

McMaster Divinity College Policy on Harassment (including Sexual Harassment)

Theological Affirmation

Jesus emphasized mutuality and respect in relationships. To harass is to misuse power and to distort human relationships, as it leads to alienation and mistrust and is against the spirit of the gospel. Sexual harassment as a form of harassment is a violation of the integrity of persons who are equal before God and in creation. Sexual harassment is a violation of the integrity of persons because of unequal power relations and usually because of gender, and degrades persons rather than allowing their gifts of creativity and wholeness to be used in the church.

Definitions

“Harassment” is defined in the *Ontario Human Rights Code* and the *Occupational Health and Safety Act* as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.” Such behaviour may be verbal, physical, or online. Harassment normally involves a series of incidents against one person (the Complainant) perpetuated by another (the Respondent), but can be one severe incident that has a lasting effect upon the Complainant (see below). Harassment includes sexual harassment.

Examples of harassment may include the following when repeated or one single severe event:

- Preventing a person from expressing himself or herself, such as engaging in demeaning and degrading behaviour which might include yelling at the person, threatening, constantly interrupting that person, prohibiting the person from speaking to others;
- Unwanted sexual advances which may or may not be accompanied by threats or explicit or implicit promises;

- Making rude, degrading or offensive remarks;
- Making gestures that seek to intimidate;
- Engaging in reprisals for having made a complaint under this policy;
- Discrediting the person by spreading malicious gossip or rumours, ridiculing the person, humiliating the person, calling into question the person's convictions or the person's private life, shouting abuse at the person;
- Isolating the person by no longer talking to them without valid justification, denying or ignoring the person's presence, distancing the person from others;
- Harassing a person based on a prohibited ground of discrimination (as described in the Ontario *Human Rights Code*).

Examples of sexual harassment may include the following when repeated or one single severe event:

- demanding physical contact;
- unnecessary physical contact, including unwanted touching, etc.;
- sex- and/or gender-specific derogatory language and/or comments;
- leering or inappropriate staring;
- comments or conduct relating to a person's non-conformity and/or perceived non-conformity with sex and/or gender stereotypes;
- displaying or circulating pornography, sexual pictures or cartoons, sexually explicit graffiti, or other sexual images (including online);
- sexual jokes, including circulating written sexual jokes (e.g. by email);

- rough and vulgar humour or language related to sex, sexual orientation and/or gender (including gender identity and gender expression);
- sexual- or gender-related comment or conduct used to bully a person;
- spreading sexual rumours (including online);
- propositions of physical intimacy;
- sex- and/or gender-related verbal abuse, threats, or taunting;
- bragging about sexual prowess;
- demanding dates or sexual favours;
- questions or discussions about sexual activities;
- requiring an employee to dress in a sexualized or gender-specific way;
- patronizing behaviour based on sex, sexual orientation, gender, gender identity and/or gender expression;
- threats to penalize or otherwise punish a person who refuses to comply with sexual advances (known as reprisal).

With respect to sexual harassment, making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome by definition constitutes sexual harassment under legislation.

Note: The examples noted above may not necessarily constitute harassment, each situation will be assessed and investigated on the basis of the circumstances around it.

Workplace harassment may occur at MDC or at any location or any event related to MDC, including while on travel status, at a conference where attendance is sponsored by MDC, at MDC sponsored training activities/information sessions and at MDC sponsored events, including social events, as well as online, including on social media platforms, regardless of whether the post was made during working hours.

Reasonable exercises of management functions (e.g. advancement, performance review, addressing absenteeism, day-to-day management of activities, work assignments, and the carrying out of progressive disciplinary measures) do not constitute harassment.

