



Memorandum

Office of the Provost & VP (Academic)
James Administration Building, Room 504
Tel: 514-398-4177 | Fax: 514-398-4768

TO: Senate

FROM: Professor Angela Campbell, Associate Provost (Equity & Academic Policies)

SUBJECT: Proposed Policy on Academic Freedom

DATE: May 10, 2023

DOCUMENT #: D22-71

ACTION REQUIRED: INFORMATION APPROVAL/DECISION

ISSUE McGill’s new proposed *Policy on Academic Freedom* is presented to Senate for consideration.

BACKGROUND & RATIONALE Bill 32, *An Act respecting academic Freedom in the university sector*, requires all universities in Quebec to have a Policy on Academic Freedom. The proposed policy presented to Senate meets the requirements of this legislation while also adhering to McGill’s [Mission and Principles](#). It also recommits to its [Statement of Academic Freedom](#), adopted by Senate at its meeting of March 23, 2016.

PRIOR CONSULTATION All staff unions and associations, student associations, campus-wide web-based open consultation, and in-person meetings with MAUT and student leaders. Presented to Senate for information and discussion at the meeting of April 19, 2023.

SUSTAINABILITY CONSIDERATIONS Strong policies relating to social and intellectual climate, and accountability in relation to their application, contribute to social sustainability on our campuses.

IMPACT OF DECISION AND NEXT STEPS Once approved, the Policy will be presented to the Board of Governors for consideration at its meeting of May 18, 2023.

MOTION OR RESOLUTION FOR APPROVAL *Be it resolved that Senate approve, and recommend to the Board of Governors for approval, the proposed Policy on Academic Freedom.*

APPENDICES Appendix A: Proposed Policy on Academic Freedom (tracked changes)

Appendix B: Proposed Policy on Academic Freedom (clean)

POLICY NAME	POLICY ON ACADEMIC FREEDOM
Approving Body	Senate Board of Governors
Initial Approval Date	
Date of last review	n/a
Date of next review	May 2028
Executive Sponsor	Provost & Vice-Principal Academic

PART I – PURPOSE

1. The purpose of this Policy is to recognize, promote, and protect academic freedom in order to support the [Mission](#) of McGill University, which is defined as: “the advancement of learning and the creation and dissemination of knowledge, by offering the best possible education, by carrying out research and scholarly activities judged to be excellent by the highest international standards, and by providing service to society.”
2. In the pursuit of its [Mission](#) McGill expressly embraces the following [principles](#): academic freedom, integrity, responsibility, equity, and inclusiveness.
3. Academic freedom at McGill was defined pursuant to an extensive consultation process that led to the adoption by Senate of the [Statement of Academic Freedom](#). This Policy incorporates by reference the definition and scope of academic freedom set out in the Statement.
4. Academic freedom extends to Intramural Activities and Extramural Activities.
5. The University is committed to the protection of academic freedom against undue influence or pressure by Members of the University Community or external actors or entities whose actions might seek to limit the scope or exercise of this freedom.
6. This Policy complements and does not derogate from or supersede rights and responsibilities set by law or other University policies, regulations, which include, but are not limited to, the following:
 - *Charter of Students’ Rights*
 - *Regulation on Conduct of Research*
 - *Regulation on Conflict of Interest*
 - *Statement of Principles Concerning Freedom of Expression and Freedom of Peaceful Assembly*
 - *Regulations Relating to Academic Staff Grievances and Disciplinary Procedures*
 - *Policy on Harassment and Discrimination*
 - *Regulation Concerning the Investigation of Research Misconduct*
 - *Policy against Sexual Violence*

- *Code of Student Conduct and Disciplinary Procedures*
7. The application of this Policy does not derogate from or supersede the rights and obligations that are set by collective agreements or by academic program or course requirements.
 8. The Provost & Vice-Principal (Academic) is responsible for upholding academic freedom at McGill and for the effective implementation of this Policy.

