Sodalit Family is the most professional and effective non-governmental organization addressing poverty in Lima, Peru. He also provided the committee with 200 letters of support for the SEA program from professors, staff, alumni, and students.

[14] On January 26, 2012, the applicant filed a complaint with the University's Office of Human Rights and Equity Service ("OHRES"), which alleged that the respondent had harassed and discriminated against him because of his Catholic religious beliefs contrary to the University's Respectful Work and Learning Environment Policy ("RWLEP"). Specifically, he objected to the comments that the respondent made about him in the motion that she brought forth at a faculty meeting in the Department of Sociology, the explanatory letter that she circulated to various Departments of the University, and the presentation that she made to the committee which was convened by the Provost. He alleged that the main reason that the respondent was targeting him was because he is opposed to abortion and is pro-life. He stated that he has right to hold such beliefs in accordance with freedom of religion, and quoted Pope John Paul II, who stated:

I declare that direct abortion, that is abortion willed as an end or as a means, always constitutes a grave moral disorder, since it is the deliberate killing of an innocent human being.

[15] On January 27, 2012, the committee which was convened by the Provost released a report, which found that there was no compelling evidence to support severing the University's connection with the SEA program. Specifically, it found that no substantial evidence was presented that participation in the SEA program posed any

substantial or immediate risk to mature, consenting adults. However, the committee recommended that the application form for the SEA program should include a statement that the program is affiliated with the Christian Life Movement, which is affiliated with the Roman Catholic Church, and that although no religious affiliation is required for participation in the program, students might encounter others with an attachment to a variety of faith traditions.

[16] On February 10, 2012, the University's OHRES dismissed the applicant's complaint for the following reasons:

After reviewing the allegations in your complaint, it is determined that the allegations failed to demonstrate the required elements of discrimination, harassment, personal harassment or psychological harassment. In particular, a pattern of specific behaviours by the alleged respondent that are directed towards you specifically and which may be characterized as fitting the definitions under the RWLEP is not present. As the behaviour is currently described in your documentation, it is not vexatious as defined under the RWLEP. Rather, on the face of your documentation, the actions of the respondent may be characterized as a legitimate expression of her academic freedom and use of existing avenues for the hearing and resolution of her concerns.

[17] On April 4, 2012, the applicant filed an Application with the Tribunal, which alleged that the respondent discriminated against him with respect to employment because of his creed. His specific allegations may be summarized as follows:

- 1) The respondent proposed motions at meetings of the Centre for Women and Gender Studies and the Department of Sociology, which charged him with (a) racism, classism, homophobia, and sexism, and sexual, physical and psychological abuse of youth and women, and (b) using the University's academic programs and other resources for purposes other than the services of the Roman Catholic Chaplain.
- 2) The only proof that the respondent provided to substantiate her charges against him was his links to the Sodalit Family. He admitted that he has links to the Sodalit Family, but denied the truth of any of respondent's charges. In his view, the charges constituted harassment.
- 3) He believes that the respondent targeted him because he is a pro-life Catholic who is opposed to abortion, not because she is concerned

about the safety of students who participate in the SEA program. Specifically, he stated that the respondent discriminated against him because he believes “in the sacredness of life from conception to natural death.”

- 4) The University’s OHRES dismissed his complaint because its definition of discrimination is too narrow, and it has “a too broad notion of academic freedom that supports bullying.”

[18] According to the applicant, on April 27, 2012, the University’s OHRES re-opened the investigation into his complaint, and the investigation is ongoing.

[19] On May 14, 2012, the Tribunal issued a Case Assessment Direction, which directed that a summary hearing be held by teleconference to decide whether the Application should be dismissed on a preliminary basis because it has no reasonable prospect of success.

[20] On June 7, 2012, the Tribunal issued a Notice of Summary Hearing to the parties, which informed them that the hearing was scheduled for September 17, 2012.

[21] On September 7, 2012, the University filed a Request to Intervene to address whether the applicant was in an employment relationship with the University.

[22] On September 10, 2012, the respondent filed a Response to the Application, which denied that she was in an employment relationship with the applicant, and denied she had discriminated against the applicant because of his creed. Specifically, she stated that all of her activities which the applicant is complaining about involved the exercise of her protected right of freedom of expression in the context of the University. She stated that the applicant’s sensitivity to legitimate discussion and debate are not proof of harassment or discrimination, and that his Application is an attempt to silence opposition to his point of view, and stifle criticism of an organization to which he belongs.

[23] On September 17, 2012, the summary hearing took place as scheduled. The applicant and the University filed supporting documents in advance of the hearing. At

the hearing, I heard oral submissions from the applicant, and dismissed the Application with written reasons to follow. The following are my written reasons.

ANALYSIS

[24] Rule 19A of the Tribunal's Rules of Procedures provides for a summary hearing, following which an application may be dismissed, in whole or in part, if the Tribunal finds that there is no reasonable prospect that the application or part of the application will succeed. The approach to deciding whether an application has a reasonable prospect of success following a summary hearing was explained as follows in *Dabic v. Windsor Police Service*, 2010 HRTO 1994, at paras. 8-10:

In some cases, the issue at the summary hearing may be whether, assuming all the allegations in the application to be true, it has a reasonable prospect of success. In these cases, the focus will generally be on the legal analysis and whether what the applicant alleges may be reasonably considered to amount to a *Code* violation.

In other cases, the focus of the summary hearing may be on whether there is a reasonable prospect that the applicant can prove, on a balance of probabilities, that his or her *Code* rights were violated. Often, such cases will deal with whether the applicant can show a link between an event and the grounds upon which he or she makes the claim. The issue will be whether there is a reasonable prospect that evidence the applicant has or that is reasonably available to him or her can show a link between the event and the alleged prohibited ground.

In considering what evidence is reasonably available to the applicant, the Tribunal must be attentive to the fact that in some cases of alleged discrimination, information about the reasons for the actions taken by a respondent are within the sole knowledge of the respondent. Evidence about the reasons for actions taken by a respondent may sometimes come through the disclosure process and through cross-examination of the people involved. The Tribunal must consider whether there is a reasonable prospect that such evidence may lead to a finding of discrimination. However, when there is no reasonable prospect that any such evidence could allow the applicant to prove his or her case on a balance of probabilities, the application must be dismissed following the summary hearing.

[25] The Tribunal does not have the power to deal with general allegations of unfairness. For an Application to continue in the Tribunal's process, there must be a basis beyond mere speculation and accusations to believe that an applicant could show discrimination on the basis of one of the grounds alleged in the *Code*. See *Forde v. Elementary Teachers' Federation of Ontario*, 2011 HRTO 1389, at para. 17.

[26] In his submissions, the applicant stated that his Application has a reasonable prospect of success because it is evident that the respondent's campaign included horrendous claims against him personally, in particular, equating his pro-life beliefs with being against women. He stated that it is evident the respondent targeted him because he believes, for religious reasons, that life is sacred from conception to death, and he is "against the killing of innocent life."

[27] In support of his submissions, the applicant referred to the explanatory letter that the respondent allegedly circulated to various Departments of the University, and the other materials that he filed with the Tribunal.

[28] When I asked the applicant what his response was to the respondent's position that her activities are protected by academic freedom and freedom of expression, he responded that he is for academic freedom, but that it should include respect and tolerance. He stated that the respondent's activities were neither respectful nor tolerant towards him.

[29] When I asked the applicant to explain how the respondent's lack of respect or tolerance amounted to discrimination, he responded that she poisoned his workplace because she attacked him personally.

[30] I now turn to my analysis of whether the Application has a reasonable prospect of success. In my view, even if the applicant's factual allegations are true, the Application does not have a reasonable prospect of success because what he alleges cannot be reasonably considered to amount to a *Code* violation.

[31] The Application relates to section 5 of the *Code*, which prohibits discrimination because of creed with respect to employment, and harassment because of creed in the workplace. In his oral submissions, the applicant also stated that the Application relates to section 1 of the *Code*, which prohibits discrimination because of creed with respect to services.

[32] This case involves competing rights. The applicant has identified his right to be free from harassment and discrimination based on creed in the workplace or a service environment as the overriding value in this case. The respondent, on the other hand, has identified her right to academic freedom and freedom of expression as the overriding value in this case. In the applicant's view, however, the principles of academic freedom and freedom of expression should not be so broad as to allow the respondent to make statements about him which are disrespectful and intolerant and constitute bullying.

[33] The Tribunal has emphasized that ambiguity in the scope of *Code* rights should be resolved in favour of protecting matters at the core of the rights and freedoms in the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (U.K.), 1982, c. 11 (the "*Charter*"). See *Taylor-Baptiste v. Ontario Public Service Employees Union*, 2012 HRTO 1393; *Dallaire v. Les Chevaliers de Colomb*, 2011 HRTO 639; and *Whiteley v. Osprey Media Publishing*, 2010 HRTO 2152. In *Dallaire*, *supra*, the applicant, who was a member of the Catholic Church, alleged that the respondent discriminated against her with respect to services and facilities because it donated a monument with a pro-life inscription to a Catholic church, which displayed it on its property. In dismissing the Application, the Tribunal noted at para. 35 that the applicant was offended by the inscription on the monument because she strongly disagreed with the Catholic Church's beliefs regarding abortion. The Tribunal went on to state that attempting to use the *Code* as a vehicle to challenge not only the monument, but also the Catholic Church's belief system and teachings, was "not an appropriate use of the *Code*."

[34] Section 2(b) of the *Charter* recognizes that freedom of expression is a

fundamental freedom. In *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, 1 SCR 156, the Supreme Court of Canada stated at para. 32:

The Court... has repeatedly reaffirmed the importance of freedom of expression. It is the foundation of a democratic society (see *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2; *R. v. Keegstra*, [1990] 3 S.C.R. 697; *R. v. Butler*, [1992] 1 S.C.R. 452). The core values which free expression promotes include self-fulfilment, participation in social and political decision making, and the communal exchange of ideas. Free speech protects human dignity and the right to think and reflect freely on one's circumstances and condition. It allows a person to speak not only for the sake of expression itself, but also to advocate change, attempting to persuade others in the hope of improving one's life and perhaps the wider social, political, and economic environment.

Furthermore, expression which is merely unpopular, distasteful or contrary to the mainstream, or merely offends, shocks or disturbs the State or any sector of the population, is protected by the guarantee of freedom of expression. See *Irwin toy ltd. v. Quebec (Attorney general)*, [1989] 1 SCR 927, at para. 41.

[35] With respect to academic freedom, it is well-established that courts and tribunals should be restrained in intervening in the affairs of a university in any circumstance where what is at issue is expression and communication made in the context of an exploration of ideas, no matter how controversial or provocative those ideas may be. See *Maughan v. UBC*, 2008 BCSC 14, aff'd 2009 BCCA 447, leave to appeal ref'd [2009] S.C.C.A. No. 526, at para. 493. However, the principle of academic freedom does not override an organization or person's obligations under the *Code*. In other words, academic freedom is not a license to discriminate against another person because of his or her religious beliefs. See *Ketenci v. Ryerson University*, 2012 HRTO 994, at para. 42. That said, in my view, given the importance of academic freedom and freedom of expression in a university setting, it will be rare for this Tribunal to intervene where there are allegations of discrimination in relation to what another person has said during a public debate on social, political, and/or religious issues in a university.

[36] The applicant's main allegation is that the respondent harassed him and poisoned his work environment because of his religious beliefs, specifically, his pro-life

beliefs. In his view, the fact the respondent's statements about him were public, personal, disrespectful, and intolerant, and were related to his religious beliefs, means that they were discriminatory under the *Code*.

[37] I disagree. The Catholic Church is one of the most powerful religious institutions in the world, and is sometimes criticized by both Catholics and non-Catholics for its views on contentious issues. Whether the applicant likes it or not, as a representative of the Catholic Church at the University, he may be criticized by others because of the Church's, and his own, views on these issues. Conversely, whether the respondent likes it or not, the Roman Catholic Chaplain and the applicant are allowed to express views criticizing the respondent and promoting the SEA program, even if some of the Catholic organizations which the program is partnered with hold views that the respondent finds offensive and discriminatory.

[38] In the case at hand, the respondent and some of her colleagues, on the one hand, and the Roman Catholic Chaplain and the applicant, on the other hand, have been involved in a heated social, political and religious debate with respect to the merits of having the SEA program at the University. Both sides have expressed strong views, which may be offensive to others, and have made personal criticisms about the other side to some extent. The Provost convened a committee, which heard from both sides, and released a report, which found that there was no compelling evidence to support severing the University's connection with the SEA program. However, the fact that the committee decided the issue in favour of the Roman Catholic Chaplain was not enough for the applicant. He is now asking this Tribunal to find that respondent's comments about him were discriminatory, and to order her to pay financial compensation to him.

[39] In my view, similar to *Dallaire, supra*, this is not an appropriate use of the *Code*. The respondent's proposed motions at two faculty meetings, the explanatory letter that she circulated to various Departments at the University, and her submissions to the committee convened by the Provost, expressed views on social, political, and religious issues, which fall within the core of the guarantee of freedom of expression in the *Charter*. Furthermore, this Tribunal's intervention into the debate that is taking place on

campus about the merits of the SEA program would likely have a chilling effect on freedom of expression whereby individuals would engage in self-censorship to avoid being named a respondent in a human rights Application.

[40] With respect to the applicant's allegation that the respondent violated the *Code*, the mere fact that the applicant found the respondent's views to be offensive and hurtful is not enough to find that they were discriminatory.

[41] Subsection 10(1) of the *Code* defines harassment as "a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome." Moreover, the *Code* is concerned with substantive discrimination, not merely differential treatment. In *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital général de Montréal*, [2007] 1 S.C.R. 161, Abella J. stated at para. 49:

(...) there is a difference between discrimination and a distinction. Not every distinction is discriminatory. It is not enough to impugn an employer's conduct on the basis that what was done had a negative impact on an individual in a protected group. Such membership alone does not, without more, guarantee access to a human rights remedy. It is the link between that group membership and the arbitrariness of the disadvantaging criterion or conduct, either on its face or in its impact, that triggers the possibility of a remedy. And it is the claimant who bears this threshold burden.

[42] In the case at hand, the respondent publicly alleged within the University that the SEA program was affiliated with "far-right", "cult like" Catholic organizations which have a record of actively opposing abortion rights, women's rights, gay and lesbian rights, liberation theology, and other progressive causes, and of physically, psychologically and sexually abusing youth. She also alleged that these organizations had links with the Roman Catholic Chaplain at the University, specifically, Br. Masseur and the applicant. She further alleged that Br. Masseur and the applicant had used the University's academic programs, resources, and institutional credibility to recruit students for the SEA program. In the respondent's view, the University, which is a publicly-funded, secular organization, should only support volunteer abroad programs

which are secular.

[43] I find that the respondent's statements do not constitute harassment under the Code. Although the respondent clearly treated the applicant differently because of his religious beliefs, in the context of the debate that was taking place within the University about the merits of the SEA program, which the applicant had administered and continues to support, I cannot see how the respondent's comments about him were vexatious, or known or ought reasonably to be known to be unwelcome, no matter how personally offensive and hurtful he found them to be. Accordingly, the respondent's comments did not amount to substantive discrimination.

[44] In her Response, the respondent also stated that the Application should be dismissed because the applicant was not in an employment relationship with her. Similarly, in its Request to Intervene, the University stated that the applicant is not, and has never been, in an employment relationship with the University. In view of my findings above, it is not necessary to address whether the applicant was in an employment or service relationship with the respondent or the University because, even if he was, the Application has no reasonable prospect of success.

[45] In conclusion, I want to make it clear that my dismissal of the Application is not an endorsement of the respondent's statements about the merits of the SEA program. My decision should not be misconstrued as supporting either side of the debate on this issue.

ORDER

[46] The Application is dismissed.

Dated at Toronto, this 9th day of October, 2012.

"Signed by"

Ken Bhattacharjee
Vice-chair

Appendix 5

CONFIDENTIAL

January 4, 2012

Dear Members of the International Committee, Brock University:

Re: Solidarity Experiences Abroad

My name is Ana Isla, Associate Professor, holding a joint appointed position between Women's Studies and the Department of Sociology. This letter is to inform you about my decision to forward a motion to cease Brock's association with Solidarity Experiences Abroad field trips conducted by the Christian Life Movement also referred to as the Sodality of Christian Life.

In 2006, 6 students, one male and 5 females, from the Centre for the Environment stepped into my office to brief me on their trip to Peru. They were unknown to me, but they knew that I was originally from Peru. During the conversation, they described several issues and it became clear that they were shocked by the experience for the following reasons:

1. they were not comfortable meeting fundamentalist Catholics, particularly Mr Luis Fernando Figari, founder of the Sodality of Christian Life, and a group of musicians (called Takillakta del Peru);
2. they were uncomfortable encountering the ideologies and values of the fundamentalist Catholics in the context of a Brock sanctioned trip ("The information presented was shocking in that the position that Mr Figari took on any position, was extremely right wing.. I was not anticipating such a blatant and right wing interpretation of Christianity");
3. they were uncomfortable watching and participating in the birth of a child. They also did not know on what grounds the mother had consented to their presence;
4. they were distressed to have Brock sanction volunteer and course work associated with religious organizations and in particular with this specific organization.

These students disclosed to me on how disturbed they were. They underscored the ties between the Sodality Family, Sodality of Christian Life, Solidarity in Action, Christian Life Movement and Solidarity Experience Abroad (SEA).

As a result of their research, they:

1. found a picture of a Brock student used to advertise the trips to Peru by the Christian Life Movement in the United Kingdom;
2. found a Brock University logo shown on the website of the Christian Life Movement, suggesting an affiliation with Brock University; and
3. found that the new program Tourism and Environment (ex Centre for the Environment and Tourism Studies) marketed the SEA field trip for academic credit in which it was described that interested students should contact Professor Tony Ward or Br. Raoul Masseur. This left the impression that either one was able to provide students with academic credit.

These students made a strong case in my opinion that deserved to be put forward to another level of authority.

Following this conversation, I contacted professor Karen Krug at the former Centre for the Environment. She expressed interest in further conversation regarding student's experiences with SEA as she disclosed to me that she had experiences with the Catholic Church while in Peru. Unfortunately, on the day of our first meeting, she became ill and ended up in the hospital. Later she moved back to Saskatchewan where her partner and her child were living.

At that time, (2006), I then approached the Director of Women's Studies (then Prof. Meri Jean Morrissey), and the Chair of Sociology (Dr. June Corman) for advice. Our concerns were sent to Kim Meade, who is in charge of the program, and triggered "A Solidarity Experience Abroad Program Review Final Report," which was published on February 6, 2007. The Review was conducted by Dr. James Mandigo (Department of Physical Education and Kinesiology) and Lynne Bubic (Office of Human Rights and Equity Services).

