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Anti-Discrimination Policy

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PREAMBLE

McMaster University is dedicated to the pursuit and dissemination of knowledge. In order to enable its diverse members to pursue these twin objectives, McMaster University seeks to provide an atmosphere free of harassment and discrimination.

This policy supersedes the McMaster University Senate Procedures on Alleged Violations of Human Rights as Defined by the Ontario Human Rights Code (March 25, 1982: final revision March 14, 1990).

This policy does not pertain to sexual harassment, which is covered separately in the McMaster University Policy and Procedures on Sexual Harassment.

Where applicable, this policy should be read in conjunction with McMaster University's Statement on Academic Freedom (see Appendix A).

POLICY

STATEMENT OF PRINCIPLES

1. Discrimination and harassment, as defined in this document, (see clause 11) are prohibited at McMaster University and constitute punishable offenses under this policy. Discrimination and harassment are serious human rights issues.

Inasmuch as discrimination and harassment are demeaning to human dignity and are unacceptable in a healthy work environment and one in which scholarly pursuit may flourish, McMaster University will not tolerate such behaviour against any member of the University community and will strive to create an environment free from such behaviour on its premises.

2. McMaster University affirms the right of every member of its constituencies to live, study and work in an environment that is free from discrimination and harassment. Discrimination and harassment are incompatible with standards of professional ethics and with behaviour appropriate to an institution of higher learning.
3. McMaster University recognises that as an academic and free community it must uphold its fundamental commitments to academic freedom and to freedom of expression and association. It will maintain an environment in which students and teaching and non-teaching staff can engage in free enquiry and open discussion of all issues. The Anti-Discrimination Officer, like all other officers of the University, is obliged to uphold academic freedom, and freedom of expression and association.
4. An academic and free community must also include freedom of movement and freedom of access to facilities and resources without fear of harassment, discrimination or violence.
5. All persons entrusted with authority by the University have a particular obligation to ensure that there is no misuse of that authority in any action or relationship.
6. The University recognizes its legal and moral responsibility to protect all of its members from discrimination and harassment, and to take action if such behaviour does occur. To these ends it has developed a policy on, and procedures for, dealing with complaints arising out of such behaviour including a range of disciplinary measures up to and including removal. It has also established an educational programme to prevent incidents of discrimination.

7. The University prohibits reprisal or threats of reprisal against any member of the University community who makes use of this policy or participates in proceedings held under its jurisdiction. Any individual or body found to be making such reprisals or threats will be subject to disciplinary action.
8. The intention of this policy and its procedures is to prevent discrimination and harassment from taking place, and where necessary, to act upon complaints of such behaviour promptly, fairly, judiciously and with due regard to confidentiality for all parties concerned.
9. All administrators, Faculty deans, managers, department chairs, directors of schools or programmes and others in supervisory or leadership positions have an obligation to be familiar with and to uphold this policy and its procedures and to inform members of their staff about its existence.
10. Notwithstanding this policy, individuals have the right to seek the advice and services of the Ontario Human Rights Commission.

DEFINITIONS

11. Prohibited grounds of discrimination include all of the following, as defined in the Ontario Human Rights Code, taking account of those exceptions listed in the Ontario Human Rights Code.

- age
- ancestry
- citizenship
- colour
- creed
- ethnic origin
- family status
- handicap
- marital status
- place of origin
- race
- receipt of public assistance
- record of offenses (provincial offenses or pardoned federal offenses)
- sex
- sexual orientation

Prohibited grounds of discrimination also include such other types of discrimination as are prohibited in the Ontario Human Rights Code.

Prohibited grounds of discrimination also include language, accent, or dialect, except as language, accent, or dialect may interfere with legitimate requirements of education or employment.

Prohibited grounds of discrimination also include discrimination because of political belief; membership or non-membership in a political organization; or membership or non-membership in a trade union, or employee or employer organization.

- 11a. Discrimination means differential treatment of an individual or group of individuals which is based, in whole or in part, on one or more than one of the prohibited grounds of discrimination, and which thus has an adverse impact on the individual or group of individuals.
- 11b. Harassment means engagement in a course of vexatious comments 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.

- 11c. The Anti-Discrimination Officer is the individual appointed by the University to carry out the functions of the anti-discrimination officer under this Policy, exclusively or in combination with other University employment responsibilities. Hereafter, the Anti-Discrimination Officer shall be referred to as the Officer."