PART II – DEFINITIONS

9. "Complainant" means a person who brings a complaint under this Policy.
10. "Days" means calendar days.
11. "Extramural activities" means off-campus events and activities that are not University-sponsored and extends to media and social communications.
12. "Intramural activities" means events and activities that take place on campus and/or that are sponsored by the University.
13. "Member of the University Community" means the following:
 - i) an employee of the University; or
 - ii) a student as defined in Section 1 of the *Code of Student Conduct and Disciplinary Procedures*.
14. "Prima Facie Case" means a situation where – without determining the truth of any allegations – the facts and evidence presented are sufficiently plausible to justify proceeding to an investigation in accordance with this Policy, in view of the criteria set out at sections 46-46.2.
15. "Respondent" means the person against whom a complaint under this Policy is made.
16. "Statement" means McGill's [Statement of Academic Freedom](#) adopted by the University Senate in 2016, which is incorporated by reference within this Policy, and provides:

Academic freedom is central to McGill University's mission of advancing learning through teaching, scholarship and service to society.

The scholarly members of the university have the freedom to pursue research and artistic creation and to disseminate their results, without being constrained by political or disciplinary orthodoxies, monetary incentives or punitive measures as a result of their academic pursuits. They may exercise this freedom in the service of both the university and the wider society. When scholarly members of the university participate in public forums and debates, they should represent their views as their own.

The exercise of academic freedom requires collegial governance with the full participation of scholarly members. They retain the right of free expression, including the freedom to criticize one another, university policies and administration.

The university and its officers have a duty to protect the academic freedom of its scholarly community, both individually and collectively, from infringement and undue external influence as well as to maintain the university's institutional autonomy.

17. "University Context" means an occurrence:

- i) on University premises;
 - ii) within the context of a University-sponsored program or event or activity whether on campus or off-campus (e.g., University-sponsored competitions or field trips/studies); or
 - iii) off-campus, including online or in social media, where the conduct has consequences that may be reasonably seen to adversely affect:
 - o the safety of students, faculty, or staff while on campus or while participating in a University-sponsored program, event or activity;
- or
- o the right of a Member of the University Community to use and enjoy the University's learning or working environment.

PART III – SCOPE

18. [The Statement](#) applies to "scholarly members of the university". This Policy applies to all Members of the University Community who have teaching and/or research as core functions of their employment duties. It also extends to students and trainees in connection with decisions they make about the subjects they research or arguments they adopt in the context of their academic programs, courses, or other scholarly pursuits.

19. A complaint may be filed pursuant to this Policy only where:

- a. the ~~Complainant person bringing a complaint~~ and the Respondent are both Members of the University Community;
- b. the ~~Complainant person bringing a complaint~~ is the person who is ~~alleged to have been~~ the subject of an alleged violation of academic freedom;
- c. the Respondent named in the complaint is the person whose actions are alleged to have violated the Complainant's academic freedom ~~of the person who makes the complaint~~; and
- d. the complaint pertains to incidents arising in a University Context.

19.1 For greater clarity, where a complaint arises from an event involving an invited speaker who is not a Member of the University Community, the complaint falls within this Policy's scope only where the Complainant is the host or organizer of the event and where the Complainant argues that the Complainant's own (rather than the invited speaker's) academic freedom was violated.

20. A complaint may be filed pursuant to this Policy only with respect to acts alleged to have occurred after the Policy's adoption by Senate and the Board of Governors.

PART II –CONTENT

Guiding Principles Protecting Academic Freedom on Campus

21. Vigorous, evidence-based, and respectful debate and inquiry, even on controversial or morally divisive topics, are at the heart of a university's mission, which is to advance learning and knowledge. The University will not prevent or limit scholarly inquiry or debate of any issue or question.
22. Academic freedom must be exercised in accordance with the standards of ethics and of scientific and scholarly rigour generally recognized within the academic community, taking into account the rights of the other Members of the University Community ~~expected within our University community and in the context of the relevant discipline.~~
23. Members of the University Community are free to criticize the institution and its decisions and policies. ~~subject to legal and policy restrictions including but not limited to those that pertain to privacy, harassment, discrimination, and defamation.~~ In respect of employees who are entitled to academic freedom pursuant to this Policy, the exercise of this freedom in accordance with this Policy and the law shall not be abridged by an employee's obligation of loyalty to the University.
24. This Policy is not intended to prevent the discussion of controversial or difficult ideas and subjects in the context of academic activities at the University.
25. The University may not compel the use of content or "trigger" warnings prior to discussions on sensitive topics in academic settings. Nevertheless, members of the University community may use such warnings when appropriate to facilitate learning and academic engagement.

