



Memorandum

Office of the Provost

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TO: Senate

FROM: Lydia White, Associate Provost (Policies, Procedures and Equity)

SUBJECT: Proposal to Review the *Policy on Harassment, Sexual Harassment and Discrimination Prohibited by Law*

DATE: 16 May 2012

DOCUMENT #: D11-67

ACTION REQUIRED: INFORMATION APPROVAL/DECISION

ISSUE: The *Policy on Harassment, Sexual Harassment and Discrimination Prohibited by Law* is up for review as of December 2012, if Senate so determines.

BACKGROUND & RATIONALE: According to section 8.1 of the *Policy on Harassment, Sexual Harassment and Discrimination Prohibited by Law*, Senate may determine that a review of the Policy be undertaken by a working group (see attached policy for composition of this group). Feedback from the groups and individuals consulted suggests that a review of this policy would be appropriate at the present time.

The *Policy* specifies that such a review should be considered after 3 years of operation, if Senate so determines. This would bring us to December, 2012.

Rather than starting a review in the middle of the academic year, it is proposed that such a review be initiated somewhat earlier, namely at the beginning of the 2012-2013 academic year. This will allow more thorough discussion, as well as the possibility of bringing any recommendations to Senate by the end of the academic year.

MOTION OR RESOLUTION FOR APPROVAL: Be it resolved that Senate determine that the *Policy on Harassment, Sexual Harassment and Discrimination Prohibited by Law* be reviewed in the Fall term of 2012.

PRIOR CONSULTATION: JBSCE, harassment assessors, SACOMSS, SSMU, PGSS

NEXT STEPS: N/A

APPENDICES: Appendix A: *Policy on Harassment, Sexual Harassment and Discrimination Prohibited by Law*

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

Last revised by:	
Senate	December 2, 2009 (Minute 3.1)
Executive Committee	December 7, 2009 (Minute 5.1.2)
Effective Date:	December 7, 2009

Full legislative history appears at the end of this document.

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. To help create such an environment the University is also committed to supporting 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. Nothing in this Policy relieves administrators from the responsibility of addressing situations of inappropriate behaviour in accordance with good management practices.

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 the University from its obligations under the Labour Standards Act of Quebec.

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

Section 1 – SCOPE

- 1.1 This Policy shall apply to all members of the University community.
- 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 5.4.5 nothing in this Policy precludes either party from exercising any internal or external recourse available.
- 1.3.1 Subject to section 1.3,2 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 her or his right to the external recourse.

Section 2 – DEFINITIONS

2. For the purpose of this Policy:
- 2.1 *Advisor* means a Member of the University Community so identified who has agreed to accompany the Complainant or the Respondent and act in an Advisory capacity. The Advisor is not paid for his or her services.
- 2.2 *Assessor* means an Assessor appointed in accordance with this Policy.
- 2.3 *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.
- 2.4 *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.
- 2.5 *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 his or her 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 under the control and authority of the University 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 results 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(a) of the *Code of Student Conduct and Disciplinary Procedures*.
- 2.9 *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.
- 2.10 *Respondent* means a Member of the University Community against whom a Complaint has been filed in accordance with this Policy.

Section 3 – OBJECTIVES

3. This Policy shall have as its objectives:
- i) to prevent Harassment, Sexual Harassment and Discrimination Prohibited by Law through 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) to ensure that procedures are in place to address Complaints of Harassment, Sexual Harassment and Discrimination Prohibited by Law.
 - iii) to ensure that the University's policies and procedures dealing with Members of the University community foster an environment free of Harassment, Sexual Harassment and Discrimination Prohibited by Law.

Section 4 – APPOINTMENT OF ASSESSORS

- 4.1 The Provost shall consult with the university-level students' associations, staff associations and unions on the appointment of 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.
- 4.2 The Assessors shall be employees or appointees of the University. Four (4) shall be chosen from the members of academic staff and four (4) from the members of administrative and support staff. At least one of the Assessors shall be from Macdonald Campus.
- 4.2.1 The Provost shall endeavour to have a diverse group of Assessors reflective of the diversity of the University Community and with an equal representation of the sexes.
- 4.3 The Assessors shall have staggered terms of two years each normally commencing on June 1st.
- 4.4 The names of the Assessors shall be made known to the University community.