JURISDICTION

12. For the purpose of this policy, members of the University are defined as all administrative, research, teaching and non-teaching employees of the University as well as students (including interns and residents) of the University.
13. This policy applies to all members of the University community and to any person on University property.
14. This policy affects the terms and conditions of employment of faculty of the University. As such, it is 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 Faculty*, revised by the Board of Governors on October 20, 1988 (the 'Joint Administration/Faculty Association' policy).
15. 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.
16. The following individuals or bodies may initiate a complaint:
- (a) any member of the University, on his or her own behalf;
 - (b) the University, on behalf of one of its members;
 - (c) any duly constituted University association or union, on behalf of one of its members or employees, or any employee of such association or union, on his or her own behalf;
 - (d) persons seeking to become members of the University in circumstances directly affecting their application to become a member;
 - (e) former members of the University in circumstances directly affecting their removal or withdrawal from the University;
 - (f) individuals employed by companies holding contracts with the University while fulfilling the terms of the contract; or
 - (g) invited visitors.
17. The following individuals or bodies may be the subject of a complaint:
- (a) any member(s) or employee(s) of the University; or
 - (b) others on University property.
18. Complaints may be made about any alleged violation of this policy that takes place on University premises, be they rented or owned, or in the course of any activities conducted by or on behalf of the University on other premises.

19. The University will inform all external agencies who do business on the University campus of the existence of this Policy.
20. Students engaged in University-sanctioned academic activities on premises off-campus (co-op placement, internship, practicum) will have access to the provisions of this policy, 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 the McMaster Officer.

ASSURANCE OF FAIR TREATMENT

21. The complainant, the respondent, and any other parties to proceedings under this policy are to be treated fairly.

This may involve the making of special arrangements, two examples of which are described below.

- (a) Where the complainant at the time of making a complaint is either a student or instructor of the respondent, the University may, in appropriate circumstances, after the respondent has been informed that a complaint has been made, and after receiving recommendations from the Officer, make arrangements with the appropriate administrator for certain work and examinations of the student to be supervised and evaluated by a disinterested party.
- (b) Where the complainant is a staff member whose performance is normally evaluated by the respondent, the complainant is to receive fair employment treatment and protection from adverse employment-related consequences during the procedures of this policy. To that end, the University may, after the respondent has been informed that a complaint has been made, and in consultation with the complainant:
 - i) have the complainant's performance assessed by another administrator, where practicable;
 - ii) temporarily reassign the complainant until the complaint is resolved; or
 - iii) delay the complainant's performance appraisal and/or awarding of merit pay until the complaint is resolved, in which case subsequent payment for merit shall be retroactive to the date it would normally have been received and the University banker's savings rate of interest shall be paid on the amount owed.

These assurances shall also be offered to any witnesses in a case.

22. Should any special arrangement of the type described in clause 21 above be required, the Officer shall, after the respondent has been informed that a complaint has been made, make the request for the special arrangement of the appropriate University administrator, and shall provide the administrator with any details of the complaint necessary to enable the administrator to decide what special arrangements are appropriate. The administrator shall treat in confidence all information provided by the Officer.

PROCEDURES

GENERAL PRINCIPLES FOR PROCEDURES

23. (a) All persons who allege discrimination or harassment under the provisions of this policy must be advised to contact the Officer. This provision will ensure that all such complainants will have access to a common source of consistent and expert advice and that reliable data may be gathered on the incidence of discrimination and harassment in the University community. In the event that a complainant is reluctant to contact the Officer, the complainant may contact a

trained or qualified individual (e.g., employment supervisor, manager, Department Chair or Dean). It will be the responsibility of the individual contacted to report the case to the Officer without identifying either the complainant or the alleged offender and to ask for advice on procedure and policy from the Officer to effect a solution, if a solution is necessary.

In the event that the actual case is not referred to the Officer, the individual responsible for the case shall adhere as closely as possible to the policies and procedures of this document. If a complainant chooses not to consult the Officer but wishes a formal hearing, the complainant shall be directed to file a written request with the Secretary of the Board of Governors.

