

Complete Policy Title:  
**Discrimination, Harassment & Sexual  
Harassment: Prevention and Response**

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**Senate / Board of Governors**

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October 20, 2001; October 25, 2001

Responsible Executive:  
**University Secretariat**

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[University Secretariat](#)

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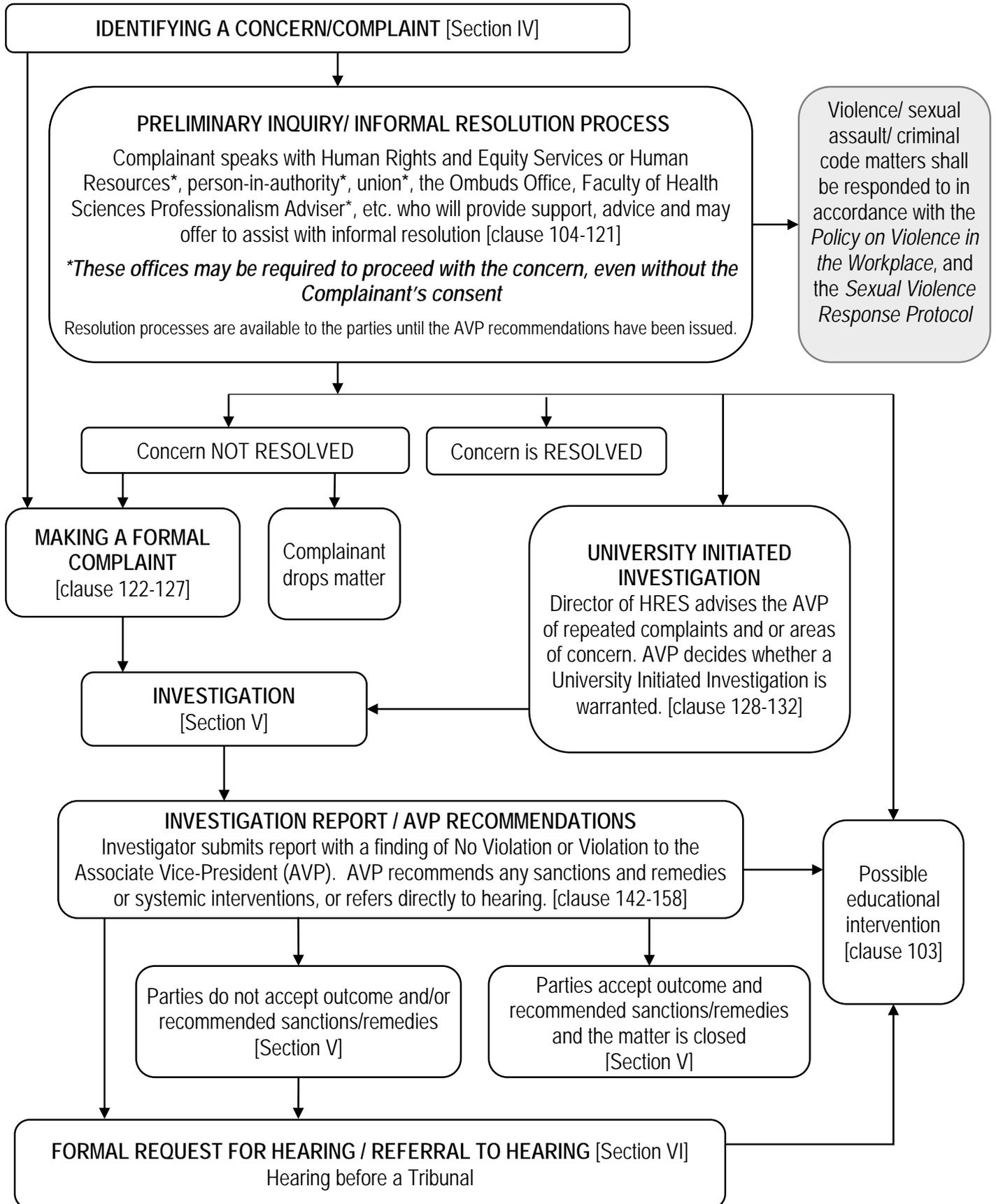
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## SECTION I: INTRODUCTION

### PREAMBLE

1. McMaster University is committed to fostering a respectful and inclusive organizational culture in which all members of the University community work, study and live free of discrimination and harassment.
2. The University upholds a fundamental commitment to freedom of expression and association for all its members and to academic freedom for faculty. In exercising those freedoms, all its members are required to respect the rights and freedoms of others, including the right to freedom from discrimination and harassment.
3. Prevention of discrimination and harassment are matters of not only individual concern but of significance for the overall climate and welfare of the University community.
4. Prevention through education is a fundamental aspect of the University's commitment. As part of this commitment, the University provides a range of educational and community-building activities that foster understanding of human rights issues and of the harm incurred by their violation, and communicates the expectation of and support for a workplace free from discrimination and harassment.
5. The University has a legal and moral responsibility to address instances of discrimination and/or harassment promptly and fairly, and to set in place a process for receiving and responding to complaints that all members of the community can access, and for providing support throughout and, where necessary, after the process. See [Appendix B: Glossary of Terms](#).
6. In seeking to prevent and address discrimination and harassment the Policy is guided by the [Ontario Human Rights Code](#) and the [Occupational Health and Safety Act](#), as well as by other legislation, policies and collective agreements identified in [clause 37 Related Policies and Legislation](#).
7. For the purpose of interpreting this document:
  - a) words in the singular may include the plural and words in the plural may include the singular;
  - b) references to harassment include sexual and/or gender-based harassment;
  - c) the Office of Human Rights and Equity Services shall be referred to as Human Rights and Equity Services; and
  - d) references to the Associate Vice-President include the Assistant Vice-President Human Resources.
8. Links to a summary overview and guide to the Policy may be found on the Human Rights and Equity Services website at <http://www.hres.mcmaster.ca/>.

## SCOPE

9. This Policy applies to all members of the University community. "Members of the University community" includes, but is not limited to, faculty, staff, postdoctoral fellows, medical residents<sup>1</sup>, students (graduate, undergraduate, and continuing education), adjunct professors, librarians, visiting professors, volunteers, visitors, observers and institutional administrators and officials representing McMaster University.
10. Any member of the University community engaged in University-sanctioned academic and non-academic activities on all University premises or off-campus (co-op placement, clinical placement, internship, practicum, athletic event, club events, staff training, conferences, etc.) will have access to the provisions of this Policy, and if applicable: the policies of the hiring or supervisory agencies, where such policies exist; or the policies of the relevant Human Rights Commission. Students at off-campus placements may seek advice from Human Rights and Equity Services.
11. The terms **concern** and **complaint** are used to refer to two separate but often sequential ways in which issues may be raised for resolution. A concern refers to something raised in an initial/exploratory or informal way that may or may not become a clearer articulation of a complaint.
12. Complaints may be made or investigations initiated about any alleged violation of this Policy involving any member of the University community, including members of recognized groups, teams and clubs. The Policy may extend to incidents that occur off campus where there is a clear nexus to the campus community and recognizes that social media conduct may give rise to a violation of the Policy.
13. Incidents of violence, sexual assault, or threats of violence are not covered by this Policy but will be responded to in accordance with the [McMaster University Policy on Violence in the Workplace](#), the [McMaster University Violence Program and Guidelines](#) and the Sexual Violence Response Protocol.
14. Nothing in this Policy is meant to supersede the terms and conditions of any collective agreement, or any other contractual agreement, entered into by the University and its employee groups. In the event that the provisions of this Policy contradict any such collective or contractual agreement, the collective or contractual agreement governs, to the extent of the contradiction.
15. Should a Complainant, with respect to the subject matter of a complaint dealt with under this Policy, initiate a complaint or seek redress under the [Ontario Human Rights Code](#), the [Criminal Code](#), the [Occupational Health and Safety Act](#), the provisions of an applicable collective agreement, or through civil litigation, or any other forum external to the University, proceedings under this Policy may be permanently discontinued and any new proceedings under this Policy in relation to the subject matter of the complaint may be disallowed.
16. To the extent that this Policy affects the terms and conditions of employment of faculty of the University, it may be subject to discussion and/or approval in accordance with the University policy entitled, *The Joint Administration/Faculty Association Committee to consider University Financial Matters and to Discuss and Negotiate Matters Related to Terms and Conditions of Employment of*

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<sup>1</sup> Except where the medical resident's employment relationship takes precedence.

*Faculty*, revised by the Board of Governors on October 20, 1988 (the 'Joint Administration/Faculty Association' policy).

17. As part of the University's commitment to a discrimination and harassment free working, studying and living environment, all external agencies, third-party service providers, and independent contractors, who do business on the University campus will be informed of the existence of this Policy and of the University's expectation that these external entities shall govern themselves accordingly while doing business with the University. Information to this effect shall be included in all contracts.

## GUIDING PRINCIPLES

18. **Offensiveness and Illegality of Discrimination and Harassment**  
Discrimination and harassment are offensive, illegal, and incompatible with the ethos and aspirations of McMaster University.
19. **Recognition of Power Relations**  
Discrimination and harassment involve, in many cases, abuses of power vested in institutional authority structures and/or imbalances of power rooted in systemic social inequalities.
20. **Fairness**  
All parties involved in complaints will be treated fairly and in keeping with principles of procedural fairness.
21. **Enabling Access**  
Policies and procedures should maximize the opportunity to come forward for those who may have experienced conduct they think constitutes discrimination and/or harassment. All members of the community should have access to the same processes and procedures to ensure consistent treatment of all issues.
22. **Support**  
The University recognizes that coming forward with a concern or complaint, or being the focus of allegations of misconduct may be difficult. Individuals will receive appropriate support, respect, and assistance throughout and, where necessary, following the process.
23. **Confidentiality and Disclosure**  
The University recognizes the importance of confidentiality for anyone coming forward with a concern or complaint of discrimination and harassment and for anyone named as an alleged Respondent, and will protect confidentiality to the extent permitted by its legal obligations.
24. **Expectation of Participation**  
Anyone against whom allegations of discrimination or harassment are made is encouraged to participate in the informal complaint processes described in this Policy. If a complaint is pursued formally or if an investigation is initiated by the University, all members of the community, if asked, are expected to cooperate in the process. Lack of cooperation will not prevent an investigation from proceeding.

25. **Timeliness**  
Complaints will be addressed in a timely manner, as will recommendations for the University to undertake educational or systemic initiatives.
26. **Institutional Learning**  
The University will gather and use data on the incidence and character of reported discrimination and harassment to inform ongoing institutional learning and preventive initiatives.

## DEFINITIONS

27. This Policy prohibits discrimination and/or harassment on a number of grounds including, but not limited to, those grounds articulated in the [Ontario Human Rights Code](#) and described in the [Occupational Health and Safety Act](#).
28. This Policy prohibits discrimination and/or harassment on the following grounds:
- age;
  - ancestry, colour, race;
  - citizenship;
  - ethnic origin;
  - place of origin;
  - creed;
  - disability;
  - family status;
  - marital status (including single status);
  - gender identity, gender expression;
  - receipt of public assistance (in housing only);
  - record of offences (in employment only);
  - sex (including pregnancy and breastfeeding); and
  - sexual orientation.
29. This Policy also prohibits discrimination and/or harassment on the grounds of:
- language, accent or dialect, except where this may interfere with legitimate requirements of education or employment;
  - political belief;
  - membership or non-membership in a political organisation;
  - membership or non-membership in a trade-union, employee/employer organization; and
  - employee group status, e.g. tenured/tenure-track faculty, permanent/teaching-track faculty, staff (unionized and The Management Group - TMG).
30. The following are expressly prohibited by this Policy:
- any discriminatory or harassing conduct, verbal or non-verbal, directed at or about one or more individuals or groups, that creates an intimidating, hostile or offensive environment or interferes

- with academic or work performance, in a manner that exceeds the bounds of freedom of expression and academic freedom;
- b) discriminatory and/or harassing action based on any of the grounds listed above; and
  - c) other discriminatory and/or harassing conduct, whether verbal or non-verbal.