Principles and Policy

The Faculty, Senate, and Board of Trustees of McMaster Divinity College (“MDC”) affirm that:

- (a) any volunteer, student, faculty member, staff member or contractor has the right to volunteer, study, work and provide services in a safe environment of trust, free from harassment, including sexual harassment;
- (b) an important way to create such an environment is through the education and pastoral care of all concerned;
- (c) any act which violates this environment of safety and trust shall be dealt with by MDC with utmost seriousness, in keeping with the law, with the spirit of the gospel, and with the standard of Christian living;
- (d) any member of the MDC community who believes they are a victim of harassment shall have the right to make an allegation against another and have that allegation investigated;

- (e) any member of the MDC community who is formally accused of harassment shall have the right to defend themselves and provide their version of events;
- (f) in investigating and deciding each case, there must be an objective examination of all the circumstances (including the nature and context of the incidents);
- (g) in the investigation of the allegation and in the hearing of a complaint, those concerned shall be treated with fairness and shall be granted confidentiality;
- (h) confidentiality shall not be confused with anonymity, and those bringing complaints must be prepared to be identified, before the Respondent and potentially before witnesses;
- (i) the hearing process shall be designed to minimize anxiety and distress and shall be accompanied with the provision of appropriate pastoral care and counselling for those concerned;
- (j) at any time during the process of investigation and hearing, the Complainant need not continue with the complaint and may freely withdraw from the process if they so desire; at this point all parties shall be informed of closure of the process;

If a person believes, after considering the above criteria and principles, that harassment has occurred, the Complainant may bring a complaint against the Respondent for such actions. In the process of making a complaint, all of those involved in the process, whether as Complainants, Respondents, witnesses or as personnel involved in the investigation process, must be careful to respect the personal integrity of all parties and ensure that they do not engage in statements that may defame the character of those involved and subject themselves to accusations of libel or slander.

Investigation Process

The procedure for dealing with a complaint of harassment, including sexual harassment, presupposes that an appropriate system of support and investigation be in place involving the following personnel:

(a) Harassment Officer

The Harassment Officer is a designated employee of MDC who acts as the first point of contact for a complaint of harassment. The Harassment Officer is to be in direct contact with the Complainant and to hear the nature of the complaint. If the Complainant wishes to proceed with the complaint, the Harassment Officer is to help the complainant to formulate and write down the complaint. After the formal complaint has been completed, the Complainant must attest by signature and date that this is an accurate account of the complaint.

The written complaint must include the specific details of the complaint, the time frame in which the complaint occurred, the location of the actions concerned, the circumstances of the alleged incidents, the relationship of the parties involved, any basic corroborating evidence available at the time, and the name or names of those named in the complaint as Respondent(s) as well as any potential witnesses. These details must specify, especially in cases of potential sexual harassment, the nature and type of possible bodily contact including location, the situation in which such actions occurred, any words or gestures accompanying such events and other pertinent circumstances, and any threats that may have been made in conjunction with such purported actions.

It must be made clear that pursuant to legislation, in some circumstances, even if the Complainant does not wish to proceed with a formal complaint and/or investigation, MDC may be under a legal obligation to nevertheless investigate the complaint.

(b) Chaplain/Counsellor

The Chaplain/Counsellor is an independent person experienced in the area of harassment counselling, including sexual harassment counselling. The Chaplain/Counsellor will provide pastoral support for persons involved in cases of harassment at MDC. The position of Chaplain/Counsellor is a permanent one. Approach to the Chaplain/Counsellor by a Complainant would be a second step in the process of dealing with cases of harassment, arranged through the Harassment Officer. The Respondent to the complaint is also entitled to pastoral support by the Chaplain/Counsellor.

The Harassment Officer may recommend that the Chaplain/Counsellor, with the consent of both the Complainant and the Respondent, arrange a meeting between the two parties.

The purpose of this meeting would be to facilitate open communication between the two parties on the matter in the hope of finding a satisfactory resolution before proceeding further.

(c) Complaint Evaluator

The Complaint Evaluator is an independent person experienced in the area of harassment, including sexual harassment, evaluation, and complaints, and may be a counsellor or lawyer or other suitably qualified person. The Complaint Evaluator shall assess on the basis of the written complaint and supporting evidence whether there are grounds in the complaint for it to become a formal complaint and require further action, and determine the nature of such further action. The Complaint Evaluator makes a determination on the basis of this policy in light of further information from the laws of the Province of Ontario.