- 4.5 The Assessors shall elect from amongst their members a Coordinating Assessor, who, in addition to being an Assessor, shall be responsible for coordinating the activities of the Assessors and reporting annually to the Provost.
- 4.5.1 In addition to serving as an Assessor, the Coordinating Assessor shall be responsible for:
- i) coordinating the activities of the Assessors;
 - ii) keeping a confidential record of all enquiries and Complaints and their disposition;
 - iii) ensuring an equitable distribution of work between assessors while taking into account as far as is feasible the wishes of Complainants;
 - iv) collecting the data necessary to allow for the preparation of reports on the operation of the Policy; and
 - v) reporting at least annually to the Provost on such matters as are necessary for the effective operation of the Policy.
- 4.6 Assessors shall be provided with appropriate training.

Section 5 – PROCEDURES

5.1 Mandate of the Assessors

- 5.1.1 Subject to Sections 5.2.1 and 5.3 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 his or her 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.
- 5.1.2 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.
- 5.1.3 To the extent allowed by law, Assessors shall preserve confidentiality in the handling of all enquiries and Complaints.
- 5.1.4 Once a Complaint has been submitted in accordance with section 5.2.2, an Assessor shall remain seized of the Complaint until:
- i) an informal resolution is reached between the parties in accordance with section 5.3;
 - ii) the Complaint is withdrawn by the Complainant in accordance with section 5.3.3;
 - iii) an informal resolution is proposed and accepted in accordance with section 5.4.5;
 - iv) the Complaint is withdrawn by the Complainant with the consent of the Respondent in accordance with section 5.4.6;
 - iv) an Assessor files a report with the Provost with a copy to the Complainant and the Respondent in accordance with section 5.5;
 - or
 - vi) a Complainant seeks resolution of a Complaint under any other internal or external recourse as provided in section 1.3.1.

5.2 Initiation of Complaints

- 5.2.1 Nothing in this Policy shall prevent a Member of the University Community who believes that he or she has grounds for submitting a Complaint from meeting with an Assessor prior to submitting a Complaint to seek advice as to how his or her 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 Sections 5.3, 5.4 or 5.5 of this Policy.

- 5.2.2 A Complainant shall submit a Complaint to an Assessor in writing in sufficient detail.
- 5.2.3 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.
- 5.2.4 The Assessor shall provide the Complainant and the Respondent with:
- i) a copy of this Policy;
 - ii) information on sources of advice and assistance; and
 - iii) information on his or her rights, obligations, and internal and external recourses, pursuant to the law and to applicable collective agreements, policies and regulations.
- 5.2.5 The Assessor shall inform both the Complainant and the Respondent of their right to be accompanied by an Advisor.

5.3 Informal Resolution of Complaints

- 5.3.1 Prior to commencement of any investigation under Section 5.4, the Assessor shall attempt an informal resolution through any means he or she deems appropriate in the particular situation, subject to sections 5.3.1.1 through 5.3.1.5.
- 5.3.1.1 The name of the Complainant may not be divulged by the Assessor to any third party without the Complainant's consent in writing.
- 5.3.1.2 The name of the Respondent may not be divulged by the Assessor to any third party, unless the Respondent is previously advised of the Complaint and consents in writing.
- 5.3.1.3 No party to a Complaint is obliged to participate in any means of informal resolution, but the parties should attempt a resolution by engaging in an open discussion conducted in a respectful manner.
- 5.3.1.4 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 its use is withheld in writing by the person who is its source. The Assessor shall advise such persons of their right to withhold consent under this clause.
- 5.3.1.5 In cases where the Respondent is advised of the Complaint and a resolution acceptable to both parties is achieved, the matter will be resolved in accordance with section 5.4.5 of this Policy.
- 5.3.2 Where the Assessor is of the opinion that a resolution cannot be reached in accordance with the provisions of Section 5.3.1 of this Policy within a reasonable time, but no more than 30 working days following the date on which the Respondent was informed of the Complaint, the Assessor shall so advise the parties in writing prior to proceeding to an investigation under section 5.4.
- 5.3.3 At any time prior to the commencement of an investigation, a Complaint may be withdrawn by the Complainant.