- (b) The Officer is an agent of the University and is responsible for the application of this policy as herein defined. To this end, the Officer will mount educational programmes designed to promote awareness of discrimination and to foster an environment free of discrimination and harassment in the university community, and will carry out complaint resolution. The Officer shall act as an impartial counsellor and advisor to any member of the University community and maintain a fair and unbiased attitude to all complaints, and to all parties to complaints, at all times.
- 24. (a) Confidentiality shall be enjoined on the Officer, and supervisory personnel working in concert with the Officer. This does not preclude the discreet disclosure of information in order to elicit the facts of the case, or to implement and monitor properly the terms of any resolution.
 - (b) The Officer and supervisory personnel working in concert with the Officer will be subject to administrative disciplinary action for inappropriate breaches of confidentiality on their part.
- 25. Should the complainant, with respect to the subject matter of a complaint being dealt with under this policy, initiate a complaint under the Human Rights Code, or should the complainant seek redress other than redress under the criminal law in the courts, proceedings under this policy will be permanently discontinued and any new proceedings under this policy in relation to the incident in question will be barred.
 - 26. The complainant and the respondent may at any stage of any of the procedures outlined in this policy be represented and/or accompanied by another person of her/his choice.
 - 27. Failure to comply with a resolution agreed upon or imposed as a result of the procedures within this policy may result in disciplinary action by the University.
 - 28. If, during the informal stages of complaint resolution, the Officer determines that the complaint is frivolous, vexatious or entirely without factual basis, the Officer will advise the complainant and the respondent (if previously informed of the complaint) of this fact, in writing, and will provide reasons for this conclusion. The Officer will advise the complainant that should a tribunal eventually hear the matter, and come to the same conclusion, the complainant could be subject to disciplinary actions under this policy. At this point, the Officer's involvement in the case shall cease.
 - 29. Teaching, research and non-teaching staff who participate in the procedures outlined in this policy shall be given released time to consult with the Officer and attend formal hearings pertaining to their case. Students will be assisted in adjusting schedules as necessary to attend their formal hearings.
 - 30. Should the Officer believe at any time that the health or safety of members of the McMaster community is at risk, the Officer may notify the Director of Security Services and the appropriate administrative officer of the University. Such a situation, and such a situation only, supersedes the prohibition on informing a third party of a complaint prior to the respondent's being notified and having the opportunity to reply to the complaint.
 - 31. No one shall be compelled to proceed with a complaint.

October 10, 2001

RECORDS

32. (a) All notes pertaining to advice sought by persons wishing merely to consult with the Officer, or arising from procedures of an Informal Resolution Without A Written Complaint (see clause 41), shall be maintained by the Officer in a confidential file for a period of three years from the date of the complainant's initial contact with the Officer.
- (b) All records pertaining to procedures involving an Informal Resolution With A Written Complaint (see clauses 45 and 46), or Formal Resolution (see clauses 47 to 74), shall be maintained in a confidential file for a period of 7 years from the date the Written Complaint was signed by the complainant. Any record of a Written Complaint necessitates notification of the respondent. The respondent must be allowed an opportunity to respond to the complaint and to have that response form part of record.
- (c) At the end of the prescribed period for keeping notes/records, the Officer will destroy the notes/records. Non-identifying data will continue to be recorded by the Officer for statistical purposes only.

The notes/records in (a), (b) and (c) above shall be maintained by the Officer. No one other than the Officer shall have access to the records in (a) and (b) above, except as otherwise provided for in this policy.

UNIVERSITY AS COMPLAINANT

33. If the Officer receives repeated allegations of offenses against the same person but each of the persons making allegations is unwilling to file a written complaint and appear as complainant, and if circumstances are considered by the Officer to be such that a complaint should be lodged, the Officer shall inform the appropriate Vice-President, or in the case of conflict of interest, the President.
34. The Officer shall communicate with persons drawn from the pertinent notes/records who might provide evidence of discrimination or harassment to determine their willingness to provide testimony if the University were to proceed as a complainant against the alleged offender. The Officer shall not communicate the contents of the notes to such persons in either written or verbal form.
35. The Officer shall provide to the appropriate Vice-President the names of witnesses who agree to testify, the name of the alleged respondent and copies of any written complaints and responses submitted to the Officer relating to alleged offence(s) by the respondent.
36. The appropriate Vice-President shall communicate with witnesses and the alleged respondent, review all information and decide (as soon as possible but no later than six weeks from the date of receiving the information) whether to initiate formal procedures against the respondent (see clause 47). The Officer shall be informed in writing of the Vice-President's decision. If the Vice-President decides to initiate formal proceedings against the respondent, such proceedings normally should be initiated within one month of making the decision.

CONSULTATION WITH ANTI-DISCRIMINATION OFFICER

37. (a) Persons having reason to believe that they have been subjected to anti-discrimination are strongly encouraged to contact the Sexual Harassment Officer as soon as possible. Through consultation, the Sexual Harassment Officer will assist in determining if the reported events constitute discrimination or harassment under the provisions of this policy, and delineate options for action available to that individual. Persons seeking advice at this stage need not reveal their names or the name(s) of the other person(s) concerned. The Officer will keep confidential records of all consultations (see clause 32).