Promoting Academic Freedom

26. At the outset of each academic year, the Provost and Vice-Principal (Academic) will disseminate to all Members of the McGill community this Policy with a reminder of McGill's commitment to academic freedom.
27. The University will develop and maintain a website devoted to academic freedom setting out the University's commitment, relevant resources and materials for further learning, and activities on campus – including conferences, workshops, and lecture series – that promote academic dialogue and engagement.
28. The University will host activities annually for academic leadership and faculty on academic freedom to enhance awareness and understanding of this concept and how it manifests in a university setting.

Advisory Resources

29. Members of the University community who seek information and/or advice in relation to academic freedom have a range of resources at their disposal. For academic staff, this includes the staff member's Chair and/or Dean. Staff members may also consult their faculty association or, where unionized, their union representative. Students may connect with the Dean of Students, the Ombudsperson for Students, or Student Advocacy.

Subcommittee on Academic Freedom

30. Each year by 1 June, the [Academic Policy Committee \(APC\)](#) will nominate a standing Subcommittee on Academic Freedom (SAF) that includes five members of APC, which shall include:
- three members of academic staff;
 - one member of senior administration; and
 - one student.
- 30.1 The SAF may seek the support of any Member of the University Community whose advice and input it deems would be helpful to making a preliminary determination and/or carrying out an investigation into a complaint of a violation of academic freedom including, but not limited to, subject matter experts and the General Counsel.
31. The SAF Chair will be a tenured member of academic staff appointed by the Chair of APC.
32. The SAF's mandate is to:
- a. investigate complaints of academic freedom violations in accordance with the process set out below and, where appropriate, to make recommendations arising from such investigations; and
 - b. oversee the effective implementation of the present Policy.
33. Before or at the beginning of each academic year, the SAF will receive dedicated training on academic freedom, including its history and purpose, which will include the participation of a recognized expert in the field.

Complaints of Academic Freedom Violations (AFVs)

34. A Member of the University Community who believes that their academic freedom was violated by an act of another Member of the University Community within a University Context, including through the application of University regulation or policy, may bring a complaint to this effect to the SAF.
35. The APC will establish a designated complaint form to report an AFV. This form shall elicit information from the Complainant to allow the SAF to make a preliminary determination about the complaint under s. 38.
36. Upon receipt of a complaint of an AFV, the SAF will notify the Respondent. The latter shall have the opportunity to reply to the complaint in writing within 30 Days.
37. The APC will establish a designated form to respond to a report an AFV. This form shall elicit information from the Respondent to allow the SAF to make a preliminary determination about the complaint under s. 38.

Preliminary Determination

38. The SAF will have 30 Days from receipt of the Respondent's submissions made pursuant to ss. 36-37 to make a preliminary determination in regard to the admissibility of the complaint. The preliminary determination shall be based on ~~two~~ three questions:

- a. Does the complaint establish a *Prima Facie* Case of an AFV, in view of the [Statement and this Policy](#)?
 - b. [Is the complaint more suitably addressed under another University policy or process? and](#)
 - c. Is the complaint admissible in view of this Policy's scope as defined at ss. 18-20?
39. Where the SAF concludes, pursuant to its preliminary determination, that a *Prima Facie* Case is not made and/or that the complaint lies outside of this Policy's scope, and hence that the complaint is not admissible, the SAF shall report this conclusion to the party who brought the complaint and to the APC, and the matter will be closed.
40. Where the SAF concludes that such a *Prima Facie* Case is made out and that the complaint is admissible in view of the Policy's scope as defined at ss. 18-20, and hence that the complaint is admissible, it shall report to the APC to this effect. The Chair of APC shall thereafter mandate the SAF to carry out an investigation into the merits of the complaint.