## Discrimination

31. Within this Policy discrimination means an unjust or prejudicial form of unequal treatment, whether imposing extra burdens or denying benefits. It may be intentional or unintentional. It may involve direct actions that are discriminatory on their face, or it may involve rules, practices or procedures that appear neutral, but disadvantage certain groups of people. Discrimination may take obvious forms, or it may happen in very subtle ways. Even if there are many factors affecting a decision or action, if discrimination is one factor that is a violation of this Policy.<sup>2</sup> Not every distinction is discriminatory even if one can identify a distinction on the facts (e.g. distinctions made under policies such as Awards, Scholarships, CP/M, Statement on Academic Freedom, Framework for Merit Allocation TMG).

## Harassment

32. Both the [Ontario Human Rights Code](#) and the [Occupational Health and Safety Act](#) define harassment to mean engagement in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. "Vexatious" comment or conduct is comment or conduct made without reasonable cause or excuse. Harassment includes sexual and/or gender-based harassment as defined below.

## Sexual and/or Gender-Based Harassment

33. The [Ontario Human Rights Code](#) states that every person has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression.
34. This Policy prohibits any form of sexual and/or gender-based harassment, which is comment and/or conduct of a sexual or gender-based nature directed at or about an individual or group by another individual or group where it is known, or ought reasonably to be known, that the comment/conduct is unwelcome and/or unwanted. Such harassment may involve one incident or a series of incidents.
35. Sexual and/or gender-based harassment includes, but is not limited to:
- a) any reward/promise of reward, whether explicit or implicit, for complying with a sexual solicitation or advance; demands for dates or sexual favours; or propositions of physical intimacy;
  - b) any reprisal or threat of reprisal, whether explicit or implicit, for refusing to comply with any sexual solicitation or advance;
  - c) any form of sexual exploitation, or conduct that takes non-consensual sexual advantage of someone;

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<sup>2</sup> Modified Language from "A policy primer: Guide to developing human rights policies and procedures (1996; revised December 2013)" © Queen's Printer for Ontario, 2013. Reproduced with permission.

- d) unwelcome gender-related comments about a person's physical characteristics, mannerisms, gender identity or expression; and
- e) gender-related verbal abuse, threats or taunting.

## Poisoned Environment

36. Where harassing and/or discriminatory conduct (including comments or conduct that are condoned or allowed to continue when known or made known to the [Administration clause 48-53](#)) are sufficiently severe and/or pervasive and cause significant and unreasonable interference to a person's study or work environment, they may be deemed as creating an intimidating and/or hostile work or study environment. A poisoned environment can interfere with and/or undermine work or academic performance and can cause emotional and psychological stress for some employees or students not experienced by other employees or students. As such, it results in unequal terms and conditions of employment or study and prevents or impairs full and equal enjoyment of employment or educational services, benefits, or opportunities. Although a person may not be the target of the conduct, a person may feel the effects of certain harassing or discriminatory conduct at their place of work or study.<sup>3</sup>

### EXAMPLES:

The categories and bases of discriminatory and harassing conduct defined in the [Ontario Human Rights Code](#), the [Occupational Health and Safety Act](#) and this Policy are not mutually exclusive and may intersect. Some examples of conduct that **may** constitute discrimination and/or harassment prohibited by this Policy are listed below. They are included to illustrate and contextualize what is meant by discrimination and harassment; they do not constitute an exhaustive list.

- After returning to work following a leave necessitated by a disability, an employee performing well in their position is passed over for developmental opportunities as the supervisor assumes they will be too stressful for the employee.
- A student with an accommodated disability receives assistance from Student Accessibility Services with administration of in-class tests and exams. The student overhears the Instructor commenting that the assistance results in an unfair advantage for that student.
- A racialized faculty member who is new to the University asks their department chair about initiatives in their department to address the lack of ethno-racial diversity in the faculty complement and graduate student body. The faculty member is cautioned to mute such comments in order not to be perceived as a troublemaker, especially pre-tenure.
- A student in a professional program in a clinical/field setting experiences racial slurs from a patient/client during the course of an interview, including the demand that she remove her hijab; her clinical preceptor/field supervisor remains silent throughout.
- A student persists in making sexually suggestive comments to a Teaching Assistant and continues asking her for a date, despite her clarity that the attention is unwelcome and inappropriate.

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<sup>3</sup> Ryerson University has kindly shared its definition of Poisoned Environment with McMaster University for use in this policy. Some language has been added to the definition.

- An international medical resident is excluded from academic rounds by the chief resident who makes frequent racial slurs in public aimed at the conflict ongoing in their shared homeland.
- During a clinical skills tutorial involving students voluntarily examining each other's bare shoulders, a student makes suggestive sexual comments to a classmate about their anatomy.
- A professor regularly draws unwelcome attention to an older class member. Some students join in making derisive comments about the age gap in the class.
- Two students regularly write offensive and discriminatory "jokes" about members of a particular faith group on each other's residence room doors.
- Racial slurs and stereotypes singling out particular groups are passed off as jokes.
- Use of an anonymous social media site by students to make derogatory and racist comments about a sessional instructor, ridiculing her accent and urging class members to comment negatively on the course evaluation.
- A department supervisor routinely refers to staff in a belittling or demeaning way, or humiliates them in front of others.
- In classroom contexts and department meetings, trans individuals' requests to be addressed by chosen names and gender are ridiculed, dismissed as trivial, or ignored.
- An individual or group is routinely and intentionally targeted for exclusion from group activities and everyday interactions.
- A student posts on a social networking site a video recording of sexual activity with a fellow student without the latter's permission.
- A department chair persists in appointing only men to key committees, despite female faculty asking for such assignments. .
- An employee persists in unwelcome bragging to a colleague of their sexual conquests.
- On social media a student posts racist, misogynist or homophobic remarks that are visible to classmates.
- A Teaching Assistant who identifies as lesbian is cautioned by a course instructor to dress in a more conventional and feminine way for tutorials, because students will not take her seriously and the overall course evaluation responses may be negatively affected.
- An Indigenous faculty member teaching a course on the legacies of colonialism receives derogatory and racist comments from students in emails and course evaluation responses.
- During Faculty Tenure and Promotion deliberations, the Dean makes pejorative generalizations about candidates from a particular ethnic community.
- A staff member returning from a parental leave receives a negative performance review related to their parental leave.

## RELATED POLICIES AND LEGISLATION

37. This Policy is to be read in conjunction with the following policies, statements, and collective agreements. Any question of the application of this Policy or related policies shall be determined by the Provost and Vice President (Academic) or the Vice President (Administration) as appropriate, and in conjunction with the administrator of the other policy or policies. The University reserves the right to amend or add to the University's policies and statements from time to time (this is not a comprehensive list):

- [Academic Accommodation of Students with Disabilities](#)
- [Academic Freedom, Statement on](#)
- [Academic Integrity Policy](#)
- [Accessibility Policy](#)
- [Code of Conduct for Competitive Teams](#)
- [Code of Conduct for Faculty](#)
- [Complaint Resolution Procedure for TMG](#)
- [Conflict of Interest Guidelines: Undergraduate and Graduate Studies](#)
- [Employment Accommodation, Policy and Procedures on](#)
- [Employee/Labour Relations – Collective Agreements](#)
- [Faculty General Grievance Procedure](#)
- [Freedom of Information and Protection of Privacy Act](#)
- [Ontario Human Rights Code](#)
- [Occupational Health and Safety Act](#)
- [Personal Health Information Protection Act](#)
- Petitions for Special Consideration – see the [Undergraduate Calendar](#) / [Graduate Calendar](#)
- [Professional Behaviour Code for Graduate Learners, Health Sciences](#)
- [Professional Behaviour Code for Undergraduate Learners, Health Sciences](#)
- [Residence Code of Conduct](#)
- [Senate Resolutions re Group Conflict](#)
- [Senate Mediation Procedures](#)
- Sexual Violence Response Protocol
- [Statement on Academic Freedom](#)
- [Statement on Building an Inclusive Community with a Shared Purpose](#)
- [Statement and Guidelines on Inclusive Communications](#)
- [Student Appeal Procedures](#)
- [Student Code of Conduct](#)
- [Student Event Risk Management Policy](#)
- [Tenure and Promotion Policy](#)
- [Violence in the Workplace, Policy on](#)

## SECTION II: RESPONSIBILITIES AND PROCEDURAL GUIDELINES

### ROLES & RESPONSIBILITIES

38. The Offices of Human Rights and Equity Services, Human Resources Services (Employee/Labour Relations), and the Faculty of Health Sciences Professionalism Office share responsibility for addressing concerns and complaints relating to discrimination, harassment, sexual or gender-based harassment, including [Ontario Human Rights Code](#) harassment and discrimination, and workplace harassment as defined in the [Occupational Health and Safety Act](#).
39. The Office of Human Rights and Equity Services is available to all members of the University community. Employees also have the option of contacting Human Resources Services. Students, faculty and staff in the Faculty of Health Sciences may also consult with the Faculty of Health Sciences Professionalism Office.
40. While these Offices have primary responsibility, members of the University community may also choose to consult with an organization that represents their interests, or offers support, such as unions, student associations, the Faculty Association, Ombuds Office, Chaplaincy Centre, or persons in authority (see [Appendix B: Glossary of Terms](#)) from whom they choose to seek advice.

### Members of the University Community

41. All members of the University community are responsible for contributing to and maintaining an environment that is free of discrimination, harassment, and/or sexual or gender-based harassment.
42. All members of the University community have the responsibility to:
  - a) be aware of the scope of this Policy; and
  - b) report incidents of apparent discrimination, harassment, sexual or gender-based harassment, and/or a poisoned environment.

### Persons in Authority

43. Persons in Authority include:
  - a) individuals in designated administrative positions and with particular titles (see [clause 46-53](#)); and
  - b) individuals who, not in such positions but in particular contexts, have authority in relation to others e.g. a Teaching Assistant in a tutorial; a student society leader in a society meeting; an instructor in a class.
44. Within the scope of their authority, all such persons are responsible for contributing to a discrimination and harassment free environment.
45. The University is responsible for ensuring that all Persons in Authority are prepared for and supported in assuming the appropriate degree of responsibility through training and orientation to this policy. Orientation will clarify the limits to authority of those without formal administrative positions or

titles (clause 43 b), and the expectation that they inform those with formal oversight if incidents of discrimination or harassment come to their attention.