In cases the Officer deems to be appropriate, the Officer, or a suitably trained alternate appointed by the Officer, may investigate allegations made under this policy in order to:

- (i) assist in the resolution of the matter in the informal stages;
 - (ii) decide whether to make a recommendation that the University proceed as complainant; or
 - (iii) proceed by way of fact-finding investigation.
- b) Where provisions for dealing with discrimination or harassment are contained in a collective agreement, the terms of that collective agreement will be applicable. In the event of conflicting jurisdictions between the complainant and the respondent, the procedure governing the respondent shall be followed. The Officer shall remain available to provide counsel and advice.
- c) Where complaints fall outside the jurisdiction of this policy (e.g., co-op placement, internship, practicum), the Officer will direct the complainant to the appropriate resolution process and will remain available as an adviser (see clauses 19 and 20).
- d) The University prohibits reprisal or threats of reprisal against any member of the University community who makes use of this policy or participates in proceedings held under its jurisdiction. Any individual or body found to make such reprisals or threats of reprisal will be subject to disciplinary action.

RESOLUTION

38. The objective of discrimination or harassment resolution is to secure a settlement that is consistent with the spirit of this policy and its fundamental principles.
39. Resolution may be pursued through three progressive levels, "Informal Resolution Without a Written Complaint", "Informal Resolution With a Written Complaint" and "Formal Resolution With a Written Complaint". The Officer will normally encourage all complainants to seek resolution through informal means instead of, or prior to, proceeding to the process of formal complaint resolution. This does not preclude a complainant's requesting to bypass informal procedures and move directly to formal resolution (see clause 47).
40. Any complainant who requests Informal Resolution With A Written Complaint or Formal Resolution With a Written Complaint, must be prepared to be identified to the respondent. This policy does not, however, prevent anyone from seeking counselling or advice on a confidential basis from the Officer.

INFORMAL RESOLUTION WITHOUT A WRITTEN COMPLAINT (see also clause 28)

41. (a) The primary objective of most people who seek the assistance of the Officer is to stop the offending behaviour. To this end, it is important to provide for the option of Informal Resolution facilitated by the Officer. Each situation is unique and creativity may be necessary in devising options for Informal Resolution.
- (b) No third party will be informed of the identity of the respondent unless and until the respondent is informed of the complaint and given an opportunity to respond, except in cases described in Section 30. The Officer will keep confidential records of all Informal Resolutions (see clause 32[a]).
42. (a) After consulting with the Officer or after attempting Informal Resolution Without A Written Complaint, the complainant may decide:
- (i) to take no further action; or
 - (ii) to proceed with the formulation of a written complaint.

WRITTEN COMPLAINTS

43. (a) A complainant may file a signed, written complaint of breach of this policy. The written complaint should be filed with the Officer or, in the event that the complainant chooses to contact another University officer (see clause 23), with that other officer.
- (b) A written complaint shall be submitted promptly, but no later than 12 months from the last date of the alleged harassment. An extension of up to 3 months may be granted by the Officer, or other University officer where appropriate, upon written request. Any further extension may be granted at the discretion of the Officer or other University official only after hearing submissions from both the person seeking an extension in order to make a complaint, and from the potential respondent.
- (c) The written complaint shall include the dates of the alleged incident(s), the names of the people involved in the incident(s) and a full description of the incident(s).
- (d) The respondent shall be provided with a copy of the complaint, disclosure of all material facts relevant to the complaint, and an opportunity to respond orally or in writing to the written complaint. The respondent is to be provided with ongoing disclosure of the particulars of the complaint as they become known.
- (e) No information regarding the complaint will be given to any party unless the respondent has been notified of the complaint, as required by sub-section (d) above.
44. Upon receipt of a written complaint, the Officer, or other University officer where appropriate, shall determine whether the complainant wishes first to proceed by way of the "Informal Resolution With a Written Complaint" procedure or whether the complainant wishes directly to proceed with the "Formal Resolution" procedure.