Investigation

41. In carrying out an investigation mandated by s. 40, the SAF shall meet with both the Complainant and the Respondent. The SAF may also interview witnesses who can provide relevant evidence, and it may obtain and review documents and materials relevant to its investigation submitted by the parties or witnesses.
42. Meetings with parties and witnesses should occur in person or, if preferable to the SAF, by videoconference, subject to consultation with the party or witness concerned.
43. The SAF's meetings shall not be open to the public.
44. The SAF shall not hold a hearing.
45. Each of the parties to a complaint of an AFV may be assisted by an advisor who shall be a member of the McGill community acting in this capacity without remuneration.
46. In assessing a complaint of an AFV, the SAF shall be guided by the following criteria:
 - a. whether the act complained of constrains the Complainant's academic or intellectual pursuits;
 - b. whether the act complained of appears retaliatory in nature, in that it results in an adverse or punitive consequence for the Complainant by someone in a position of academic or employment authority;
 - c. whether the act complained of is reasonably justified by the University's [Mission](#); its obligations to its students; university policies, regulations, or collective agreements; and/or by law; and
 - d. whether the act complained of is reasonably justified because it addresses academic performance that falls short of expected requirements or standards (e.g., requirements for tenure for academic staff or the requirements of a course or program for students).

46.1 Where the evidence is such that, on a balance of probabilities s.46(a) and/or s.46(b) are answered in the affirmative, and where the act complained of is not reasonably justified pursuant to the criteria set by s.46(c) and/or s. 46(d), then the SAF shall find that an AFV has occurred.

46.2 In contrast, the SAF will not find that an AFV has occurred where the evidence is such that, on a balance of probabilities, s.46(a) and/or s.46(b) are answered in the negative, or where the act complained of is reasonably justified pursuant to the criteria set by s.46(c) and/or s. 46(d).

47. The SAF shall have ~~90~~120 Days to complete its investigation.

Submission of SAF Investigation Report and Chair's Decision

48. Upon completing its investigation mandated by s. 40, the SAF will submit a report setting out its process, findings, and recommendations to the APC through the APC Chair. The submission of this report concludes the SAF's investigation.
49. Upon receipt of the report from the SAF the Chair may seek further information or clarification from the SAF before making a final decision.
50. The Chair of APC will review the SAF's report and determine, within 60 Days, whether and how its recommendations will be implemented. The APC Chair's decision to this effect shall be final and conclude the investigation into a complaint of an AFV.
51. The APC Chair's decision will be communicated to the parties, enclosing a copy of the SAF's investigation report. If the Chair decides to reject the findings or declines to implement the recommendations of the SAF, the Chair's reasons shall be provided in writing to the parties, the SAF, and the APC.
52. The APC Chair's decision, enclosing the SAF's investigative report, also will be shared with the APC. Should members of APC want to discuss the SAF's report and/or the Chair's decision, such discussion will happen in closed session and will be minuted.
53. Where the APC Chair has accepted a recommendation from the SAF to impose a disciplinary measure, the APC Chair shall refer the matter to the appropriate disciplinary authority for action in accordance with the relevant University regulation, policy, or collective agreement applicable in the circumstances.

Confidentiality

54. All processes conducted under this Policy will protect the privacy rights of the parties. Parties and witnesses shall accordingly maintain the confidentiality of such processes and of the information provided or received throughout their duration. The parties may, however, share information about the investigation with an advisor who accompanies them during the processes described by this Policy, who must also commit to maintaining confidentiality.

55. Members of the SAF and of the APC are bound to treat all complaints arising under this Policy, including documents, deliberations, processes, and decisions, as strictly confidential. APC meetings held to discuss complaints arising under this Policy, and their outcomes, shall be held in closed session.

AFV Complaints against Members of Senior University Leadership

56. Where the Respondent is a Vice-Principal, the Principal may create an *ad hoc* committee to investigate the complaint through a process aligned with ss. 41-47. This *ad hoc* committee will be responsible and report to the Board of Governors. Its composition will respect the requirements of the *Act respecting academic freedom in the university sector*.
57. Where the Respondent is the Principal, the Chair of the Board may create an *ad hoc* committee composed of Governors or *Governors emeriti* to investigate the complaint through a process aligned with ss. 41-47. This *ad hoc* committee will be responsible and report to the Board of Governors. Its composition will respect the requirements of the *Act respecting academic freedom in the university sector*.

