Clinique d'information juridique à McGill

Legal Information Clinic at McGill

Know Your Rights

Summer 2023

McGill Campus Life & Engagement

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Land Acknowledgment

The LICM is located on unceded Indigenous lands. The Kanien'kehà:ka and Anishinabek nations are recognized as the custodians of the lands and waters on which we gather today. This land holds a long and rich history of occupation and stewardship by Indigenous peoples for millennia through to the present day.

As a legal clinic, we recognize that the legal system in which we operate has served and serves to uphold colonial violence and harm Indigenous peoples. Therefore, we have an obligation to rebuild relationships with Indigenous peoples in order to promote a vision of access to justice that centres Indigenous communities.

The LICM commits to standing in solidarity with/in struggle with those fighting for a just and equitable system.

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Who are we?

- The LICM is the largest student-run legal clinic in Canada.
- All our services are free and bilingual.
- The Clinic is divided into three branches:
  - Legal Information
  - Student Advocacy
  - Community Services
    - Commissioner of Oaths
    - Court Accompaniment
    - Just Info presentations
    - Know Your Rights campaign

Information juridique
Legal Information

Représentation étudiante
Student Advocacy

Services communautaires
Community Services

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Disclaimer

- In accordance with article 128 of the *Act Respecting the Barreau du Québec*, only lawyers and notaries can give legal advice in Quebec – **law students can only provide information**.
- **<u>Nothing in the following presentation should be construed as or relied upon as legal advice.</u>**

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Disclaimer

- The legal information in the following presentation is accurate as **of the day of the presentation**.
- Please be aware that laws and regulations are subject to change.

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Roadmap

- Your rights as a tenant in Quebec
- Your rights as an employee in Quebec
- Your rights as a McGill University student
- Q&A

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Residential Leases

Your rights as a tenant

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Residential Leases - Roadmap

- What is the TAL?
- Are deposits legal?
- Who can cancel a lease and when?
- Negotiating, transferring and subleasing!
- Which co-tenant is responsible for paying the rent?

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The Tribunal Administratif du logement (TAL)

- What is it?
  - An administrative tribunal which deals specifically with residential lease disputes.
  - Tenants and landlords can open a file at the TAL on the following matters:
    - lease resiliations for non-payment of rent;
    - lease resiliations for reasons other than non-payment of rent;
    - annual rent increases;
    - tenant evictions, lease transfers or any dispute concerning the obligations of tenants or landlords, or concerning compensation for damages.

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Julia wants to know her rights

- Julia is a McGill student. She is originally from Toronto, but she is staying with her aunt in Montreal while she attends university. Julia still has a few years of study left to complete, and she would like to move into an apartment with her friends as of next September for the remainder of her studies at McGill.
- In January, with her two friends Melissa and Camille, she agrees to sign a 1-year lease that starts in September for the perfect apartment. However, when she is signing the lease, the landlord asks Julia for a security deposit. Julia is uncomfortable with this and wants to know what to do.

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Are deposits legal?

- **NO.**
  - The law in Quebec is clear; a landlord may not ask a tenant for more than 1 month's rent at a time.
  - The only payment the landlord can ask for in advance is the first month's rent.
  - The landlord cannot ask for any form of deposit (security, furniture, etc.)

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Can Julia cancel her lease?

- Julia went back home to Toronto to live with her parents for the summer semester. Eventually, she finds out that most of her classes will be held remotely in the fall.
- In light of this announcement, Julia decides she wants to stay home with her parents for the Fall semester. Can she cancel her lease which starts in September?

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Ending a Lease – Tenant Edition

- You may have heard that a tenant may break a lease at any point either by giving 3 months' notice or by paying 3 months' rent. **This is NOT true**.
- The law says **THIS**:
  - The landlord and tenant can agree between themselves to end a lease at any time.
  - If they can't come to an agreement, the tenant can apply to the TAL to end the lease only if one of the following situations apply to them:
    1. The apartment is or has become unfit for habitation (and this is not the tenant's fault).
    2. The tenant is granted low income housing or housing in a long-term care facility, or they cannot continue to live in the apartment because of a disability.
    3. A spouse or ex-spouse's violent behaviour threatens the safety of a tenant or their child.