## Supervisors

46. Supervisor responsibilities include, but are not limited to:
  - a) acting as a Person in Authority in the context of this Policy;
  - b) completing all required training and ensuring that the people they are supervising are trained appropriately on the Policy and [RMM 300 Health and Safety Training Program](#);
  - c) being aware of McMaster University's policies on required training and reporting for individuals under supervision; and
  - d) being aware of their roles and responsibilities as set out in the [Occupational Health and Safety Act](#) with respect to workplace violence and workplace harassment.
47. In addition to the above, Ontario's [Occupational Health and Safety Act](#) defines a supervisor as "a person who has charge of a workplace or authority over a worker." Supervisors are responsible for knowing the [Duties of Supervisors](#) under the Act.

## Administration

48. The term "Administration", as used in this Policy, refers to individuals and entities responsible for upholding the University's policy on *Discrimination, Harassment & Sexual Harassment: Prevention & Response*. A non-exhaustive list includes: Supervisors; Managers; Directors; Department Chairs; Directors of Schools and Programs; Assistant Deans; Associate Deans; Deans; Assistant Vice-Presidents; Associate Vice-Presidents; Vice-Presidents; the Provost; the President; and the University's Senate and Board.
49. In the University context, a member of the Administration may on occasion delegate responsibilities to another individual in the University.
50. The Administration is responsible for maintaining an environment free from discrimination and harassment. When any member of the Administration becomes aware that there may be a poisoned environment, or a pattern of repeated allegations, they are responsible for ensuring that the problem is addressed, which may necessitate training and education, or an investigation under the Policy.
51. The Senior Administration ([see Appendix B: Glossary of Terms](#)) has overarching responsibility for developing and updating policies and procedures related to maintaining an environment free from harassment and discrimination at the University and providing the resources required to support these activities. In addition, it is responsible for promoting awareness of what constitutes an environment free from harassment and discrimination, and providing resources so that members of the University are able to function with the highest standards of integrity, accountability, and responsibility. Activities may include disseminating information about the expectations for a University environment free from discrimination and harassment, and providing education to all members of the University community.

52. Administrators and Persons in Authority are responsible for maintaining records of concerns/complaints that have been brought to their attention. See [clause 78-87 Data Sharing and Record Keeping](#).
53. It is possible that members of the Administration may be the focus of complaints concerned either with their conduct as individuals (in relation to incidents of discrimination, harassment, sexual harassment), or with their conduct in their formal roles (e.g. Chair, Manager, Dean) in which case the University might also be identified as a Respondent.

### Associate Vice-President

54. The Associate Vice-Presidents have various responsibilities under this Policy. The Associate Vice-President in the line of authority in relation to the Respondent shall be the:
  - a) Associate Vice-President (Faculty) for faculty (except those in Faculty of Health Sciences);
  - b) Associate Vice-President (Academic), Health Sciences, for faculty and medical residents in the Faculty of Health Sciences;
  - c) Associate Vice-President (Students and Learning) and Dean of Students for undergraduate, graduate and continuing education students; and
  - d) Assistant Vice-President Human Resources for staff (see [Appendix B – Glossary of Terms](#)).
55. When the line of authority is unclear, the Provost and Vice-President (Academic) or the Vice-President (Administration), as appropriate, will determine the appropriate individual in the line of authority.
56. Should there be a conflict of interest with the Associate Vice-President, the appropriate Vice-President shall assume the responsibilities of the Associate Vice-President under this Policy. Similarly, if that Vice-President is in a conflict then another Vice-President or the President shall act.

### Human Rights and Equity Services

57. Human Rights and Equity Services works with community members to ensure that McMaster University is a place where all community members can learn, work and live in an inclusive and barrier-free environment that fosters equity, respect and accessibility and is free from discrimination and harassment.
58. Human Rights and Equity Services is responsible to all members of the University community for:
  - a) providing support, and policy and procedural guidance in addressing concerns/complaints relating to discrimination, harassment, sexual or gender-based harassment, including [Ontario Human Rights Code](#) harassment and discrimination, and workplace harassment as defined in the [Occupational Health and Safety Act](#);
  - b) informing those who come forward of other resources available to them at the University, including the Ombuds Office, Employee/Labour Relations, Security Services, the Employee Family Assistance Plan, Student Wellness, Student Accessibility Services, etc.;
  - c) providing assistance and advice to Persons in Authority on informal processes of inquiry or informal resolution related to a faculty, staff or student concern/complaint;

- d) in all instances in which a Complainant wishes to proceed with a Formal Complaint, ensuring completion of the Complaint Intake Form and, as appropriate, offering informal resolution, and referring to an investigator. See [clause 122-127 Making a Formal Complaint](#);
  - e) ensuring that reliable data are gathered on the incidence of discrimination and harassment in the University community;
  - f) participating in planning, assisting and coordinating appropriate discrimination, harassment, sexual or gender-based harassment education activities; and
  - g) maintaining records of concerns/complaints under the Policy. See [clause 78-87 Data Sharing and Record Keeping](#).
59. The Director of Human Rights and Equity Services is responsible for the analysis of data gathered by Human Rights and Equity Services or provided to that office by Human Resources Services or by the Faculty of Health Sciences Professionalism Office. The Director is also responsible for providing a written, anonymized, annual statistical report to the Senate and the Board of Governors in order to ensure the identification of areas or issues of repeated concern. The report shall include statistical data on resolutions of Formal Complaints as well as data on informal resolutions, complaints dropped or withdrawn, and concerns brought forward.

## Human Resources Services

60. Human Resources Services works with community members to ensure that McMaster University is a place where all employees can learn, work and live in a safe environment that is free from discrimination and harassment.
61. Units within Human Resources Services that have particular responsibilities in this area include ***Employee/Labour Relations*** and ***Environmental and Occupational Health Support Services*** (which is the facilitator of the mandatory violence and harassment prevention training for all employees in the workplace along with graduate students and volunteers).
62. ***Employee/Labour Relations*** is responsible for:
- a) providing support, and policy and procedural guidance to employees who bring forward concerns/complaints relating to discrimination, harassment, sexual or gender-based harassment, including [Ontario Human Rights Code](#) harassment and discrimination, and workplace harassment as defined in the [Occupational Health and Safety Act](#);
  - b) informing employees of other resources available to them at the University, including the Ombuds Office, Human Rights and Equity Services, Security Services, the Employee Family Assistance Plan, Faculty of Health Sciences Professionalism Adviser etc.;
  - c) providing assistance and advice to Persons in Authority on informal processes of inquiry or informal resolution related to an employee concern/complaint;
  - d) in all instances in which a Complainant wishes to proceed with a Formal Complaint, ensuring completion of the Complaint Intake Form and, as appropriate, offering informal resolution, and referring to an investigator. See [clause 122-127 Making a Formal Complaint](#);

- e) ensuring that reliable data are gathered on the incidence of discrimination and harassment in the University community and that such data are provided to Human Rights and Equity Services for purposes of reporting and analysis;
- f) participating in planning, assisting and coordinating appropriate discrimination, harassment, sexual or gender-based harassment education activities for employees;
- g) maintaining records of employee concerns/complaints under the Policy and communicating identifying data to Human Rights and Equity Services to maintain a complete institutional record. See [clause 78-87 Data Sharing and Record Keeping](#).

### Faculty of Health Sciences Professionalism Office

63. The Faculty of Health Sciences is committed to ensuring an environment where community members in Faculty of Health Sciences can learn and work in an inclusive environment that fosters respect, diversity and collaboration. The mandate of the Advisor, Professionalism and the Faculty Lead includes addressing issues of discrimination, harassment and sexual harassment in accordance with University policies.
64. The **Faculty of Health Sciences Professionalism Office** is responsible to community members in the Faculty of Health Sciences for:
- a) providing support and policy and procedural guidance to Faculty of Health Sciences students, staff and faculty who bring forward concerns/complaints relating to discrimination, harassment, sexual or gender-based harassment, including [Ontario Human Rights Code](#) harassment and discrimination, and workplace harassment as defined in the [Occupational Health and Safety Act](#);
  - b) informing members of the Faculty of Health Sciences community of other resources available to them at the University, including the Ombuds Office, Human Rights and Equity Services, Human Resources Services, Security Services, the Employee Family Assistance Plan, Student Wellness, Student Accessibility Services, etc.;
  - c) providing assistance and advice to Persons in Authority on informal processes of inquiry or informal resolution related to a community member concern/complaint;
  - d) in all instances in which a Complainant wishes to proceed with a Formal Complaint, ensuring completion of the Complaint Intake Form and, as appropriate, offering informal resolution, and referring the matter to the Director of Human Rights and Equity Services (or Director of Employee/Labour Relations). See [clause 122-127 Making a Formal Complaint](#);
  - e) ensuring that reliable data are gathered on the incidence of discrimination and harassment in the Faculty of Health Sciences community and that such data are provided to Human Rights and Equity Services for purposes of reporting and analysis;
  - f) participating in planning, assisting and coordinating appropriate discrimination, harassment, sexual or gender-based harassment education activities for members of the Faculty of Health Sciences community;
  - g) maintaining records of concerns/complaints under the Policy and communicating identifying data to Human Rights and Equity Services to maintain a complete institutional record. See [clause 78-87 Data Sharing and Record Keeping](#).

## PROCEDURAL GUIDELINES

### Confidentiality and Privacy

65. Offices on campus have different reporting requirements that may limit their ability to maintain confidentiality.
66. Offices and Persons in Authority receiving concerns/complaints must inform the individual bringing forward the complaint of the Office/Person in Authority's reporting requirements. See [clause 75-77 Reporting Requirements](#).
67. When bringing concerns/complaints to any University office, individuals are urged to confirm their understanding of that office's reporting requirements and the level of confidentiality that applies to it. See [clause 75-77 Reporting Requirements](#).
68. Should the Office/Person in Authority believe at any time that the health or safety of members of the McMaster community is at risk, the Office/Person in Authority must notify the Director of Security Services and the appropriate administrative officer of the University.
69. Offices/Persons in Authority will, to the extent practicable to enable a concern/complaint to be investigated, acted upon or resolved, protect the confidentiality and privacy of persons involved in a complaint, subject to the requirements of a fair resolution process and their reporting requirements.<sup>4</sup>
70. The **Ombuds Office** provides confidential advice and assistance to all members of the University community. The Ombuds Office reports directly to the President of the University and the President of the McMaster Students Union (MSU) and is otherwise not a University office as it is independent of all existing administrative structures. Notwithstanding the foregoing, the Ombudsperson is not required to maintain confidentiality in cases involving the commission of a serious crime or where there is an imminent risk of physical harm or abuse.
71. **Human Rights and Equity Services** is an office of the University with a particular responsibility for fostering a discrimination and harassment free environment for all members of the University community. In the absence of direct responsibility for, or reporting relationships to, community members in their roles as employees or students, it offers an important neutral space to which concerns/complaints of discrimination and/or harassment can be safely brought forward.  
Assurance of confidentiality is crucial to Human Rights and Equity Services' operation and is offered with the exception of the following limitations:
  - a) if the health and/or safety of an individual or group may be at risk; or
  - b) if the University is subject to legal proceedings that in the opinion of the Provost and Vice-President (Academic) or the Vice-President (Administration), (in consultation with the President) require the disclosure of information; or

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<sup>4</sup> Language from "A policy primer: Guide to developing human rights policies and procedures (1996; revised December 2013)"  
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- c) if disclosure of information is required at law, e.g. as required by the [Occupational Health and Safety Act](#).
72. **Human Resources Services (Employee/Labour Relations)** is responsible for fostering a discrimination and harassment free environment for all employees.
- Assurance of confidentiality is crucial to fostering that environment and is offered by Human Resources Services (Employee/Labour Relations) with the exception of the limitations noted in [clause 71 a\), b\), and c\)](#) above and in addition:
- if Human Resources Services (Employee/Labour Relations) becomes aware of an incident(s) of discrimination or harassment in the University community.
73. The **Faculty of Health Sciences Professionalism Office** is responsible for fostering a discrimination and harassment free environment for community members in the Faculty of Health Sciences.
- Assurance of confidentiality is crucial to fostering that environment and is offered by the Faculty of Health Sciences Professionalism Office with the exception of the limitations noted in [clause 71 a\), b\), and c\)](#) above and in addition:
- if disclosure is required by the Faculty of Health Sciences professional behavior codes (see [clause 37](#)) or obligations under health profession guidelines.
74. The University will protect personal information and deal with records in accordance with the [Freedom of Information and Protection of Privacy Act](#) and the [Personal Health Information Protection Act](#).