Review of Decisions Regarding AFV Complaints

58. Any Member of the University Community who has made a complaint using the procedure provided for herein, or who has been the Respondent in an SAF, and who is of the view that the University has not adhered to the requirements set by this Policy may pursue a recourse through the grievance process established by the applicable University policy, regulation and/or collective agreement.

Reporting to Senate, the Board of Governors, and the Minister

59. The Provost and Vice-Principal (Academic), as Chair of APC shall report annually to Senate and the Board of Governors on the implementation and application of this Policy. This report will include information about the number of complaints of AFVs received during the reporting period and the number of cases wherein a *Prima Facie* Case of an AFV was made and referred to the relevant University disciplinary authority. The annual report shall also provide, in the aggregate, data regarding the treatment of complaints that were referred to a full investigation by a University disciplinary authority including individual measures (e.g., disciplinary or administrative measures) and/or systemic measures.
60. The University, through the Provost and Vice-Principal (Academic) shall report annually to the Minister on the implementation of this Policy in accordance with the *Act respecting academic freedom in the university sector*.

PART III – REVIEW

Reporting to Senate, the Board of Governors and Minister; and Policy Review

61. This Policy shall be reviewed at least once every five years through a process conducted by a subcommittee of APC, in broad consultation with members of the McGill community.

POLICY NAME	POLICY ON ACADEMIC FREEDOM
Approving Body	Senate Board of Governors
Initial Approval Date	
Date of last review	n/a
Date of next review	May 2028
Executive Sponsor	Provost & Vice-Principal Academic

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- one student.

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31. The SAF Chair will be a tenured member of academic staff appointed by the Chair of APC.

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Preliminary Determination

38. The SAF will have 30 Days from receipt of the Respondent's submissions made pursuant to ss. 36-37 to make a preliminary determination in regard to the admissibility of the complaint. The preliminary determination shall be based on three questions:

- Does the complaint establish a *Prima Facie* Case of an AFV, in view of the [Statement](#) and this Policy?

- b. Is the complaint more suitably addressed under another University policy or process? and
 - c. Is the complaint admissible in view of this Policy's scope as defined at ss. 18-20?
39. Where the SAF concludes, pursuant to its preliminary determination, that a *Prima Facie* Case is not made and/or that the complaint lies outside of this Policy's scope, and hence that the complaint is not admissible, the SAF shall report this conclusion to the party who brought the complaint and to the APC, and the matter will be closed.
40. Where the SAF concludes that such a *Prima Facie* Case is made out and that the complaint is admissible in view of the Policy's scope as defined at ss. 18-20, and hence that the complaint is admissible, it shall report to the APC to this effect. The Chair of APC shall thereafter mandate the SAF to carry out an investigation into the merits of the complaint.

Investigation

41. In carrying out an investigation mandated by s. 40, the SAF shall meet with both the Complainant and the Respondent. The SAF may also interview witnesses who can provide relevant evidence, and it may obtain and review documents and materials relevant to its investigation submitted by the parties or witnesses.
42. Meetings with parties and witnesses should occur in person or, if preferable to the SAF, by videoconference, subject to consultation with the party or witness concerned.
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44. The SAF shall not hold a hearing.
45. Each of the parties to a complaint of an AFV may be assisted by an advisor who shall be a member of the McGill community acting in this capacity without remuneration.
46. In assessing a complaint of an AFV, the SAF shall be guided by the following criteria:
- a. whether the act complained of constrains the Complainant's academic or intellectual pursuits;
 - b. whether the act complained of appears retaliatory in nature, in that it results in an adverse or punitive consequence for the Complainant by someone in a position of academic or employment authority;
 - c. whether the act complained of is reasonably justified by the University's [Mission](#); its obligations to its students; university policies, regulations, or collective agreements; and/or by law; and
 - d. whether the act complained of is reasonably justified because it addresses academic performance that falls short of expected requirements or standards (e.g., requirements for tenure for academic staff or the requirements of a course or program for students).
- 46.1 Where the evidence is such that, on a balance of probabilities s.46(a) and/or s.46(b) are answered in the affirmative, and where the act complained of is not reasonably justified

pursuant to the criteria set by s.46(c) and/or s. 46(d), then the SAF shall find that an AFV has occurred.