The report identified some challenges and made numerous recommendations such as (See Appendix K):

1. "Marketing materials should be revised to remove any and all references to using the program for academic credit. Consideration of the program as course work is to be left to the discretion of faculty." (page 2);
2. "The University recognizes and appreciates the importance of local partners in participating countries to ensure a positive and safe educational experience, and recognizes there is always a need for transparency and background information about such local partners. Because of the many of the local partners are religious organizations, a Campus Ministries Committee should evaluate the suitability of the organization in a partner in SEA (page 6);
3. "Some participants reported watching a live birth during placements, and a marketing session for MEDplus students suggested that they would have an opportunity to perform medical procedures, including suturing during a placement. Such experiences raise issues of legal liability for participants, as well as for the University; moreover, concerns about the emotional experiences of participants and the need for additional support. It was suggested that the

activities of each work placement be carefully reviewed as part of program planning to ensure that participants and the University are not put at risk.”(page 7);

4. “Some participants and Program Leaders reported that programs included daily prayers and ongoing religious references. Some participants reported that they felt there was subtle pressure from others in the program to participate in this, even if it was not meaningful to them. One program schedule included daily prayer...” (page 7);
5. “Feedback from some participants indicated that they did not feel welcome to give constructive criticism of the program and the negative feedback given to date has not been well received.” (page 9); and
6. ”A more formal evaluation process needs to be designed and implemented so that all participants feel comfortable and free to give honest feedback about the program...” (page 9).

Many of these suggestions were useful, but others such as #2 were inappropriately conceived. Asking Campus Ministries to evaluate their own organizations is not appropriate. A committee struck by the Academic Vice President ought to evaluate, on an annual basis, the legitimacy of partners considered for both volunteer and course work.

The mandate of this review was too narrowly conceived in that the review should have been charged with determining the appropriateness of affiliating with religious groups to provide Brock sanctioned volunteer, field trips and course work. We appeal to this committee to take on such a task.

During the 2006 review process I was attacked personally by Mr. Masseur in an e-mail sent to his followers. (See Appendix O).

Since 2007, Ian Wood, who participated in the first review found an opportunity to research the Sodality of Christian Life in Peru, as he wrote his Master’s thesis in that country. This student briefed Kim Meade and me, through e-mails, on the activities of the Sodality in Peru. As a result, I learned about the challenges brought by the Sodality to the reproductive rights of women in Peru. In 2011, by listening to some participants in the SEA field work, I became aware that the MEDplus program continues in the same fashion (described above), and the schools built with the energy and money of Brock students have been used by Sodality of Christian Life to further train Peruvian youth “proper lifestyle behaviours” which are homophobic and sexist. By 2011, a note written to Kim Meade by the same student was forwarded to me (Appendix Q).

The e-mail shows evidence that SEA’s local partners were not safe places for students participating in the program. Confirmed cases of sexual assault and *estupro* (sexual acts with youth) by the late second in Command of the Sodality of Christian Life were published in Peru’s newspapers, and allegations of sexual assault against a minor by the

founder of the Sodality of Christian Life were also publicized in the Peruvian media this August 2011. At the same time, the pedophilia case of a Consecrated Layman of the Sodality of Christian Life, who was caught red-handed in the act in 2007, was also brought to my attention. The reason these became cause for alarm is due to the fact that the Sodality's infrastructure – retreat houses, charity sites, church buildings, school buildings – were work, leisure and living spaces for Brock students during the trip.

This information (September 20, 2011) was brought to Kim Meade, Vice-Provost and Associate Vice-President Student Services, and her response to the student impressed upon me that she offered no further channels for discussing these issues. In response I forwarded this information to Dr. Tom Dunk, Dean, FOSS and Dr. June Corman, Associate Dean, Undergraduate FOSS. I also discussed these concerns with members of the Women's Studies Program Committee. This conversation led to the creation of the motion passed unanimously November 25, 2011:

Whereas there have been documented cases of physical and psychological abuse, classism, sexism, racism and homophobia in activities related to Solidarity Experiences Abroad to Latin America, the Centre for Women's Studies strongly urges Brock University to cease support for the Solidarity Experiences Abroad trips to Latin America and to remove all ties to local partners of these trips (i.e., the Sodalit Family, Sodality of Christian Life, Solidarity in Action, Christian Life Movement, etc.).

Since I hold a joint appointment between Women's Studies and the Department of Sociology, I proposed the approval of the motion in the Sociology Department which also passed unanimously.

These conversations generated the recognition that Brock should not offer volunteer, field trips and course work in association with any religious organization. Rather officially sanctioned and recognized opportunities for students should be with legitimate secular organizations.

Following the motion, a news agency run by a Sodality of Christian Life member, called ACI Prensa and based in Lima, scandalously attacked me in Spanish. The same day, their English analog, Catholic News Agency, based in the Sodality of Christian Life's USA Headquarters, Denver Colorado, asked me for an interview to clarify, and then later released another article about me. I have received numerous non-solicited emails since then (see Appendix R).

To conclude, giving the Sodality of Christian Life a **platform** to legitimize its conservative practices and values is inappropriate for a publically-funded secular Canadian university. Giving them access to Brock students in the context of Brock-sanctioned volunteer and course work, positions this religious organization to gain wide authority within Peru and Canada and thereby facilitates their ambitions to evangelicize and convert Peruvian and Canadian youth. It could even be argued that providing Brock

students to work with this organization in Peru makes Brock accountable for the actions undertaken by the organization in the schools and charities supported by Brock students.

In preparing this submission, we have discovered that some other Canadian universities have an official policy that prohibits university-sanctioned volunteer or course work with any religious organizations. We appeal to your judgement to enact such a policy at Brock University. All partnerships for volunteer, field trips, course work, or other sanctioned activities offered to Brock students should be legitimate, secular organizations.

Several members of the Brock community request an opportunity to meet with the committee in person. Please inform me of a date at your earliest convenience.

Sincerely,

Ana Isla

Associate Professor for the Centre for Women's Studies
and the Department of Sociology

Appendix 6

1

St. Catharines, January 4, 2012

Members of the International Committee

Brock University

Dear Members,

Re: Solidarity Experiences Abroad and the Sodality of Christian Life, 2012

My name is Ian Wood, former participant in Solidarity Experiences Abroad (2005), Brock alumnus (Honours BA Environment 2007, MA Geography 2012), and Chief Steward of CUPE 4207.

The goal of this letter is to provide you with details of my experiences with Raoul Masseur and his community from 2005 to 2007.

During the 2005 trip:

1. Students were encouraged to take as many pictures as they wanted to while on the trip, which included pictures of people, including children, living in squatter settlements that were receiving charity from Solidarity in Action Peru (*Solidaridad en Marcha Peru*), part of the Sodalit Family. Some of the children whose pictures were taken, to my recollection, had nothing to do with the program but lived or played nearby the locations we worked at. Raoul Masseur not only encouraged that students could take images of whomever they pleased without ensuring expressed consent (or, in the case of young children, expressed consent of their parents) but also he encouraged us to share our libraries of pictures upon return to Canada. Some of these pictures I recall being used for recruitment in future years.

2. The construction site in Dos Cruces-San Juan de Miraflores-Lima-Peru that we were working on on behalf of Solidarity in Action, Peru was run quite controversially:

a) There was one person on-site that was in-charge of the construction site. He was a volunteer from the host community. As he was identified to us as the on-site coordinator, he was put into a position where he may have had extensive legal responsibilities under the National Regulations for Building in Peru, or was quite possible inappropriately taking on the responsibilities of the property owner.

b) As workers on construction sites, we did not have the proper safety equipment nor was there signage -in English or Spanish- for us.

c) As inexperienced masons, we built walls and structures with cement we mixed with rocks and nearby sand in quantities that we could gauge were suitable. Everyone who wanted to could try their bricklaying skills on walls that would later be used as a school for children in the squatter settlements, putting children in real danger (especially in a seismic area).

d) Children were allowed to visit on the construction site, and even participate in construction (see picture).

3. At least two female students working in the nearby Maternity Clinic in San Juan de Miraflores-Lima, Peru, informed me that they could watch live births. One accounted to me that she was invited to prepare the birth with the nurse/doctor by dropping iodine on the opening of the vagina of the woman expecting a child. It was also accounted to me by one of the students that she could not ask for consent due to language barriers, and noticed some preoccupation in the face of the woman as she looked on.

4. The “cultural activities” of the trip largely occurred with the Sodalit Family. In particular, I recall seeing a musical group called Takillakkta, which integrates members of the Sodality of Christian Life,

in a Sodality of Christian Life centre, meeting the “fraternas”, or Marian Community of Reconciliation (*Fraternidad Mariana de la Reconciliación*), a consecrated group of females of the Sodalit Family, going to the Our Lady of Reconciliation Parish (*Nuestra Señora de la Reconciliación*), a Sodality of Christian Life run and operated church in Camacho-La Molina-Lima-Perú, a Sodality of Christian Life retreat house in San Borja-Lima-Perú, receiving an “academic” lecture from a Sodality of Christian Life member (where I first learned the arguments for the evangelization of culture in the context of Perú), and visiting two educational centres “Villa Caritas” and “San Pedro” in La Molina-Lima-Peru. Further, I believe that the even Spanish-language training was provided by the NSR Institute, a pedagogical institute run by the Sodalit Family, as it was advertised in SEA Trips in 2008 that Spanish language training in the retreat house would be certified by them.

5. There was very little room for critical exploration of different realities of ourselves and the people we were working with during nightly discussions. In fact, honest concerns about our role as volunteers in these communities emerged in informal discussions among some students but there was a general feeling that bringing these concerns forward was not appropriate given the pressures of group cohesion. Those who were interested in the aspect of poverty were not given space to fully speak intelligently about what they thought about their experiences if it meant contemplation of what we were doing there, or social dynamics within Peru. Questions of the poverty were explained by Raoul as cultural issues. Many times, conversation was closed with a line similar to that of “one should not feel guilty about the situation”, as though the concern (from one example) of the relationship between subaltern groups to impoverished conditions was a product of guilt.

Post 2005 Trip

After returning from my own visit to Peru in 2005, I noticed that the activities of the Catholic Campus Ministries office seemed centred around activities of the Sodalit Family and its leader: the Solidarity Experiences Abroad trips to his community, the formation of an NGO “Solidarity In Action, Inc.” headed by Raoul that involved his community (including the involvement in the planning of one of his community members, who came from outside of Canada), and efforts to make the texts of Figari available in English.

One of the first things I investigated about the Sodality of Christian Life came from Raoul's own mentioning of current events with his movement. Raoul told me that his movement was having difficult times in Puno and to pray for them. It turned out that the incident in question was due to the expulsion of liberation theologians from Puno once Kay Schmalhausen, a Sodality of Christian Life priest became the Bishop of the Prelature of Juliaca in Puno, and the fact that the locals resisted this expulsion. It was revealed to me through magazine and news readings that the Sodality of Christian Life held a set of politics that were traditionalist and conservative, such as their open support for polemic Cardinal Cipriani of the Opus Dei, their close affiliations to other conservative movements in the Catholic Church such as those discussed in Miranda's 2011 article *Asedio e intolerancia*, and their open support and sometimes active thwarting of reproductive rights, and gay rights.

In 2006, I was discussing the book *El Otro Sendero* with Raoul, and he told me that the situation of many Andean migrants to Lima could be explained as a cultural problem as Quechua speakers lack the capacity to create or comprehend complex thoughts that are otherwise attainable by speaking Spanish. As stated before, I was advised by my then-partner, whose family was from the Andes and spoke Quechua, that this was bordering on racism, and that I should distance myself.

2006-2007 Program Review

By the Fall Semester in 2006 I was not the only with concerns about Raoul's trips and the Sodalit Family. The issues of psychological manipulation and abuse were brought to me by in 2006 by a

professor at Brock University. After reading the two articles, *Los misterios del Sodalicio* and *Los Once Mil Castos*, the professor advised me that these cases were enough to be concerned about their presence at Brock University. When he became aware that the Brock logo had appeared on the *Solidaridad en Marcha Peru* website he took action on the issue, but otherwise distanced himself from the problem. Another professor at Brock was about the volunteer tourism model and potential problems of parachuting relatively affluent youth into contexts like Peru with potentially less than noble motives. A third professor that had been to Peru had concerns but could not participate for health reasons.

I was aware of other complaints from students that had been to Peru had become concerned about the Sodalit Family. One Brock University student became aware of their image being used to promote the Christian Life Movement in the UK. The student told me the following in reference to her image used to promote the Sodalit Family in another country “it's quite scary if you stop and think about it”. Another student, who is a friend of mine, came forward to both Ana Isla and me after reflecting on a presentation given by the founder, Luis Fernando Figari, that disturbed her.

During the first program review, other complaints came forward from students that I was not familiar with. Raoul attempted to discredit those responses in various emails. (See FOI 2010-157 Response; see Appendix S).

When the program review turned into a suspension of his program, Raoul wrote an email to students that discredited another student's complaint and Ana Isla's concerns. Further, both were referred to as “wicked” and Raoul asked that students pray for Ana for her biased views (See Appendix O for a copy of the email):

“They congratulated me for the fantastic program that we have created and for the uniqueness of it; but at the same time they “bought” many of the complaints of Melissa. And even worse, they consider that “mixing” academic credits and religion has to be revised, and they are buying the argument of Prof. Ana Isla that Christian Life Movement is a potential danger for Brock students. It was deeply sad!!! Especially because of the choice of political correctness over truth. Also was sad to hear about the position of a Prof. Saying that our trips are not social justice but paternalistic charity, and we do cultural imperialism. Well, I hope we can talk about this sometime, very sad, but it seems that this year the SEA trips are not viable, which clearly doesn't stop my commitment with social justice and my faith ideals, but make me aware of how wicked people can be. I think that we should pray for all the people that deny our students the possibility to experience solidarity due to their ideological-political biased views.” (Appendix O)

Should you have any questions regarding my experiences please contact me by email at iwood@brocku.ca and I would be happy to speak with you.

Sincerely,

Ian Wood

Appendix 7

SOLIDARITY EXPERIENCES ABROAD PROGRAM REVIEW FINAL REPORT – February 6, 2007

Conducted by Dr. James Mandigo, Department of Physical Education and Kinesiology and
Lynne Bubic, Office of Human Rights and Equity Services

Introduction:

A review of the Solidarity Experiences Abroad program (SEA) was requested by Kim Meade, Associate Vice-President, Student Services. Faculty and staff involved in the delivery of the SEA program engaged with the reviewers in a consultative process leading to this final report. Input from student participants was gained through testimonials, email and personal interviews. The review considered all elements of the SEA program, including: marketing, selection of participants and assistants, pre-departure briefing, program operations, and follow up evaluation.

A number of sources were used to help provide guiding principles throughout the Solidarity Abroad Experience Review. These were consulted in order to ensure an objective review and to provide recommendations that are consistent with current Brock University policies. At the time of the review, there was not one single document on Policies and Procedures for International Placements, Internships, and Experiences but rather a variety of documents that were consulted.

Sources:

- Brock International: Protocols and Policies for Study Abroad Courses
<http://www.brocku.ca/brockinternational/studyabroad.php>
- Policy on Student International Mobility
<http://www.brocku.ca/brockinternational/files/BrockStudentInternationalMobilityPolicy.pdf>
- Office of Research Services: Policy on Safety and Liability for Field Research
http://www.brocku.ca/researchservices/safety/assets/documents/policies_feild_safety.pdf
- Terms of Reference for Internationalization Committee:
Provided by Sheila Young (Brock International)

In addition, other recommendations were made during discussions with faculty, staff, students, and senior administration during the review process.

The review found that the SEA program has been very successful in the past and has experienced a lot of growth since its inception. The vast majority of past participants in the program expressed very positive feedback about the program, and a small number of past participants had some negative and/or constructive feedback. The review makes several recommendations to provide some additional structure and organization to the program in order to improve participants' experience in the program and to better address risk management and liability issues for Brock University.

Program Successes:

Students, staff and faculty associated with the SEA program reported the following as program successes:

- increased recognition, reputation for Campus Ministries as an inclusive department and greater integration of the department into the life of the University

- greater connection of Campus Ministries with students
- religious accommodation and learning among students of differing beliefs
- breaking down of barriers between students during programs
- students learn to live outside of themselves and develop global awareness
- focus on program as a learning experience (not a teaching/sharing our knowledge experience)
- personal and professional growth of students
- increasing students' motivation towards academics after participating in the program
- development of a pluralistic and and creative relationship between Campus Ministries and other departments at the University that allows for ecumenical and inter-religious opportunities for students

Participants consistently report that the exposure to other cultures, the personal connections with local residents in the host countries, and the opportunity to develop global awareness are the greatest elements of the programs.

Program Marketing:

To date, the SEA Program has been an initiative of Campus Ministries, with some involvement and joint marketing with International Services. Marketing has been through the use of brochures and posters, a website, presentations/slide shows for information sessions and within class settings when requested.

Some feedback regarding marketing of the program suggests that there is some confusion about the role of religion in the programs. Marketing materials indicate that “Clear respect for the religious beliefs of the participants and locals and an openness to explore spirituality” is a requirement and “No religious affiliation is required for participation in this program”. This might be unclear to students as one message conveys there is a clear element of religion/spirituality and the other suggests there is not. While no specific religious affiliation or experience is required for participation in the program, additional clarity that the program does involve a spiritual component should be clear in marketing materials so that students are prepared for such experiences.

Marketing materials indicate that students interested in using the program for academic credit should contact Professor Tony Ward or Raoul Masseur, which leaves the impression that either one is able to provide students with academic credit. In fact, only faculty members are able to do so. Marketing materials should be revised to remove any and all references to using the programs for academic credit. Consideration of use of the program experience within course work is to be left to the discretion of faculty.

An additional issue related to marketing that was raised by past participants was that photographs of them during the program were being used without their consent. Photographs have been used by SEA for marketing, but have also appeared in marketing and advertising for similar programs offered by other religious organizations not affiliated with Brock University (Christian Life Movement UK and Canadian Catholic Campus Ministry). Participants reported they did not give consent for this use and some were distressed that their photos were used in this way. Similarly, the Brock logo was found to be shown on the websites of these other organizations, suggesting an affiliation that has not been approved by the University. Any such links and/or use

of the Brock logo and name must be removed and requests for same to be used must be submitted to the University through appropriate channels (University Communications, etc.).

There appears to have been some confusion for some students and community members about the difference and/or connections between Brock's SEA programs and similar programs offered by Canadian Catholic Campus Ministry and other organizations. This seems to be due, in part, to Raoul Masseur's involvement in all of these programs and to the fact that Brock students have chosen to participate in programs other than the one offered by Brock. To date, the programs organized by Raoul Masseur have used almost identical marketing and scheduling, as they are very similar in nature. Additional efforts to make clear the differences in the Brock program and the programs offered by other organizations, as well as clarity around when Raoul Masseur is operating in his capacity as Brock chaplain versus his roles within the other organizations would help to reduce confusion.

Recommendations:

- Marketing materials may state that programs are designed to enhance participants' learning experiences. Marketing materials should not contain any reference to academic credit. Faculty members may access SEA programs as potential placements for course work.
- Marketing materials should state that the program is inclusive and invites participants of all religious beliefs and practices. They should continue to indicate that participants must display respect for the religious beliefs and practices of other participants and of local cultures. Pre-departure sessions should contain more specific information about the religious beliefs and practices each local destination, what experiences participants should expect, and reinforce that openness and respect are core values of the program.
- Photographs and other information from the SEA programs shall not be used by any organization other than Brock University. Campus Ministries shall ensure that any photos currently being used without consent are returned immediately and are not used again. In addition, it is recommended that no photo be used without written informed consent of the participants appearing in the photo, in accordance with University policy and privacy legislation. It is suggested that SEA staff contact the Privacy Coordinator to learn their responsibilities in this regard and to get assistance in drafting an appropriate consent.
- Campus Ministries shall ensure that the Brock University logo and name are immediately removed from websites and marketing materials of other organizations. Requests for use of the Brock University logo and name must be submitted to the University for approval through appropriate channels (University Communications, etc.) and must be in accordance with University policy and procedures.
- Marketing of the Brock University Solidarity Experiences Abroad Program should be separate and distinct from any marketing of similar programs through other organizations that Campus Ministries staff might also be participating in so that students have a clear understanding that they are attending a Brock University program and of the expectations associated with a Brock program. Anyone attending similar programs through other organizations should be able to clearly understand those programs have no association with Brock University.