## Reporting Requirements

75. Because of their roles and responsibilities on campus, some University offices and Persons in Authority may be required to pursue the matter once a concern/complaint has been brought to their attention. If at any time it is believed that the health or safety of members of the McMaster community are at risk, or there is a report of a poisoned work environment that endangers health and safety, the appropriate University office must be informed [e.g. Human Resources Services (Employee/Labour Relations), Security Services]. Certain offices/authorities have mandatory reporting requirements when receiving reports regarding violence, sexual assault, harassment and other misconduct.
76. As part of the University's internal responsibility to maintain an environment free from discrimination and harassment, there are various reporting requirements regarding the resolution of concerns and complaints:
- a) **Informal Process: Preliminary Inquiry / Assistance with Informal Resolution:** Offices or Persons in Authority who receive concerns or complaints must consult with Human Rights and Equity Services (or Human Resources Services, or the Faculty of Health Sciences Professionalism Office as appropriate) and may disclose the general nature of the concern without identifying the parties involved. The resolution of these preliminary inquiries is reported to Human Rights and Equity Services without identifying information;

- b) **Formal Complaint / University Initiated Investigation:** Investigation Reports identify the parties involved, the complaint and the resolution. These reports shall be reported to Human Rights and Equity Services, as well as to the appropriate Associate Vice-President; and
  - c) **Hearing:** Tribunal reports identify the parties involved, the complaint and the resolution. These reports shall be provided to the parties, and to the Director of Human Rights and Equity Services, as well as to the President, the appropriate Vice-President and appropriate Associate Vice-President.
77. Concerns/complaints that are related to graduate student supervision and postdoctoral fellows may need to be reported to the Associate Vice-President and Dean of Graduate Studies. In the event of a conflict, matters will be reported to the appropriate Associate Dean of Graduate Studies.

### Data Sharing and Record Keeping

78. As part of the University's internal responsibility to maintain an environment free from discrimination and harassment, information shall be shared between Human Rights and Equity Services, Human Resources Services (Employee/Labour Relations), Faculty of Health Sciences Professionalism Office, and/or Security Services on a need-to-know basis (see [Appendix B: Glossary of Terms](#)), for example information regarding other allegations/poisoned environment, or issues regarding health and safety.
79. When an Investigation is initiated by **Human Rights and Equity Services** or **Employee/Labour Relations**, if any of the parties involved are employees, the office responsible for the Investigation shall inform the other office of the identities of the parties. If the other office has records that are related to the parties involved this information shall be shared.
80. Administrators / University offices / Persons in Authority involved at any stage of the process must protect confidentiality and privacy (see [clause 65-74 Confidentiality and Privacy](#)), and maintain the security of all documents related to concerns/complaints, including contents of meetings, interviews and reports.<sup>5</sup>
81. If a concern/complaint is resolved through informal means, a confidential record of the resolution is provided to **Human Rights and Equity Services** for use in anonymized annual reporting. If a resolution is not reached through informal means and the Complainant decides to withdraw the complaint, the withdrawal is reported to Human Rights and Equity Services for inclusion in anonymized annual reporting.
82. Members of the Administration and Persons in Authority are responsible for ensuring that notes and materials are retained for seven years after last use. Administrators and Persons in Authority who leave the administrative position, retire, or otherwise leave the service of the University must notify their successor or immediate supervisor of the on-campus storage location of the material.
83. All notes and materials pertaining to advice or assistance provided by **Human Rights and Equity Services** to an individual who identified a concern/complaint will be maintained in a confidential file

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<sup>5</sup> Language from "A policy primer: Guide to developing human rights policies and procedures (1996; revised December 2013)  
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for seven years after the matter is closed, and may be retained longer subject to the discretion of the Director of Human Rights and Equity Services.

84. All notes and materials pertaining to advice or assistance provided by **Human Resources Services** to an individual who identified a concern/complaint will be maintained in a confidential file for seven years, and may be retained longer subject to the discretion of the Director of Employee/Labour Relations.
85. All notes and materials pertaining to advice or assistance provided by the **Faculty of Health Sciences Professionalism Office** to an individual who identified a concern/complaint will be maintained in a confidential file for seven years, and may be retained longer subject to the discretion of the Professionalism Advisor in that Office.
86. A copy of each Investigation Dossier (see *clause 141*) related to a University Initiated Investigation or a Formal Complaint will be maintained in the Office of Human Rights and Equity Services in a confidential file for seven years, and may be retained longer subject to the discretion of the Director of Human Rights and Equity Services.
87. Hearing files shall be retained by the University Secretary for seven years after last use, and may be retained longer subject to the discretion of the University Secretary.

### Interim Measures

88. At any stage of the procedures in this Policy it may be necessary to take temporary steps in order to safeguard the environment of the Complainant and/or Respondent.
89. Interim measures shall not be construed as evidence of guilt or violation of the Policy.
90. Interim measures may be proposed by or to the Director of **Human Rights and Equity Services** (or the Director of **Employee/Labour Relations**) at the discretion of Persons in Authority processing the concern or complaint, or considered by the Director at the request of the Complainant and/or the Respondent. The Director shall recommend to the relevant Associate Vice-President any appropriate interim measures, taking into account the nature of the complaint.
91. Interim measures may include, but are not limited to, the rearrangement of academic/employment responsibilities or oversight, the rearrangement of residence location, the implementation of a *No Contact Order*, or a *Persona Non Grata* designation.
92. In the event an employee is directed to take an "*administrative leave as an interim measure*", the conditions of the administrative leave shall accord with the terms of any applicable collective agreement. In the absence of an applicable collective agreement [e.g. where the employee is faculty or The Management Group (TMG)], the leave shall be without loss of pay or benefits. In all instances, the procedural timelines for complaint resolution / Investigation / Hearing specified in this policy will be carefully adhered to.

93. It is understood that an “*administrative leave as an interim measure*” is non-disciplinary and designed to separate a person from a situation or another person pending resolution, an Investigation or Hearing, as the case may be.

### Protection from Reprisal

94. The University prohibits reprisal or threats of reprisal against any member of the University community who makes use of this Policy or participates in any process held under its jurisdiction. Any individual or body found to be making such reprisals or threats will be subject to sanctions under this Policy.

### Time Limitations for Bringing Forward a Concern/Complaint

95. Individuals are encouraged to identify a concern/complaint at the earliest opportunity, but should do so ***within one year*** of the date on which the incident of discrimination and/or harassment is alleged to have occurred. If there was more than one incident it should be reported within one year of the date of the last event. Complaints may only be identified outside of this timeframe if the Director of Human Rights and Equity Services (or Director of Employee/Labour Relations) believes there are compelling reasons or extenuating circumstances.

### Procedural Timelines

96. The procedural timelines as set out in this document must be adhered to in all but the most exceptional circumstances. The permission of the Provost and Vice-President (Academic) or the Vice-President (Administration) must be obtained to extend the procedural timeline of any formal process except as set out in clause 95 above. The permission of the appropriate Associate Vice-President must be obtained to extend the procedural timeline of any informal process.

### Accompaniment/Representation

97. Individuals coming forward with a concern/complaint (Complainants) and individuals about whom allegations are made (Respondents) may at any stage of any of the procedures outlined in this Policy be accompanied by an advisor (see [Appendix B: Glossary of Terms](#)) or counsel. The advisor/counsel may be present during Investigation interviews but may not participate as a representative. The advisor/counsel may represent the party at the Hearing. The costs of any accompaniment/representation are to be borne by the party.

### Frivolous, Vexatious Complaints

98. If at the conclusion of the informal process or during the course of the investigation it is determined that the complaint is frivolous, vexatious, made in bad faith, or without sufficient factual basis in the terms of this Policy, the Complainant will be advised of this in writing, with reasons. They will be advised that if they pursue the matter to a Hearing and the Tribunal also finds the complaint is frivolous, vexatious, or made in bad faith, the Complainant could be subject to sanctions under this Policy.

## SECTION III: SANCTIONS AND REMEDIES

99. Violations of the Policy shall be accompanied by sanctions and remedies that shall be proportional to the severity of the violation. The existence of any previous violations of this Policy will be taken into account when sanctions are determined. Sanctions and remedies may be used independently or in combination for any single violation.
100. The Associate Vice-President shall recommend any appropriate sanctions, remedies, and systemic and preventive interventions they deem necessary to ensure that the conduct is not repeated. A Tribunal hearing a complaint must order/recommend any appropriate sanctions, remedies, and systemic and preventive interventions they deem necessary to ensure that the conduct is not repeated.

### Sanctions

101. Sanctions may include, but are not limited to:
- a) written apology;
  - b) written reprimand;
  - c) inclusion of the decision in a specified file(s) of the Respondent, for a specified period of time;
  - d) the exclusion of the Respondent from, or oversight during, one or more designated University activities or duties;
  - e) a *No Contact Order*, which may include restrictions on: registration for specific classes, other academic or non-academic activities, or attendance at specific meetings or events; direct or indirect contact (including but not limited to in person, by phone, email, text, social media, through a third party etc.) with a specific individual or group of individuals..
  - f) a *Persona Non Grata* (PNG) designation, which is given to an individual who is denied the privilege of entering designated portion(s) of the University's buildings or grounds. If PNG individuals are found or seen in the area they are denied, they will be subject to a charge by McMaster Security Services under the Trespass to Property Act;
  - g) other, as deemed appropriate;
  - h) Suspension:
    - i. **Student Respondent:** Imposition of a suspension: the loss of all academic privileges at the University for a specified period of time and/or until imposed conditions are met. The suspension shall be noted on the student's transcript.
    - ii. **Staff Respondent:** Recommendation for suspension: relieving the Respondent of their University duties and denying them access to University facilities and services for a stated period of time, and may be with or without pay and/or benefits. Recommendations shall be dealt with in accordance with the established policies and procedures and by the terms of existing contracts of employment or collective agreements.
    - iii. **Faculty Respondent:** Recommendation for suspension: relieving the Respondent of their University duties and denying them access to University facilities and services for

a stated period of time, and may be with or without pay and/or benefits as recommended by the Tribunal and determined by the President. A recommendation for suspension shall be dealt with in accordance with section V of the [McMaster University Revised Policy and Regulations with Respect to Academic Appointment, Tenure and Promotion](#).