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Ending a Lease – Landlord Edition

- There are also some situations in which the **landlord** may be able to end the lease:
  - the tenant is 3 weeks late on rent;
  - the tenant is frequently pays the rent late;
  - the tenant seriously interferes with the peace and enjoyment of other tenants (e.g. harassment, aggression…etc.);
  - the landlord wishes to repossess the dwelling for themselves or for a direct relative (only once the term of the lease has expired);
  - the landlord wants to do major renovations (as above, only at end of term).
- These are the only situations in which a landlord may lawfully end a lease. In addition, the landlord must give the tenant **6 months' notice** of an eviction OR must apply to the TAL before ending the lease (resiliation).

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Can Julia cancel her lease due to the COVID-19 pandemic?

- **NO.**
  - Julia cannot end her lease because of the COVID-19 pandemic. The pandemic is not a legitimate reason for her to do so.
  - When it comes to a tenant's obligation to pay the rent, the COVID-19 pandemic is not considered a "force majeure" under Quebec law.

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What are Julia's options?

- Julia now knows that the COVID-19 pandemic is not a legally valid reason to end her lease. However, she still wants to stay in Toronto for the Fall semester, and would prefer not to pay rent for her apartment in Montreal. What are her options?

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Negotiation, Assigning, Subletting

- There are **three** options available to Julia if she does not want to pay rent for the apartment in Montreal while she stays in Toronto in the fall:
  1. Negotiating with her landlord
  2. Assigning the lease (commonly referred to as a "lease transfer")
  3. Subletting

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Negotiating with the Landlord

- Negotiating with the landlord is a first step that may allow the tenant to avoid more complicated processes.

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Assigning the Lease

- Assigning a lease means transferring it to someone else. This means that the original tenant will be permanently out of the picture.
- If the tenant assigns their lease, they will no longer be responsible for paying the rent.
- The tenant needs to notify the landlord that they are assigning the lease. The landlord may only refuse the assignment for a serious reason.

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Subletting

- If Julia does not find someone to assign her lease to or she plans on moving back to Montreal for the Winter semester, she can sublet.
- If a tenant sublets, **they are NOT out of the picture**. They take on the same role towards the subletter as the landlord has towards them. They remain responsible for the rent and their other obligations to the landlord.
- Since a sublease is a new contract, the tenant can offer terms to the the subletter that are different from the ones in their lease contract! However, they can't give any rights to the subletter that they themselves don't already have.
- Finally, the tenant also needs to notify the landlord that they are subletting. Again, the landlord may only refuse for a serious reason.

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Is Julia responsible for her co-tenants' rent?

- Julia unfortunately was not able to find someone to assign the lease or sublet to. After discussing the situation with her parents, she has decided to go to Montreal in the fall and move into her apartment. However, both Melissa and Camille have told Julia that they won't be staying in the apartment in the fall and that they don't plan on paying the rent or finding people to assign their lease or sublet to. Julia is worried that the landlord will make her pay for the entire apartment's rent, which she can't afford.

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Co-Tenancy

- Tenants need to read their lease carefully to know whether they might be responsible for their co-tenants' rent or not.
- If it is not specified in the lease contract, the tenants will, by default, have "joint responsibility" for the rent. This means that each tenant is only responsible for paying their share of the rent.
- However, if the lease specifies that the tenants are "solidarily liable" for the rent, each tenant will be responsible for the entire rent
- Regardless of how the responsibility is shared, if one of the tenants ends up paying the entirety of the rent, they can always require that the other tenants pay them back for their shares of the rent.

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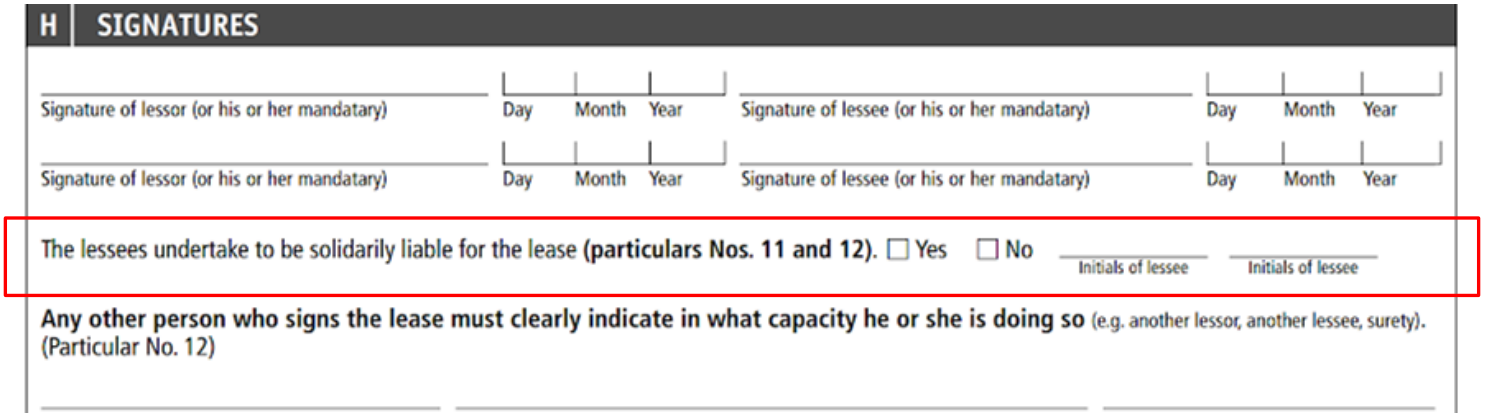
So, is Julia responsible for her co-tenant's rent?