Application to the program and selection of participants:

To date, application for participation in SEA programs has been on a first come, first serve basis, with no selection process. Students make application through Campus Ministries generally, though academic issues are handled by faculty.

Recommendations:

- A selection process should be developed to ensure that all students have an opportunity to apply for the program. In addition, this selection process should include an assessment of students' suitability for the program. It is suggested that the following information and process be used for selection: confirmation that the student is in "good academic standing"; an application letter explaining why the student wants to participate and what they hope to get out of the program; and an application interview with Student Services staff, as organized by Campus Ministries. The interview could focus on suitability for work placements included on the program. References might also be required. It is recommended that SEA staff review selection processes for other international experience programs at Brock and develop something similar. A selection process will better ensure student's suitability to the program. In addition, having an objective selection process prevents later challenge from students not accepted. SEA staff are encouraged to investigate and consider the selection processes used in similar programs (though other courses or International Services) in determining a selection process.

Selection of Student Assistants (student leaders) and their role:

Student assistants are sought out on a volunteer basis from among those students who are going on a program. The only requirements are that they must have been on a program previously and have First Aid/CPR training. Student assistants are chosen by the Program Leader and there is one student assistant for every ten student participants. Usually, at least one student assistant selected is female to provide a female "leader" for participants as Program Leaders to date have all been male. Student assistants are expected to assist the Program Leader by helping with organizational details, relaying information to participants, supervising participants, and providing leadership to the participants. There is currently no training provided for student assistants and they are not paid for this role, though part of their expenses is covered. Feedback from participants suggested that they had high expectations of the student assistants, particularly since part of their fees were going to cover some of the student assistants' costs (i.e., participants viewed student assistants as being "paid" in some way). Some participants indicated that student assistants did not have as much knowledge as they expected and did not play as much of a leadership role within the group as expected. Some participants suggested that student assistants could have better knowledge about program details and the local area. In addition, they suggested that it would be helpful if student assistants were fluent in the local language to assist participants in communicating with local partners.

Recommendations:

- There needs to be a selection process for student assistants, recognizing that certain strengths and skills will be required to play a leadership role among their peers. A job description should be completed for this position.
- Training for student assistants is recommended in the areas of: group process/dynamics, conflict resolution, risk management/emergency preparedness – something similar to

Residence Life Staff, so they have skills to be active in building community among participants and so that they are prepared to handle interpersonal issues/conflict that is bound to arise.

Preparation for the program/ course:

Participants are required to attend four pre-departure sessions. Two sessions are done by International Services on cross cultural issues, traveling, etc., one session is by the Program Leader on history/culture of the destination for that program, and one social occasion for participants to get to know each other. Participants are also provided with written material to review. Pre-departure sessions include, in detail, the risks to each area: from Foreign Affairs Canada, CIA and an international human rights watch organizations to give the different perspectives for each area. As well, the Emergency/Risk Management Protocol developed by the SEA program is covered and participants are provided with written information to take with them on location. Program Leaders attempt to be frank and clear about potential risks and corresponding responsibilities of participants (ex. Importance of following rules of Program Leader, staying with the group, limits on travel, appropriate dress, etc.). No participants have backed out of the program after learning about risks, though some parents have called for more information and one parent has accompanied a student on the program. This may be, in part, because participants have already made a financial commitment at the time of the pre-departure sessions. It is recommended that students have an opportunity to make their final decision about attending the program after the pre-departure sessions, when they have received full disclosure about all elements of the program. They should be able to do so without any financial penalty. This may necessitate conducting pre-departure sessions (or at least some of them) earlier in the application process.

Feedback from participants indicated that while most pre-departure information was beneficial, some additional information about the reality of daily living in the host country would be helpful. More frank discussions of living conditions, poverty, safety, and crisis management information were suggested. Some participants indicated that they felt fairly well prepared, but that they would not have been prepared had a crisis taken place (ex. Injury at work placement).

A few participants also expressed that their expectations of the program, from a social justice/work placement perspective were not met. From the program marketing and pre-departure sessions, they had expected this to be the focus of the program, but they described that there was an almost equivalent focus on tourist/vacation activities during the program.

Finally, some participants suggested that more information regarding the local partners/ organizations they would be working with in the host country should be provided before the program.

Recommendations:

- Pre-departure information sessions should continue, and might include even more frank discussions of living conditions, poverty, safety, and crisis management information so that participants are more fully prepared for the realities of daily living in their host countries. It is recognized that some of this critical information will simply not be found in government

information and press releases (ex. social and cultural beliefs and practices, appropriate dress, street safety).

- Crisis management protocol (as developed by the SEA program) should continue to be covered with all participants, (both in pre-departure and on arrival) including any/all potential issues that might arise and providing information about who to contact and how. Trip Leaders should actively query students to ensure they have understood this important information.
- The University recognizes and appreciates the importance of local partners in participating countries to ensure a positive and safe educational experience, and recognizes there is always a need for transparency and background information about such local partners. Because many of the local partners are religious organizations, a Campus Ministries committee should evaluate the suitability of the organization as a partner in SEA. Background information should also be disclosed to participants so they can make an informed decision about their level of involvement in the SEA program.
- Participants should have full pre-departure disclosure prior to making a final decision/commitment to attend the SEA program and should not have any financial penalty for choosing not to attend after the pre-departure session (within a reasonable time frame, based on information provided in the pre-departure session). However, recognizing the expenses associated with making travel arrangements, participants may be required to submit a reasonable non-refundable deposit to secure their spot with the remainder of the costs due at the conclusion of the pre-departure sessions.
- Pre-departure sessions should include a more detailed itinerary for participants setting out details of anticipated work placements and tourist activities/excursions, so participants have accurate expectations of what they will be doing in the host country. During the pre-departure sessions, it should be noted that changes in scheduling can be expected to occur, and that participants should be prepared to adjust their expectations of scheduling and time in light of differing cultural practices in the host country. When changes in scheduling do occur during the program, they should be immediately addressed and explained.
- It is recommended that program planning become a more formal and documented process. It is recommended that the process for planning, approval, and operation of the SEA programs be consistent with University policies and procedures. A program plan should be prepared for each potential program, that includes the following:
 - Rationale for selection of location and supporting documentation
 - Information regarding all local partners/organizations Brock will be working with, including a rationale for selection of those partners/organizations, and supporting documentation (ex. Contracts)
 - Risk management assessment and plan identifying all potential risks and what actions are being taken to address risks (ex. Security, insurance)
 - Summary of program details (# of participants, itinerary, travel plans, etc.)
- Prior to departure, a list of all participants and their relevant information and documentation should be provided to the Office of the Associate Vice-President, Student Services, in case of emergency. This should include: students' names and contact information, copies of passports, health cards, health insurance documents, details for at least two emergency contacts. SEA staff are encouraged to investigate and consider best practices used by other departments for similar programs.

During the Program:

All programs to date have been hosted at religious retreat houses that provide both accommodation and meals – these provide the safest, and most economical accommodations for participants. The upcoming Namibia program will be different as it will be hosted at a local university. A unique feature of using the retreat houses is that they are part of local organizations that can also assist with securing the work placements as some of these organizations are the only ones who have access to the shanty town areas (they have built up relationships of trust with the locals). At the retreat houses, students generally have their own rooms and share bathroom facilities. Laundry is generally available and dietary needs can be accommodated, though students are expected to eat local cuisine. Security is generally available at the retreat houses and SEA hires additional security as needed during work placements, etc. SEA programs are generally the only ones using the retreat houses at the time.

SEA arranges private transportation and security during the program to go to/from work placements or tourist activities.

SEA staff indicated that each program includes work placements in the following areas: health, education and environment. Program Leaders are responsible to “supervise” the participants while at placements, and travel among the different placement during the day. Local partners are therefore also responsible to assist in supervision. Some participants reported that there was sometimes little or no supervision at work placements. Feedback from participants also indicated that language barriers reduced their effectiveness at placements. Some participants reported watching a live birth during placements and a marketing session for Medplus students suggested that they would have an opportunity to perform medical procedures, including suturing, during a placement. Such experiences raise issues of legal liability for participants and the University, as well as concerns about the emotional experiences of participants and the need for additional support. It is suggested that the activities of each work placement be carefully reviewed as part of program planning to ensure that participants and the University are not being put at risk.

Programs also include tourist activities and excursions to local sites. As previously indicated, feedback from some participants indicated they had not expected or understood that this would be an element of the program. SEA staff indicated such information is covered during pre-departure sessions, so it may be that some participants did not attend or did not take in this information.

Each program includes an in-country orientation session, and each day includes evening debrief sessions where participants can discuss their experiences and their reactions to those experiences. Some Program Leaders reported that students often raised spiritual questions during this time and that having a Program Leader with a religious background assisted students in processing these feelings.

Some participants and Program Leaders reported that programs included daily prayers and ongoing religious references. Some participants reported that they felt there was subtle pressure from others on the program to participate in this, even if it was not meaningful to them. One program schedule included daily prayer. The practice of including religion as a formal element

of the program schedule has the potential to make students feel excluded during the program. While room for discussion of spiritual issues brought forward by the student is appropriate and provided, care should be given regarding how to include specific religious practices or services without having students feel excluded or obligated to attend. One suggestion is to remove such items from the formal program schedule and another is to ensure that a statement is made acknowledging the religious nature of the activity and providing students with choice about their participation in the activity.

SEA indicated that local language lessons are part of the program as well. Some participants reported that this was not consistent and that they did not receive a certificate as advertised.

Recommendations:

- It is recommended that additional efforts be taken to ensure that participants are aware of who is supervising them at each work placement (Program Leaders, designated local partners, or student assistants). It is further suggested that, where feasible, there be someone at each placement that is able to translate for participants and locals to allow for the most effective placement participation for students and to ensure effective communication in case of emergency. One suggestion is that additional student assistants be used and that a requirement for the position be some fluency in the language in the host country.
- As previously recommended, it is recommended that all work placement activities be reviewed as part of program planning to ensure that any risks to participants and the University are being appropriately managed.
- Recognizing that daily prayer and religious activities may be offered a part of the program, it is recommended that participants be advised that activities are optional, in order to create an inclusive environment.
- The right of students, staff and faculty members to not attend events sponsored by local partners (or their affiliates) which they feel are inappropriate or contradictory to personal beliefs or lifestyle choices should be covered in pre-departure sessions and made clear regularly to all participants during the program. This right has always been recognized by the SEA program.
- Where changes in the program itinerary and/or cancellation of work placements/events occur during a program, the Program Leader and/or student assistants should provide detailed information about the need for changes to participants and be available to answer questions.

Risk Management:

Campus Ministries has developed a “risk management” protocol that addresses obvious risks associated with travel to a developing country (ie. illness, accident, insurrection, assault, natural disaster) and group insurance to cover losses. Feedback from some participants indicates that they did not have full awareness of what to do in case of various emergencies, though such information is covered during pre-departure sessions. Additional training for participants in this area may be needed, or some assessment to ensure that they have taken in and understood the information provided would be appropriate. In addition, as previously set out, some work placement activities may involve risk that needs to be more carefully assessed and managed (ie. Participation in provision of medical care, situations of intense emotion).

To date, programs have only gone to locations where the Program Leader(s) have personal knowledge of the area. Program locations are researched/visited by Program Leaders, or with the help of their trusted contacts/colleagues. Upon arrival, a representative from the Canadian Consul visits to discuss area/risks, local police are informed that program is in the area, and additional security is sometimes hired.

Recommendations:

- A more comprehensive assessment of potential risks, beyond those already addressed in the crisis management protocol, and actions to address those risks should be included and documented as part of the Program Plan.
- All crisis and risk management plans for each program should be completed (revised as necessary) by the Program Leader and filed with the Office of the Associate Vice-President, Student Services, prior to departure for each program.
- Funding should be provided to support the implementation of risk management and emergency action plans, as required. For example, Program Leaders should continue to be provided with cell phones that can be used in the event of an emergency.
- A deselection process should be developed and communicated to participants setting out clear expectations of behaviour (adherence to the Brock University's Code of Student Conduct and the laws of the land at a minimum) and consequences for misconduct while on the program. Aspects to be considered and addressed in this process include: cost of return airfare, options for refunding participants' fees, and parental/emergency contact. SEA staff are encouraged to investigate and consider deselection processes used for similar programs and exchanges. This information should be covered in pre-departure sessions.

Follow up and Assessment of the Program:

SEA staff reported that an evaluation form has been created, but it has not always been used. Many students offer their feedback/testimonials for marketing purposes. As previously indicated, there are daily debrief sessions conducted by the Program Leaders during the program and it is an informal role of the student assistants to check in with students.

Feedback from some participants indicated that they did not feel welcome to give constructive criticism of the program and negative feedback given to date has not been well received.

Recommendations:

- A more formal evaluation process need to be designed and implemented so that all participants feel comfortable and free to give honest feedback about the program. This should be done independently and ahead of seeking any "testimonial" for marketing purposes. Feedback from students should only be used for marketing with their written consent.
- Pre-departure sessions and the follow up evaluation process should include a clear statement about where participants can address any concerns or issues they have about their SEA experience. This might include that such issues are first brought to the Program Leader, then to the Office of the Associate Vice-President, Student Services. This feedback process should also be communicated on the SEA website.
- Brock University and SEA program staff will not facilitate an extended stay in another country. Any additional travel by a participant will be at their own risk and liability. As part

of program preparation, SEA program staff will provide each participant with a return airfare ticket to return with the program group and will not make alternate travel arrangements.

Academic Component:

Students wishing to use the program for academic credit (both undergraduate and graduate are possible) are responsible to arrange this with a professor, though SEA members will assist in sharing information and discussing project possibilities. Approximately 60% of students attending SEA do so for credit. As academic credit is determined by faculty, as part of their course curriculum, this review does not assess or address any issues related to the use of the SEA programs for academic credit. The review panel recognizes the academic freedom of faculty to plan and conduct their courses and to make decisions regarding the use of the SEA program experience as part of students' academic study.

Recommendations:

- Marketing materials may state that programs are designed to enhance participants' learning experiences. Marketing materials should not contain any reference to academic credit. Faculty members may access SEA programs as potential placements for course work.

Program Challenges:

The following were identified as challenges to the program:

- perception that program is religious based/open only to students of a particular religion and rumours about connections to Opus Dei
- persistent challenges to some local partners of the SEA program by faculty
- most common student issues: homesickness, feeling overwhelmed by poverty
- Funding/costs – big challenge is to keep costs low so that students in all economic circumstances have the opportunity to attend – this poses challenges in making program arrangements – ie. low cost accommodation/travel, limiting number of placements to reduce costs – balancing low cost and safety
- 75% of participants are female – challenge to engage male participants
- staffing levels – the need for an administrative assistant and more Program Leaders/student assistants was noted, particularly given the growth in the program
- finding the right balance to ensure sufficient time is allocated to work directly on projects while at the same time trying to ensure participant safety is not compromised

The fact that SEA was now recognized with its own cost centre was seen as a start in addressing some of the program challenges. A Schedule 5 request has previously been made, but has not yet been approved.

Recommendations:

- Increased funding and staffing will be required as the program expands and to address some recommendations being made for improvement in the program. In addition, accessing programs like Experience Plus and International Plus may provide assistance in hiring student staff for administrative duties or as student assistants. Increased funding for research and site visits is also needed if the program is to be expanded to additional locations.

- It is recommended that SEA have a clearer link to Brock's Internationalization Policy (want 10% of grads to have some international experience) as it provides a better opportunity to increase quantity of students getting this than exchange programs.

Appendix 8

CENTRE FOR WOMEN'S STUDIES SUMMARY REPORT: SOLIDARITY EXPERIENCES ABROAD, LATIN AMERICA, INVESTIGATION 2011-2012

Introduction

In November 2011 a number of concerns were brought to the attention of the Center for Women's Studies, and the Department of Sociology regarding the Solidarity Experiences Abroad (SEA) to Latin America program organized through the Roman Catholic Chaplaincy at Brock University. These concerns led to the creation of a motion, passed unanimously, urging Brock University to end its formal endorsement of Solidarity Experiences Abroad, Latin America, (SEA) and to end all ties to their local partners, i.e. the Sodalit Family, Sodality of Christian Life, Solidarity in Action, and the Christian Life Movement. The Brock University Faculty Association and CUPE Local 4207 also endorsed the motion.

This recommendation would reinforce the separation of academic practices from ecclesiastical concerns and processes. Outside the boundaries of Brock's formal endorsement, SEA would be free to continue to operate in the broader community as an ecclesiastical exercise. This report summarizes the rationale for these motions. Given that over 1000 Brock students have participated in SEA since 2004, and that six trips are organized for 2012 we urge a careful review of how continued support of the SEA program might influence the reputation of Brock University.

Partnerships as the framework for solidarity experiences abroad

In 2004 Brock University signed a 'Concordat' with the Roman Catholic Diocese of St. Catharines which was intended to "define its long term relationship as a **Partnership and Association** (emphasis in original)... [through] their common aim in promoting culture and integral human development." This document served as the foundation for establishing the SEA program.

The Concordat establishes a special relationship between Brock University and the Roman Catholic Church. We would assume, in order to avoid the perception of unfairness, namely that the University looks more favorably on this religious community than others, that other religious groups, including those represented in the Faith and Life Center (Jewish, Muslim, Lutheran, and Christian Reformed) should also have the opportunity to establish a special relationship with Brock and, if they wish, to sponsor similar solidarity trips overseas. Under the current framework, Brock University could have multiple agreements with a variety of religious institutions for partnerships in solidarity work abroad.