INFORMAL RESOLUTION WITH A WRITTEN COMPLAINT

45. (a) If the complainant elects to proceed by way of Informal Resolution With a Written Complaint, the Officer shall discuss the written complaint and any response with the complainant and with the respondent with a view to reaching a resolution acceptable to all parties.
- (b) It is expected that Informal Procedures shall be conducted at a reasonable pace, but shall not normally extend past 60 days from submission of the written complaint.
- (c) Once the procedure of Informal Resolution With A Written Complaint is initiated by the complainant, and once the respondent has been notified of the complaint and has been given a chance to respond to it, the Officer, after consultation with the complainant, may contact persons with authority over the respondent, or with jurisdiction over the place or context in which the alleged harassment occurred, if alternative arrangements as provided for in section 21 are required, or to elicit the facts of the case.
- (d) If a resolution is achieved through Informal Procedures, a Resolution Report prepared by the Officer shall be signed by the complainant and the respondent. Should the resolution include an action or remedy by the University, that aspect of the resolution report must also be agreed to, signed and with respect to that aspect enforced by the member of the University Administration with the authority for ensuring that the remedy is imposed or enforced. All parties shall receive a copy of the report and a copy shall be retained in the Officer's confidential files (see clause 32 [b]).

46. (a) Should the Officer determine that the possibility of reaching a resolution through Informal Procedures has been exhausted, both the complainant and the respondent shall be informed in writing within 5 working days of that determination.
- (b) Following notification that Informal Procedures have been exhausted, the complainant shall then be advised to:
- i) request, in writing, a formal hearing; or
 - ii) withdraw, in writing, the complaint.
- (c) Should the complainant withdraw the complaint, the report noted in clause 46(a) will remain in the Officer's confidential files for a period of 7 years (see clause 32[b]). Both the complainant and the respondent will be notified that the records will remain in the Officer's files for seven years. Should the complainant request a formal hearing, this request will be forwarded to the Secretary of the Board of Governors. Attached to the request will be a copy of the original written complaint and any written response from the respondent.
- (d) If the complainant has neither written to the Officer to initiate a formal hearing nor written to withdraw the complaint within 30 working days of being notified in writing that informal resolution has failed, the complaint shall lapse.

FORMAL RESOLUTION WITH A WRITTEN COMPLAINT

General Considerations

47. (a) If a complainant requests a formal hearing, the complainant and any witnesses must be prepared to be identified to the respondent.
- (b) If a complaint has reached the stage of a formal hearing, the respondent is entitled to a specific disposition of the issue; or, where the complaint is withdrawn once a formal hearing has begun but before it has concluded, to a dismissal of the complaint.
- (c) Where a complainant alleges that an incident raises a breach under both the Sexual Harassment and the Anti-Discrimination Policies, the complaint will be dealt with in a single hearing by the same tribunal appointed under both policies.

Hearing Panel

48. Formal hearings will be conducted before a tribunal selected from the membership of a Hearing Panel. The Hearing Panel shall be the same Panel, with the same members, as that constituted under the McMaster University Policy and Procedures on Sexual Harassment. The Hearing Panel will consist of 6 non-teaching staff members appointed by the Board of Governors and 6 members of the teaching staff, 3 undergraduate students and 3 graduate students appointed by the Senate. The Chair shall be appointed by the Senate from among the members appointed by the Senate and the Vice-Chair shall be appointed by the Board of Governors from among the members appointed by the Board of Governors. Staff serving on the Hearing Panel will be given released time to do so.
49. Members will be appointed to the Hearing Panel for staggered terms to provide for continuity of experience. Student members shall serve two-year terms and teaching and non-teaching staff members shall serve three-year terms. Shorter terms may be required occasionally to provide for staggering and to fill vacancies. No member shall serve for more than two consecutive

terms. Former members will be eligible for reappointment after a lapse of two years.

50. Members of the Hearing Panel will receive generic training by the Anti-Discrimination Officer in the particular sensitivities which surround discrimination and 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, together with the principles of academic freedom as outlined in Appendix A. 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.
51. The Chair or, alternatively, the Vice-Chair, in addition to conducting the business of the Hearing Panel, may chair the tribunals hearing formal complaints, or the Chair may designate Chairs of tribunals from among the membership of the Hearing Panel.