- **Well, it depends…**
- Julia must read her lease carefully to see if her and her co-tenants are jointly or solidarily liable for the rent.
- Regardless, if Julia were to pay for the entirety of the rent, she would still have the right to ask Melissa and Camille to reimburse her.



H SIGNATURES

Signature of lessor (or his or her mandatary) Day Month Year

Signature of lessee (or his or her mandatary) Day Month Year

Signature of lessor (or his or her mandatary) Day Month Year

Signature of lessee (or his or her mandatary) Day Month Year

The lessees undertake to be solidarily liable for the lease **(particulars Nos. 11 and 12)**. ☐ Yes ☐ No Initials of lessee Initials of lessee

Any other person who signs the lease must clearly indicate in what capacity he or she is doing so (e.g. another lessor, another lessee, surety). (Particular No. 12)

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Employment

Your rights as an employee

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Employment - Roadmap

- What to look out for in the employment contract
- Rights and obligations during the employment period
- Human rights in the workplace
- End of employment

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What to Look for in an Employment Contract

- Sam just finished his first year of studies at McGill and he is getting ready to spend his first summer in Montreal. Sam is excited because he managed to find a job related to his field of study. This is the first time he will work in Quebec. His new employer sent Sam his contract by email and expects him to review and sign it. Sam is unsure what to look out for.

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Basic Rights Protected by the *Act Respecting Labour Standards*

- Here are some of the basic rights that an employee is entitled to:
  - A minimum wage of $15.25/hour
    - EXCEPTION: employment in restaurant services, seasonal harvesting, hotel industry, etc. has a minimum wage of $12.20/hour.
  - Paid training
  - Uniform covered by employer if the cost of it would mean the employee would make less than minimum wage
  - A 30 minutes break after 5 hours in a row of work

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Are non-compete clauses legal?

- Sam read over his contract and made sure that it respected all his basic rights. However, one clause in the contract caught his attention. It is a non-compete clause which says that Sam is not allowed to work for any of his employer's competitors at any point after the end of his employment. This concerns him as he only intends to keep this job for the summer and does not want to commit to anything long term. Sam wants to know if this clause is legal.

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Non-Compete Clauses

- Some non-compete clauses are indeed legal in Quebec. However, they are regulated and cannot be too broad:
  - Non-compete clauses need to be **clear**, **unambiguous**, and **in writing**.
  - The clause must be limited in **duration**, **location** and **scope of employment**.
  - The extent of the clause's application must not be more than is necessary to protect the interests of the employer.

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So, is the non-compete clause in Sam's contract valid?

- **NO.** The clause does not have ANY limitations in duration or location.
  - The clause says that Sam cannot work for a competitor at any time AND it does not specify a location where it applies, for example, Montreal or the province of Quebec.
  - This is a strong indication that this non-compete clause is NOT valid. This means that even if Sam signs the contract as is, the clause will have no effect.

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Rights and obligations during the employment period

- Sam has told his employer that the non-compete clause is not valid, and his employer has agreed to remove it from the contract. However, Sam is now worried that the employer will want to retaliate somehow because Sam is "making things difficult". Sam wants to know what his rights and obligations are.

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Employer's Obligations

- Protect employee's **health**, security and dignity
- Must allow the execution of the **agreed-upon tasks**
- Must pay the **agreed-upon salary/wage**
- Must provide a **clear and explicit employment contract**
- Must respect the ARLS in terms of sick leave, **maternity/paternity leave**, etc.

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Employee's Obligations

- Act with **honesty** and **fidelity**
- Must do their work **prudently** and **diligently**
- Must be able to execute the **agreed-upon tasks**
- Must NOT use **confidential information** obtained during their employment

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Can an employer discriminate?