If the Complaint Evaluator determines that the complaint is insufficient for a formal complaint, on the basis of the evidence presented or the location

or nature of the events alleged, the Complaint Evaluator is to meet with the Complainant and explain the outcome of the complaint. The Complaint Evaluator may still recommend to the Complainant that the Complainant meet with the Chaplain/Counsellor on their own or meet with the Chaplain/Counsellor and the Respondent, with the consent of both parties to the complaint, to attempt to resolve their conflict and facilitate communication between the two parties. At that point, the complaint is closed. There is no formal record kept of such a complaint. The Complainant may at any time seek legal recourse by filing a police report or engaging other suitable legal remedies.

To proceed to a formal complaint, the Complaint Evaluator is to inform the President of MDC that the Board must appoint a Co-ordinator to investigate the formal complaint.

(d) Co-ordinator

The Co-ordinator is a person named by the Board who shall act as the facilitator of the process of investigating and hearing a given formal complaint of harassment, including sexual harassment. The Co-ordinator shall be appointed to this position for the duration of the case. The Co-ordinator shall also serve as Chair of the Panel to hear a case of harassment, and shall act as liaison between the Panel and the Board and/or Senate when recommendations are to be made by the Panel. The Co-ordinator is not to be an employee of MDC.

The Co-ordinator guides the formal complaint through the following process:

Stage One

The first stage involves the Co-ordinator meeting with the Complainant and informing the Respondent of the formal complaint.

- (a) If there are grounds for a formal complaint, the Co-ordinator shall be given the formal complaint of the Complainant, as well as any supporting evidence.
- (b) The Co-ordinator shall inform the Respondent in writing that the formal complaint has been made, and will also provide to the Respondent a copy of the written complaint. The Respondent shall also be advised that an investigation of the complaint has now begun and will be requested to prepare a written response to the complaint.
- (c) The Co-ordinator shall collect the facts of the case together by means of interviews with the Complainant and the Respondent separately, as well as any relevant witnesses. There is to be no contact between the Complainant or the Respondent and individual members of the Panel (see below). All communication is to be through the Co-ordinator. The Co-ordinator shall also invite each person to offer additional information relevant to the complaint, such as any written documents or artifacts. The Co-ordinator shall set a reasonable limit on the timeframe and process for gathering such information and the terms of its distribution to the Panel. In any case, no further documents are to be gathered or disseminated within a week of a formal Panel hearing. The Co-ordinator shall set the parameters for contact with the Complainant or Respondent leading up to the Panel hearing and may limit any communication (such as by email) to preserve integrity of the process.
- (d) The Co-ordinator shall meet with the Complainant to advise of remaining options. These are (1) a face-to-face meeting with the Respondent, mediated by the Co-ordinator, or (2) proceeding with a formal hearing before a Panel. The Co-ordinator shall advise the Complainant of the implications of the various courses of action, including the possible outcomes. These findings include the full range from upholding the

complaint to dismissing the complaint, as well as intermediate findings as appropriate (see below).

- (e) If a face-to-face meeting with the Respondent is chosen by the Complainant, then this will be expedited by the Co-ordinator. If a formal hearing is chosen, then the procedure is as follows.

Stage Two

- (a) The Co-ordinator shall request that the Senate select a Panel for the formal hearing if the Respondent is a student, or shall request that the Board select a Panel for the formal hearing if the Respondent is a faculty or staff member, volunteer, or contractor, and shall set the schedule of meetings in consultation with the parties concerned.
- (b) The Panel shall consist of five people, including the Co-ordinator who shall serve as Chair of the Panel.
 - 1. Membership of the Panel shall be impartial and unbiased;
 - 2. One member of the Panel shall be a lawyer.
- (c) Before the hearing begins, a full explanation of the nature of the proceedings shall be given to both Complainant and Respondent. The Complainant and Respondent shall be advised that each may be accompanied by another person, that person possibly being a lawyer, who may speak on behalf of that person.
- (d) The formal hearing shall proceed as follows:
 - 1. The Panel shall examine the statements of the Complainant and the Respondent, as well as any supporting documents provided by each;