We argue that the framework of university - religious partnerships for organizing solidarity experiences abroad poses a number of problems which require attention and review. First, Brock University is a secular educational institution which is bound to uphold human rights as defined by legislation in Canada and internationally. In this context, we suggest that our special relationship with the Sodality of Christian

Life which is the local partner for the SEA program in Latin America could compromise the academic integrity of these trips and may expose the university to unnecessary risks. We highlight these concerns below:

I. Academic integrity and curricular issues

A key concern in determining partnerships for solidarity experiences overseas is the degree to which students have access to, not just an international experience, but *also* are exposed to the *academic debates in the field* regarding the problematic of solidarity work. Over the past forty years scholars have been asking a difficult set of questions about what it actually means to put relatively affluent, mostly white, unilingual and sexually curious students in a 'real world' situation abroad for a short stint. Is it possible that well-intentioned, liberal and humanist ethics developed in elite institutions in the North could be perceived as, or could in fact be colonialist in specific situations in the south? Considerable research is now focused on what kinds of organizational and pedagogical practices need to be developed to avoid this outcome. (Vainio-Mattila, Arja, Kris Inwood, and Aradhana Parmar 2004; Epprecht 2004; Kaufmann et. al, 1992; Cook 2008; Heron 2007; Nestel 2006)

We argue that it is crucial for Brock University to carefully consider the nature of the partnerships developed for solidarity trips in order to foster the academic and curricular integrity of these experiences. In this regard we point out that the Sodality of Christian Life Movement embraces values that are antithetical to declarations of the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW), to which both Canada (1980) and Peru (1981) are signatory. We are particularly concerned about the SEA partnership with the Sodality Family, including the Sodality of Christian Life, Solidarity in Action, and the Christian Life Movement in Latin America. We detail the rationale for these concerns below:

II. Gender Equity and Reproductive Justice

The Sodality of Christian Life actively works against movements promoting gender equity and reproductive justice in Latin America. According to Stephanie Rousseau (2007) from 2001-2003 the Sodality of Christian Life and other ultra conservative Roman Catholic groups exerted extraordinary influence over the Peruvian Health Minister, who then implemented health policies for 2002-2012 which destroyed and distorted the Family Planning Program and Women's Health Program (112-113). This perception was corroborated by *A Report by Physicians for Human Rights*. It found that:

despite being consistently touted as a political priority, there is no national concerted plan of action to reduce maternal mortality...Moreover, there has been retrogression with respect to family planning program and the availability of contraception ...and changes relating to abortion. First, as a result of reorganizing the National Family Planning Program in 2001, family planning and reproductive health lost priority and funding...A second form of retrogression was evidenced in Article 30 of the General Health Law of 1997, which included a requirement that doctors are obliged to denounce indications of a criminal abortion to the 'competent authority'... A third form

of retrogression can be observed in...[the] reduction in coverage for those in the lowest income quartiles...between 2003 and 2005. A Report by Physicians for Human Rights. "Deadly Delays: Maternal Mortality in Peru A Right-Based Approach to Safe Motherhood." (p. 9)

<http://www.law.harvard.edu/programs/hrp/documents/maternal-mortality-in-peru.pdf>].

Further, in 2007, the Regional Government of Arequipa tried to create a protocol for Therapeutic Abortion after rape. While the protocol was being developed, the Sodality of Christian Life acted with other groups to lobby against this by publishing articles in newspapers, and preaching against it in both sermons and schools run by the Church. As a result of this lobby the protocol failed to proceed. (Source: Religious Fundamentalisms and the Therapeutic Abortion Protocol in Arequipa, Peru http://issuu.com/awid/docs/religious_fundamentalisms_and_the_therapeutic_abor)

Our preoccupation with women's reproductive health is not un-related to the SEA Program. For example, we ask the university to consider what might be the protocol for assisting a student in the event of a sexual assault. Although this eventuality is unlikely, assaults do happen at Brock University and could also happen overseas. If the student wanted access to the morning after pill to ensure that she did not get pregnant as a result of the rape, how would this request be handled when the SEA local partner in Peru has specifically lobbied against women having access to this treatment?

III. SEA student participation in health clinics

In 2007, a Brock University review of the SEA program highlighted the following concern:

Some participants reported watching a live birth during placements and a marketing session for Medplus students suggested that they would have an opportunity to perform medical procedures, including suturing, during a placement. (p. 7)

The report suggested that the problems with this kind of placement were "legal liability for participants [students] and the University, as well as concerns about the emotional experiences of participants...." Consequently it recommended that work placements be carefully reviewed to ensure that students and the university are not being put at risk.

Our concern with this work placement, however, goes well beyond issues of legal liability and student distress. We believe the primary ethical concern to be addressed here is that women using the health clinic facilities run by the Sodality of Christian Life would have no opportunity to give informed consent to a group of foreign students *watching them* as they give birth. It is important to note that most SEA students do not have a working knowledge of Spanish or any other indigenous languages, and the MedPlus program does not provide any academic credits - hence students would have no skills to actually help in the medical procedures being performed, nor could they communicate with patients.

To provide an alternative framework for considering the ethical stakes involved we suggest thinking about a parallel situation in Canadian context: how would we assess a program that provided permission for students from Germany to watch a woman in a Canadian hospital giving birth – when those German observers could not speak English or French, hence could not obtain the woman's informed consent, and had no useful medical skills to offer? I believe that most of us would view this situation as one which turned a woman's most intimate experience into a public spectacle.

We suggest that if ethical issues of informed consent are overlooked then women using the Sodality of Christian Life health facilities become 'objects' whose medical procedures, including giving birth, provide Canadian students with education experiences sanctioned by a University with inadequate regard for the woman or person receiving healthcare interventions.

Recent letters from students who participated in the SEA program from 2007-2011 indicate that volunteers continue to be present at live births; and as of January 15, 2012, the Solidarity Experiences Abroad FAQ advertises maternity clinics as a placement site. Student placement activities also include medical triaging, neonatal assessments and street clinics amongst other public health initiatives. Given that the overwhelming majority of students do not speak Spanish, or the more common local languages (e.g., Quechua or Aimara in Peru) and most students have few if any medical skills to offer, it seems like students are gaining valuable international experience, while those in the host community might gain very little. Thus it seems important to give serious consideration to the 'ethics' of this trade-off in a context of existing north-south inequality. Further, as a university which requires students and faculty to follow rigorous protocols in relation to ethical behaviour in research, we would hope that the University would reflect further on appropriate understandings of 'ethical consent' in the context of the SEA medical missions.

IV. ***Additional concerns about human rights***

The Brock University partnership developed through SEA highlights troubling contradictions in relation to our responsibilities to uphold international human rights. More specifically:

- While the Roman Catholic position against lesbian, gay, bisexual and transgender people is well known, it is significant that the church also lobbies against efforts by local groups to enshrine legal protections against discrimination in law. For example, in June 2011, ACI Prensa (Roman Catholic newspaper in Peru) published an article criticizing a proposed by-law in Lima that would promote gender equality and end discrimination based on sexual orientation. (Ordenanza gay obligaria a aceptar "afecto homosexual" en colegios de Lima", 27 June, 2011). <http://www.aciprensa.com/noticia.php?n=33924>
- In 2011, the Roman Catholic Church acknowledged that German Doig (1957-2001), a founder and general coordinator of the Sodality of Christian Life movement and a spiritual leader for many youth, was guilty of three cases of sexual abuse. <http://diario16.pe/noticia/1320-sodalicio-confirma-inconductas-sexuales-de-su-la-der-espiritual>

Centre for Women's Studies, Summary Report on SEA Investigation

- In 2007, Daniel Beltran Murguia Ward, a Sodality of Christian Life Consecrated Layman was convicted of pedophilia.
<http://www.terra.com.pe/noticias/noticias/act1018766/capturan-pedofilo-que-era-laico-consagrado.html>
- There are repeated allegations of psychological and physical abuse by former Sodality of Christian Life members who say that initiates have been subjected to dangerous 'tests of faith' as part of their training:
<http://agenciaperu.com/sociedad/2001/nov/sodas.htm> and most recently:
<http://elquintopie.blogspot.com/2011/02/los-pecados-mortales-del-sodalicio.html>
- Scholars of Latin American studies have critiqued the Sodality of Christian Life movement for attempting to co-opt and reverse the progressive gains made by the Roman Catholic Church since Vatican II. See for example, Peña, Milagros. "The Sodalitium Vitae Movement in Peru: A Rewriting of Liberation Theology" *Sociological Analysis*, 53:2 159-173, 1993.
- Finally, the 2010 resignation of Bishop Wingle in St. Catharines, the signatory of the Concordat with Brock University, raises questions about accountability and transparency in the church handling of two recent sex abuse scandals within the Niagara diocese.
<http://www.thestar.com/news/ontario/article/806484>

V. **Supporting Academic Debate about Ethical Policy and Partnerships**

Many of the Faculty associated with the Center for Women's Studies and the Department of Sociology have worked, conducted research and volunteered overseas. Some of us have long-term projects, familial connections and institutional partnerships with grassroots organizations in Peru and elsewhere in the global south.

Hence the objective of this report is not to simply critique solidarity experiences abroad but to request that the University engage in a process of critical self-reflection to ensure that solidarity experiences provide the context for academically rigorous exchanges which also promote more genuine *solidarity* between Brock and their partners in the global south. Our objective is not to impinge the motives of any of the individuals associated with the current SEA program. Instead, we aim to promote *academic debate* about the current organizational partnerships so that the university can consider the most appropriate policy and institutional framework for future solidarity experiences.

Despite these objectives, since the motion passed in Women's Studies November 25, 2011, national and international Catholic News Agencies have published articles using inflammatory and threatening language to condemn one of our colleagues Professor Ana Isla. See for example: <http://www.aciprensa.com/noticia.php?n=35622> These Catholic News Agencies, including that for the Niagara Diocese, report on academic processes and internal program meetings at Brock University with specific information that is at times provocative, reproduced without informed consent or knowledge of individuals that are quoted and misquoted. As a direct response to the "News Reports" Professor Ana Isla has received directly to her Brock email unsolicited letters from Canada, USA and Europe. In this context it is

important to note that the ACI group [ACI Prensa (Spanish), ACI Digital (Portuguese), and Catholic News Agency (English)] have been officially administered by a Sodality of Christian Life member since 1987.

We trust that under the policy on academic freedom, the university would endorse the right of all faculty and students to participate in substantive academic debate about how best to organize University policy and partnerships. We suggest that giving the Sodality of Christian Life a **platform** to legitimize its conservative practices and values is inappropriate for a publically funded secular Canadian university.

VI. Alternatives

As a publicly funded, secular university, one would expect Brock must be duly attentive to any officially sanctioned experiences undertaken by our students, either in a volunteer setting or in a course work setting. ***Hence we respectfully suggest that Brock University consider phasing out the organization of international volunteer work through the SEA program and move to build partnerships with volunteer placement organizations that support international declarations on human rights.***

One alternative to Brock University organizing international volunteer solidarity work through religious institutions would be to establish partnerships with secular groups, whose mission is to organize youth volunteer experiences abroad. Some of these groups also promote critical reflection on north-south exchange. Examples of relevant organizations include:

- [CUSO International](http://www.cusointernational.org/) at <http://www.cusointernational.org/>
- [Katimavik](http://www.katimavik.org/) at <http://www.katimavik.org/>
- [Volunteer International](http://www.volunteerinternational.org/) at <http://www.volunteerinternational.org/>
- [Transitions Abroad](http://www.transitionsabroad.com/) at <http://www.transitionsabroad.com/>
- [Uniterra](http://www.uniterra.ca/) at <http://www.uniterra.ca/>
- [World University Service of Canada](http://wusc.ca/) at <http://wusc.ca/>
- [Youth Challenge International](http://www.yci.org/) at <http://www.yci.org/>
- Right to Play International at <http://www.righttoplay.com/International/Pages/Home.aspx>
- Canadian Crossroads International at <http://www.cciorg.ca/page.aspx?pid=1493>

There are a wide range of secular organizations which have spent decades developing their own local partnerships with grassroots organizations to engage Canadian youth in supporting community-based struggles for peace, health and justice. We hope that Brock University might develop a sustainable, long-term vision for solidarity experiences abroad that helps students to better understand academic debates regarding global inequality and how they might contribute to international social justice.

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Appendix 9



Campus Ministries Faith and Life Centre

Brock University
Student Support
350 Sunningdale Avenue
St. Catharines, ON
L2S 3L1 Canada
Tel: 905.675.5700
www.brocku.ca

St. Catharines, April 23rd 2012.

Mrs. Lynne Prout
Manager - Office of Human Rights and Equity Service
Brock University

Dear Lynne,

As per our last conversation in your office, I am sending you a binder with more information about the **bully action** that SEA participants were victims the last February 13th and 14th, which supplements my application of December 7th, 2011, and my appeal of February 6th, 2012. I would ask for these three groups of documents to be considered as a whole.

In that regard I would like you to know the following:

1. The binder contains information about the bully situations that female students related to the SEA Program at Brock suffered on last February 13th and 14th. It also contains the proofs that backup the pattern of harassment against me, and SEA at Brock University.
2. As a result of the process of gathering this information I would like to ask the Office of Human Rights and Equity Services (OHRES) to expand the respondents of my claim to the following persons:
 - a) The following professors of W.I.S.E.: Dr. Ana Isla, Dr. June Corman, and Dr. Cathy van Ingen.
 - b) Mr. Ian Woods, TA of the Department of Geography, one of the leaders of Occupy Brock.
 - c) Mr. Tim Fowler, Instructor of the Department of Political Sciences, Treasurer of CUPE 4207.

I believe the bully episodes of last February 13th and 14th makes clear how these three groups of people are acting in a coordinated way against students related with the SEA Program.

3. Also as a result of our research, I would like to ask OHRES to include Mr. German McKenzie as claimant, along myself.

4. For OHRES interest I am including the Final Report, produced by Brock's Internationalization Committee, as well as the Executive Summary SEA presented before it as a response to the false accusations made against it; since they are key information to better understand the context of the harassment episodes of last February 13th and 14th.

5. In a personal note, I would like to tell you that I have learned lately that some of the persons mentioned above have been networking with their allies in Peru after Brock's resolution, sharing out confidential information of the Internationalization Committee's investigation. This not only disregards again Brock procedures, but strongly suggests that we should expect new episodes of harassment against myself, Mr. German McKenzie, and the SEA Program at Brock.

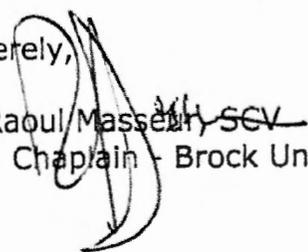
Because of the risk that new strategies intend to block next year's SEA 2013 Programs I think that with the harassment investigation case **Interim Measures** (Respectful Work and Learning Environment Policies #47) should be taken to protect us.

6. I would also like to mention -for your information- that Brock University has not made public yet the positive resolutions of the Internationalization Committee supporting the SEA Program, despite of the clear calumnies and slanders that I have been victim of. This means that my name and that of the SEA Program continue stained until date in at least four Brock Departments/Faculties. For that matter I feel the need to kindly request a fast resolution of my claim.

7. I would like to add as well the testimonies of almost 200 participants to the SEA Programs, open to be summoned to declare their position regarding this matter. In my personal opinion, their testimonies prove the ill disposition and ideological persecution of Prof. Isla, and the other instigators and perpetrators against me, as victim, because of my religious and pro-life beliefs. I ask these testimonies to be, also, part of my claim.

Please let me know if you may need any clarification in these matters.

Sincerely,


Br. Raoul Massé, SCV
R. C. Chaplain - Brock University

Details of Issue:

I received a letter from the Human Rights and Equity Service Office at Brock University, dated December 16, 2011, which informed me that the request I had submitted on past December 7 and 13, 2011 did not meet OHRES's conditions to be accepted.

I would like to appeal such decision according to which I would not have a case against Prof. Ana Isla, Assistant Professor at W.I.S.E. and the Department of Sociology, for religious discrimination and others. This time I will focus on the first reason. My reasons are the following:

1.1 believe there is enough details and particulars to layout a specific behavior pattern against me specifically. The facts are the following:

1.1. On November 25, 2011, Prof. Isla, through a letter, proposed a motion to the Department of Women Studies (W.I.S.E.), where she charges me with promoting racism, classism, homophobia, sexism, sexual abuse, physical abuse of the youth or women, psychological abuse of the youth or women. In addition she says have used Brock academic program's and other public resource from Brock University for purposes different than the service the Roman Catholic Chaplaincy at Brock. (cf. Documents 1 and 5)

Since these charges were passed in a meeting of the Department of Women Studies faculty meeting, I am sure the majority of professors there can be called as witnesses of this, and Dr. Shannon Moore, Director, in the first place. (cf. Document 2)

In spite of the fact that these are very serious charges, her only "proof" was to link me with a spiritual family with the Catholic church called Sodalit Family. (cf. Document 1) As a consecrated man I am still related to such spiritual family as I have the right to associate with others, as any other lay person has in the Catholic church, for a number of religious purposes. I have even held in the past some positions in such spiritual family and in all of those stances I have never ever promoted any of the horrendous things Prof. Isla accuses me of.

1.2. On November 30, 2011, the same Prof. Isla, through a letter, proposed an almost identical motion to the Department of Sociology (cf. Document 1 and 5)

Again, since these charges were passed in a meeting of the Department of Sociology faculty meeting, I am sure the majority of professors there can be called as witnesses of this, and Dr. John Sorenson, Chair, in the first place. (cf. Document 2)

The same than before, Prof. Isla's only "proof" was to link me with a spiritual family with the Catholic church called Sodalit Family. (cf. Document 1)

1.3. On December 2012, the same letter by Prof. Isla begun to circulate among the Departments of Modern Languages, Literatures and Cultures; Nursing; and Sport Management. Unfortunately, because of their fear to the consequences for them through the current complaint, I just have the testimony of Dr. Kirsty Spence, Chair of Sport Management, who has acceded to appear as a witness to my complain. She received Dr. Cathy van Ingen, who came with a copy of the above mentioned letter, and with the

latter discussed it's points. This happened on December 12th., during a meeting which took place from 8:45 to 9:35 am. at Dr. Spence's office (Walker Complex 236). (Cf. Document 3)

This means that I was publicly linked again, without a proof, with a number of very serious charges.

1.4. On January 18, 2012, at 10 am, before a meeting of Brock's Internationalization Committee, gathered at the Committee Room on the 13th Floor of the Schmon Tower. There Prof. Isla herself supported a research Report in which the same accusations than she made on November 30th before the Department of Sociology were made against me. Witnesses to this are the members of such Committee, Dr. Murray Knuttila, Chair, in the first place. (cf. Document 4, which was included in the already-mentioned Report).

Again, I was publicly accused again, without any substantial proof, with a number of very serious charges. This absolute lack of proofs has been confirmed by the Report the Internationalization Committee produced on January 27, 2012. (cf. Document 5)

1.5. I believe these facts are enough to give substance to my claim that there is on the part of Prof. Ana Isla a specific behavior pattern against me specifically.

2. I believe this pattern of behavior is appropriately characterized by religious discrimination.

2.1. Why do I state she is discriminating me because of my religious beliefs? Because under the accusation she makes against me about promoting physical and psychological abuse of women, or sexism, what she really means is that I am opposed to abortion and have a pro-life stance. I must say I do have a pro-life position, and that in my case I declare this is because of both rational and religious reasons. According to my religious creed, I believe in the sacred nature of life, from the very moment of conception up to the moment of death due to natural causes.

Does Prof. Isla realize that my pro-life stance is because I am Catholic? If we keep in mind I work as Roman Catholic Chaplain at Brock, which is a public position, by appointment of the Catholic Bishop of the Diocese of St. Catharines, the answer must be yes. She knows that to be appointed for the job entails to adhere to the official teaching of the Catholic church regarding human life issues. Such teaching has been invariable pro-life, both in Canada and globally.

What other proof do I have about the fact Prof. Isla's realizes that accusing me of sexism is because of my pro-life stance, based on my religious beliefs? According to her own words, since in her critique to the anti-abortion activities in Peru she finds the core of the matter to be (a) the "hegemonic ideology imposed by the state/church concordat," and (b) being the Catholic church the only one who has subscribed a concordat with the Peruvian state, one can infer that her real problem here is with the specific pro-life Catholic position. Consequently, in her argument she cites official publications by the Peruvian Conference of Catholic Bishops to, supposedly, give substance to her critique. (cf. Document 4) The Catholic church in Peru is against giving access to government funded "therapeutic abortion" and "emergency contraceptives" (which cannot rule out an abortive effect). She sees the Sodalit Family, to which I belong, as sharing this, in her view, negative position. (cf. Document 4)

In the last term, and according to Prof. Isla's own words, it is the above mentioned interest and not mainly concerns about Brock student's safety what is at the bottom of her recurrent behavior aimed to hurt my reputation.