46.2 In contrast, the SAF will not find that an AFV has occurred where the evidence is such that, on a balance of probabilities, s.46(a) and/or s.46(b) are answered in the negative, or where the act complained of is reasonably justified pursuant to the criteria set by s.46(c) and/or s. 46(d).

47. The SAF shall have 120 Days to complete its investigation.

Submission of SAF Investigation Report and Chair's Decision

48. Upon completing its investigation mandated by s. 40, the SAF will submit a report setting out its process, findings, and recommendations to the APC through the APC Chair. The submission of this report concludes the SAF's investigation.

49. Upon receipt of the report from the SAF the Chair may seek further information or clarification from the SAF before making a final decision.

50. The Chair of APC will review the SAF's report and determine, within 60 Days, whether and how its recommendations will be implemented. The APC Chair's decision to this effect shall be final and conclude the investigation into a complaint of an AFV.

51. The APC Chair's decision will be communicated to the parties, enclosing a copy of the SAF's investigation report. If the Chair decides to reject the findings or declines to implement the recommendations of the SAF, the Chair's reasons shall be provided in writing to the parties, the SAF, and the APC.

52. The APC Chair's decision, enclosing the SAF's investigative report, also will be shared with the APC. Should members of APC want to discuss the SAF's report and/or the Chair's decision, such discussion will happen in closed session and will be minuted.

53. Where the APC Chair has accepted a recommendation from the SAF to impose a disciplinary measure, the APC Chair shall refer the matter to the appropriate disciplinary authority for action in accordance with the relevant University regulation, policy, or collective agreement applicable in the circumstances.

Confidentiality

54. All processes conducted under this Policy will protect the privacy rights of the parties. Parties and witnesses shall accordingly maintain the confidentiality of such processes and of the information provided or received throughout their duration. The parties may, however, share information about the investigation with an advisor who accompanies them during the processes described by this Policy, who must also commit to maintaining confidentiality.

55. Members of the SAF and of the APC are bound to treat all complaints arising under this Policy, including documents, deliberations, processes, and decisions, as strictly confidential. APC meetings held to discuss complaints arising under this Policy, and their outcomes, shall be held in closed session.

AFV Complaints against Members of Senior University Leadership

56. Where the Respondent is a Vice-Principal, the Principal may create an *ad hoc* committee to investigate the complaint through a process aligned with ss. 41-47. This *ad hoc* committee will be responsible and report to the Board of Governors. Its composition will respect the requirements of the *Act respecting academic freedom in the university sector*.
57. Where the Respondent is the Principal, the Chair of the Board may create an *ad hoc* committee composed of Governors or *Governors emeriti* to investigate the complaint through a process aligned with ss. 41-47. This *ad hoc* committee will be responsible and report to the Board of Governors. Its composition will respect the requirements of the *Act respecting academic freedom in the university sector*.

Review of Decisions Regarding AFV Complaints

58. Any Member of the University Community who has made a complaint using the procedure provided for herein, or who has been the Respondent in an SAF, and who is of the view that the University has not adhered to the requirements set by this Policy may pursue a recourse through the grievance process established by the applicable University policy, regulation and/or collective agreement.

Reporting to Senate, the Board of Governors, and the Minister

59. The Provost and Vice-Principal (Academic), as Chair of APC shall report annually to Senate and the Board of Governors on the implementation and application of this Policy. This report will include information about the number of complaints of AFVs received during the reporting period and the number of cases wherein a *Prima Facie* Case of an AFV was made and referred to the relevant University disciplinary authority. The annual report shall also provide, in the aggregate, data regarding the treatment of complaints that were referred to a full investigation by a University disciplinary authority including individual measures (e.g., disciplinary or administrative measures) and/or systemic measures.
60. The University, through the Provost and Vice-Principal (Academic) shall report annually to the Minister on the implementation of this Policy in accordance with the *Act respecting academic freedom in the university sector*.

PART III – REVIEW

Reporting to Senate, the Board of Governors and Minister; and Policy Review

61. This Policy shall be reviewed at least once every five years through a process conducted by a subcommittee of APC, in broad consultation with members of the McGill community.