



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

Last revised by:

Senate	May 15, 2017	Minute IIB3
Board of Governors	May 25, 2017	Minute 18.3

*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 5.6.5, 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 that they are 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.

**2.3.1** A third party who observes or has knowledge of conduct that they believe constitutes Harassment, Sexual Harassment or Discrimination Prohibited by Law may not be a Complainant under the present Policy. However, a third party in such a situation is encouraged to speak with a person or office in authority (e.g., the Dean of Students; the relevant Faculty Dean; the relevant human resources advisor; the Office for Sexual Violence Response, Support and Education) to ensure the safety and well-being of the person(s) concerned. A third party in these circumstances may also consider a confidential disclosure of information through the *Policy on Safe Disclosure (“Whistle Blowing”)*.

**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** Intake means receiving a Complaint and providing the parties with the option under this Policy of pursuing informal resolution (Section 5.5) or formal investigation (Section 5.6). Where formal investigation is pursued, Intake includes assigning the Complaint to an Assessor under this Policy. A Complainant's request for the assignment of a particular Assessor to their case will be granted where possible.

**2.9** 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*.

**2.10** Respondent means a Member of the University Community against whom a Complaint has been filed in accordance with this Policy.

**2.11** 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.

**2.11.1** The University's Policy against Sexual Violence includes Sexual Harassment within its definition of sexual violence. Any person who has experienced Sexual Harassment is entitled to the support and processes established in the Policy against Sexual Violence and to the services offered by the Office for Sexual Violence Response, Support and Education.

**2.12** 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 ten (10) 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, and their training and qualifications relevant to their role as 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) providing support to the Assessors in course of their activities, as required; and
- ii) participating in the annual review of the Assessors

**5.1.6** Assessors shall attend orientation and training sessions throughout their terms, as appropriate. Training will consist of at least 15 hours of educational sessions annually, led by individuals with qualifications and professional experience germane to this Policy (e.g., in the domains of: systemic discrimination, sexual harassment, informal resolution processes, confidentiality, conflicts of interest).

**5.1.7** There shall be a process for annual review of the performance of the Assessors by the Coordinating Assessor, the Senior Equity and Inclusion Officer and the Associate Provost (Equity & Academic Policies).

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

**5.2.1** Subject to Section 5.6 of this Policy, the mandate of an Assessor shall be to investigate a Complaint, 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.

**5.2.1.1** Normally, a Complaint is referred to an Assessor by the Senior Equity and Inclusion Officer, but a Complainant may also bring a Complaint directly to an Assessor of their choice, in which case the Assessor shall be responsible for Intake.

**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 5.4.1, an Assessor shall remain seized of the Complaint until:

- i) a resolution is reached between the parties in accordance with Sections 5.5.2 or 5.6.5;
- ii) the Complaint is withdrawn by the Complainant in accordance with Section 5.5.4;
- iii) the Complaint is withdrawn by the Complainant with the consent of the Respondent in accordance with Section 5.6.6;
- iv) an Assessor files a report with the Provost with a copy to the Complainant and the Respondent in accordance with Section 5.7; 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 the Senior Equity and Inclusion Officer or

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 Senior Equity and Inclusion Officer**

**5.3.1** A Senior Equity and Inclusion Officer, with qualifications relevant to preventing and responding to harassment, sexual harassment, discrimination and the facilitation of informal resolutions, shall be appointed to oversee the integration of equity work at the University with the operationalization of this Policy.

**5.3.2** With respect to this Policy, the duties of the Senior Equity and Inclusion Officer shall include:

- i) fielding inquiries and conducting Intake, except in cases where a Complainant contacts an Assessor directly or in a case of conflict of interest;
- ii) maintaining a confidential record of all inquiries 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 considering, 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;
- vi) reporting at least annually to the Provost on such matters as are necessary for the effective operation of the Policy.
- vii) facilitating informal resolutions, where appropriate, pursuant to Section 5.5.

**5.3.3** If the Senior Equity and Inclusion Officer believes that there is an immediate threat to the physical or psychological safety of the Complainant, the Senior Equity and Inclusion Officer 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.

### **5.4 Initiation and Intake of Complaints**

**5.4.1** A Complainant shall submit a Complaint to the Senior Equity and Inclusion Officer or to an Assessor in writing in sufficient detail.

**5.4.2** A Complaint may not be considered 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.

**5.4.3** Upon the submission of a Complaint, a copy shall be provided to the Respondent. The Respondent must submit a written response within 10 days of receiving the Complaint. Upon the submission of the response, a copy shall be provided to the Complainant.

**5.4.4** Once a Complaint is initiated, the Complainant and the Respondent shall be provided 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.

**5.4.5** Both the Complainant and the Respondent have the right to be accompanied by an Advisor, and they shall be informed of this right.