- i) Expulsion / Dismissal / Removal:
  - i. **Student Respondent:** Imposition of an expulsion: the loss of all academic privileges at the University for an indefinite period. The expulsion is noted on the student's transcript.
  - ii. **Staff Respondent:** Recommendation that dismissal/termination proceedings be commenced. Recommendations shall be dealt with in accordance with the established policies and procedures and by the terms of existing contracts of employment or collective agreements.
  - iii. **Faculty Respondent:** Recommendation that removal proceedings be commenced. Recommendations shall be dealt with in accordance with Section VI of the [McMaster University Revised Policy and Regulations with Respect to Academic Appointment, Tenure and Promotion](#).

## Remedies

102. Remedies may include but are not limited to:
- a) education and training;
  - b) counselling; and
  - c) rearrangement or modification of the Complainant's study or employment arrangements to address the effects of discrimination/harassment found, e.g. permission to extend a program, leave or change in work responsibilities.
  - d) ensuring individuals are referred to appropriate support resources, as necessary.

## Systemic and Preventive Interventions

103. Investigations may reveal broader issues to be addressed whether or not a violation of the Policy has been found, for example: the existence of specific barriers in the workplace, a perception of systemic discrimination, or need for further training on particular aspects of human rights or workplace culture. In such instances, the Associate Vice-President will recommend appropriate educational and preventive interventions.

## SECTION IV: IDENTIFYING A CONCERN/COMPLAINT

### IDENTIFYING A CONCERN/COMPLAINT

104. The terms concern and complaint are used to refer to two separate but often sequential ways in which issues may be raised for resolution. A concern refers to something raised in an initial/ exploratory or informal way that may or may not become a clearer articulation of a complaint.
105. Any member of the University community who has a concern or complaint about a comment and/or conduct they have experienced which they feel might be in breach of the Policy is encouraged to raise the concern/complaint through any of the points of access listed below.
106. Offices or Persons in Authority approached about a concern/complaint may provide support, guidance, and assistance and in any event, must ensure that the individual is informed of the appropriate campus resources.

### Points of Access

107. Anyone with a concern/complaint is encouraged to speak with an **Intake Coordinator** (a designated staff member in *Human Rights and Equity Services*, in *Human Resources Services*, or the *Faculty of Health Sciences Professionalism Office*).
108. Alternatively, individuals may prefer to speak initially with:
  - a) a Person in Authority, e.g. workplace supervisor, department chair, instructor, academic supervisor, etc.; or
  - b) a University office they trust for support or advice, e.g. the Ombuds Office, Chaplaincy Centre, Student Wellness Centre, Residence Life Office, etc.; or
  - c) other individuals, groups or associations they trust for support or advice, e.g. a union or faculty association representative, student association, etc.

### Confidentiality

109. When discussing concerns/complaints and/or reporting issues to any University office or Person in Authority, individuals should receive, and are advised to clarify, an explanation of the level of confidentiality that applies to the office/Person in Authority. Please refer to [clause 65-74 Confidentiality and Privacy](#) and [clause 75-77 Reporting Requirements](#).
110. Individuals may speak in confidence to the Ombuds Office (see [clause 70](#)).
111. Individuals may speak in confidence to an **Intake Coordinator** (see [clause 112](#)); however these discussions may be subject to disclosure as outlined in [clause 65-74 Confidentiality and Privacy](#).

## Intake Coordinator

112. The **Intake Coordinator** (a designated staff member in Human Rights and Equity Services, Human Resources Services, or the Faculty of Health Sciences Professionalism Office) has responsibility for ensuring that all individuals bringing forward a concern/complaint have access to a common source of consistent and expert guidance. When contacted, the **Intake Coordinator** shall explain:
- a) the Policy and the sequential steps for processing a complaint, including:
    - the **Preliminary Inquiry or Informal Resolution** process;
    - informal resolution options, such as coaching, counseling, reconciliation, workplace restoration, settlement conferences, restorative justice measures, and mediation;
    - the **Formal Complaint** process with a written complaint and Investigation; and
    - the process for a **Hearing** before a Tribunal in instances where the outcome of an Investigation, or the recommended sanctions/remedies flowing from it, are not accepted by all parties to a complaint.
  - b) other options that may be available to the individual:
    - filing a grievance through their collective agreement; or
    - filing an application with the Human Rights Tribunal of Ontario; or
    - other processes which, if appropriate and acceptable to the Complainant, may be recommended to address concerns expeditiously without proceeding with a complaint if what is described by the Complainant is not obvious harassment or discrimination as defined by this Policy.
113. The **Intake Coordinator** offers advice and assistance, and identifies resources that may support individuals in the process. The Intake Coordinator will take an active role in identifying resources and supports for those who may be reluctant to pursue a complaint for various reasons, such as a fear of reprisal. See [clause 94 Protection from Reprisal](#).
114. The **Intake Coordinator** is responsible for reporting to the appropriate administrative office (Human Rights and Equity Services or Employee/Labour Relations) any reports of reprisals or threats of reprisals that come to their attention.

## INFORMAL PROCESS: Preliminary Inquiry / Informal resolution

115. Individuals coming forward with a concern/complaint (Complainants) and individuals about whom allegations are made (Respondents) may be **accompanied** by an advisor or counsel (see [clause 97 Accompaniment/Representation](#))
116. When providing advice or assistance to a Complainant, offices or Persons in Authority **shall** consult with **Human Rights and Equity Services** or **Employee/Labour Relations**, as appropriate. They may disclose the general nature of the concern without identifying the parties involved. These offices will advise how to proceed should the matter fall under the auspices of the [Violence in the Workplace](#)

[Policy](#) or Sexual Violence Response Protocol (i.e. involves allegations of a criminal act and/or workplace violence).

117. If the Complainant has chosen to initiate a preliminary inquiry with a University office or Person in Authority, the office/Person in Authority may attempt to resolve the concern through informal means including dialogue, clarification of issues and/or, if the Complainant chooses and the Respondent agrees, informal mediation.
118. Human Rights and Equity Services or Employee/Labour Relations may be consulted for assistance with the informal resolution if the Complainant agrees to be identified to them.
119. If the Complainant has chosen to initiate a preliminary inquiry with an Intake Coordinator, the Intake Coordinator may attempt to resolve the concern through informal means including dialogue, clarification of issues, and/or, if the Complainant chooses and the Respondent agrees, informal mediation.
120. If the concern is resolved through informal means **within 30 business days** of initiation/identification of the concern, the matter is closed. The resolution of the concern is reported to the office that was consulted (Human Rights and Equity Services or Employee/Labour Relations) as “closed – resolved” for inclusion in annual anonymized reporting. Employee/Labour Relations shall report all such closures to Human Rights and Equity Services for data gathering purposes.
121. Except in unusual circumstances (in which case permission to extend the timeline must be sought from the appropriate Associate Vice-President [clause 96](#)), if a resolution is not reached **within 30 business days** of initiation, the Intake Coordinator will at the end of the 30 business days notify the Complainant that they have the choice to:
  - a) decide not to proceed with a Formal Complaint, in which case the matter is closed and reported to Human Rights and Equity Services as “closed-unresolved” for inclusion in annual anonymized reporting; or
  - b) **within 5 business days** of being notified, decide to pursue a resolution through a Formal Complaint.

## MAKING A FORMAL COMPLAINT

122. Before filing a Formal Complaint, Complainants must contact an **Intake Coordinator** in Human Rights and Equity Services, Human Resources Services, or the Faculty of Health Sciences Professionalism Office, to discuss their complaint. See [clause 112 Intake Coordinator](#).
123. If the Complainant chooses to pursue a Formal Complaint as set out in this Policy, they must complete a **Complaint Intake Form** which includes:
  - a) what happened, when it happened (include dates and incidents), where it happened, who saw it happen; and
  - b) any materials the Complainant wishes to submit as evidence in support of their position.

124. The Intake Coordinator may review the complaint and documentation with the Complainant and ask clarifying questions to elicit further detail as necessary. The Intake Coordinator is responsible for ensuring that the Formal Complaint has sufficient detail to proceed.
125. **Within five business days** of receiving the written complaint, the Intake Coordinator must notify the Respondent that a Formal Complaint has been received and provide the Respondent with a copy of the written complaint.
126. The Director of Human Rights and Equity Services (or the Director of Employee/Labour Relations), or delegate, will meet with the Complainant and Respondent separately to explain the formal process and offer to facilitate mediation. For complaints involving community members in the Faculty of Health Sciences, the Director will consult with the Faculty Lead in the Faculty of Health Sciences Professionalism Office so that they are cognisant of any considerations particular to the clinical setting involved. Mediation will only occur as long as both parties agree to participate. Mediation stops once the Associate Vice-President has issued their [Formal Complaint Investigation: Outcomes/Recommendations](#) (clause 143-148).
127. If mediation is not accepted and/or no resolution can be reached **within ten business days** from the notification of the filing of a Formal Complaint, the Director of Human Rights and Equity Services (or the Director of Employee/Labour Relations) shall refer the matter to an investigator. See [Section V: Investigation](#).

## UNIVERSITY INITIATED INVESTIGATION

128. Through ongoing data gathering on concerns and complaints, the Director of Human Rights and Equity Services (or the Director of Employee/Labour Relations) may become aware of situations where an Investigation may be warranted, these may include:
- a) where none of those coming forward have been willing to proceed with a complaint; and/or
  - b) repeated allegations about the conduct of the same individual; and/or
  - c) a poisoned environment; and/or
  - d) concerns about climate and conduct in an area of the University.
129. The Director of Human Rights and Equity Services (or the Director of Employee/Labour Relations) will advise the appropriate Associate Vice-President (see [clause 54-56 Role of the Associate Vice-President](#)) in relation to the individual or unit of concern, and provide a written summary of the nature and dates of the concern(s), without any identifying information about those who may have brought them forward.
130. If the Associate Vice-President decides that an Investigation is warranted, the Director of Human Rights and Equity Services (or the Director of Employee/Labour Relations) will refer the matter to an Investigator as per [Section V: Investigation](#) below.
131. Where possible, the Director of Human Rights and Equity Services (or the Director of Employee/Labour Relations) will contact (directly, or indirectly through the Person in Authority who received the concern) those who brought concerns forward in confidence to inform them of the Investigation and ask if they would be willing to be identified as a Complainant and meet with the Investigator. If they do not agree to be identified as a Complainant they will be informed that the Investigator will have no knowledge of their identity as someone who brought forward a concern and that their specific concern might not be addressed. However, it is possible that during the course of the Investigation the Investigator may determine that an individual is a witness and request a meeting as per [clause 138](#) below.
132. The Director of Human Rights and Equity Services (or the Director of Employee/Labour Relations) shall **within 5 business days** of the Associate Vice-President's decision (see [clause 124](#)) notify the Respondent, or the appropriate Person in Authority in relation to the unit of concern, that an Investigation has been initiated. The Director of Human Rights and Equity Services (or the Director of Employee/Labour Relations) must provide the Respondent or Person in Authority with the written summary of the concerns and meet with them to explain the Investigation process.