5.4 Investigation of Complaints

- 5.4.1 Upon the initiation of an investigation the Assessor shall provide the Respondent with a copy of the Complainant's written Complaint.
- 5.4.2 The Assessor shall investigate the Complaint fairly using such methods he or she deems appropriate in the circumstances which may include meeting with witnesses, reviewing files and documentation, and seeking information from third parties.
- 5.4.3 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 his or her request for meetings or information.
- 5.4.4 The Assessor shall meet with the Complainant and the Respondent individually. Exceptionally, other reasonable means of communication may be substituted. The Assessor shall not hold a hearing.
- 5.4.5 The Assessor may propose to the Complainant and the Respondent an informal resolution of the Complaint, which the parties shall be free to accept or reject. Where the resolution is accepted, it 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.
- 5.4.6 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.

5.5 Formal Resolution

- 5.5.1 In cases where there is no informal resolution of a Complaint, the Assessor shall report the results of his or her investigation to the Provost with a copy to the Complainant and the Respondent.
- 5.5.2 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 recommendation appropriate to the resolution of the Complaint.
 - 5.5.2.1 Where the Provost deems it necessary he or she may request from an Assessor clarification of the report and/or such additional information, if any, that would assist the Provost in making a determination.
 - The Provost shall notify the parties in the event of such a request.
- 5.5.3 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 his or her decision, together with the reasons therefore, within ten (10) 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 5.5.2.1, whichever is the later, with a copy to the Assessor who investigated the Complaint; and

- ii) institute 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 Non-Academic 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 ten (10) working days from the date of the Provost's decision.

- 5.5.4 Where the Provost agrees with a recommendation that disciplinary action is not justified, the Provost shall so notify the parties within ten (10) 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 5.5.2.1, whichever is the later, giving his or her reasons in writing, with a copy to the Assessor who investigated the Complaint.
- 5.5.5 Where the Provost is tending to disagree with a recommendation of an Assessor, the Provost shall, within ten (10) working days, consult with one other Assessor, prior to making his or her decision.
 - 5.5.5.1 Within ten (10) working days following such consultation the Provost shall:
 - i) notify the parties of his or her decision; and
 - ii) where appropriate, institute disciplinary proceedings in accordance with section 5.5.3.
- 5.5.6 The Provost is not required to meet with the Complainant or the Respondent before or after rendering his or her decision.

5.6 General Provisions

- 5.6.1 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.

All decisions, records and files shall be kept confidential and held for a minimum of five years after the closing of the file and then destroyed unless further proceedings were initiated.
- 5.6.2 Subject to section 5.4.5, nothing in this Policy precludes either party from exercising, subsequent to the decision made by the Provost, any internal or external recourse available.

Any time period stipulated for the institution of further internal procedures commences from the date of the decision of the Provost.
- 5.6.3 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, even where the Complaint was dismissed, except in cases of intentionally false or frivolous Complaints.
- 5.6.4 The Complainant, the Respondent, the Advisors and all other persons involved in the investigation shall maintain confidentiality throughout the process.
- 5.6.5 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) one representative of each of MAUT, MUNASA, MUNACA, AGSEM, SSMU, PGSS, MACES, MCSS and JSBCE;
- ii) two persons representing the Trades and Services Unions;
- iii) the Coordinating Assessor;
- iv) the Director of the Social Equity and Diversity Education Office; and
- v) the Provost or his or her delegate.

Legislative History:

Approved:

Senate	December 7, 2005	Minute 5
Board of Governors	December 12, 2005	Minute 7

Amendments:

Senate	December 2, 2009	Minute 3.1
Executive Committee	December 7, 2009	Minute 5.1.2