- Sam's friend, Jonathan, would like to get hired as a driver by the company Sam works for. However, he told Sam that, a few years ago, he was charged and convicted for driving under the influence. Jonathan is worried the company will refuse to hire him because of his criminal conviction. Sam tells Jonathan he doesn't think the company is allowed to do that because it would be discriminatory. Is Sam right?

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Discrimination in the workplace

- In Quebec, everyone is protected against discrimination in the employment context on the following grounds:
  - Pregnancy
  - Sexual orientation
  - Civil status
  - Social condition
  - Disability
  - Race
  - Colour
  - Sex
  - Language
  - Religion
  - Political convictions
  - Ethnic or national origin
  - Gender identity or expression
  - Age (except as provided by law, i.e. minors)

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Discrimination in the workplace

- In addition, an employer is prohibited from dismissing, refusing to hire or otherwise penalizing an employee on the sole basis that they were convicted of an offense…
  - …IF the offense is **in no way related** to the employment;
  - OR if the person **received a pardon**.
- One should be aware, however, that a distinction, exclusion or preference based on aptitudes or qualifications required for the job is NOT discrimination.

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So, can Jonathan be denied employment because of his criminal record?

- In this case, Jonathan is applying for a position as a driver and he was charged and convicted for driving under the influence and has not received a pardon. The company may thus refuse to hire him solely on this ground.

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Wrongful Dismissal

- Sam's employment contract specifies two things:
  - His employment is for a fixed term of 4 months.
  - He is entitled to 7 days of vacation.
- However, when Sam signed his contract, his boss told him that he would prefer if Sam did not use his vacation days because the department Sam works for is going to have a lot of work this summer. Nonetheless, halfway through the summer, Sam felt like he needed a break, so he used his 7 days of vacation. When he returned to work, his boss told him he was letting him go because he felt that Sam was clearly not working hard enough since he took his vacation despite being told not to. Sam wants to know if his boss can fire him for using his vacation days. He also wants to know why he wasn't given a notice of termination.

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Can Sam's boss dismiss him for taking a vacation?

- **NO.**
  - The law is clear: no employee can be dismissed for having exercised their rights such as going on sick leave, going on pregnancy and/or maternity/paternity leave, taking a vacation, etc.
  - However, since Sam has been employed for **less than 2 years**, he doesn't have a recourse for wrongful termination against his employer under the ARLS. His only recourse for wrongful termination is a civil suit, which can be quite expensive...
  - **BUT** Sam does have a recourse against **prohibited practices** under the ARLS, which would be less costly to him than a civil suit.

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Why did Sam's boss not give him a notice of termination?

- The minimums provided by law to give notice to a dismissed employee are as follows:

Uninterrupted Service	Length of notice
3 months - less than a year	1 week
1 year - 5 years	2 weeks
5 years - 10 years	4 weeks
10 years or more	8 weeks

- However, in the following situations, these minimums do not apply:
  - employees who have **less than 3 months of uninterrupted service;**
  - employees with a fixed term contract (when the contract has come to an end);
  - employees dismissed for a serious fault.

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Student Rights

Your rights as a McGill student

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Student Rights - Roadmap

- What is Student Advocacy and how can it help me?
- What is a grievance?
- What are some of my rights as a student?
- What happens if I get accused of a disciplinary offence?

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Student Advocacy

- A proud part of the LICM for over 30 years.

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Who is part of Student Advocacy?

- **Director of Student Advocacy and University Affairs**
  - Supervises and manages the office
- **Senior Advocates**
  - Manage the junior advocates and assist the director
- **Junior Advocates**
  - Advocate on various cases

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What does Student Advocacy do?

- We **advise**, **represent** and **negotiate** on behalf of students who are facing disciplinary proceedings or are having difficulties with the university.

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Advocacy Advice vs. Legal Advice

- We provide advice on McGill policies such as:
  - Code of Student Conduct and Disciplinary Procedures
  - Code of Student Grievance Procedure
  - Harassment, Sexual Harassment, and Discrimination policies
- Most McGill policies provide for a student to have an advocate.
- We **DO NOT** provide **legal** advice or information.