## SECTION V: INVESTIGATION

### INVESTIGATION

133. The Director of Human Rights and Equity Services (or the Director of Employee/Labour Relations) shall notify the appropriate Associate Vice-President (see [clause 54-56 Role of the Associate Vice-President](#)) of the initiation of an Investigation and together they shall decide in consultation with the Provost and Vice-President (Academic) or the Vice-President (Administration) whether to appoint an internal or external investigator. Factors taken into consideration in determining whether an Investigation should be internal or external will include the mix and number of constituents involved, as well as the complexity of the issues and the availability of staff with the necessary expertise. In those instances where the University has been named as a Respondent, or when the University has initiated the Investigation (see [Section IV: University Initiated Investigation](#)) the matter shall be referred to an external investigator.
134. The Director of Human Rights and Equity Services (or the Director of Employee/Labour Relations) shall refer the matter to an Investigator with appropriate expertise, and shall define the mandate and scope of the Investigation.
135. Investigations conducted under this Policy shall follow the principles of procedural fairness. Individuals have the right to know the case against them, and to present evidence and witnesses in response to any allegations.
136. The Investigator shall impartially collect evidence and interview witnesses in relation to the concern/complaint. In consultation with the appropriate Director, the Investigator has some discretion to adjust the scope and the manner in which the Investigation will be conducted in compliance with this Policy and the principles of procedural fairness.
137. Parties may continue the mediation process at any time after the referral to an Investigator. Mediation stops once the Associate Vice-President has issued their [Formal Complaint Outcome/Recommendations](#) ([clause 143-148](#)).
138. All members of the University are expected to meet with the Investigator if requested to do so and are required to keep confidential the meeting and any information shared.
139. If during the course of the Investigation individuals who were not previously identified as Respondents are identified as potentially being in violation of the Policy, they must be notified and given an opportunity to meet with the Investigator, and to respond to any allegations.
140. The Investigator shall complete an Investigation Dossier. The Investigation Dossier shall normally be completed and delivered to the Associate Vice-President **within 30 business days** of the Investigator receiving the Formal Complaint, or referral. The Director of Human Rights and Equity Services shall receive a copy of the Investigation Dossier.
141. The Investigation Dossier shall include the following:
  - a) an Investigation Report with:

- i. a summary of the allegation(s);
    - ii. a determination, substantiated by the evidence (weighed on the balance of probabilities), on whether there is a violation of the Policy, or that a finding is not possible because of non-cooperation by either party;
    - iii. a list and summary of the evidence reviewed;
    - iv. the names of any witnesses who agreed to participate and be identified.
  - b) if the Investigation takes longer than 30 business days to complete, the reasons for exceeding 30 business days; and
  - c) all relevant evidence the Investigator received during the Investigation (documents, written statements, affidavits, photographs, audio or visual recordings, etc.).
142. The Associate Vice-President will consult with the Investigator for any needed clarifications, and:
  - a) In the case of a Formal Complaint:
    - i. conclude there has been a Violation of the Policy and recommend appropriate sanctions and remedies in keeping with those listed in [Section III: Sanctions](#); or
    - ii. conclude there has been No Violation of the Policy and that the matter should be closed. This does not preclude the University from bringing a complaint at a later date, should new evidence become available.
  - b) In the case of a University Initiated Investigation:
    - i. conclude there has been no Violation of the Policy and that the matter should be closed. This does not preclude the University from bringing a complaint at a later date, should new evidence become available; or
    - ii. conclude there has been a Violation of the Policy and that the matter should be referred to a Hearing.
  - c) determine that the matter should be referred to a Hearing as the Investigation has not produced sufficient grounds for a conclusion, suggests the need for fuller exploration, or the nature of the allegation and potential sanction warrants a Hearing.
143. The Associate Vice-President's conclusions and any recommended sanctions are not enacted unless both parties accept them. If either party does not accept the results of the Investigation or the proposed sanctions/remedies, the case is referred to a Hearing. The Associate Vice-President will present the case as the University Officer (except when a conclusion of No Violation is not accepted by the Complainant, in which case the original Complainant may file a Formal Request for a Hearing) (see clauses 168-170).

### Formal Complaint Investigation: Outcomes/Recommendations

144. If the Associate Vice-President determines that a Formal Complaint should be referred directly to a Hearing, as provided for in clause 142 above, they shall send the Complainant and Respondent a letter to this effect, along with a copy of the Investigation Dossier. In the case of multiple Complainants and/or Respondents, the Investigation Dossier may, at the discretion of the Associate

Vice-President, be summarized or redacted to protect the privacy of the parties (see Section VI: Referral to Hearing).

### Violation

145. If the Associate Vice-President *is of the opinion that a Violation of the Policy has occurred*, as outlined in [clause 142](#) above, they shall send the Complainant and Respondent a letter informing them of their conclusion and any recommended sanctions or remedies, along with a copy of the Investigation Dossier. In the case of multiple Complainants and/or Respondents, the Investigation Dossier may, at the discretion of the Associate Vice-President, be summarized or redacted to protect the privacy of the parties. The Director of Human Rights and Equity Services shall receive a copy of the letter.
146. Within **10 business days** of receipt of the letter, the Complainant and Respondent must indicate in writing to the Associate Vice-President either:
- that they accept the outcome of the Investigation and, if applicable, any recommended sanctions and remedies; **or**
  - that they do not accept the outcome of the Investigation, and/or the recommended sanctions and remedies.
147. If **both parties accept** the Investigation outcome and any recommended sanctions/remedies, the Associate Vice-President shall:
- inform the parties that a Finding of Violation of the Policy has been accepted by both parties, that any recommended sanctions/remedies will be implemented, and that the matter shall be closed as a "*Finding of Violation*" of the Policy;
  - inform the Director of Human Rights and Equity Services, and
  - report to the appropriate Vice President on the Finding of Violation and the Investigation;
  - inform the appropriate Administrators; and
  - implement any sanctions/remedies. See [clause 162-163 Implementation of Sanctions and Remedies](#).
148. If **one or both of the parties do not accept** the outcome of the Investigation and/or recommended sanctions and remedies, the Associate Vice-President shall so inform the parties and the appropriate Administrators and shall refer the matter to a Hearing, as per [Section VI: Referral to Hearing](#).
149. If the matter proceeds to a Hearing, the Associate Vice-President will review the need for interim measures to safeguard the environment of the Complainant and/or Respondent. See [clause 87-92 Interim Measures](#).

### No Violation

150. If the Associate Vice-President *is of the opinion that no Violation of the Policy has occurred*, s/he shall send the Complainant and Respondent a copy of the Investigation Report and a letter informing them of this conclusion. In the case of multiple Complainants and/or Respondents, the Investigation

Report may, at the discretion of the Associate Vice-President, be summarized or redacted to protect the privacy of the parties. The Director of Human Rights and Equity Services shall receive a copy of the letter.

151. Within **10 business days** of receipt of the letter indicating that, in the opinion of the Associate Vice-President there has been no Violation of the Policy, the Complainant and Respondent must indicate in writing to the Associate Vice-President either:
  - a) that they accept the outcome of the Investigation; **or**
  - b) that they do not accept the outcome of the Investigation.
152. If both parties accept the outcome of the Investigation, the Associate Vice-President shall:
  - a) inform the parties that a Finding of No Violation of the Policy has been accepted by both parties, and that the matter shall be closed as a "Finding of No Violation" of the Policy; and
  - b) so inform the Director of Human Rights and Equity Services, the appropriate Vice-President, and the Respondent's supervisor only if the supervisor was informed of the matter during the process.
153. If the Complainant does not accept the outcome of the Investigation the Associate Vice-President shall:
  - a) inform the Respondent and the appropriate Administrators; and
  - b) inform the Complainant, in writing, that they may file a Formal Request for Hearing Form, **within fifteen business days** of receipt of this letter. See [Section VI: Referral to Hearing](#).

### University Initiated Investigation: Outcomes/Recommendations

#### Violation

154. If the Investigation has determined that a Violation of the Policy has occurred, the Associate Vice-President will refer the matter to a Hearing.
155. If a Respondent has been identified during a University Initiated Investigation the Associate Vice-President shall send the Respondent a copy of the Investigation Dossier and a letter informing them of the decision to refer the matter directly to Hearing. In the case of multiple Respondents, the Investigation Dossier may, at the discretion of the Associate Vice-President, be summarized or redacted to protect the privacy of the parties. [Section VI: Referral to Hearing](#).
156. Where the University Initiated Investigation focused on a poisoned environment, and/or a climate and/or conduct in an area of the University but no individual Respondent was identified, the Associate Vice-President shall send the person(s) in authority over the area under investigation a copy of the Investigation Dossier and a letter informing them of the decision to refer the matter directly to Hearing and of their role as Respondent. [Section VI: Referral to Hearing](#).

### No Violation

157. If the Investigation has determined that no Violation of the Policy has occurred, the Associate Vice-President will take the following steps:
- (a) If a Respondent has been identified during a University Initiated Investigation the Associate Vice-President shall send the Respondent a copy of the Investigation Report and a letter informing them of the **Finding of No Violation** of the Policy and the matter shall be closed. In the case of multiple Respondents, the Investigation Report may, at the discretion of the Associate Vice-President, be summarized or redacted to protect the privacy of the parties. This does not preclude the University from initiating another Investigation at a later date, should new evidence become available.
  - (b) Where the University Initiated Investigation focused on a poisoned environment, and/or a climate and/or conduct in an area of the University but no individual Respondent was identified, the Associate Vice-President shall send the person(s) in authority over the area under investigation a copy of the Investigation Report and a letter informing them of the **Finding of No Violation** of the Policy and the matter shall be closed. This does not preclude the University from initiating another Investigation at a later date, should new evidence become available.
158. In all of the above cases the Associate Vice-President may inform, at their discretion, any witnesses or other individuals they deem appropriate (e.g. supervisor or department chair aware of the investigation and needing to know of outcome) of the outcome of the Investigation.

### **Resolution Prior to a Hearing**

159. Resolution between the parties is only an option prior to the Associate Vice-President communicating to the parties his/her conclusions regarding the outcome of the Investigation.
160. **Reconsideration of Outcome.** At any time prior to start of the Hearing, the party who did not accept the Investigation outcome and/or recommended sanctions and remedies, may reconsider and decide to accept the outcome and/or sanctions and remedies, and must inform the Associate Vice-President of this decision in writing. If both parties have accepted the outcome and/or sanctions and remedies, the Associate Vice-President shall close the file in accordance with clause 147 or 152 above.
161. Resolution is not an option for University Initiated Investigations referred to a Hearing.

### **Implementation of Sanctions, Remedies, and Systemic and Preventive Interventions**

162. The Associate Vice-President shall be responsible for ensuring that any sanctions and/or remedies are implemented.
163. The Associate Vice-Presidents and Vice-Presidents are responsible for initiating educational interventions or systemic changes recommended on the basis of the Investigation, a Tribunal's findings, or indicated by analysis of aggregate data on the incidence of harassment and discrimination. These initiatives will be undertaken by Human Rights and Equity Services or Human Resources Services, as appropriate.

## SECTION VI: REFERRAL TO HEARING

### PROCEDURES FOR REFERRAL TO HEARING BEFORE THE BOARD-SENATE HEARING PANEL

#### Referral to Hearing by an Associate Vice-President

164. Within **five business days** of making the decision to refer a matter directly to a Hearing, or confirming that the conditions for initiating a Hearing have been met, the Associate Vice-President shall deliver to the University Secretary:
  - a) the Investigation Dossier
  - b) a cover letter referring the matter to a Hearing, that shall include:
    - i. preference for an open or closed Hearing;
    - ii. the recommended sanctions and/or remedies;
    - iii. the names of witnesses to be called; and
    - iv. the name of the Associate Vice President's counsel/advisor (if applicable).
165. When the Associate Vice-President refers a matter to a Hearing on behalf of the University, the Associate Vice-President shall be the University Officer at the Hearing who is the individual responsible for presenting the case.
166. If the University has been named as a Respondent at the complaint stage the University will be a Respondent at the Hearing.
167. The parties from the initial complaint stage may make a request to the Chair of the Tribunal (through the University Secretary) to be granted status at the Hearing (as a witness, party, or observer).