Selection of Tribunal

52. Upon receipt of the request for a formal hearing, the Secretary of the Board of Governors shall forward to the Chair of the Hearing Panel the written request for a formal hearing, together with the identity of the complainant and the respondent.
53. A tribunal will consist of the Chair or Vice-Chair of the Hearing Panel (or designate), as described above in clause 51, who will chair the tribunal, and two members of the Hearing Panel, selected in accordance with the process described below in clause 54.
54. Mindful of the constituencies represented by the parties in a case, the Chair of the Hearing Panel will select a slate of six names of Hearing Panel members, including the Chair or Vice-Chair if either or both has agreed to serve on the tribunal, to be presented to the complainant and the respondent within 15 working days of receipt by the Secretary of the Board of Governors of a request for a formal hearing. The complainant and respondent may object in writing with reasons (i.e., bias, conflict of interest, or other valid reason) to any of the names on the slate within 10 working days of receipt of the slate. After ruling on any objections presented by the complainant and/or respondent, the Chair will select three members from the names remaining on the slate. In the event that fewer than three names remain on the slate after this process, a subsidiary slate of members' names may be presented to the complainant and respondent. If there are any objections whatsoever to the Chair's presence on the slate, the Chair will remove herself or himself from the procedure.
55. The Chair will inform the Secretary of the Board of Governors of the membership of the tribunal. The Secretary of the Board of Governors shall then proceed to arrange for the formal hearing(s) in accordance with the procedures set out below.

Procedural Rules for Formal Hearings

56. The *Statutory Powers Procedure Act*, R.S.O. 1990, c. s 22, as amended by S.O. 1993, c.27, sched.; S.O. 1994, c.27s.56; S.O. 1997, c.23, s 13, and any subsequent amendments, establishes minimum rules by which certain tribunals must proceed, to ensure that the rules of natural justice 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.
57. Tribunals conducting Hearings under this policy shall follow the procedures set out in the *Statutory Powers Procedure Act*, or successor legislation. In addition, all hearings before

tribunals convened under this policy shall follow the procedures detailed below. In the event of a conflict between the Statutory Powers Procedures Act and the procedures detailed below, the procedures detailed below govern in the absence of any judicial determination to the contrary. Where any procedural matter is not dealt with in the *Statutory Powers Procedure Act*, or below, the Tribunal will, after hearing submissions from the parties, and guided by the principles of fairness, establish any appropriate procedure.

58. 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 document.

Parties to the Hearing

59. The signator(s) to the written complaint (the complainant[s]) and the person(s) alleged in the written complaint to have breached this policy (the respondent[s]) shall be parties to the Hearing.

Scheduling

60. An attempt shall be made to schedule the Hearing(s) 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 Chair of the tribunal or whose absence may cause unreasonable delay, shall be notified that the tribunal will proceed in that party's absence.

Notice

61. The Hearing(s) shall be commenced as soon as possible following the appointment of the tribunal. Each party to the Hearing shall be sent a Notice of Hearing stipulating the time and place of the Hearing, and the parties to the Hearing, and identifying the subject matter of the Hearing.
62. Prior to the Hearing, members of the tribunal shall be provided with:
- (a) the complainant's request for a formal hearing,
 - (b) the complainant's original written complaint, and
 - (c) the respondent's written response to the original complaint, if any.

Record

63. The Secretary of the Board of Governors will prepare a Hearing Record consisting of documents which the parties wish to submit and on which they intend to rely at the Hearing. Excluded from the record are any 'without prejudice' communications made with a view to informally resolving the complaint as well as the report of the Officer, or other University official, on the events which transpired to resolve the complaint informally (see clause 46 [a]). Prior to making the record available to members of the tribunal, the parties to the hearing are to have an opportunity to review the content of the record and may bring a preliminary motion to the tribunal seeking exclusion of part or all of the record on grounds of relevance or other appropriate grounds. The record is to be made available to tribunal members for the purpose of expediting the hearing. The documents contained in the record are not admissible as evidence at the hearing except on consent of all the parties to the hearing or upon being proven as

evidence through witnesses at the hearing.

Duties of the Tribunal Chair

64. The Chair's duties include, but are not limited to:
- (a) maintaining order during hearings;
 - (b) answering procedural questions;
 - (c) granting or denying adjournments;
 - (d) arranging for a permanent audiotape-recording of the proceedings, which shall constitute the official record of those proceedings; and
 - (e) reporting decisions of the tribunal to the President.

The above duties shall be undertaken in consultation with the tribunal members, if appropriate.

Counsel

65. (a) Both the complainant and the respondent have the right to be accompanied by an adviser or to be represented by counsel.
- (b) All parties will bear their own costs related to the proceedings. The tribunal will not order or recommend the payment of costs, including any legal costs, of the proceedings to any party.

Closed Hearings

66. Hearings shall be held *in camera* unless either the complainant or the respondent requests that the hearing, or some part of the hearing, should be held in public. In the event of such an objection, 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.