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Other Relevant Policies

- **We can also deal with issues that relate to the following McGill policies and regulations:**
  - **Policy Concerning the Rights of Students with Disabilities**
  - **Policy on Intellectual Property**
  - **Policy on Harassment and Discrimination Prohibited by Law**
  - **Policy against Sexual Violence**
  - **University Student Assessment Policy**
  - Policy for the Accommodation of Religious Holy Days
  - Policy on Hazing and Inappropriate Initiation Practices
  - Policy on Text-Matching Software
  - Policy on E-Mail Communication with Students
  - Policy on Responsible Use of McGill Information Technology Resources
  - Library User's Code of Behaviour
  - Regulation on the Conduct of Research
  - Policy on Ethical Conduct of Research Involving Human Subjects
  - Regulations Concerning the Investigation of Research Misconduct
  - Policy on Conflicts of Interest in Academic Supervision and Evaluation
  - Policy on Safe Disclosure

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Advocates often appear at…

- **Disciplinary Interviews**
- CSD Hearings
- Appeal Hearings
- Faculty Promotions Committee (SPC/PRC)
- **Grievances**
- IDR

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What is a Grievance?

- A grievance is a formal process by which a student can seek redress for an infringement of their rights by another member of the University Community
- Grievances must be grounded in the *Charter of Students' Rights*
- Any student who believes that a right has been infringed by a member University Community has the ability to lodge a grievance
- Infringement can be from an act or a failure to act
- Former students may lodge a grievance as long as the violation happened **while that person was a student**
- Come to us if you have questions!

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What are some of my rights as a student?

- The *Charter of Student Rights* outlines several rights:
  - Right to equal treatment (10)
  - Right to be free from vexatious conduct/violence (11/13)
  - Right to quality education (9)
  - Right to fair and reasonable evaluation (18)
  - Right to adequate graduate supervision (27)
  - Right to full, equal, and fair hearings (35)
  - Right to consult any record of personal information (41)
  - Freedom of Association (37/38)
  - Freedom of opinion, expression and peaceful assembly (12)
- **This list is not exhaustive!**

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Common Misunderstandings

- Student advocates...
  - Provide legal advice
  - Slow down the process
  - Push students to escalate their issues
  - Create reprisals for students
  - Hold strict privilege

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What happens if I get accused of a disciplinary offence?

- Jemma is a McGill student taking a history course. She is required to write a paper as one of her assignments. While writing it, Jemma copies some sentences directly from a textbook. After submitting the assignment, she receives an email from her faculty asking her to attend a disciplinary interview based on a violation of art.16a [Plagiarism] of the *Code of Student Conduct and Disciplinary Procedures*.

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What should Jemma do?

- Reach out to Student Advocacy at the LICM!
- We guarantee confidentiality:
  - All cases we take on are kept completely confidential.
  - Advocates sign a Code of Ethics to work with students.
  - **The advocate assigned to your case may <u>ONLY</u> discuss it with the director or with senior advocates.**

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What happens next?

- Jemma reached out to Student Advocacy. A junior advocate has now been assigned to her case. She asks her advocate what will happen next.