#### Formal Request for Hearing

168. When a Complainant does not accept the Investigation Outcome of No Violation of the Policy, the Complainant shall ***within fifteen business days of receipt*** of the Associate Vice-President's letter (see ***clause 153***) submit a Formal Request for Hearing Form to the University Secretary.
169. The Formal Request for Hearing Form shall include:
  - a) preference for an open or closed Hearing
  - b) the remedy/sanctions sought;
  - c) the names of witnesses to be called;
  - d) the name of the Complainant's counsel or advisor (if applicable); and
170. The University Secretary shall inform the Associate Vice-President that a Formal Request for Hearing has been filed. The Associate Vice-President shall provide a copy of the Investigation Dossier to the University Secretary and the University Secretary will forward a copy to the Complainant.

## Parties to the Hearing

171. Parties to Hearings shall include:
- a) the Respondent;
  - b) the University Officer (when Referred to a Hearing by an Associate Vice-President) or the Complainant (when a Formal Request for Hearing has been filed).

## Submissions and Disclosure

172. Within **ten business days of receipt** of a Referral to Hearing/Formal Request for Hearing, the University Secretary shall forward a copy to the Respondent. If the Respondent has not already received a copy of the Investigation Dossier then a copy shall be sent to them.
173. Within **fifteen business days of receipt**, the Respondent shall deliver to the University Secretary the following information:
- a) a written reply to the Referral to Hearing/Formal Complaint;
  - b) preference for open or closed Hearing;
  - c) names of witnesses to be called;
  - d) the name of Respondent's counsel or advisor, if applicable; and
  - e) any materials the Respondent wishes to submit to the Tribunal as evidence in support of their position.
174. The University Secretary shall within **five business days of receipt** forward a copy of this reply to the University Officer/Complainant as appropriate<sup>6</sup>.
175. No matter shall be placed before the Tribunal unless the parties have completed, to the satisfaction of the University Secretary, the requisite submissions as outlined above. The University Secretary shall notify the party of any deficiencies in the submission.
176. The Hearing shall be conducted in accordance with the principles of procedural fairness, namely the right to receive notice, to be heard and to know the case against one. The Hearing shall follow the applicable procedural rules specified in the [Statutory Powers Procedure Act](#), and set out in [Appendix A: Procedural Rules for Hearings](#). The Tribunal shall have the right to control its own process, and, in this regard, if the Tribunal determines that variations to the procedures set out in Appendix A would lead to a fair, just and efficient resolution of the Hearing, it has the power to make any Order in furtherance of this objective.
177. A Hearing is the final step the parties may take within the University.
178. The Tribunal has sole jurisdiction to hear and to make a final adjudication for Hearings under this Policy. In some instances a Hearing may involve matters outside the Tribunal's jurisdiction and may

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<sup>6</sup> When the Hearing has been initiated as the result of a Formal Request for a Hearing, the original Complainant shall be responsible for bringing the case forward. When the Hearing has been initiated as a result of the Associate Vice-President referring the matter, the Associate Vice-President will be responsible for bringing the case forward as the University Officer.

require action by the President, such as decisions involving financial implications. In such instances, the Tribunal's decision may take the form of a recommendation to the President, with the President maintaining the discretion to accept or deny such a recommendation.

### Onus, Burden of Proof and Basis of Decision

179. At the Hearing, the University Officer/Complainant<sup>7</sup> has the onus to present evidence, and on a balance of probabilities, to satisfy the Tribunal that the alleged violation of the Policy has occurred. The principles and procedures described in [Appendix A: Procedural Rules for Hearings](#) shall apply to all proceedings before the Tribunal. Tribunals shall not be charged with investigative duties.

### Representation

180. Parties to the Hearing may be advised or represented by, for example, a friend, colleague, union representative, or advisor, or legal counsel.

### Administrative and Legal Support

181. Administrative support for the Tribunal will be provided by the University Secretary.
182. The Tribunal shall have independent legal counsel arranged by the University Secretary.
183. The University Secretary shall ensure that all members of the Tribunal receive appropriate training to discharge their responsibilities (see [clause 186](#)).

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<sup>7</sup> When the Hearing has been initiated as the result of a Formal Request for a Hearing, the original Complainant shall be responsible for bringing the case forward. When the Hearing has been initiated as a result of the Associate Vice-President referring the matter, the Associate Vice-President will be responsible for bringing the case forward as the University Officer

## SECTION VII: HEARING PANEL

### BOARD-SENATE HEARING PANEL FOR DISCRIMINATION, HARASSMENT AND SEXUAL HARASSMENT

184. The Board-Senate Hearing Panel for Discrimination, Harassment and Sexual Harassment shall consist of six faculty members, three undergraduate students and three graduate students appointed by the Senate; and six staff members appointed by the Board of Governors. Student members shall serve for staggered two-year terms and faculty and staff members for staggered three-year terms. No member shall serve for more than two consecutive terms, but on the expiration of two years after having served the second of two consecutive terms, such person may again be eligible for membership on the Hearing Panel. In addition, the Chair of the Panel has the authority to appoint, on an *ad hoc* basis, faculty, staff and students who are not members of the Panel to serve on Tribunals as auxiliary Panel members (see [Appendix B: Glossary of Terms](#)).
185. The Chair and one Vice-Chair shall be appointed by the Senate from among the members appointed by the Senate and one Vice-Chair shall be appointed by the Board of Governors from among the members appointed by the Board of Governors.
186. Members of the Hearing Panel will receive generic training provided by Human Rights and Equity Services in the particular sensitivities which surround discrimination and harassment, and sexual harassment issues, in procedures which effect fair resolutions and in penalties and sanctions which are appropriate to the various breaches of Policy and which act as deterrents to further breaches of Policy. This training will not deal with specific cases currently before any Tribunal established under this Policy and is in no way meant to fetter the independence of any Tribunal member to decide any case on the basis of the evidence presented in that case and according to his or her conscience. Once identified as a Tribunal member, the University Secretary will provide additional training regarding the hearing procedures.

#### Establishment of Tribunal

187. When the University Secretary receives the Referral to Hearing/Formal Request for Hearing, the University Secretary shall forward to the Respondent and University Officer/Complainant a list of the members of the Board-Senate Hearing Panel for Discrimination, Harassment and Sexual Harassment. The parties shall be given the opportunity to express, in writing, any objections they may have concerning any members of the Panel.
188. After careful consideration of any such objections, the Chair or a Vice-Chair of the Board-Senate Hearing Panel for Discrimination, Harassment and Sexual Harassment shall select the members of the Tribunal. The Chair or a Vice-Chair shall approve the Tribunal Chair and Tribunal members and, through the University Secretary, shall so inform the Tribunal members, and the parties to the Hearing. When either party has objected to the Chair, a Vice-Chair shall rule on the objection and shall select the members of the Tribunal.

189. The Tribunal shall consist of three members who are without any reasonable apprehension of bias. The Tribunal shall be appointed by the Panel Chair (or a Vice-Chair) and shall be chosen from among the relevant and/or appropriate association/constituency members of the Hearing Panel. There must be at least one Tribunal member from the constituency of each of the Complainant and the Respondent.
190. If deemed necessary for Hearings involving multiple parties or constituencies, the Panel Chair, in consultation with the Vice-Chairs, may appoint a five-member Tribunal.
191. A Tribunal Chair external to the University with legal training, expertise and experience in university matters shall be appointed by the Panel Chair, in consultation with the Vice-Chairs, when:
- a) the University has been named as a Respondent; or
  - b) a University Initiated Investigation has been referred to a Hearing.

## APPENDIX A: PROCEDURAL RULES FOR HEARINGS

### INTRODUCTION

1. The [Statutory Powers Procedure Act](#) (SPPA) establishes minimum rules by which certain Tribunals must proceed, to ensure that the rules of procedural fairness have been observed. These rules are divided into two separate parts: (1) the duty to give persons affected by the decision a reasonable opportunity for presenting their case, and (2) the duty to listen fairly to both sides and to reach a decision untainted by bias.
2. Tribunals established under this Policy are guided by these principles in their procedures in order to satisfy the requirements of being fair to the parties before them. Tribunals have some discretion to establish the actual manner in which the Hearing will be conducted.
3. The policy on *Discrimination, Harassment & Sexual Harassment: Prevention & Response* requires that all Hearings convened under this Policy follow the procedures detailed below, subject to the Tribunal exercising its discretion to adhere to a variation of the procedures, in the interest of procedural fairness.

### Notice of Hearing

4. A Hearing shall be commenced as soon as possible following the appointment of the Tribunal.
5. An attempt shall be made to schedule the Hearing at a time and place convenient for the Tribunal and for the parties to the Hearing. However, any party whose reasons for absence are not considered valid by the Tribunal's Chair, or whose absence may cause unreasonable delay, shall be notified that the Tribunal will proceed in that party's absence.
6. The parties shall be given reasonable, written notice of the Hearing.
7. Parties to the Hearing shall be given the opportunity to submit written or other documentary evidence prior to the Hearing and any such evidence shall be made available or be accessible to the members of the Tribunal and to all parties prior to the Hearing.
8. Prior to the Hearing, members of the Tribunal shall be provided with:
  - a) the Referral to Hearing Form or the Request for Hearing Form (as appropriate);
  - b) the Investigation Dossier;
  - c) the Respondent's response to the Investigation Report; and
  - d) all materials submitted by the parties.
9. Members of the Tribunal must not hear evidence or receive representations regarding the substance of the case other than through the procedures described in this Appendix.

## Closed Hearings

10. Hearings are normally open to the public, but any party to the Hearing may request a closed (*in camera*) hearing. In the event of such a request, the Tribunal shall hear representations from all parties. In making its ruling, the Tribunal shall consider whether matters of an intimate financial or personal nature are to be raised, whether there is an issue of public safety involved, the desirability of holding an open hearing and other relevant circumstances.
11. The Tribunal shall make the decision on whether the Hearing shall be open or closed. If a request by one or both of the parties to close the Hearing is made prior to or during the Hearing of a case, the Chair of the Tribunal shall close the Hearing for the purpose of discussing the request. After listening to the arguments for closing, the Tribunal shall decide whether, in accordance with Section 9 (1) of the Statutory Powers Procedure Act, sufficient cause for closing exists. If not, the Hearing will be re-opened.

## ORDER OF THE HEARING

12. The first item of business for the Tribunal shall be to determine whether the Hearing shall be closed, in accordance with the procedure set out in clause 11 above.
13. At the outset of the Hearing, the Chair shall:
  - a) identify the nature of the case;
  - b) review the order of the Hearing;
  - c) note for the record the documentary information submitted by the parties to the Hearing, including any preliminary or procedural orders;
  - d) note the names of the witnesses for each party;
  - e) confirm the likely dates for sitting and the projected length of the Hearing;
  - f) raise, or request the parties to raise, any and all preliminary issues concerning composition of the Tribunal and other unaddressed procedural matters; and
  - g) proceed to deal with any matters raised in (f) above before the commencement of the substantive portion of the Hearing, by either proceeding directly to the Hearing or considering and rendering a decision on matters raised in (f) above.
14. The University Officer/Complainant<sup>8</sup> is the first party heard. The University Officer's/Complainant's opening statement shall contain a brief description of their case, including what they believe is the offence and the recommended sanctions and remedies.
15. Following the completion of the University Officer's/Complainant's opening statement, the Respondent may present their opening statement at that time, or may defer until completion of the University Officer's/Complainant's case.