2.2. Under Canada's Charter of Rights, I have the right of religious freedom and it is such right I invoke to keep my religious beliefs. Besides, I may say, in this I am not alone, whereas this is the official teaching of the Catholic church both globally and in Canada, as you may see in a large number of public documents. Just as example I may cite:

(a) Pope John Paul II, encyclical *Evangelium Vitae*, 25/March/1995, 63: "I declare that direct abortion, that is, abortion willed as an end or as a means, always constitutes a grave moral disorder, since it is the deliberate killing of an innocent human being."

(b) The Catholic Organization for Life and Family (COLF), sponsored by the Canadian Conference of Catholic Bishops, sent Prime Minister Stephen Harper a letter where manifest's its dismay for the decision by the Canadian government to fund abortion programs in Afghanistan, Bangladesh, Mali, Sudan and Tanzania, to be ran by the International Planned Parenthood Federation (IPPF). The letter was dated on October 4, 2011, and signed by Most. Rev. Gerard Weisner, OMI, Chairman of COLF Board and Bishop of Prince George.

These two mentioned positions have not changed to the present and express the Catholic understanding on the issue of abortion.

It is because this discriminating behavior on behalf of Prof. Ana Isla that I am filing a claim against her for religious harassment before Brock's OHR.

3. The above mentioned pattern of behavior, I believe fit the definitions under the RWLEP, and is very much vexatious.

3.1. My claim here is not that I am being a victim of defamation (which is something true but does not belong to Brock OHR's competence) by Prof. Ana Isla. My claim is that I am being harassed and discriminated because of my Catholic religious beliefs by Prof. Ana Isla.

3.2. According to RWLEP, I am stating here she is incurring in:

(a) Discrimination, because Prof. Isla is giving me a differential treatment based on my religious beliefs, treatment aimed to have an adverse impact on me.

(b) Harassment, because Prof. Isla's negative comments have been recurrent in the last three months. Going beyond this fact, it is good to remember that a single act severe enough may constitute harassment in itself, which I think is the present case.

(c) Personal harassment, since Prof. Isla's comments directed against me are objectionable because they do not serve to a legitimate work or academic related purpose. Although in appearance they look for the safety of Brock students who take part at the Solidarity Experiences Abroad trips organized by the Faith

and Life Centre, the core of her argumentation has very little to do with such issue, and much less to do with my involvement in such trips, but with events (a few of them true, the rest of them false) related to the Sodalit Family, events that have little to do with Brock student's safety. (cf. Documents 1 and 4)

(d)Psychological harassment, because Prof. Isla's statements are aimed to affect my personal dignity and to create a harmful work environment, inasmuch her insidious comments have created mistrust and sadness in regards to me within the Catholic community at Brock. Her statements have compromised my health to the point I had to go to the hospital with panic and anxiety attacks and chest pain. My blood pressure, because of Prof. Isla's statements, has turned very high now and with risks of a stroke. (cf. Document 6)

(e)Vexatious comments. Prof. Isla's remarks lack enough ground to prove anything and are just serving to cause me distress. The lack of substance of her accusations has even been recognized by Brock's Internationalization Committee after a thorough investigation process (cf. Document 5)

4.I believe Prof. Isla's statements may not be characterized as an expression of her academic freedom.

4.1. I respect Prof. Isla's right of freedom of speech, much more in the context of a university. I also endorse RWLEP's policy on the matter:

"The University recognizes the following:

- A richly diverse society in Ontario, as well as beyond;
- A duty to act in a manner consistent with existing legislation regarding human rights;
- A commitment to academic freedom and freedom of thought, inquiry, and expression among its members that may result in respectful disagreements regarding beliefs or principles." (No. 2)

In this light, I would like to say that Prof. Isla's academic freedom has not resulted in any respectful disagreement, but in a constant attitude of defamation and religious discrimination.

4.2.What specially caught my attention is the fact that she does not feel in need of talking with me at all before going ahead with what are objectively speaking very grave accusations, just in order to contrast her opinions before going ahead. I understand that disagreements come about after communication has been established, but regarding Prof. Isla it is the case that she has never contacted me to talk about any issue, either regarding the SEA Program or matters of principle, but, on the contrary, she has let me down every time I requested her some time for a friendly talk. (cf. Document 7)



Appendix 10



Office of the Provost and
Vice-President, Academic

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MEMORANDUM

TO: Dr. Shannon Moore, Director of Women's Studies
Department of Child and Youth Studies

Dr. John Sorenson, Chair
Department of Sociology

FROM: Murray Knuttila
Provost and Vice-President, Academic 

DATE: December 7, 2011

RE: Solidarity Experiences Abroad to Latin America

The W.I.S.E. Program Committee passed a motion on November 25, 2011 recommending that Brock University terminate its relationship with the Solidarity Experiences Abroad to Latin America program. I do not have a copy of the precise motion, nor am I aware of the evidence on which the motion was based; however a memorandum from Professor Cathy van Ingen to Professor Anna Lathrop dated November 25, 2011 refers to "numerous documented cases of abuse against youth and women perpetrated by the Sodalit Family".

On November 30, 2011 the Department of Sociology passed the following Motion:

Whereas there have been documented cases of physical and psychological abuse, classism, sexism, racism and homophobia in activities related to Solidarity Experiences Abroad to Latin America, the Department of Sociology strongly urges Brock University to cease support for the Solidarity Experiences Abroad trips to Latin America and remove all ties to local partners of those trips (i.e., the Sodalit Family, Sodality of Christian Life, Solidarity in Action, Christian Life Movement, etc.).

Given the seriousness of these allegations it is imperative that these allegations be thoroughly investigated. The responsibilities of my Office include the protection of Brock students while ensuring adherence to the tenets of natural justice when there is an allegation of malfeasance or wrong doing, to that end I will ask the International Advisory Committee to investigate. The Internationalization Committee is a committee struck by the Provost to advise on international matters. Its membership includes the Vice-President Research, Dean of Graduate Studies, Dean of Social Sciences, Dean of Business, Director of International Services, Director of Brock International, and a representative from the Library. In this instance, given their past involvement with this file, neither the Vice-Provost

Student Affairs nor the Director of International Services will sit on the Committee in order to ensure there is no possibility of a perception of bias. I will chair the Committee.

In addition, I have asked Dr. Greg Finn, Vice-Provost Academic, to establish a Committee under the rubric of our Student Travel and Safety Policy to undertake a separate and independent investigation of this matter and to make recommendations with regard to Brock's relationship to Solidarity Experiences Abroad to Latin America. I have asked Dr. Finn to ensure that there are at least two faculty members on the Committee he will chair.

In each case the investigations will need to examine all the evidence from whatever source you have at your disposal and that informed your actions. As I noted, the W.I.S. E. motion and the Sociology Department motion each makes reference to documented cases of abuse which are presumably the grounds for our termination of our relationship with Solidarity Experiences Abroad to Latin America. I will need any and all such documented evidence and any other relevant material so it can be placed before the Committee. I can assure you that any such evidence and documentation will be treated in strict confidence, subject only to the requirements of natural justice which allow any individual accused of wrong doing or malfeasance the right to confront and address the evidence on which an accusation or allegation is made; therefore all material will be shared with the other parties.

The Committee Chaired by Dr. Finn will act independently of the Internationalization Committee so he will also be in contact with you in due course. I note that Dr. Finn is absent from campus until the week of December 19. I am also away on University business from December 8 to the 17 and unable to follow-up on this matter until I return. I understand that this is a busy time of the year and I regret having to make this request at this time; however I am sure you understand the importance of handling this matter in a timely manner.

Thank you for your attention. I look forward to receiving the necessary material from you. Should you know of any individual or a representative of a group who would like to speak to the Committee, please let me know and we will do our best to accommodate such a request.

C.C. Dr. Thomas Dunk, Dean of Social Sciences
Dr. Anna Lashrop, Associate Dean of Applied Health Sciences
Dr. Greg Finn, Vice-Provost Academic
Ms. Kimberley Meade, Vice-Provost Student Affairs
Members of the Internationalization Committee
Dr. Raoul Masseur, R.C. Chaplain, Brock University

Appendix 11



**Brock
University**

Campus Ministries

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www.brocku.ca

January 12, 2012

Dr. Murray Knuttila, PhD
Provost and Vice-President Academic
Brock University

Dear Dr. Knuttila,

This cover letter is to respond to your memo of December 7th 2011. There you informed me of the motion passed by the W.I.S.E Program Committee on November 25th 2011, where they recommend that Brock University terminate its relationship with the Solidarity Experiences Abroad to Latin America Program based on alleged "numerous documented cases of abuse against youth and women perpetrated by the Sodalit Family". Also, the motion passed by the Sociology Department on November 30th saying: "Whereas there have been documented cases of physical and psychological abuse, classism, sexism, homophobia in activities related to Solidarity Experiences Abroad to Latin America, the Department of Sociology strongly urges Brock University to cease support for the Solidarity Experiences Abroad trips to Latin America and remove all ties to local partners of these trips (i.e., the Sodalit Family, Sodality of Christian Life, Solidarity in Action, Christian Life Movement, etc.)."

In order to respond to these grave allegations I have prepared my formal response/defense of the SEA Program to Latin America and local partners, placed in this binder. I want to state that, along with the documents I am presenting, I consider as a constitutive part of my response/defense the binder with the almost 200 testimonies of professors, staff, alumni and students that have actually participated in the SEA program and that were collected by my office in 2 days and made available to you.

As you have learned, as well, by my previous emails, I never had formal access to these materials before January 4th, so I disposed of a by far shorter chance that my accusers to prepare my defense. However, I appreciate your efforts to provide me with time and this opportunity.

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University

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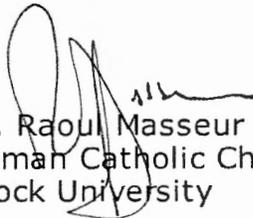
In this response I am trying to be brief because the almost 200 testimonies of professors, staff, alumni and students that have actually participated in the SEA program over 8 years existence are prove enough that no psychological or physical abuse has ever existed with our students. Neither cases of sexual harassment, religious pressure or lack of professional leadership in this SEA Program whatsoever, to the contrary that students safety has always been a top priority and a constant reality during them.

The most absolute transparency has been the characteristic of the SEA Program that has always looked for professors and staff members to accompany the trips and provided with fluent means of communication and detailed *rationales* with Student Services, making explicit every aspect of the program and partners.

However, some input has been necessary into comment on the questionable level of sources used by Prof. Ana Isla, trying to prove these alleged grave accusations with inconsistent documentation.

For that matter a division made in this response through **Appendixes** (using material presented by Prof. Isla) and **Sections** (documents offered by me in this binder) is available now for all the members of the Internationalization Committee and any other party interested.

Sincerely,



Br. Raoul Masseur
Roman Catholic Chaplain
Brock University

General Statement

Br. Raoul Masseur
Roman Catholic Chaplain at Brock University
January 2012

After reading the *SEA Investigation 2011-2012* put together by Prof. Ana Isla for her colleagues at the Centre for Women's Studies, I would like to state the following:

1. Such investigation is based on incomplete and/or highly questionable sources.

2. Its academic approach is one-sided, manichaeist and conflictual with a number of unstated assumptions. One of the most notable is that any intellectual position different than the one Prof. Isla's professes is wrong, and just her opinions are true.

3. This approach has not allowed any dialogue between Faith and Life Centre/Campus Ministries and Prof. Isla and her group, in a way that has impeded them to see any other interpretation of the real facts different than what she already had and passed to her group. In this manner no constructive intra-university synergy could be ever created.

4. The conclusions drawn from the supposed "facts", go far beyond of what is logical to infer.

5. Almost all the same arguments presented here were largely analyzed -for long eight months- by the SEA Review Committee led by the OHRES' Director Lynn Prout and Prof. James Mandigo in 2006-2007; I think that it is inappropriate and unnecessary to bring everything back again.

6. At the end, the investigation does not bring enough evidence to question the suitability of the SEA Program or its partners for students.

7. Prof. Isla's radical secular views are not shared for all academics at Brock, that could see positive aspects in spirituality. That approach is harmful in academia and is against Brock's goals and vision.

I will expand on these topics in the following pages: Please note than when citing **Appendixes**, I will be referring to the *SEA Investigation 2011-2012* put together by Prof. Ana Isla. When citing **Sections**, I will be referring to the different parts of this binder. Where needed, English translations of (relevant parts of) the Spanish in the original documents will be provided.

Executive Summary

1. The *SEA Investigation 2011-2012* put together by Prof. Ana Isla for her colleagues at the Centre for Women's Studies, and presented to Brock's Advisory International Committee, (hereon *Ana Isla's Investigation*) is based on incomplete facts and highly questionable sources.

A large number of facts are mentioned which neither has been appropriately confirmed nor detailed. Among them the following:

- *SEA Program participants stay in places ran by the Sodalit Family.*¹ This is false. None of the accommodations for SEA has ever been under a care of the Sodalit Family in any country. The Sodalit Family has never provided sleeping arrangements of any sort for SEA programs. In every country SEA rents retreat houses operated by different organizations. For example, in Peru students stay at a retreat house under the care of Marianists; in Ecuador, in one under the care of the Schoenstaat Congregation; in Brazil, in one under the care of Sisters of the Cenacle; in South Africa, at the Charismatic Renewal Centre.
- *The Sodalit Family promotes homophobia, sexism, goes against women rights.* This is not only false but Prof. Isla is maliciously equating being Catholic with promoting homophobia, sexism and going against women rights. No well intentioned academic would go in that direction. No cases of SEA participants have been reported that see these positions as the philosophy of the program nor of Campus Ministries. In her alleged proofs she presents the position of a Peruvian Bishop and the Catholic church in Peru as a "documented evidence" of SEA's wrongdoings and philosophy. What does this prove in relation to SEA?

Beyond, I would ask: Are Peruvian bishops entitled to defend positions different than Prof. Isla's and act according to their own cultural characteristics? Is it necessary to profess Prof. Isla's positions to be a good Brock employee? Are other Departments at Brock that differ from

¹ The Sodalit Family's spirituality and discipline is overviewed by the Catholic church. The concept of "spirituality" in Catholic communities is equivalent to the "philosophy" that inspires its members. Jesuits, Franciscans, Ursulines, Sodalits, etc., have their own spiritualities or accents/styles within the Catholic church. For example, the Jesuits have an emphasis on intellectual formation, the Carmelites on prayer, the Franciscans on love of the poor. None of these communities could even exist without approval or support of Catholic authorities regarding every aspect of their discipline and spirituality. These communities (also called congregations, orders, societies of apostolic life, movements, institutes, etc.) have large sets of initiatives like universities, schools, hospitals, intellectual centres, refugee shelters, soup kitchens, trade-training centres, scientist's stations, social justice work and institutions, etc., etc., that are part of their spiritual families. Some communities such as the Franciscans have gathered hundreds of thousands of sympathizers or members throughout the world. For that reason we can talk about the Jesuit Family, Franciscan Family, Basilian Family or Sodalit Family. More information about the Sodalit Family can be found on www.sodalitium.us

Isla's positions attacked because of that? (cf. Section C for the Catholic church's approval of the two core organizations in the Sodalit Family: the Sodality of Christian Life, and the Christian Life Movement)

- The two confirmed *cases of sexual misconduct* in the Sodalit Family she mentions, were in the first place reported by the Sodalit Family itself with all possible transparency, and were repudiated by the institution as inconsistent with its goals and values. (cf. Sections E and F). Their appearance in the media did not entail the revelation of any information different than what was already made public by the Sodalit Family, as has been suggested by Prof. Isla. There was no interest on the part of the Sodalit Family to conceal these cases; on the contrary, the institution was very much interested in having things resolved as soon as possible under the Peruvian law on these matters.
- Regarding these two cases of sexual misconduct, it is important to say they have occurred out of a large universe of religiously consecrated persons. In the Sodalit Family, in 40 years, the number of nuns, consecrated lay persons and priests are about 800. In this context the wrongdoers represented the 0.25% of the total. Despite of the very unfortunate existence of these cases an important conclusion to be drawn is that these statistics, compared with those of other similar institutions in the Catholic church and in other religious denominations, are notoriously low.
- The Sodalit Family does not promote neither *physical or psychological abuses* of the organization members, as it is stated by Mr. Escardó and Mr. Salinas that are questionable characters (cf. Section H). In 40 years, the only two cases where dissatisfaction brought to the media between parents and a member of the Sodalit Family are those of Br. Franz Guillén and Br. Axel Alt. There was no evidence of any abuse on the part of the Sodalit Family in these instances. (cf. Section I) They represent the 0.25% of the total of consecrated members. I do not understand why Prof. Isla is not able to access also the testimonies that deny her allegations and parents supporters of the religious life of their children as priests or religious brothers.
- SEA Program *participants have contact with Br. Luis Fernando Figari*, the Sodalit Family founder, on their trips to Peru? This is false. The only time this occurred was on a trip developed by the organization called CCCM -Canadian Catholic Campus Ministries- in 2006, and a few Brock SEA participants were interested in having a Catholic perspective on history and were strongly advised that this was a Catholic event for a group different than the Brock one. In none SEA program over the years have been scheduled any encounter of this type and all the activities and schedules are presented in advance to Brock authorities. The allegedly evidence she presents is the schedule of that CCCM trip. (cf. Appendix O)

- Br. Luis Fernando Figari has never incurred in a *case of sexual assault* against anyone. There were two newspapers, *La República* and *Cambio 16*, who were willing to publish this while all the other media (printed, radio and TV stations) found there were no grounds for the denounce. Br. Figari and the Sodalit Family denied the fact publicly and no proof was ever provided. (cf. Section G)
- Prof. Isla *takes very lightly official approvals of institutions and appointments for positions in the Catholic church*. She seems to ignore the fact that before being recognized officially by the Vatican at the highest level it takes place a thorough process of screening about their life, mission, founders, finances, etc. In a similar fashion, becoming Roman Catholic Chaplains at Brock University entailed, for Mr. Germán McKenzie and for me, to pass a thorough process of selection and screening on the part of the Diocese of St. Catharines, and that it is the Bishop of St. Catharines who proposed us to Brock for the position. If we were appointed it was because, in the mind of the Catholic church, we were/are fitting for the job. (cf. Appendix L)

Ana Isla's Investigation heavily relies on a number of journal news and internet resources, which are greatly questionable. She has put aside sources which do not lead to what appear to be preconceived conclusions. Among her sources one may find:

- The article by Milagros Peña, *The Sodalitium Vitae Movement in Peru. A Rewriting of Liberation Theology*. This has been cited as scholarly evidence for the accusations against the Sodalit Family.
- A Master's degree thesis by Ian Wood of the Sodalit Family. Wood took part in a SEA trip in the past, and gave a positive feedback of his experience. (cf. Section D)

Among the sources she has avoided one may find:

- The works by other Latin-American sociologists like Pedro Morandé, Carlos Cousiño, Alberto Methol-Ferré, Alejandro Estenós, among many more, on the new Catholic movements, into which the Sodalit Family can be included. In a similar positive vein one can find, among others, in the English-speaking world, the book edited by M.A. Hayes *New Religious Movements in the Catholic Church*.
- It would also be interesting to cite works by well-known Latin American liberation theologians Joao Batista Libanio and Segundo Galilea. The former considers "reconciling theology" (which is criticized by Milagros Peña's article) as a theological development which also addresses the need of radical change of unjust and oppressive social structures. The latter affirms that "reconciliation theology" gets the best of liberation theology and pushes it forward.

- A Master's degree thesis at Princeton University by Kathrin McWatters, *Filling the Void: Non-Governmental Responses to Urban Poverty in Lima, Peru*. (2003) This author compares the efficiency of several private NGOs in Lima, Peru, and finds that Solidaridad en Marcha, the Sodalit Family social branch, is the most professional and effective one.

A more detailed analysis of Prof. Isla's sources on events regarding the Sodalit Family in Peru, shows that 67% of the times she uses online sources as news agencies and blogs, which are instances whose credibility varies a lot. It is just the 37% of her sources that proceed from formal newspapers. Interestingly, in the last case, no Peruvian source comes from the more respectable printed media as *El Comercio*, *Peru 21*, *Correo*, but from *Caretas* magazine and *La República* (2 articles), both of them sharing the same ideological perspectives than Prof. Isla, and *Cambio 16*, which is a periodical prone to yellow journalism with very little circulation. There is no mention at all to newscasts done by radio (which are many) and TV stations (which just in Lima, the capital city in the country, are 8).

Regarding *Ana Isla's Investigation* online sources it is interesting to say that when they are useful to her preconceptions she uses them generously (as in the case of *Agencia Peru*), and when they criticize her opinions she discredits them (as in the case of *Aciprensa* and *CNA*).

When one goes a bit further and looks for the number of articles on which Prof. Isla's arguments are based, one finds that they are basically:

- 2 from *Caretas* magazine (2003, 2006)
- 1 from *Agencia Peru* (2001)
- and 3 more corresponding to: the two cases of proved sexual misconduct already discussed (2007, 2011), and another one related to the alleged (and never proved) sexual abuse by Br. Luis Fernando Figari (2010)

It is important to say that, when the disclosure of the information did not come from the Sodalit Family, all these pieces were in due time assessed and a public response provided by the Sodalit Family through the same media which disseminated the news.

Summarizing, in spite of the fact that *Ana Isla's Investigation* is contained in a very thick binder, her supposed proving sources are 6. Besides the two

lamentable cases of proved sexual misconduct, we are talking about 4 articles in a timespan of the last 10 years (or 40, if one counts the whole time of existence of the organization), which have not raised any further research and lest any legal action. In all cases a clear response on the part of the Sodalit Family was provided.

2.This approach has not allowed any dialogue between Campus Ministries and Prof. Isla and her team, in a way that has impeded them to see any other interpretation of the real facts different than that she already had and passed to her group. In this manner no constructive intra-university synergy could be created.

I have asked Prof. Isla to talk about her concerns since 2006, as it can be seen in the e-mails included in Appendix P of *Ana Isla's SEA Investigation*. Her response has been negative. She never has asked me to have a dialogue on the matters that concern her. This is surprising since what is at stake here is the well being of Brock's students, which is the main focus of my service at the university and I suppose is hers. Maybe she thinks she already knows what I might have to say.

This lack of willingness to dialogue, I think, has misled the professors of the Centre for Women's Studies and the Sociology Departments who voted in favor of the motions Prof. Isla mentions in her letter to the members of the International Committee, Brock University (cf. Appendix A of *Ana Isla's SEA Investigation*). Again, it seems like they already knew what I might have to say.

In past November Prof. Isla has been circulating among Brock professors a calumnious petition-letter in which she accused me of promoting racism, classism, homophobia, sexism, sexual abuse, physical abuse of the youth or women, psychological abuse of the youth or women, to promote minor surgeries by untrained "westerners" with "brown bodies". Likewise, she accused me of using the academic programs and other public resources from Brock University for proselitism and purposes different than the service the Roman Catholic Chaplaincy at Brock. She did this without presenting any proof. This is a grave legal matter and I hope Women's Studies do not consider these slanders "freedom of speech". (cf. Section A, where this letter is responded, item by item, by me; cf. Section B, where Mr. Germán McKenzie, former Acting Roman Catholic at Brock, brings his own response).

3.In *Ana Isla's SEA Investigation* the conclusions drawn from the supposed "facts" go far beyond of what is logical to infer.

From the two cases of sexual misconduct mentioned above, Prof. Isla deduces that students who take part in the SEA Program are in grave danger of being sexually abused. This is illogical for what has been already mentioned: these cases represent the 0.25% of the total consecrated members in the Sodalit Family and by no means can be considered general nor consented trend within the organization. Moreover, it should be said that Brock students are rarely in touch with consecrated people from the Sodalit Family.

From the two denounces of supposedly physical or psychological abuse, whose documented sources are weak, Prof. Isla infers that students who take part in the SEA Program are in grave danger of being physical or psychologically abused. This is the 0.25% of the total of nuns, consecrated lay persons and priests who belong to the Sodalit Family. Given the facts her fears sound unfounded. The logic that Prof. Isla is using here would lead us to say that no young people should come to Brock because of the well known cases of sexual misbehavior among Brock faculty.

Prof. Isla ignores the fact that as part of SEA Program policies we always ask Brock professors and staff members to take part of the trips. They share the same accommodations, solidarity placements, dialogues, leisure time, etc. than students. It is almost impossible that any of the misconducts Prof. Isla fears could happen without being noticed by adults not related in any way to the SEA Program. Unless, she implies that these professors and staff members are somehow covering wrongdoings, and all 1000 participants lack of any accurate perception of things. I personally, feel that is easier to prove that the SEA programs are very safe.

Finally, I believe Prof. Isla's approach to Brock students is very paternalistic. It seems to be the case she thinks they are not trained in critical thinking and that are not capable to notice when things are going wrong. My experience is quite the opposite.

4. Ana Isla's SEA Investigation's academic approach is one-sided and biased by a number of unstated assumptions. One of the most notable of these assumptions is that any intellectual position different than the one Prof. Isla's professes is wrong, and just her opinions are true.

Prof. Isla's account goes beyond her concern about the suitability of the SEA Program for Brock students, specifically the issue of security. Her discourse puts into question the way in which social justice and solidarity are presented to the SEA Program participants. Moreover, and going beyond into much more complicated issues, *Ana Isla's SEA Investigation* calls into question the suitability of any collaboration between the Roman Catholic

Diocese of St. Catharines, and more broadly, seems to me, the suitability of the Catholic Church's presence for Canada (cf. Appendixes A and B).

Among Prof. Isla's assumptions there are several that are very questionable. Among them:

(a) The only tenable sociological account to understand social justice and solidarity at the global level is that inspired by sociological "theories of conflict," which are inspired by K. Marx's approach. In this light, solidarity experiences that are not inspired by Isla's particular views on international justice and "critical perspectives" are just "feel good trips" oriented around "charity". Under this assumption, the distinctions between right/left, conservative/progressive, fundamentalist/liberal become paramount, and eliminate any further nuances and possible positions in the middle.

What is not mentioned is that there are other major sociological currents in contemporary sociology that offer accounts different than the mentioned above: just to mention a couple, the so called "functionalist" approach, based on the theories of Durkheim, and the "interactionist" perspective, inspired by G.H. Mead and others. Alongside with these one also can find Max Weber's theories. In consequence, there are no dogmas here that have to be accepted with no criticism, there may be other frameworks to talk about social justice different than the one Prof. Isla spouses, perspective that should have a legitimate place within the university debate.

Besides, I think that the honest identification on the part of scholars like Prof. Isla with the cause of justice, when placed within the framework of "theories of conflict", tends to foster in them an attitude of self-righteousness.

In this simplistic and manequist black-and-white approach that fit facts into ideological pre-conceived ideology there is a risk to operate with no freedom to see facts objectively; in this view the Catholic church is almost always presented as the "oppressor" even when hundreds of thousands of religious spent their lives serving the poor and defending human dignity. In this view, the Catholic church needs to be reduced and paralyzed, seems to me. For that matter probably she cannot recognize that I'm the victim of her slanders and secular fundamentalism, nor she is capable to see in the SEA program any positive nuance. How many more letters of support of professors, staff, alumni and students stating that her conclusions have no connection with reality are necessary to prove her that her statements are disconnected from reality? I pledge for a plural space at Brock.

(b) A second assumption here seems to be that the Roman Catholic presence in Canada is nocive for the country, and that this is also the case of the Niagara Area. One may not share the official teachings of the Catholic church

(among other things, about the defence of life from conception to natural death) but, in a truly democratic society, one should respect those who accept them. It is unfair to press someone to go against her/his good conscience, and even to deny the right of objection of conscience (before any national or international law). Moreover, the efforts the Catholic church to respectfully invite any person to know her better and, eventually, become a Catholic, should also be given a place. This is also true for any other religious tradition in Canada or for any professor's teachings. I believe this is what religious freedom and tolerance is about.

Any mention to a secret and evil "master plan" on the part of the Roman Catholic Diocese of St. Catharines to revitalize the Catholic life and apostolate in the Niagara Area does not make sense inasmuch the Catholic church has never renounced to such goals. The Concordat between Brock and the Diocese of St. Catharines was intended to give a framework to the collaboration between two of the largest and more important institutions in the Niagara Area. Nothing impedes other religious traditions or denominations to put together similar agreements with Brock University. Witch hunting attitudes should be out of academia.(cf. Appendix I, on Bishop Wingle, and Appendix C, on the Concordat).

The denounces against the Peruvian Bishop Eguren in terms of going against gender equity, reproductive rights and protections for LGTB people, understood as Prof. Isla does, go beyond a matter of safety regarding the SEA Program, into a different kind of debate. In his positions, what Bishop Eguren has done is to state what at the present is the official teaching of the Catholic church, Peruvian culture particular characteristics, and (in the case of "femicide") his own personal opinions. (cf. Appendix D)

(c)A third operative assumption here seems to be that religion is possible to be completely restrained into the private personal sphere, and that when that does not occur the results are always very negative. As a consequence of this, religious-based organizations are said to be inadequate as partners in solidarity trips.

The fact is that it has been a long time since religious studies scholarship has abandoned the approach that predicted the unavoidable decline of religion because of modernity. In today's post-modern world, religion is still alive and thriving, and the focus of research is now in religious change (cf. the studies on this by Ch. Taylor, P. Berger, R. Finke, M. Chaves, among many others). This is also true in Canada (cf. the work of R. Bibby and, W.A. Stahl just to mention a couple). This shift has triggered new perspectives in studies on the relationship between religion and the public place which do not see them only as mutually exclusive (cf. J. Casanova and his analysis of Spain, Poland, Brazil, evangelical protestantism, and Catholics in

the United States). On a different perspective, this has also triggered the question of religion minorities within liberal democracies, and has began a debate on new models of democracy: "hospital liberalism" (Ch. Taylor), "cultural liberalism" (W. Kymlicka), "deliberative democracy" (J. Habermas), and the kind of "mestizo logic" approach (Sh. Benhabib), among others. I has also initiated a debate on globalization and religion.

I just mention these trends in scholarship to show that things are much more complicated than what Prof. Isla's affirms in a rather simplistic way: that one should prefer non-religiously inspired partners for solidarity trips abroad. On the contrary, I believe that, in developing countries, religious-based organization have in involved with poor communities for long time and have a great deal of expertise. Besides, they tend to have, in such countries, a much more involved and effective action, and are less prone to corruption, than their secular or government-based counterparts. It is neither new nor recent that secular multilateral institutions as the World Bank partner with religious-based local organization to carry on their work on fostering social development. What Prof. Isla is proposing seems to me tainted with a very ethnocentric view of things.

Applying these criteria to the SEA Project the conclusion I would make is that it it key for the success of the program to keep the partners we already have (who are also very effective in their work) and to improve every time our work together, instead of changing them for secular ones.

5. At the end, Ana Isla's SEA Investigation does not bring enough evidence to question the suitability of the SEA Program or its partners for students at Brock.

There is no mention to any of the overwhelming number of positive testimonies by Brock professors, staff, alumni and students that have actually taken part of the SEA Program.

Given the fact of the complexity of this kind of trips, it is remarkable that in 8 years of existence, a period of time in which SEA has taken about 1000 students to different countries on Latin America and Africa, the feedback has proven to be so positive from different perspectives. Before this universe of 1000 participants, the 6 dissatisfied students mentioned by Prof. Isla constitute a very little 0.6% of the total.

The blue binder, which is part of our discharge proofs package, containing almost 200 support letters by professors, staff, alumni and students that have taken part of the SEA Program (received recently by the Faith and Life Centre/Campus Ministries in 3 days) once and again attest the following facts:

(a) During the trips there have not been cases of sexual harassment whatsoever.

(b) During the trips there have not been cases of religious harassment whatsoever.

(c) The trips help the participants in many different ways to grow academically and professionally.

(d) The trips are safe, and the overwhelming amount of testimonies state that my leadership as well as that of the other SEA leaders is very professional. Participants say they felt safe at all times. They value the way the trips are prepared, our knowledge of the local language and culture, the facts that we are proactive, welcoming and very well connected with the leaders of the local communities we serve and learn from. Even in the few cases where health issues occurred and there was need to go to the hospital, people involved found our protocol very adequate and efficient.

During the past days many participants in the SEA Program have told me about their willingness to have a word supporting the Program before the Internationalization Committee. I think they are too many to ask for some time for their purpose. I just want to mention the names of the persons whom I asked to do so and agreed on the matter, in case the time is too short for them to have proper space to do so. (cf. Section J)

Appendix 12

CONFIDENTIAL

MEMORANDUM

To: Murray Knuttila, Provost & Vice-President Academic
Members of the Internationalization Committee

From: Ian Wood

Date: January 18, 2012

Re: Solidarity Experiences Abroad, Latin America

After reviewing the content in the binder presented on behalf of Solidarity Experiences Abroad, and the 84-page document provided by Raoul Masseur on January 12, 2012 there are a number of issues I would like to present in complement with those presented by concerned Brock community members in the Departments of Women Studies and Sociology.

Part 1: Binder of Letters in Support of Raoul and SEA

The letters were selectively solicited and many respondents are not affiliated with Brock University

I was not approached to give feedback on the Solidarity Experiences Abroad, and I noticed that only a few of my colleagues on the 2005 trip (with exception of those who continued to participate in SEA) were featured. The letters received included supporters, alumni, and students from other Universities in Ontario that have not attended Brock University or worked for Brock University, and sympathizers or members of the Sodalit-run Christian Life Movement in Canada, Brasil, and Ecuador. The binder, evaluated in its entirety, is not representative of feedback of former participants of the Solidarity Experience Abroad program from the Brock University community.

SEA Participants provide medical clinics and watch live births

During a SEA trip to Peru in 2009, which was not identified as a MedPlus trip, a student claims that she and a couple of other volunteers watched a live birth at the maternity hospital (see letter by Brittany Butt). As of January 15, 2012, the Solidarity Experiences Abroad FAQ advertises maternity clinics as a placement site. Other letters referenced “medical missions” where students participated in “medical triaging, neonatal assessments and street clinics”, and “maternity wards” amongst other public health initiatives. A letter from one volunteer, Dana from Queens University, cites that there were issues in communicating in the local community at one instance, and another, Alaina Baker from UWO, cites that she could practice using clinical skills in an unusual setting. Letters from head of Career Services and the International Studies program say there was a ‘strict adherence to medical ethics’ in the procedures followed in this context. With respect, I would like the committee to think through a series of questions in relation to these practices:

- Given that the overwhelming majority of students do not speak Spanish, or the more common local languages (e.g., Quechua or Aimara in Peru) how is informed consent obtained? Is there a record of these forms? Where are they kept?
- Given that patients might feel if they did not give consent to student involvement, this might endanger their access to treatment – could we reflect on the meaning of ‘informed consent.’ Is this a context in which ‘consent’ can only really be provided under duress?

- As most students have few if any medical skills to offer, it seems like students are gaining valuable international experience, while those in the host community might gain very little. What are the ‘ethics’ of this trade-off in a context of existing north-south inequality?
- As a university which requires students and faculty to follow rigorous protocols in relation to ethical behaviour in research, I would hope that this committee could reflect further on appropriate understandings of this concept in the context of the SEA medical missions.

Part 2: 84-Page Document presented by Raoul Masseur January 12, 2012

Solidarity Experiences Abroad and Recruitment of Students

On Page 18, Raoul states:

“The ‘Solidarity Experience Abroad’ program does not recruit for the Sodalit Family or anyone. The Sodalit Family has never operated from Brock (What does this even mean?). There are no tactics of recruitment, because there is no recruitment; the organization develops projects and programs and people come -or not- freely.”

I believe that I can offer some insights on Raoul’s comments that will elucidate how trip participants are given the opportunity to develop deeper connections with the Sodalit Family.

During my experiences in 2005, SEA trip participants considered being in the Sodalit Family as workers, volunteers or as *aspirantes*. I recall Raoul taking us to a site in La Molina-Lima, Peru where there were two Sodalit-run schools – *Colegio Villa Caritas* and *Colegio San Pedro* – and a project to create vegetation of the desert environment on the school property. One participant, Andrea Klose, was offered the opportunity to teach at *Villa Caritas*. She was offered a job interview during the SEA trip (I cannot remember whether she had the interview but I recall that she chose not to pursue the work placement). Raoul facilitated the opportunity, which would require her to live in Peru and work in the Sodalit community for a Sodalit Family institution.

The letter I provided Raoul in 2005 (see page 34 of Raoul Masseur’s January 12, 2012 Document) suggests my interest in returning to Peru to volunteer with him through Environmental Studies [my program]: “If I did this [return to South America], I would be still very interested in volunteering through our program in different locations!”. This idea came from the fact that Raoul offered me the possibility to work on an environmental project in Lima, which I considered. Instead, I returned in a non-academic setting, with the help of Raoul, and worked at *Solidaridad en Marcha Peru* in San Juan de Miraflores-Lima from October to December in 2005. I was offered many opportunities to go on trips and pass time with Sodality of Christian Life members or *aspirantes*, including to San Bartolo for a weekend.

Another trip participant, Steven Marischuk (SEA Brasil 2005), considered joining the Sodality of Christian Life (featured in Appendix S of Women’s Studies dossier) as he went to Peru in 2005 to live in community with the Sodality of Christian Life in a retreat house in San Borja-Lima, Peru during the same time that I was in Lima. When Steven returned from Peru, he began to translate the works of Luis Fernando Figari into English. I recall that Steven performed this work for Raoul while in the Catholic Chaplaincy office in DeCew Residences at Brock University.

In 2006, one SEA Peru participant, Jen Coorsh, identified that she was invited to an educational lecture where students would hear Luis Fernando Figari speak of the Theology of Reconciliation and its relationship to poverty (See Appendix A). I have spoken to Jen about this as recent as 2011 when

discussing our respective experiences in Peru. She revealed to me that the speaker during the SEA Peru 2006 trip was Luis Fernando Figari.

After reviewing the binder presented on behalf of Solidarity Experiences Abroad, there are similar experiences of students where they have extended stays in Latin America or even join Christian Life Movement (CLM) and develop ties to the Sodality of Christian Life.

Krista Antonio, former student at York University, writes:

“In June of 2010 I had the opportunity to travel with Raoul and Solidarity Experiences Abroad to Rio de Janeiro, Brazil... With great trust in SEA, specifically Raoul, in September 2010 as I began the final year of my undergraduate degree at York University, I decided to undertake an Independent Study through which Raoul served as mentor and supervisor. I concluded my Independent Study by spending two months in Guayaquil, Ecuador under the auspices of SEA and Christian Life Movement... [I never felt endangered] due to Raoul’s unmatched hospitality and the hospitality of his Sodalit brothers across Latin America.”

(See Binder of Support Letters presented on behalf of Solidarity Experiences Abroad on January 4, 2012)

Matthew St. Louis, Brock Alumnus, writes:

“I currently act as SEA Inc.’s¹ treasurer and I am also an active member of SEA Inc.’s Board of Directors. I’ve been participating, leading and organizing SEA trips since 2008. I am also a good friend and am still very close to the Sodalite/CLM community, having lived and worked within South America between 2009 and 2010. This program and community of people that is involved has had a profound impact on my life by connecting my passion for solidarity with spirituality and my overall career objectives and aspirations... Having been closely involved with the Sodalite/CLM Communities apart from the actual SEA trips...”

(See Binder of Support Letters presented on behalf of Solidarity Experiences Abroad on January 4, 2012; See Appendix B)

Megan Blair, UWO Alumna, writes:

“Although I am not a Brock alumni, I am a member of the SEA/CLM community and have spent entire summers in Peru/Ecuador amidst the Sodalite/CLM community. My first trip was in 2006 to Peru, and I have returned to Peru 5 times after this experience as a leader, and this past summer spent almost a month in Ecuador... I have had the privilege of helping to establish and lead the Brock Nursing SEA trip the past 3 years... I am working with administration and faculty at UWO to get this program ignited here...”

(See Binder of Support Letters presented on behalf of Solidarity Experiences Abroad on January 4, 2012)

¹ SEA Inc. was registered as a corporation in 2009 but cites a Copyright of its name from 2004, the first year of the SEA trips operated from Brock University. The trips run by SEA Inc. are operated through Universities in some instances and Christian Life movement USA in another. The Peru Medical Mission that is offered Organized by CLM USA’s Medical Missions to Peru, and logistics are by SEA Inc. Raoul Masseur sits on the Board of Director of CLM USA’s Medical Missions to Peru.

German Mackenzie's Role in Solidarity Experiences Abroad and the Sodality of Christian Life

The following statements by German Mackenzie need to be unpacked:

"I have not used any academic program or any other public resource from Brock University for purposes different than the service the Roman Catholic Chaplaincy at Brock provides to the whole university community..."

I do not understand the motivations Isla has against me, since we do not know each other and we have never engaged in conversation. For the way she states her opinions it seems she is upset for what she believes are my personal convictions, which she may find different than hers. Even if this were the case, Isla seems to be acting in a way that expresses a great deal of intolerance and little care for my freedom of thought, my religious liberty and my honor."
(Page 27)

I cannot speak for Dr. Isla but I know that German Mackenzie's role in the Sodality of Christian Life is being overlooked in his statements. German Mackenzie is related to the Sociology and Women's Studies motion in a significant way: he was Regional Superior of the Sodality of Christian Life in Peru from (at least) 2003- 2006, encompassing the SEA 2004-2006 trips (See Appendix M of Women's Studies Dossier). As Regional Superior of the Sodality of Christian Life's most important location – Peru – he was in charge of the activities of Sodality of Christian Life in Peru, which include governing Raoul Masseur's activities and some sites that students visited during the SEA trips (See Appendix C). In his capacity as Regional Superior, the organization he was in charge of at the regional level was benefiting from a relationship with Brock University.

Raoul Masseur and SIA, Inc.

On page 23 Raoul Masseur states: "*Solidarity in Action, Inc.*" is a Canadian non-denominational organization with no connection at all to the Sodalit Family."

In 2005, following the SEA trip, Raoul Masseur tried to start a "Solidarity in Action Club" (I was in Peru). This club then turned into the production of an NGO in 2006, Solidarity in Action, Inc., which Raoul Masseur organized. The meetings were held in a Catholic Church basement in Merriton and involved former SEA participants. Raoul became the President of this organization, and had invited "students" from Bowdoin University, one of whom I had met in Peru, Ricardo Simmonds, who is a Sodality of Christian Life member. (See Appendix D)

I am not familiar with the role Raoul has played in Solidarity in Action, Inc. since 2006 but its existence would not be without his efforts.

Concerning All Statements Made about Me

I. On Page 6, Raoul Masseur claims:

“Ana Isla’s Investigation heavily relies on a number of journal news and internet resources, which are greatly questionable. She has put aside sources which do not lead to what appear to be preconceived conclusions. Among her sources one may find:

A Master’s degree thesis by Ian Wood of the Sodalit Family. Wood took part in a SEA trip in the past, and gave a positive feedback of his experience. (cf. Section D)”

My Masters thesis is titled “The neoliberalization of street vending policy in Lima, Peru: the politics of citizenship, property and public space in the production of a new urban marginality”. The Brock University Graduate Studies and Geography websites highlight my research interests and presentations on street vending policy in Lima, Peru during my MA Geography program. I never once wrote on the Sodalit Family as part of my Honours BA and MA degrees.

II. On Page 21, Raoul Masseur claims:

“The information taken by Dr. Isla from Guillen’s and Ian Wood’s blogs are not serious.”

The content being referred to is found in news reports from Peru, and student concerns about recruitment practices. I have come forward, after being informed about the recruitment practices in *Agencia Peru* and *Caretas*, to Ana Isla personally. Second, a student also came forward concerned about recruitment practices of the Sodality of Christian Life during an SEA trip in Appendix S of Women’s Studies dossier. The contributions that I have given to faculty members of Women Studies were done in person and in letters addressed to the University. The content that informs the Women Studies’ investigation or any investigation by its members does not include “information taken from Ian Wood’s blogs”, and it appears Raoul Masseur is confusing me with someone who has written on issues of recruitment online (i.e., Jose Enrique Escardo Steck).

I do not appreciate the unfounded statement that information taken from me is not serious.

III. Section D of Raoul Masseur’s report singles me out for comments made within two weeks after completing the SEA trip in 2005. Raoul Masseur states: “[Ian’s positive comment from 2005] makes me think that he changed his mind about SEA under the influence of other sources, not right after his trip as is have being misled for the readers of Prof. Isla’s material.”

My comments are hardly unequivocal support for Raoul Masseur and SEA but rather they do illustrate positive reflections of the opportunities that I had by being in Peru. As a naïve and well-intentioned North American concerned I found immediate gratification in performing volunteer work despite glaring issues that existed at the time (e.g., watching live births, children on construction sites) and issues that would be revealed in the future (e.g., informed consent of group participants and dwellers in the *asentamiento humanos*² that we visited regarding their use in promotional materials, and informed consent of who the local partners are). I have a framework much larger than the one I had at 21 years old, two weeks after the SEA trip in 2005. My framework is a product of the academic work that I have done in Peru and at Brock University from 2005 to 2011, my fluency in Spanish that I developed since 2005, and my experiences living

² Communities formed by squatting by marginalized groups – largely rural migrants from the Andes

in *asentamiento humanos* of Lima with family between 2006 and 2009. I do not appreciate insinuations that my concerns are a product of influence from other sources. The ability to articulate the concerns I have with the SEA trips and the Sodalit Family is because of my critical pursuit to understand the different spaces I am connected to and how I am situated in them.

Minor Medical Procedures Performed by Med Plus Students

Raoul states: “I CATEGORICALLY REJECT SUGGESTING THAT MEDPLUS STUDENTS WERE PROMISED THE OPPORTUNITY TO PERFORM MINOR MEDICAL PROCEDURES.” (Page 22)

This was part of the 2007 Report by Lynn Prout and James Mandigo. Raoul qualified the issues presented in that report as being largely analyzed for a “long eight months” (Page 3).

Issues of Professionalism and Informed Consent

One of the people listed on page 83 of the Document provided by Raoul Masseur is Daryl Kaytor. Daryl also identified that the purpose of his was for presentation at Brock University, that he was not informed of the use of his submission in ACI Prensa, and that his words were used out of context (Appendix E):

“I wasn’t told about [this Peruvian newspaper article] so it caught me by surprise for sure. I was asked to write a letter supporting the trips for use in some kind of council meeting at Brock. I didn’t know they were using it for a newspaper or I would have edited it better...”

[The article] at the end has me saying the attacks “shameful”. The quote is somewhat out of context from what I had originally wrote, but no perversely so. I said that I thought the sexual misconduct allegations were shameful, and it comes off here as though I am saying Ana Isla is shameful. I don’t know Ana, I haven’t read any of her critiques in several years now, and I would never mention her by name nor attack anyone personally...

Anyways, I think the SEA should be open to critiques from academics and the community, but I see the worth of the experiences I gained during the trip as very beneficial, obviously. If I knew the specific critiques you and Ana (and others I presume? I have not been in the community for some time) were making, I would have commented on those, but that simply wasn’t the case. It was a testimonial for Raoul basically.”

I would like to remind the Committee of the issues of professionalism and informed consent involving the depiction of my colleague and SEA 2005 participant Christine on the CLM UK website (Appendix M of the Women’s Studies’ Dossier), the unprofessional email sent by Raoul that discredits a former participant and attacks Ana Isla, and the letters highlighted in Appendix M of the Women’s Studies’ Dossier, which can be found in the FOI that I provided labelled as Appendix S in the Women’s Studies’ Dossier. (Also see Appendix E)

Appendix 13

Doc. 5

Raoul Masseur <rmasseur@gmail.com>

occupy brock

3 messages

Nicole Studenny <studenny_2@hotmail.com> Tue, Feb 14, 2012 at 3:46 PM

To: raoul <rmasseur@gmail.com>

Hey Raoul,

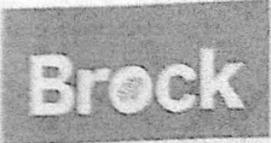
This is all the information that I know about what happened yesterday, unfortunately for some parts I was not at the table but was knocking on education professors doors to see if they would like to buy a rose from us. We had a fundraiser yesterday (and it was going to be today as well) where we were selling flowers to help raise money for the trip. In the morning a feminist professor stopped by the table and make some rude comments. Saying how she did not support that Brock was supporting our trip, but that she did not think there was anything wrong with religious trips, but that she did not think that they had a place in Brock (from the description the girls gave Andrew I am assuming it is a professor you had trouble with before). I was not here during this part. Then in the afternoon two males came by our table (around 2) and start to force the people who were buying flowers for us to take a flyer that had the same charges that you were faced with earlier in the year. I was not sure if we were allowed to say anything or what to do so I went to the office right away and talked to Andrew. We were not sure if we were allowed to do anything and well we were trying to figure it out one of the girls at the table contacted me. She said that the people had gone away because there was a BUSU election going on and one of the people running for election was buying a flower and was saying that he was going to call Campus Security because they were not being nice. By the time security came they had already left, but it was an outside person who called them. for the next half hour or so Campus security walked by our table to make sure that we had no more trouble. By 3:30pm we had sold out of flowers (which is why we are not doing it today) and at 4pm we had a meeting with Brock Marketing who wanted to do a short story on us. After Sam (the lady from Brock Marketing) had taken our picture and was getting our names the two guys returned with a third guy this time. They tried to give Sam their flyer but she said no and she figured that someone liek them would be there but she had no interest in what they had to said. Natasha was around this time, and she knew two of the males, the one was a professor, Tim something (i think she said that he was in labour studies) when I was telling Andrew, Andre was asking about who the male was and he knew of the Tim. Sorry I cannot remember his last name, Natasha knows and we told Andrew yesterday. The other male had been Natasha's TA at one point, but she could not remember her name. When they came by Campus Security came again because they heard from the BUSU election taht they were bothering us again, Natasha gave them the name of the professor. Today Karne walked by the table that we were suppose to have and the two males were once again trying to hand out their flyers. Andrew says that they have made it a Facebook organization

thing now. That is all that I know. It is not your fault that anything happened so you do not have to say sorry, I am sorry if we did not handle it properly, I went to the office and an outside person was the one who called campus security to get them to leave us alone. The girls at the table were not sure what to do, were upset that it was happening, and sacred because they were rude to people, but mostly we are just wondering what to do now, we don't want to cancel any of our fundraising events coming up but it seems that these guys will be there at them all.
I hope that this helps, it is everything that I know

Prayers,

Nicole

Appendix 14



Brock

Office of the Provost and
Vice-President, Academic

Brock University
500 Glenridge Avenue
St. Catharines, ON
L2S 3A1 Canada
T 905 688 5550 x4121
F 905 684 2277

March 14, 2012

Catholic News Agency
3392 S. Broadway
Englewood, CO 80113
USA

To Whom It May Concern*

Re: Attached item posted on your on-line CNA website.

I write as the Provost and Vice-President Academic of Brock University to express concern and objections with regard to the item I attach below. The item makes statements with regard to a faculty member at Brock University, Professor Ana Isla. One paragraph states that some protestors "appear to be linked" to Professor Isla, while another paragraph claims she is opposed to a program because of who created it. The first is an unsupported allegation without evidence and the second is, from the information I have, simply not true.

It is true that two academic units at Brock expressed their concerns publicly with regard to Brock's involvement with a particular experiential field-learning program with which Br Masseur is associated; however in none of the communication I received was Professor Isla explicitly mentioned. Brock University's Internationalization Committee handled the matter internally and made certain recommendations; however it is also my duty and responsibility to protect the academic freedom of Brock faculty and their right to express diverse opinions without fear or favor, and without being publicly singled out for potential abuse or reprimand. The fact that vitriolic statements follow the item in question exposes Professor Isla public humiliation and abuse as a result of the references to her in the item.

I respectfully request that you withdraw this item and refrain from identifying particular faculty members at my University without the required evidence and supporting documentation to support any claims and allegations. Individuals must have the right to defend themselves against claims and accusations such as these.

Murray Knuttila, Ph.D
Provost & Vice-President Academic
Brock University
St Catharines, Ontario
Canada

Appendix 15



Provost and Academic Vice President
Brock University

Brock University
Niagara Region
500 Glenridge Avenue
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L2S 3A1 Canada
T 905 688 5550 x4121
F 905 684 2277

March 14, 2012

Br. Raoul Masseur
R.C. Chaplain
Brock University
500 Glenridge Ave.
St. Catharines, ON

Dear Br Masseur:

I write as the Provost and Academic-Vice President at Brock University to express my personal regrets with regard to any negative personal impact that may have resulted from recent events at Brock University with regard to the Solidarity Experiences Abroad Program and the Program to Latin America with which you are affiliated.

As you know, Brock University's commitment to academic freedom allows members of the university community to participate in the free exchange of ideas and debates; however some of the accusations that were apparently made and public pronouncements of some of those involved may be seen to cast aspersion on your character and good name.

If this is the case, I offer my heartfelt and sincere personal apology and regrets. Rest assured that everything in my experience here at Brock University in dealing with you and everything that I have personally heard about you leads to the conclusion that you are a person of great integrity and that you hold the best interests of our students as paramount in the conduct of your office. To repeat, I hereby offer my personal apology for any injury that you and your good name might have suffered as we worked through this difficult matter. I look forward to continuing to work with you in the best interests of our students. I wish you peace.

Sincerely

A handwritten signature in black ink, appearing to read "Murray Knuttila".

Murray Knuttila, Ph.D

Provost & Vice-President Academic
Brock University
St Catharines, Ontario

September 10, 2012

HRTO File No.: 2012-11281-1

Contact Information:

Ana Isla
500 Glenridge Ave.,
McKenzie Chown, Room D 331
St. Catharines, Ontario
L2S 3A1

Members of the *Human Rights Tribunal of Ontario*,

It is respectfully submitted that the application of Mr. German McKenzie should be dismissed for the following reasons:

- I. Nothing in the application indicates that there is any employment relationship that falls within the parameters of the Ontario Human Rights Act
- II. I, the respondent Ana Isla, have not in anyway discriminated against Mr. McKenzie and nothing in the application suggests that Mr. McKenzie has experienced any discrimination based on his creed.

I. EMPLOYMENT ISSUE

- (i) Mr. McKenzie is not an employee of Brock University and there is no suggestion that he has ever applied for employment with Brock University. Attached you will find the University "Request to intervene in the Application based on the ground that the Applicant has asserted that the basis of his claim is 'employment' and he has given the impression that he was an employee of the University, which he was not" (nor had he applied for a position at Brock). (See Document 1).
- (ii) Mr. McKenzie's hope that he might propose a course to the business faculty of Brock University and then if successful apply for and be accepted as a teacher of that course does not bring him within the purview of section 34 of the Ontario Human Rights Act. The hypothetical possibility of his being an employee is far too remote.
- (iii) There is no evidence of any nexus between my activities and Mr. McKenzie's lack of employment.
- (iv) I, Ana Isla, have absolutely no employment relationship with Mr. McKenzie. In fact, I have never met Mr. McKenzie.
- (v) I am an Associate Professor at Brock University in the Department of Sociology and the Centre for Women's Studies. I have no input with respect to what courses are offered at the Business Department at Brock and I have no

input with respect to who teaches courses in that Department. It is in Business Department that Mr. McKenzie hopes he might be employed.

II. DISCRIMINATION

- (i) Mr. McKenzie asserts that my actions and the actions of others have somehow caused him health problems and that these problems have prevented him from preparing a proposal for a course in the Business Department which he hoped he could then teach. But my actions, and those of others that he complains of, were not in anyway directed at Mr. McKenzie nor concerned with his creed (or his belief in “the sanctity of life from conception”).
- (ii) There is no evidence to suggest that Mr. McKenzie’s lack of employment at Brock University has anything to do with his creed or beliefs about abortion.
- (iii) The activities that Mr. McKenzie complains of all involve the exercise of the protected right of freedom of expression in the context of the University. In each incident complained of, Mr. McKenzie was not mentioned nor was his creed. Each incident involved legitimate discussions and debate concerning University policy or the nature of the organization to which Mr. McKenzie belongs. Nothing in those discussions or debates could be construed as discrimination on the basis of creed.
- (iv) While it is regrettable that Mr. McKenzie has health problems, if those health problems are a result of his learning that others oppose his point of view and express their opinions this is unfortunate. But Mr. McKenzie’s sensitivity to legitimate discussion and debate are not proof of discrimination. The assertion of discrimination appears to be an effort to silence opposition to his point of view and to stifle criticism of an organization to which he belongs since nothing said or done refer to in Mr. McKenzie’ application has been in the nature of discrimination against his creed.

See detailed response to each of incidents in III below

III. RESPONSE TO EACH ALLEGATION

8.1:

I did not claim that German McKenzie was “promoting racism, classism, homophobia, sexism, sexual abuse, ...”. Rather the intent was to describe the doctrine of the organization to which he belongs (the Sodality of Christian Life or the Sodality Family). In the incident in question, I never mentioned German McKenzie, but in referring to his organization (the Sodality Family in this response) I did argue that his organization promotes racism, classism, homophobia, sexism, sexual abuse which is well documented. See Document 2 - Re: Solidarity Experience Abroad background.

The motion passed by the Centre of Women’s and Gender Studies, Department of Sociology, Brock University Faculty Association, and CUPE 4207 (Document 2) are not

charges against German McKenzie (as he claims). I repeat, at no time did I refer to him by name or by inference in oral or written communication.

I have documented evidence of the actions and activities of the Sodality Family (Document 3 – “January 4, 2012 Dear Members of the International Committee” and Document 4 – “Factual Presentation: This presentation has 3 objectives”).

Many members of the Brock community are working to change Brock’s policy for students intending to participate in international voluntary experiences. These people include all those who passed the above motion: members of the Center of Women’s and Gender Studies, the Department of Sociology, Brock University Faculty Association, and CUPE 4207.

In this complaint Mr. McKenzie describes our activities as if they were directed against him, but our activities were intended to inform others about the doctrine of the Sodality Family. Mr. McKenzie was never mentioned to.

8.2:

It is not true that I personalized my comments when proposing the motion to the Sociology Department. The motion proposed in the Sociology Department on November 30, 2012 at no time refers to German McKenzie by name or by inference. The motion passed was identical to that passed by the Centre for Women’s and Gender Studies (see document 2). I am a member of both departments of Sociology and Women’s and Gender Studies. This document makes no reference to Mr. McKenzie and did in no way promote discrimination on the basis of creed. The passing of such motions in the university context is a completely legitimate form of freedom of expression.

8.3:

In this complaint Mr. McKenzie refers to a “letter”, I believe he is referring to the same motion that we passed in the Department of Sociology and Women’s Studies. It is not true that Mr. McKenzie was “publicly linked with a number of very serious charges.” The motion never mentioned Mr. McKenzie but was concerned with the Sodality Family. At no time in any of the discussions on proposed policy change (see Documents 2 and Documents 3) did I mention McKenzie.

8.4:

The Centre for Women’s Studies Summary Report provides documentation that the Sodality Family is opposed to women’s freedom of choice with respect to abortion. Mr. McKenzie acknowledges. Again Mr. McKenzie was never mentioned in the Report and the Report is an expression of our findings and in no way discriminates against Mr. McKenzie on the basis of creed. The Report argues that Brock University should only partner with international organizations that embrace UN human rights conventions, including the declaration of the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW), to which both Canada (1980) and Peru (1981) are signatories. It is my right and the other authors of the Report to express our point of view on this issue. Taking this point of view does not promote discrimination on

the basis of creed and has nothing to do with Mr. McKenzie who is free to express his own opinions.

8.5:

This is not an accurate description of this event. A careful reading of Dr. Spense's email, demonstrates that Dr. van Ingen gave the report upon request to the SPMA Chair, who is also the instructor, SPMA 4P93 Sport for Development Field Experience (to Peru).

8.6: I do not dispute this point

8.7:

I am not responsible for the actions of CUPE 4207. I have not seen the CUPE website. Our report did not suggest people be removed from campus. Rather we argued only that the University should not endorse any religious organizations.

8.8:

There will be many occasions on the Brock campus that people are exposed to others who hold opinions counter to theirs on the university policy issue, as outlined above, and on reproductive rights. People will disagree. People will argue. We regret that Mr. McKenzie had health problems as a result of hearing our opinion.

8.9:

The fact that the International Committee allowed the sports team to make the trip planned for February, by ruling that the program did not pose "any substantial or immediate risk to mature consenting adults" is irrelevant to the issue of whether Mr. McKenzie has been the victim of discrimination.

8.10:

While I am not responsible for the actions of Dr. June Corman, nor do I direct her activities, I heard her remarks at the public forum on February 1, 2012. She did not criticize German McKenzie as he states nor did she mention him. She proposed that the university authorities sever any links between Brock volunteer opportunities and religiously affiliated groups. June Corman was polite and calm in expressing her point of view and was perfectly in her right to do so. In making this argument, Dr. Corman, in no way discriminated against Mr. McKenzie on the basis of creed.

8.11:

We did not dispute that OHRES found against Mr. McKenzie. We disagree with Mr. McKenzie's position. I have never spoken with Mr. McKenzie. My activities have been aimed at informing other university members about the Sodalit Family.

8.12:

I do not agree with Mr. McKenzie's description of this event. Dr. June Corman reported to me the following: the students initiated the conversation by asking her to buy a rose to support their pending volunteer trip with Sodalit Family to South America. I understand that she said that she would not buy a rose because she did not think that Brock should formally endorse the volunteer activities affiliated with religious groups. I understand the conversation ended at this point, and she did not mention Mr. McKenzie's name. In any case Dr. June Corman does not speak for me. As well, I was unaware that Mr. Fowler and Mr. Wood distributed leaflets to the students as described in McKenzie's submission. Both Mr. Fowler and Mr. Wood have informed me that Mr. McKenzie's description is not accurate.

8.13: I don't know what happened in this incident. It has nothing to do with me.

8.14:

I have not harassed nor bullied Mr. McKenzie. As I have stated I never met Mr. McKenzie. What I did was to inform the university community about the Sodalit Family.

IV. FAILURE OF MR. MCKENZIE TO EXHAUST REMEDIES

German McKenzie made a decision to file the above noted complaint with the Ontario Human Rights Tribunal before he exhausted all his options.

German McKenzie has an open complaint registered against me, Dr. Ana Isla and others, with the Respectful Work and Learning Environment Policy (RWLEP)¹ at Brock University (filed by Raoul Masseur and German McKenzie). This file was presented to the Human Rights and Equity Services (OHRES) on April 4, 2012, a month later, McKenzie filed a complaint to the Human Rights Commissioner Ontario (HRCO). RWLEP at Brock accepted the second application on April 27, 2012 and it is open and on-going at this time.

German McKenzie's provides documentation that demonstrates that his initial application invoking the RWLEP on January 26, 2012 was dismissed by the OHRES on February 10, 2012.

¹ See Brock University, Office of Human Rights and Equity Services: <http://www.brocku.ca/human-rights/policies-procedures>

VI. BACKGROUND AND ISSUE OF FREEDOM OF EXPRESSION

The exercise of free speech by me and others to persuade and educate the Brock community about contentious issues and the nature of certain organizations is well within our rights and in fact obligations as educators. Nothing that has been done by myself or the others named in the complaint has amounted to bullying or harassment and it is completely misleading to suggest that the incidents in question are anything but the reasonable exercise of the right of freedom of expression. This is particularly so in the context of University life. Efforts were made by faculty members to change University policy with respect to the endorsement of organizations with the completely legitimate goal of ensuring that a publicly funded University be a secular institution. Such a discussion about the nature of Universities is completely within the range of legitimate debate. Such efforts cannot be considered harassment or bullying of individuals who happen to want to promote their particular religious ideas.

Further, it is completely within the protected area of freedom of expression to express opinions about an organization's racist, sexist, or homophobic tendencies. The expression of those views and the efforts to have certain departments adopt positions with respect to such organizations is also within the boundaries of legitimate debate at a University. Nothing we have done has discriminated against the applicant because of his creed and in particular because of his beliefs about abortion.

In summary, the Complainant has provided absolutely no evidence that his lack of employment has anything to do with his views on abortion. Further, the suggestion that our activities have had any impact on the complainant's desire to create a course and have it accepted by the University and to then obtain a position teaching such a course are purely hypothetical. Absolutely no causal connection has been shown between the fact that the applicant does not hold a teaching position at Brock University and my activities. Nor is there any evidence that my activities are in anyway connected to the fact that the course that the complainant wants the University to offer has not been offered.

The fact that I and others may disagree with the aims and practices of the organization to which the Applicant belongs is not a form of discrimination. The fact that we express our views and try to persuade others of our views is not discrimination against Mr. McKenzie. We have not discriminated against Mr. McKenzie on the basis of creed or because of his belief in the sanctity of life from conception. Moreover the fact that we disagree with the practices of the Sodalit Family has nothing to do with his hypothetical employment situation.

The applicant must, when he enters the University community, be prepared to have his views vigorously questioned and opposed and cannot try to stifle opposition to those views by claiming discrimination.

Appendix 17

BUFA



BROCK UNIVERSITY FACULTY ASSOCIATION
BROCK UNIVERSITY
ST. CATHARINES, ONTARIO L2S 3A1

TO: Varujan Gharakhanian
Director, Faculty and Employee Relations

FROM: David Whitehead *Stannum Lura for David Whitehead*
BUFA Grievance Officer

RE: Formal BUFA Complaint under Article 10 of the Collective Agreement re the University's actions against Professor Ana Isla

DATE: February 7, 2013

BUFA hereby submits a formal complaint, pursuant to the relevant provisions of Article 10 of the Collective Agreement, that the University has violated the Collective Agreement by its actions against Dr. Ana Isla:

1. by allowing procedures under the Respectful Work and Learning Environment Policy (RWLEP) to be initiated against Dr. Isla and four other respondents on May 10, 2012 based on invalid claims;
2. by allowing the Office of the Human Rights and Equity Services (OHRES) to review its own decisions;
3. by allowing the OHRES to accept as a valid complaint under the RWLEP a request presented by a complainant to modify a complaint that the OHRES had previously dismissed;
4. by allowing the complainant to initiate procedures on behalf of another person who had previously filed a complaint on the same subject-matter that was dismissed by the OHRES;
5. by allowing the complainant to add four new respondents to a complaint that had previously been dismissed by the OHRES;
6. by allowing the complainant to complain about events that he has not witnessed;
7. by using the reference to the provisions of confidentiality contained in the RWLEP to prevent Dr. Isla from exercising her right to communicate with BUFA, and to prevent BUFA officers from investigating the claim made by its member (contemporaneously, with the complainant publicizing the fact that he had filed a "complaint" with the OHRES on a major press agency reaching people all over the world);

8. by allowing Ms. Lynne Prout, the Manager of the OHRES, to authorize the complaint against Dr. Isla and against four other respondents, notwithstanding the fact that Ms. Prout was one of the co-investigators who had reviewed the Solidarity Experiences Abroad Program in 2006-2007 and was one of the authors of the Final Report, dated February 6, 2007. In these circumstances, BUFA submits that Ms. Prout should not have rendered a decision concerning the complaint against Dr. Isla and the four other related complaints;
9. by refusing to withdraw the complaint against Dr. Isla and by delegating the investigation of that complaint to an external investigator in violation of the RWLEP; and
10. by refusing to withdraw the complaints against the four other respondents, and by delegating the investigation of the complaints to an external investigator in violation of the RWLEP.

Articles of the Collective Agreement that have been violated include, but are not limited to, Article 3, Management Rights, Article 8, Harassment and Discrimination, and Article 10, Complaints, Grievances and Arbitration.

Remedy:

BUFA requests that the University ends any process or complaints related to these matters against its members or any other employees of the University.

cc: Ana Isla, Associate Professor
Linda Rose Krasnor, BUFA President

Appendix 18

BUFA



BROCK UNIVERSITY FACULTY ASSOCIATION
BROCK UNIVERSITY
ST. CATHARINES, ONTARIO L2S 3A1

TO: Varujan Gharakhanian
Director, Faculty and Employee Relations

FROM: David Whitehead
BUFA Grievance Officer

Sharon Lee for David Whitehead

RE: Formal BUFA Complaint under Article 10 of the Collective Agreement re the University's actions against Professor Cathy Van Ingen

DATE: February 7, 2013

BUFA hereby submits a formal complaint, pursuant to the relevant provisions of Article 10 of the Collective Agreement, that the University has violated the Collective Agreement by its actions against Dr. Cathy Van Ingen:

1. by allowing procedures under the Respectful Work and Learning Environment Policy (RWLEP) to be initiated against Dr. Ana Isla and four other respondents, including Dr. Van Ingen, on May 10, 2012 based on invalid claims;
2. by allowing the Office of the Human Rights and Equity Services (OHRES) to review its own decisions;
3. by allowing the OHRES to accept as a valid complaint under the RWLEP a request presented by a complainant to modify a complaint that the OHRES had previously dismissed;
4. by allowing the complainant to initiate procedures on behalf of another person who had previously filed a complaint on the same subject-matter that was dismissed by the OHRES;
5. by allowing the complainant to add four new respondents to a complaint that had previously been dismissed by the OHRES;
6. by allowing the complainant to complain about events that he has not witnessed;
7. by using the reference to the provisions of confidentiality contained in the RWLEP to prevent Dr. Van Ingen from exercising her right to communicate with BUFA, and to prevent BUFA officers from investigating the claim made by its member (contemporaneously, with the complainant publicizing the fact that he had filed a "complaint" with the OHRES on a major press agency reaching people all over the world);

8. by allowing Ms. Lynne Prout, the Manager of the OHRES, to authorize the complaint against Dr. Van Ingen and against four other respondents, notwithstanding the fact that Ms. Prout was one of the co-investigators who had reviewed the Solidarity Experiences Abroad Program in 2006-2007 and was one of the authors of the Final Report, dated February 6, 2007. In these circumstances, BUFA submits that Ms. Prout should not have rendered a decision concerning the complaint against Dr. Van Ingen and the four other related complaints;
9. by refusing to withdraw the complaint against Dr. Van Ingen and by delegating the investigation of that complaint to an external investigator in violation of the RWLEP; and
10. by refusing to withdraw the complaints against the four other respondents, and by delegating the investigation of the complaints to an external investigator in violation of the RWLEP.

Articles of the Collective Agreement that have been violated include, but are not limited to, Article 3, Management Rights, Article 8, Harassment and Discrimination, and Article 10, Complaints, Grievances and Arbitration.

Remedy:

BUFA requests that the University ends any process or complaints related to these matters against its members or any other employees of the University.

cc: Dr. Cathy Van Ingen
Linda Rose-Krasnor, BUFA President

Appendix 19

DATE: August 28, 2012

TO: Jack Lightstone, President, Brock University

FROM: Ana Isla, Associate Professor

Re: Human Rights Tribunal of Ontario

I request legal representation as covered by Article 47 of the Collective Agreement between Brock University and the Brock University Faculty Association. In the course of doing my job, I have taken certain stands that appear to disagreeable to German Mckenzie. Mr. Mckenzie has chosen to pursue a claim against me to the Human Rights Tribunal of Ontario. The Tribunal is September 17th (1:30-4:30).

The first task for the lawyer would be to request the hearing be postponed until April 2013 to coincide with the end of my teaching responsibilities. I did not receive the package from the Human Rights Tribunal – dated May 14, 2012 – until August 20th. I had left Canada on May 14th to carry on research and attend conferences in South America. Upon my return, July 31st, I was house bound with a broken foot.

I have arranged to meet with you tomorrow to discuss this matter. I will bring June Corman, as she is also a target of Mr. Mckenzie's organization and Charles Burton as my BUFA representative.

Appendix 20

Open Letter to Dr. Jack Lightstone, President of Brock University, September 26, 2012

Dear Dr. Lightstone:

We, the undersigned faculty members, wish to protest the position taken by the senior administration of Brock University in regard to the case brought against Professor Ana Isla at the Ontario Human Rights Tribunal, a case that was dismissed at the preliminary-hearing stage on September 17, 2012. In our view, the Brock administration must be held to account for the “hands-off” stance that it adopted in this matter. We affirm our full support for the position taken by the Brock University Faculty Association that the university had an obligation to provide Dr. Isla with legal representation and liability insurance, as stipulated in Paragraph 47 of the Collective Agreement, and we concur with the assessment of the BUFA Executive that the administration’s failure to recognize its obligation in this regard has alarming implications for academic freedom. Furthermore, we submit that the university administration’s position that the specific actions of Dr. Isla, which were the subject of the complaint against her, fell outside “the scope of her employment” places in jeopardy the right of all faculty members to play an active role in reviewing and challenging university programs and policies that they deem to be contrary to the interests of our students and the reputation of our university.

Signed by:

Hichem Ben-El-Mechaiekh

Gregory Betts

Kate Bezanson

Jeff Boggs

Jean Bridge

Jonah Butovsky

David Butz

Janet Conway

June Corman

Keri Cronin

Christine Daigle

Joshua Dumont

Ifeanyi Ezeonu

Tim Fowler

Margot Francis

Jane Helleiner

Ana Isla

Tamari Kitossa

Murray Kropf

Richard Miller

Shannon Moore

Hijin Park

Rebecca Raby

Mary-Beth Raddon

Larry Savage

Murray Smith

John Sorenson

Dennis Soron

Nancy Taber

Appendix 21

BUFA

BROCK UNIVERSITY FACULTY ASSOCIATION
BROCK UNIVERSITY
ST. CATHARINES, ONTARIO L2S 3A1



April 4, 2013

Varujan Gharakhanian
Director, Faculty and Employee Relations
Brock University
Human Resources and Environment, Health & Safety
500 Glenridge Ave.
St. Catharines, ON L2S 3A1

Dear Mr. Gharakhanian,

RE: Formal BUFA Complaint under Article 10 of the Collective Agreement re the University's Actions against Professor Ana Isla

Formal BUFA Complaint under Article 10 of the Collective Agreement re the University's Actions against Professor Cathy Van Ingen

BUFA submits that the amended grievances dated March 26, 2013 do not raise new issues, but result directly from the actions and decisions of the University concerning this matter. BUFA also submits that the amended grievances are in conformity with article 10.08 c. and moreover, that BUFA has the right to amend the grievances dated February 7, 2013.

BUFA and the University should proceed without any further delay to ask Mr. Kenneth P. Swan to serve as an arbitrator in the above mentioned grievances. BUFA will be providing further representations concerning the right to amend the grievances.

Subsidiary, BUFA is filing a new formal complaint to ensure that the most recent decisions of the University concerning this matter will be submitted to arbitration.

Yours truly,

A handwritten signature in black ink, appearing to read "David Whitehead", written over a white background.

David Whitehead
Grievance Officer
Brock University Faculty Association

cc: Linda Rose-Krasnor, BUFA President

Appendix 22

BUFA

BROCK UNIVERSITY FACULTY ASSOCIATION
BROCK UNIVERSITY
ST. CATHARINES, ONTARIO L2S 3A1



TO: Varujan Gharakhanian
Director, Faculty and Employee Relations

FROM: David Whitehead
BUFA Grievance Officer

RE: Formal BUFA Complaint under Article 10 of the Collective Agreement re the University's Actions concerning the Respectful Work and Learning Environment Policy Complaints against BUFA's Members

DATE: April 4, 2013

BUFA hereby submits a formal complaint, pursuant to the relevant provisions of Article 10, Complaints, Grievances and Arbitration, of the Collective Agreement, that the University has violated the Collective Agreement by its actions:

1. by refusing to fulfill its obligations under the Collective Agreement and the *Ontario Labour Relations Act* by considering the Office of the Human Rights and Equity Services as an autonomous decisional body different from the employer as it appears from the correspondence sent by email from Varujan Gharakhanian to Lynne Prout, dated March 20, 2013, and copied to David Whitehead, BUFA Grievance Officer;
2. by refusing BUFA the right to be notified of decisions that have an important impact on the rights of its members; and
3. by using the reference to the provisions of confidentiality contained in the RWLEP to prevent bargaining unit members from exercising their right to communicate with BUFA.

Articles of the Collective Agreement that have been violated include, but are not limited to, Article 3, Management Rights, Article 8, Harassment and Discrimination, and Article 10, Complaints, Grievances and Arbitration.

BUFA requests:

- a declaration that the University has violated the Collective Agreement by its actions;
- an order that, in matters related to the application of the RWLEP, the University shall fulfill its obligations as the employer under the Collective Agreement.

cc: Linda Rose-Krasnor, BUFA President