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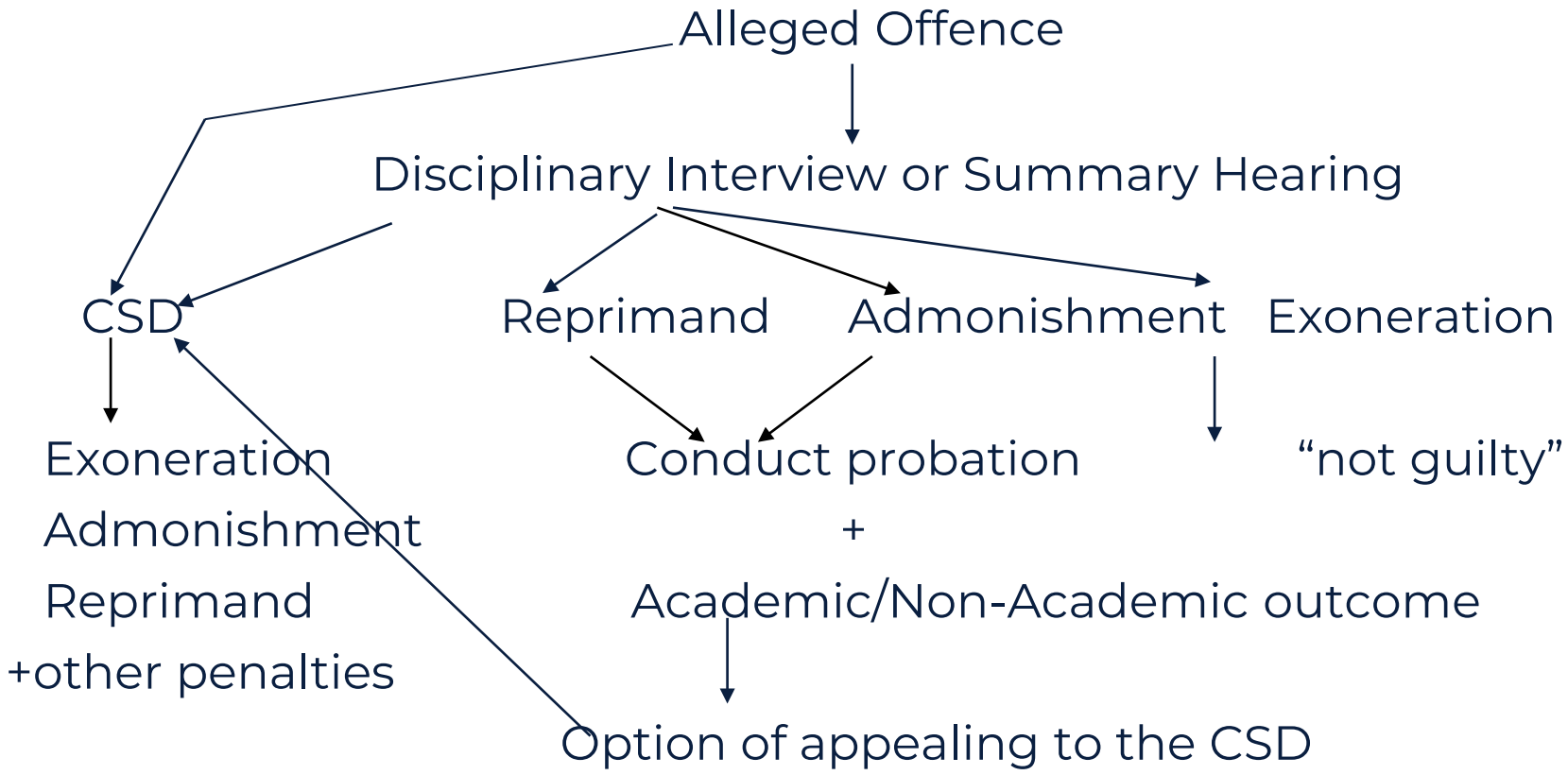
Disciplinary Offences



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Disciplinary Interview

- Now that Jemma's student advocate explained the process of a disciplinary offence accusation to her, she is a bit less nervous about attending her disciplinary interview, but she is wondering how she should prepare for it. She asks her advocate what will happen during the interview.

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Disciplinary Interviews

- Disciplinary interviews usually include:
  - Disciplinary Officer (DO)
  - Student
  - Student Advocate
- The DO may also have an advisor
- The DO informs student of their rights (e.g. right to remain silent, etc.)
- The DO presents the evidence and invites the student to speak
- These interviews are informal and more "conversational" in order to understand the narrative of the events that led to the alleged offence

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Potential Outcomes of a Disciplinary Interview or Summary Hearing

- Exoneration
  - Not enough evidence
- Admonishment
  - Sufficient evidence
  - Official sanction, not on record
- Reprimand
  - Sufficient evidence
  - Official sanction, on record
- To admonish or reprimand, evidence must be:
  - Clear, convincing, reliable

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Outcome of Jemma's interview

- Jemma will likely be admonished, depending on the evidence.
- Jemma is worried she might receive additional penalties. She asks her advocate if this is a possibility.

Additional Penalties

- Conduct Probation
- 10 hours of unpaid non-academic activities (community service to residence) and restitution
  - Approved by Managing Director of RLM DO
- Suspension (30 calendar days with option for additional 30)
  - Specific academic accommodations often required
- Security for good behaviour ($250)
  - Considering student's financial condition
- Exclusion of residence for specified time
  - If referred to CSD, cannot impose exclusion until afterwards, unless grave concern

So, will Jemma receive additional penalties?

- She will likely be put on Conduct Probation
- She will likely receive a grade of zero on her assignment
  - She could also fail the course if that assignment was required to pass

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Q&A - Contact

- **Legal Information**

514-398-6792 or intake form at licm.ca/legal-information

- **Student Advocacy**

info.studentadvocacy@licm.ca

- **Community Services**
  - **Commissioner of Oaths**
    assermentation@licm.ca
  - **Court Accompaniment**
    courtaccompaniment@licm.ca
  - **Just Info**
    cs.licm@mail.mcgill.ca
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