Order of Proceedings

67. The Order of Proceedings will be as set out below.
- (a) The Chair's opening statement which shall identify the parties, introduce members of the tribunal and other participants in the Hearing, identify the nature of the case, confirm that all parties have had an opportunity to see the record and list any evidence which the parties have agreed can be admitted on consent.
 - (b) The complainant's opening statement, which shall contain a brief description of her/his case, including what she/he believes is the offence.
 - (c) The complainant's witnesses, each to be examined as follows:
 - examination-in-chief by the complainant,
 - cross-examination by the respondent,
 - questions from the Tribunal for the purpose of clarification and dealing with omissions,
 - re-examination by the complainant, limited to points of clarification and to new issues arising out of the cross-examination by the respondent and questions from the Tribunal, which issues could not reasonably have been anticipated during the examination-in-chief.
 - (d) The respondent's opening statement, which shall contain a brief reply to the complainant's case, outlining the main points of her/his defense.
 - (e) The respondent's witnesses, each to be examined as above (sub-section c) beginning

with examination-in-chief by the respondent, and so on.

- (f) Complainant's reply witnesses, limited to matters which could not reasonably have been considered pertinent at the time that the complainant put in her/his case. The complainant will not be allowed to split her/his case. Witnesses called in reply will be examined as above, beginning with the examination-in-chief by the complainant, etc.
- (g) Closing arguments to be made first by the respondent and then by the complainant. Closing arguments should address both the substance of the complaint and the appropriate penalty in the event that the complaint is found to be valid by the tribunal.

Witnesses

68. The following rules govern witnesses:

- (a) Only parties to the hearing have the right to call witnesses at the hearing.
- (b) The tribunal has discretion to limit testimony and questioning of witnesses to those matters it considers relevant to the disposition of the case.
- (c) Parties are responsible for producing their own witnesses and for paying the costs associated with their appearance before the tribunal.
- (d) The Chair of the tribunal has the power to compel a witness to attend, and parties may request the Chair's aid in this regard.
- (e) The Chair, on his or her own initiative may, or at the request of either party to the hearing shall, issue an Order Excluding Witnesses from the hearing room except during the time their testimony is required. Once such an order has been issued, witnesses are not to confer amongst themselves or with other witnesses who have already testified.

Evidence

69. The following evidentiary rules apply.

- (a) Parties to the hearing have the right to present evidence in support of their case to the tribunal and to see any written evidence presented to the tribunal.
- (b) The tribunal has the power to require production of written or documentary evidence by the parties or by other sources.
- (c) A person appearing before the tribunal may be required to give evidence under affirmation or oath.
- (d) The Anti-Discrimination Officer may testify as a witness, if called by one of the parties, but shall not disclose information provided to her or him in confidence by the parties or during 'without prejudice' negotiations, except on consent of the relevant party or parties.
- (e) Complainant(s) may be questioned on behaviour related to the incident(s) in question. Apart from this, no complainant is to be questioned on previous behaviour or character for purposes other than those of establishing credibility as a witness.

Deliberations by the Tribunal

70. (a) Following the formal hearing, the tribunal shall deliberate in closed session.

The tribunal will decide, either unanimously or by a majority of the members, the merits of the complaint on the basis of evidence and arguments presented at the hearing. In order to be upheld by the tribunal, complaints under this policy must be proven on the balance of probabilities by clear and cogent evidence. Where the complaint is found to be valid, the tribunal will recommend an appropriate penalty, either unanimously or by a majority.

In the event that the tribunal cannot reach a majority decision with respect to the recommended penalty, the two members of the tribunal who do not occupy the position of Chair shall each submit in writing to the Chair the penalty he or she believes is appropriate. The Chair shall select one of these two proposals as the tribunal decision.