### ***5.5 Informal Resolution Prior to Investigation***

**5.5.1** Informal resolution shall be offered to the parties by a McGill University Community member with appropriate skills and training, prior to commencement of investigation. Any means deemed appropriate in the particular situation, subject to Section 5.5, may be used. Normally, an informal resolution is facilitated by the Senior Equity and Inclusion Officer unless there is a conflict of interest or unless the parties request that informal resolution be attempted by an Assessor of their choice.

**5.5.1.1** The names of the Complainant and the Respondent, along with facts and evidence presented during the informal resolution process, may not be divulged to any third party without their written consent.

**5.5.1.2** In the event that the parties choose to pursue an informal resolution, the process must be conducted in a respectful manner. However, no party to a Complaint is obliged to participate in an attempt at informal resolution.

**5.5.1.3** All statements and disclosures made, information furnished, and documents and things provided or presented during the informal resolution process may not be used or referred to if a Complaint proceeds to formal investigation, unless consent to their use is provided in writing by the person who provided them. The person facilitating the informal resolution shall advise such persons of their rights and duties under this clause.

**5.5.2** 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 person facilitating the informal resolution 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. A signed copy of the resolution shall be kept confidential and held for a minimum of ten years by the Senior Equity and Inclusion Officer.

**5.5.2.1** If, after an informal resolution has been reached, there is 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.

**5.5.3** Where the person facilitating the informal resolution is of the opinion that a resolution cannot be reached within a reasonable time, they 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 5.6.

**5.5.4** At any time prior to the commencement of an investigation, a Complaint may be withdrawn by the Complainant.

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

**5.6.1** 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.

**5.6.2** 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.

**5.6.3** The Assessor shall meet with the Complainant and the Respondent individually. Exceptionally, other reasonable means of communication may be substituted.

**5.6.4** The Assessor shall not hold a hearing.

**5.6.5** 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 Section 5.5 shall be followed.

**5.6.6** 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.

### ***5.7 Formal Resolution: Outcomes***

**5.7.1** In cases where no resolution has been reached, the Assessor shall provide a written report of the results of the investigation to the Provost, with a copy to the Complainant and the Respondent.

**5.7.2** The report shall conclude the investigation. It 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.

**5.7.2.1** Where the Provost deems it necessary, the Provost may request clarification of the report from the Assessor and/or any additional information that would assist the Provost in making a determination.

**5.7.2.2** The Provost shall notify the parties in the event of such a request.

**5.7.3** 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 5.7.2.1, 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 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.

**5.7.4** 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 5.7.2.1, whichever is the later, giving written reasons, with a copy to the Assessor.

**5.7.5** In the exceptional case 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.

**5.7.5.1** 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 5.7.3.

**5.7.6** The Provost is not required to meet with the Complainant or the Respondent before or after rendering a decision.

**5.7.7** The Provost's decision shall be final.

**5.7.8** Should a party feel that there has been a failure to comply with the Provost's decision, or should a concern related to the original Complaint arise following the Provost's decision (e.g., recurrence of behavior described in the Complaint), the matter may be referred to the Senior Equity and Inclusion Officer. The Senior Equity and Inclusion Officer shall address the matter with the Provost, who shall decide on the need for subsequent measures, including referral to the relevant disciplinary officer for disciplinary or administrative measures.

## **5.8 General Provisions**

**5.8.1** 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.

**5.8.1.1** 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.

**5.8.2** 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.

**5.8.2.1** Any time period stipulated for the institution of further internal procedures commences from the date of the decision of the Provost.

**5.8.3** 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.

**5.8.4** The Complainant, the Respondent, the Advisors and all other persons involved in the investigation shall maintain confidentiality throughout the process.

**5.8.5** 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 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, AMURE, AMUSE, MCLIU, SACOMSS, SEU, SSMU, PGSS, MACES, MCSS and JBSCE;
- iii) the Senior Equity and Inclusion Officer
- iv) the Coordinating Assessor; and
- v) a representative of the Social Equity and Diversity Education Office.

8.2 There shall be an annual meeting convened by the Provost or delegate of the working group identified in 8.1 to review the operation of this Policy. These annual meetings will review:

- i) the University’s efforts to meet the objectives of this Policy articulated in Section 3 (i.e., prevention and education, fostering an environment free of Harassment, Sexual Harassment and Discrimination Prohibited by Law, and establishing effective procedures to address incidents and complaints), and means of enhancing such efforts.; and
- ii) the circumstances under which Complaints have been withdrawn, and the nature of Complaints that have resulted in informal or formal resolutions. This review process will be anonymous, with the working group not having access to any nominative or identifying information regarding any party to a Complaint under this Policy.

<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
Senate	May 15, 2017	Minute IIB3
Board of Governors	May 25, 2017	Minute 18.3

**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.