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<sup>8</sup> When the Hearing has been initiated as the result of a Formal Request for a Hearing, the original Complainant shall be responsible for bringing the case forward. When the Hearing has been initiated as a result of the Associate Vice-President referring the matter, the Associate Vice-President will be responsible for bringing the case forward as the University Officer

16. Following the Respondent's opening statement (if presented) the University Officer/Complainant<sup>9</sup> presents their case.
  - a) The University Officer's/Complainant's case presents the evidence relating to the complaint, which may include any or all of the following:
    - i. University Officer's/Complainant's oral testimony;
    - ii. oral testimony of University Officer's/Complainant's witnesses; and
    - iii. documents or other evidence in support of this testimony (if admissible).
  - b) Questioning of the University Officer/Complainant and their witnesses by the Respondent and/or by the Tribunal occurs at the close of each person's testimony.
17. Following the completion of the University Officer's/Complainant's case, the Respondent may present their opening statement if they elected to defer until the completion of the University Officer's/Complainant's case.
18. The Respondent's opening statement shall contain a brief reply to the University Officer's/Complainant's case, outlining the main points of their case.
  - a) The Respondent's case presents the evidence to support their defence, which may include any or all of the following:
    - i. Respondent's oral testimony;
    - ii. oral testimony of Respondent's witnesses; and
    - iii. documents or other evidence in support of this testimony (if admissible).
  - b) Questioning of the Respondent and their witnesses by the University Officer /Complainant and/or by the Tribunal occurs at the close of each person's testimony.
19. The University Officer/Complainant and their witnesses may have the right to offer testimony or other evidence in reply to the issues raised in the Respondent's case.
20. **After this point in the Hearing, no new evidence or witnesses may be introduced.**
21. The parties are entitled to make closing arguments, and to summarize briefly the main points of their cases, in the following order:
  - a) University Officer/Complainant
  - b) Respondent
  - c) University Officer/Complainant
22. The Tribunal may alter the order described in clauses 14 to 21 above in the interest of fairness to any or all of the parties.

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<sup>9</sup> When the Hearing has been initiated as the result of a Formal Request for a Hearing, the original Complainant shall be responsible for bringing the case forward. When the Hearing has been initiated as a result of the Associate Vice-President referring the matter, the Associate Vice-President will be responsible for bringing the case forward as the University Officer

23. While procedural fairness is essential, the Tribunal reserves its right to direct, curtail or encourage the organisation of witnesses, testimony and evidence in the interests of enhancing the clarity, relevance and efficiency of the proceedings.

### Other Parties

24. If other persons, in addition to the University Officer/Complainant<sup>10</sup> and the Respondent, have been specified or added as parties to the proceedings, the procedure described above shall be altered by the Tribunal to provide an opportunity for such additional parties to be heard in accordance with the principles of natural justice and procedural fairness.

### Recess or Adjournment

25. The Tribunal may consider and grant a recess or an adjournment at the request of either party to allow them to review written or documentary evidence submitted at the Hearing.
26. The Tribunal may grant an adjournment at any time during the Hearing to ensure a fair hearing.

## OTHER PROCEDURES

### Evidence

27. Parties to the Hearing have the right to present evidence in support of their case to the Tribunal and to see any written or documentary evidence presented to the Tribunal.
28. The Tribunal has the power to require production of written or documentary evidence by the parties or by other sources.
29. The Tribunal has the power to rule on the admissibility of evidence.

### Witnesses

30. Parties to the Hearing and the Tribunal have the right to call and question witnesses.
31. Any person appearing before the Tribunal as a witness shall be required to give evidence under affirmation or oath.
32. The Tribunal has discretion to limit the testimony and questioning of witnesses to those matters it considers relevant to the disposition of the case.

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<sup>10</sup> When the Hearing has been initiated as the result of a Formal Request for a Hearing, the original Complainant shall be responsible for bringing the case forward. When the Hearing has been initiated as a result of the Associate Vice-President referring the matter, the Associate Vice-President will be responsible for bringing the case forward as the University Officer.

33. Parties are responsible for contacting their own witnesses; for making all arrangements for witnesses to attend the Hearing; for paying any costs associated with their appearance before the Tribunal; and for absorbing the costs of any legal counsel attending on their behalf.
34. The Tribunal Chair has the power to compel an unwilling witness to attend, and parties may contact the University Secretary to request the Chair's assistance in this regard. The power to compel a witness is derived from the *Statutory Powers Procedure Act*. An unwilling witness may be compelled by the Chair under summons to testify where the written request by the party for the summons demonstrates the witness' testimony is relevant and related to the alleged facts of the case.
35. Other than parties, witnesses are present in the Hearing room only during the time they are testifying.

### Representation

36. Parties to the Hearing have the right to be represented at the Hearing by another person or to represent themselves. The costs of any representation are to be borne by the party retaining such representation.
37. The Tribunal shall have independent legal counsel arranged through the University Secretary.

### Recording

38. The Hearing shall be recorded for convenience purposes only. Any malfunction of the recording device or subsequent loss of the recording shall not invalidate, in any way, the related Hearing. The recording shall be held in confidence by the University Secretary for a period of seven years from the last date of the Hearing. Any party to the Hearing may request access to the recording and the reproduction thereof, upon reasonable notice and payment of the reasonable costs associated therewith.

### Similar Questions of Fact or Policy

39. If two or more proceedings before the Hearings Panel involve the same or similar questions of fact or Policy, the Chair of the Panel, after seeking written input from the parties, may decide:
  - a) to consolidate the proceedings or any part of them; or
  - b) to hear the proceedings at the same time; or
  - c) to hear the proceedings one immediately after the other.

### Appropriate procedures

40. Where any procedural matter is not dealt with specifically in this Policy or the Procedural Rules for Hearings, the Tribunal may, after hearing submissions from the parties, establish an appropriate procedure.
41. Any procedural requirement contained in this Policy or in the Rules may be waived with the consent of the Tribunal and of all the parties.

## DELIBERATIONS BY THE TRIBUNAL

42. Following the formal Hearing, the Tribunal shall deliberate in closed session and shall reach a decision. After deliberation and decision in closed session solely with members of the Tribunal is complete, the Tribunal may solicit the assistance of the University Secretary and the Tribunal's legal counsel regarding the precise form or wording of any order and reasons for judgement to support its decision.

## TRIBUNAL DECISION

43. The Tribunal shall supply a written report of its decision with reasons to the University Secretary, who, in turn, shall distribute a complete copy thereof to:
- a) the parties;
  - b) the President;
  - c) Human Rights and Equity Services;
  - d) the relevant Associate Vice-President (if not a party); and
  - e) to such other individuals as the Tribunal deems appropriate and/or necessary.
44. The Tribunal's decision shall be final and shall include:
- a) the membership of the Tribunal;
  - b) the background of the complaint;
  - c) a summary of the case of the University Officer/Complainant<sup>11</sup> and the Respondent;
  - d) the Tribunal's findings of fact; and
  - e) the Tribunal's decision and the reasons for the decision.
45. At the discretion of a tribunal, public reports or statements may be issued identifying the Respondent: following a Hearing, when a Respondent is exonerated and wishes that fact to be known publicly.
46. Hearing files shall be retained by the University Secretary as per [clause 66-73 Data Sharing and Record Keeping](#).

## Recommendation of the Tribunal

47. Apart from its duty under these procedures to hear and decide the matters properly brought before it, any Tribunal may make recommendations or suggestions to University bodies or members. Such recommendations are offered for informational purposes and shall be distinct and separate from the decision.

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<sup>11</sup> When the Hearing has been initiated as the result of a Formal Request for a Hearing, the original Complainant shall be responsible for bringing the case forward. When the Hearing has been initiated as a result of the Associate Vice-President referring the matter, the Associate Vice-President will be responsible for bringing the case forward as the University Officer

## APPENDIX B: GLOSSARY OF TERMS

### Academic Freedom

Please refer to the [Statement on Academic Freedom](#).

### Advisor

A person of the individual's choice who acts in a supportive or advisory role (e.g. union representative, friend).

### Auxiliary Panel Members:

The Chair of the Board-Senate Hearing Panel for Discrimination, Harassment and Sexual Harassment has the authority to appoint, in exceptional circumstances and on an *ad hoc* basis, faculty, staff and students who are not members of the Board to serve on tribunals as supplementary Panel Members.

### Balance of Probabilities:

Balance of Probabilities is the test to be met to show, by the weight of the evidence presented, that all of the facts necessary to make a Finding of Violation of the Policy have a greater likelihood of being true than not.

### Community

Includes but is not limited to, faculty, staff, postdoctoral fellows, medical residents (except in certain circumstances), students, adjunct professors, librarians, visiting professors, volunteers, visitors, observers and institutional administrators and officials representing McMaster University.

### Complainant

The individual coming forward with a concern/complaint.

### Concern/complaint

The terms concern and complaint are used to refer to two separate but often sequential ways in which issues may be raised for resolution. A concern refers to something raised in an initial/exploratory or informal way that may or may not become a clearer articulation of a complaint.

### Dossier:

A file containing detailed records on the Investigation, including all of the evidence and witness statements.

### Employee

Where applicable, employee is used to refer to staff (see below) and faculty (see below).

### Faculty

Faculty are defined as those academic teaching staff and senior academic librarians who are members of the McMaster University Faculty Association.

### Frivolous, Vexatious Complaints

A complaint may be considered frivolous if it does not have any serious purpose or value; is of little or no weight, worth, or importance. A complaint may be considered vexatious if instituted without sufficient grounds and only to cause annoyance to the Respondent.

**Hearing (Open/Closed):**

An open hearing is where spectators and members of the public may be present. A closed hearing is closed to all but those who have a specific right to be present.

**Informal Resolution Processes**

Informal Resolution Processes may include discussion, clarification of the issues, facilitated conversations, informal dispute resolution, coaching, reconciliation, workplace restoration, settlement conferences, restorative justice measures, and mediation.

**Mediation:**

The act or process of mediating; especially: intervention between conflicting parties to promote reconciliation, settlement, or compromise.

**Need-to-know**

Access to information must be necessary for the performance of official responsibilities or to defend the University in any form of litigation.

**Person in authority**

Examples of Persons in Authority: Workplace supervisor, Dean, Associate Dean, Assistant Dean, department Chair, instructor, academic supervisor, teaching assistant, etc.

**Respondent**

The individual or entity about whom allegations have been made.

**Senior Administration**

The President, Provost and Vice-President (Academic), Vice-President (Administration)

**Staff**

Employees of the University including The Management Group (TMG), Unions, Temporary/Casual, non-teaching staff.

**Students**

A student is any individual recorded by the University Registrar as enrolled in an educational course of study recognised by the Senate and for whom the University maintains education records.

**Supervisor**

A person who has charge of a workplace or authority over a worker. See the Ministry of Labour guide [Who is a Supervisor under the Occupational Health and Safety Act](#)

**Support**

The provision of resources appropriate to the individual and the circumstances. This may include access to the Student Wellness Centre, Employee Family Assistance Program, McMaster Students Union (MSU). Support resources does not include the provision of legal counsel.