- (b) The tribunal shall prepare and submit to the President of the University a written report which shall include the tribunal's decision and the reasons for the decision, together with any recommendation for penalty. If there is a minority report, it shall also be submitted to the President.
- (c) Copies of the tribunal's report to the President shall be sent in confidence to the complainant, the respondent and the Officer. Similarly, the President will inform all parties, in writing, of the final decision in the case and course of action to be taken, if any.
- (d) The President shall ensure that any penalties recommended are enforced by the authority responsible for implementing or imposing the penalty. If the recommended penalty is suspension or removal, the President shall initiate the appropriate procedure.
- (e) If the tribunal decides by a preponderance of reliable evidence that a complaint has been fraudulent, malicious, frivolous or vexatious, or is entirely without factual basis, the Tribunal hearing the original complaint will find that the complainant, as a result of the complaint, is in breach of this policy and will recommend to the President such sanction or remedy against the complainant as it feels is appropriate. Prior to finding that a complaint has been fraudulent, malicious, frivolous or vexatious or is entirely without factual basis, the Tribunal will advise the parties that it is considering making such a ruling and specifically invite submissions on this point.
- (f) Decisions of the Tribunal are binding and cannot be appealed within the University.
- (g) The Tribunal will prepare a summary of the report for the public. The summary will include an outline of the case and the tribunal's findings and decision, but will be sufficiently general that the parties to the hearing cannot be identified.
- (h) The tribunal shall make any other recommendations or comments, as appropriate, to the President, in a document separate from the report containing the Tribunal's decision and recommended penalty.
- (i) All records pertaining to tribunal procedures, decisions and recommendations shall be retained by the Secretary of the Board of Governors.

Sanctions and Remedies

71. The following penalties, singly or in combination, may be imposed upon any respondent who is a member of the teaching, research or non-teaching staff in any case where discrimination or harassment is found to have occurred:
- (a) oral or written reprimand;
 - (b) inclusion of the decision in a specified personnel file(s) of the respondent, for a specified period of time, not longer than 7 years;
 - (c) exclusion of the respondent from a designated portion(s) of the University's buildings or grounds, or from one or more designated University activities, where such penalty is appropriate to the offence and where the penalty does not prevent the respondent from carrying out her/his professional duties;
 - (d) imposition of conditions, with or without a deposit not exceeding \$200, returnable at a specific date, such deposit to be forfeited should any conditions be violated;
 - (e) the imposition of a fine;
 - (f) recommendation for suspension of the respondent without pay;
 - (g) recommendation that removal proceedings be commenced; and/or
 - (h) other, as deemed appropriate.
72. The following penalties, singly or in combination, may be imposed upon a **student** respondent in any case where discrimination or harassment is found to have occurred:
- (a) oral or written reprimand;
 - (b) inclusion of the decision in a specified student file(s) of the respondent, for a specified period of time, not longer than 7 years;
 - (c) exclusion of the respondent from a designated portion(s) of the University's buildings or grounds, or from one or more designated University activities, where such penalty is appropriate to the offence and where the penalty does not prevent the respondent from pursuing her/his studies;
 - (d) imposition of conditions, with or without a deposit not exceeding \$200, returnable at a specific date, such deposit to be forfeited should any conditions be violated;
 - (e) prohibition of the respondent from attendance in a course(s), a programme, or a teaching division or unit, for a period of not more than 1 year; and/or
 - (f) other, as deemed appropriate.
73. The tribunal of the Hearing Panel must recommend any appropriate sanction or remedies it deems necessary to guarantee that the behaviour is not repeated. The tribunal may also make a recommendation to the President that the complainant be accommodated for injury or damage to or loss of property, subject to clause 65.

74. Suspension or removal may only be recommended, and such recommendations shall be dealt with in accordance with the established policies and procedures and by the terms or existing contracts of employment or collective agreements.

REVIEW

75. This policy may be reviewed from time to time, as required, in conjunction with the Sexual Harassment Policy.

APPENDIX A

Statement on Academic Freedom

McMaster University is dedicated to the pursuit and dissemination of knowledge. Its members enjoy certain rights and privileges essential to these twin objectives. Central among these rights and privileges is the freedom, within the law, to pursue what seem to them fruitful avenues of inquiry; to teach and to learn unhindered by external or non-academic constraints; and to engage in full and unrestricted consideration of any opinion. This freedom extends not only to members of the university but to all who are invited to participate in its forum. All members of the University must recognize this fundamental principle and must share responsibility for supporting, safeguarding and preserving this central freedom. Behaviour which obstructs free and full discussion, not only of ideas which are safe and accepted but of those which may be unpopular or even abhorrent, vitally threatens the integrity of the University, and cannot be tolerated.

Suppression of academic freedom would prevent the University from carrying out its primary functions. In particular, as an autonomous institution McMaster University is protected from any efforts by the state or its agents to limit or suppress academic freedom. Likewise, neither officers of the University nor private individuals may limit or suppress academic freedom.

The common good of society depends upon the search for knowledge and its free exposition. Academic freedom does not require neutrality on the part of the individual; on the contrary, academic freedom makes commitment to a position or course of action possible. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge.