



## **POLICY ON HARASSMENT, SEXUAL HARASSMENT AND DISCRIMINATION PROHIBITED BY LAW**

Last revised by:

Senate	December 4, 2013	Minute IIB4
Executive Committee	January 16, 2014	Minute 11.1
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*Full history appears at the end of this Policy.*

### **STATEMENT OF PRINCIPLE**

McGill University is committed to excellence in teaching, learning, and research and to fostering a community founded upon the fundamental dignity and worth of all of its members. The University recognizes that such excellence can only flourish in an equitable environment in which all members of the University, at all levels, regardless of the nature of their work or area of study are free from Harassment, Sexual Harassment and Discrimination Prohibited by Law. The University is also committed to maintaining an office the mandate of which includes the education of, and the dissemination of information to, members of the University community concerning such matters as harassment, discrimination and equity.

Each Member of the University Community shares responsibility for respecting the dignity of, and giving fair treatment to all members of the University community. Moreover, each person is responsible for promoting and maintaining an equitable environment free from Harassment, Sexual Harassment and Discrimination Prohibited by Law, as defined in Section 2, below.

Particular onus is placed on those in positions of academic and administrative authority: to be aware of what constitutes Harassment, Sexual Harassment and Discrimination Prohibited by Law and what procedures are in place to provide information and to address complaints; and to implement and use appropriate and active management practices consistent with the achievement of the goals of this Policy.

Acts of Harassment, Sexual Harassment and Discrimination Prohibited by Law are University offences subject to disciplinary measures.

### **STATEMENT OF RESPONSIBILITY**

The University shall take measures aimed at creating and maintaining an environment free from Harassment, Sexual Harassment and Discrimination Prohibited by Law.

The University shall take reasonable action to prevent Harassment, Sexual Harassment and Discrimination Prohibited by Law, and, whenever it becomes aware of such behaviour, to put an end to it. Nothing in this Policy relieves administrators from the responsibility of addressing situations of inappropriate behaviour in accordance with good management practices, regardless of whether a specific Complaint under this Policy has been received. Nothing in this Policy relieves the University from its obligations under the Labour Standards Act of Quebec.

## **Section 1 – SCOPE**

1.1 This Policy shall apply to all members of the University community.

As far as complaints under this Policy are concerned, this Policy applies to members of the University who are under the control and authority of the University at the time of any alleged incident(s).

This policy does not and cannot apply to the internal affairs of corporations associated with McGill University but legally independent from it, such as student societies (PGSS, SSMU, student faculty associations, etc.) or staff unions and associations (AGSEM, AMURE, AMUSE, MAUT, MUNACA, MUNASA, SEU, etc.). Such corporations have independent legal rights and obligations, and are responsible for their own actions, including actions of their officers and members acting in respect of the Corporation.

1.2 This Policy is to be interpreted in a manner that is consistent with the goals given in the “Statement of Principles,” as well as with the provisions of the Civil Code of Quebec, the Quebec Charter of Human Rights and Freedoms, and the Labour Standards Act of Quebec.

1.3 Subject to Section 5.4.2 and 5.5.5, nothing in this Policy precludes either party from exercising any internal or external recourse available.

1.3.1 In the event that a Complainant should concurrently seek resolution of a Complaint under any other internal or external recourse, any Complaint submitted under this Policy shall be deemed to have been withdrawn.

1.3.2 Section 1.3.1 shall not apply where a Complainant is obliged to initiate an external recourse prior to the completion of the processes provided under this Policy in order to preserve a right to the external recourse.

## **Section 2 – DEFINITIONS**

2. For the purpose of this Policy:

2.1 “Advisor”, so identified, means a Member of the University Community who has agreed to act in an advisory capacity. Advisors are not paid for their services.

2.2 Assessor means an Assessor appointed in accordance with this Policy.

2.3 Complainant means a Member of the University Community who considers himself or herself the object of Harassment, Sexual Harassment or Discrimination Prohibited by Law as defined by the Policy, and who has filed a Complaint against another Member of the University Community in accordance with this Policy.

2.4 Complaint means an allegation of Harassment, Sexual Harassment or Discrimination Prohibited by Law as defined by this Policy and submitted by a Member of the University Community against another Member of the University Community in accordance with this Policy.

2.5 Conduct of a Sexual Nature means any conduct which, in whole or in part:

i) seeks the sexual attention or sexual favour of the person to whom it is directed; or

ii) treats the other person as an object of sexual desire; or

iii) is discriminatory or hostile to a person because of their sex (including gender identity);

and that is known or ought reasonably to be known to create for such a person an intimidating, hostile, or offensive working, learning, extracurricular or, in the residences, living environment.

2.6 Discrimination prohibited by law means any action, behaviour, or decision based on race, colour, sex (including gender identity), pregnancy, sexual orientation, civil status, age (except as provided by law), religion, political conviction, language, ethnic or national origin, social condition, a disability or the use of any means to palliate a

disability which results in the exclusion or preference of an individual or group within the University community. This includes both the actions of individual members of the University and systemic institutional practices and policies of the University.

- 2.7 Harassment means any vexatious behaviour by one Member of the University Community towards another Member of the University Community—in the form of repeated hostile or unwanted conduct, verbal comments, actions or gestures, that affect the dignity or psychological or physical integrity of a Member of the University Community and that result in a harmful environment for such an individual. Within the employment relationship, a single serious incidence of such behaviour that has a lasting harmful effect on such an individual may also constitute Harassment.
- 2.8 Member of the University Community means
- i) anyone holding office under the University Charter and Statutes;
  - ii) an appointee or employee of the University; or
  - iii) a student as defined in Section 1 of the Code of Student Conduct and Disciplinary Procedures.
- 2.9 Respondent means a Member of the University Community against whom a Complaint has been filed in accordance with this Policy.
- 2.10 Sexual Harassment means
- i) any Conduct of a Sexual Nature by one Member of the University Community towards another Member of the University Community, where sexual activity:
    - (a) is made an explicit or implicit term or condition of an individual's employment or status in a course, program, or activity; or
    - (b) is used as a basis for an employment or educational decision affecting an individual;
  - or
  - ii) any Conduct of a Sexual Nature by one Member of the University Community towards another Member of the University Community, the effect of which is to impair that person's work or educational performance where it is known or ought to be known that the conduct is unwelcome.
- 2.11 All references to the Provost include a delegate.

### **Section 3 – OBJECTIVES**

3. This Policy shall have as its objectives:
- i) prevention of Harassment, Sexual Harassment and Discrimination Prohibited by Law by means of education and other proactive efforts to promote awareness about equity among members of the University community, including the nature of Harassment, Sexual Harassment and Discrimination Prohibited by Law.
  - ii) ensuring that the University's policies and procedures foster an environment free of Harassment, Sexual Harassment and Discrimination Prohibited by Law.
  - iii) ensuring that procedures are in place to address Complaints of Harassment, Sexual Harassment and Discrimination Prohibited by Law.

### **Section 4 – PROMOTION OF AWARENESS**

4. In pursuit of the objectives described in Section 3, the University shall take measures to provide education, guidelines and dissemination of information relating to such matters as harassment, discrimination and equity, using a variety of means, as appropriate. (See Appendix.)

## **Section 5 – PROCEDURES FOR ADDRESSING COMPLAINTS**

### **5.1 *Appointment of Assessors***

- 5.1.1 The Provost shall consult with the university-level student associations, staff associations and unions on the appointment of at least eight (8) Assessors from the University community. The appointment of the Assessors shall be approved by Senate. The Assessors shall report directly to the Provost.
- 5.1.2 The Assessors shall be employees or appointees of the University. Half shall be chosen from the members of academic staff and half from the members of administrative and support staff (excluding staff in academic administrative appointments). At least one of the Assessors shall be from Macdonald Campus.
- 5.1.2.1 The Provost shall endeavour to have a diverse group of Assessors reflective of the diversity of the University Community.
- 5.1.3 The Assessors shall have staggered terms of three years each, normally commencing on September 1st.
- 5.1.3.1 The appointment of an assessor may be terminated, subject to Section 5.1.7.
- 5.1.4 The names of the Assessors shall be made known to the University community.
- 5.1.5 The Assessors shall elect from amongst their members a Coordinating Assessor.
- 5.1.5.1 In addition to serving as an Assessor, the Coordinating Assessor shall be responsible for:
- i) coordinating the activities of the Assessors, including arranging consultation and cooperation between them, as needed;
  - ii) maintaining a confidential record of all enquiries and Complaints and their disposition;
  - iii) ensuring maintenance of confidential files after the end of an Assessor's term;
  - iv) ensuring an equitable distribution of work between assessors while taking into account as far as is feasible the wishes of Complainants;
  - v) collecting the data necessary to allow for the preparation of reports on the operation of the Policy; and
  - vi) reporting at least annually to the Provost on such matters as are necessary for the effective operation of the Policy.
  - vii) participating in the annual review of the Assessors.
- 5.1.6 Assessors shall attend orientation and training sessions throughout their terms, as appropriate.
- 5.1.7 There shall be a process for annual review of the performance of the Assessors by the Coordinating Assessor and the Associate Provost (Policies, Procedures and Equity).

### **5.2 *Mandate of the Assessors***

- 5.2.1 Subject to Sections 5.3 and 5.4 of this Policy, the mandate of an Assessor shall be to receive a Complaint, investigate it, and to submit a report of the results of the investigation in writing to the Provost, as soon as possible but no later than thirty (30) working days after the initiation of a Complaint, unless the parties to a Complaint have consented in writing to a longer delay, which delay shall not exceed an additional period of thirty (30) working days.
- 5.2.2 If the Assessor believes that there is an immediate threat to the physical or psychological safety of the Complainant, the Assessor may recommend to the appropriate authority that temporary measures, as deemed appropriate, be instituted during the period of the investigation. The institution of such measures shall be without prejudice to the rights of the parties.
- 5.2.3 To the extent allowed by law, Assessors shall preserve confidentiality in the handling of all enquiries and Complaints.

- 5.2.4 Once a Complaint has been submitted in accordance with Section 5.3.1, an Assessor shall remain seized of the Complaint until:
- i) an informal resolution is reached between the parties in accordance with Sections 5.4.2 or 5.5.5;
  - ii) the Complaint is withdrawn by the Complainant in accordance with Section 5.4.3;
  - iii) the Complaint is withdrawn by the Complainant with the consent of the Respondent in accordance with Section 5.5.6;
  - iv) an Assessor files a report with the Provost with a copy to the Complainant and the Respondent in accordance with Section 5.6; or
  - v) a Complainant seeks resolution of a Complaint under any other internal or external recourse.
- 5.2.5 Nothing in this Policy shall prevent a Member of the University Community with potential grounds for submitting a Complaint from consulting with an Assessor to seek advice as to how their concerns may be addressed without submitting a Complaint. Should such Member of the University Community then submit a Complaint, such Assessor shall play no further role in the investigation or resolution of the Complaint under this Policy.

### **5.3 *Initiation of Complaints***

- 5.3.1 Complainant shall submit a Complaint to an Assessor in writing in sufficient detail.
- 5.3.2 An Assessor shall not consider a Complaint where the action, behaviour, conduct or decision which is the subject of the Complaint occurred more than one calendar year prior to the date of the Complaint.
- Nevertheless, in such circumstances a Complainant may exercise another available recourse in accordance with Section 1.3.
- 5.3.3 Upon receipt of a written Complaint, the Assessor shall provide the Respondent with a copy. Upon receipt of a response in writing by the Respondent, the Assessor shall provide the Complainant with a copy.
- 5.3.4 The Assessor shall provide the Complainant and the Respondent with:
- i) a copy of this Policy or link to the Secretariat webpage where it can be found;
  - ii) information on sources of advice and assistance; and
  - iii) information on their rights, obligations, and internal and external recourses, pursuant to the law and to applicable collective agreements, policies and regulations.
- 5.3.5 The Assessor shall inform both the Complainant and the Respondent of their right to be accompanied by an Advisor.

### **5.4 *Informal Resolution of Complaints Prior to Investigation***

- 5.4.1 Prior to commencement of any investigation under Section 5.5, the Assessor shall attempt an informal resolution through any means deemed appropriate in the particular situation, subject to Sections 5.4.1.1 through 5.4.1.4.
- 5.4.1.1 The names of the Complainant and the Respondent may not be divulged by the Assessor to any third party without their written consent.
- 5.4.1.2 The parties should attempt a resolution by engaging in an open discussion conducted in a respectful manner. However, no party to a Complaint is obliged to participate in an attempt at informal resolution.
- 5.4.1.3 All statements and disclosures made, information furnished, and documents and things provided or presented to the Assessor, if any, may be used at a subsequent stage unless consent to their use is withheld in writing by the person who provided them. The Assessor shall advise such persons of their right to withhold consent under this clause.

- 5.4.2 In cases where a resolution acceptable to both parties is achieved, the resolution shall be acknowledged by the Complainant and the Respondent in writing, in sufficient detail to allow for its implementation, with the Assessor signing as a witness. The resolution shall be deemed to be final and both parties thereby waive any further internal and external recourse based on the facts having given rise to the Complaint.
- 5.4.2.1 After an informal resolution has been reached, in the event of a recurrence of the behaviour which led to the original Complaint, the Complainant has the right to make a subsequent Complaint. Such Complaint will be addressed by means of a formal investigation, where possible conducted by the same Assessor that handled the original Complaint.
- 5.4.3 Where the Assessor is of the opinion that an informal resolution cannot be reached within a reasonable time, the Assessor shall so advise the parties in writing no later than 30 working days following the date on which the Respondent was informed of the Complaint, prior to proceeding to an investigation under Section 5.5.
- 5.4.4 At any time prior to the commencement of an investigation, a Complaint may be withdrawn by the Complainant.

#### **5.5 *Formal Resolution: Investigation of Complaints***

- 5.5.1 The Assessor shall investigate the Complaint fairly and objectively, using such methods as are deemed appropriate in the circumstances, which may include meeting with witnesses, reviewing files and documentation, and seeking information from third parties.
- 5.5.2 All members of the University community, including the parties and their respective Advisors, shall cooperate with the Assessor and respond in a timely fashion to requests from the Assessor for meetings or for information.
- 5.5.3 The Assessor shall meet with the Complainant and the Respondent individually. Exceptionally, other reasonable means of communication may be substituted.
- 5.5.4 The Assessor shall not hold a hearing.
- 5.5.5 During the course of the investigation, the Assessor may propose an informal resolution of the Complaint, which the parties shall be free to accept or reject. Where the proposal is accepted, the procedures outlined in 5.4.2 shall be followed.
- 5.5.6 Once an investigation has begun, a Complaint may be withdrawn by the Complainant with the consent of the Respondent. This shall be evidenced in writing, with the Assessor signing as a witness.

#### **5.6 *Formal Resolution: Outcomes***

- 5.6.1 In cases where no informal resolution has been reached, the Assessor shall report the results of the investigation to the Provost, with a copy to the Complainant and the Respondent.
- 5.6.2 The report shall be in writing and shall contain the findings of relevant facts and a description of any temporary measures instituted pursuant to this Policy. It shall contain a recommendation as to whether disciplinary measures should be taken and any other recommendations appropriate to the resolution of the Complaint.
- 5.6.2.1 Where the Provost deems it necessary, he or she may request clarification of the report from the Assessor and/or any additional information that would assist the Provost in making a determination.
- 5.6.2.2 The Provost shall notify the parties in the event of such a request.

- 5.6.3 Where the Provost agrees with the recommendation of the Assessor that disciplinary measures are justified, the Provost shall:
- i) notify the parties in writing of the decision, together with the reasons therefore, within fifteen (15) working days from the date of receipt by the Provost of either the Assessor's report or the clarification or information requested pursuant to Section 5.6.2.1, whichever is the later, with a copy to the Assessor who investigated the Complaint, as well as anyone charged with implementing disciplinary or other measures; and
  - ii) require the appropriate disciplinary officer to administer disciplinary proceedings in accordance with the Regulations Relating to the Employment of Academic Staff, the Regulations Relating to the Employment of Librarian Staff, the Disciplinary Measures Policy for Non-Unionized Administrative and Support Staff or the disciplinary process pursuant to the collective agreement to which the Respondent is subject, or the Code of Student Conduct and Disciplinary Procedures, as the case may be.

The time delays for taking disciplinary measures as set out in the disciplinary regulations or policies shall begin fifteen (15) working days from the date of the Provost's decision.

- 5.6.4 Where the Provost agrees with a recommendation that disciplinary action is not justified, the Provost shall so notify the parties within fifteen (15) working days from the date of receipt by the Provost of either the Assessor's report or the clarification or information requested pursuant to Section 5.6.2.1, whichever is the later, giving written reasons, with a copy to the Assessor.
- 5.6.5 Where the Provost is tending to disagree with a recommendation of an Assessor, the Provost may, within fifteen (15) working days, consult with one other Assessor, prior to making a decision.
- 5.6.5.1 Within fifteen (15) working days following such consultation the Provost shall:
- i) notify the parties of the decision; and
  - ii) where appropriate, institute disciplinary proceedings in accordance with Section 5.6.3.
- 5.6.6 The Provost is not required to meet with the Complainant or the Respondent before or after rendering a decision.

## **5.7 General Provisions**

- 5.7.1 Once the decision of the Provost is rendered, original documents shall, upon request, be returned to the party who submitted them, with only copies retained by the University, and the case shall be considered closed.
- 5.7.1.1 All decisions, records and files shall be kept confidential and held for a minimum of ten years after the closing of the file and then destroyed unless further proceedings were initiated.
- 5.7.2 Subject to Section 5.4.2, nothing in this Policy precludes either party from exercising, subsequent to the decision made by the Provost, any internal or external recourse available.
- 5.7.2.1 Any time period stipulated for the institution of further internal procedures commences from the date of the decision of the Provost.
- 5.7.3 No action shall be taken by the University or a Member of the University Community against the Complainant for having exercised any right under this Policy, except in cases of intentionally false or frivolous Complaints.
- 5.7.4 The Complainant, the Respondent, the Advisors and all other persons involved in the investigation shall maintain confidentiality throughout the process.
- 5.7.5 In the case of a breach of this policy, a Respondent or Complainant shall be subject to

a penalty only in accordance with applicable laws or the Regulations Relating to the Employment of Academic Staff, the Regulations Relating to the Employment of Librarian Staff, the Disciplinary Measures Policy for Non-Unionized Non-Academic Staff or the disciplinary process pursuant to the collective agreement to which the Respondent or Complainant is subject, or the Code of Student Conduct and Disciplinary Procedures, as the case may be.

**Section 6 – ANNUAL REPORT**

6.1 The Provost shall report annually to Senate on the application of this Policy.

**Section 7 – ACADEMIC FREEDOM**

7.1 Nothing in this Policy shall abridge academic freedom in the University’s educational mission. Prohibitions against Harassment, Sexual Harassment and Discrimination Prohibited by Law do not extend to statements or written materials that are relevant and appropriately related to the subject matter of courses.

**Section 8 – REVIEW OF POLICY**

8.1 After a further three years of its operation and if Senate so determines, this Policy shall be reviewed by a working group, comprised of:

- i) the Provost or delegate (as Chair).
- ii) one representative each of MAUT, MUNASA, MUNACA, AGSEM, SACOMSS, SEU, SSMU, PGSS, MACES, MCSS and JBSCE;
- iii) the Coordinating Assessor;
- iv) a representative of the Social Equity and Diversity Education Office.

<b>Legislative History:</b>		
<i>Approved:</i>		
Senate	December 7, 2005	Minute 5
Board of Governors	December 12, 2005	Minute 7
<i>Amendments:</i>		
Senate	December 2, 2009	Minute 3.1
Executive Committee	December 7, 2009	Minute 5.1.2
Senate	December 4, 2013	Minute IIB4
Executive Committee	January 16, 2014	Minute 11.1

**Appendix.**  
**Guidelines on implementation of Section 4.**

- Maintenance of the Social Equity and Diversity Education (SEDE) office. SEDE's mandate includes fostering a fair and inclusive environment that respects the dignity of each member of the McGill Community. SEDE engages in activities such as training and workshops on equity, diversity and discrimination, public events on such topics, and special consultations by request.
- Maintenance and development of the webpage relating to the Policy, to provide information and education about issues relating to harassment and discrimination, as well as directing people to available resources within the University. This page can be found here:  
<http://www.mcgill.ca/harass/>.
- Promotion of the Policy by developing a communication and education plan (Associate Provost (Policies, Procedures and Equity), Associate Vice Principal (Human Resources)).
- Development of online courses and promotion of existing courses.
- Regular information/training sessions to the Academic Leadership Forum (ALF), at the orientation sessions for new academic administrators and for new faculty members, at Management Forum, etc.
- Training sessions for managers, provided by HR.
- Collaboration with units engaged in related areas (e.g. Graduate and Postdoctoral Studies, Office of the Ombudsperson, Office of the Dean of Students, Student Services, Legal Services) to make available resources better known.