2. The Panel may interview separately the Complainant and the Respondent; however, the substance of all allegations shall be made known to the Respondent with opportunity for response;
3. The Panel shall request additional information as it deems necessary;
4. The Panel shall interview any person who may have information relevant to the complaint, and/or consider any written statements by them;
5. In all cases, the Respondent shall have the opportunity to know the substance of the case against them and the evidence gathered, and shall have the opportunity to provide a response;
6. The Panel may choose to hear both the Complainant and the Respondent together, at their sole discretion (failure of one party to comply may be deemed grounds for either dismissal on the part of the Complainant or admission of guilt on the part of the Respondent);
7. After due consideration, the Panel shall decide whether, in their opinion, an act of harassment has occurred. A majority of 4/5 is necessary for such a decision;
8. If the decision is that harassment has not taken place, then the matter will be dropped by the Panel. No record of the complaint will be placed in the personnel or student file of the Respondent. Appropriate counselling support may be provided for both parties; and
9. If the decision of the Panel is that harassment occurred, then the Panel shall advise in writing the appropriate body (either the Senate or Board of Trustees) of this conclusion and shall make its recommendations.

Determination

The appropriate body of MDC, whether the Senate or Board of Trustees, makes the final determination as to the outcome of a formal complaint regarding harassment, including sexual harassment. There is no provision for appeal of a decision of the Panel, as the Panel does not have decision-making powers only recommendatory ones. If new substantive evidence or accusations are brought to light, they must be considered as new complaints and pursued through this policy. Both the Complainant and Respondent retain their rights to pursue their legal and statutory rights outside the scope of this process.

- (a) The Panel shall make recommendations to the appropriate body for final determination and action if required. It is the duty of the Co-ordinator to communicate in writing the decision and recommendations of the Panel to the Chair of the appropriate body within MDC.

- 1. Where the Respondent is a faculty or staff member, volunteer, or contractor, notice of the Panel's deliberations and recommendations shall go to the Board of Trustees;

- 2. Where the Respondent is a member of the student body, notice of the Panel's deliberations and recommendations shall go to the Senate.

- (b) The range of recommendations shall be appropriate to the Panel's judgment on the nature and severity of the case and can be (but is not limited to) as follows:

- 1. The Panel can recommend that the costs of counselling the Complainant be borne by MDC;

- 2. The Panel can recommend that a written reprimand of the Respondent, or Complainant if the complaint is found to be in bad faith, or other disciplinary action be taken by the Board and/or Senate, and that a record of such action be placed into the person's personnel or student file;

3. The Panel can recommend that the Board or Senate (as appropriate) require, as a condition of continuing employment or continuing enrolment, that the Respondent participate in counselling sessions;
 4. The Panel can recommend that the Board dismiss the Respondent (faculty or staff member) from employment at MDC, or that the Senate expel the Respondent (student) from a course of study at MDC;
 5. The Panel can recommend that the Board reimburse the Complainant for costs actually incurred arising from the instances of harassment complained of, such as payment of counselling fees and other incurred costs;
 6. The Panel can recommend appropriate support for the Respondent if there is a lack of substance in the complaint, such as counselling, affirmation of status within the MDC community, etc.
- (c) The decision and recommendations of the Panel shall be communicated immediately by the Co-ordinator in writing to the Chair of the Board or Senate as appropriate for determination and implementation, if accepted, as soon as possible, and no later than four weeks after decision of the recommendations. The Co-ordinator is to provide such supporting evidence as is necessary for the appropriate body to render a judgment without re-examining the complaint. The Co-ordinator should be available to the appropriate body for further clarification of issues that may arise in the course of the Board's or Senate's deliberations.
- (d) The Complainant and Respondent shall receive notification in writing of the Panel's recommendations immediately upon their determination, but with knowledge that these findings are now to be considered by the Board or Senate as appropriate and are tentative until such a decision is made.

- (e) The Complainant and Respondent shall receive notification in writing of the Board's or Senate's determination of the complaint and notice of any action adopted by the Board or Senate.

Addenda

1. All actions are subject to the laws of the Province of Ontario. Actions that amount to criminal conduct are subject to the federal laws of Canada.
2. All records of the process, kept by the Harassment Officer, Complaint Evaluator, Co-ordinator, and Panel, and upon which the deliberations were based, shall be handed to the MDC solicitor for safe-keeping. All other documents, such as those distributed to members of the Panel for information, and informal notes, etc., kept by members of the Panel, shall be collected by the Co-ordinator and shall be filed securely.
3. In light of the serious nature of the allegations made in harassment proceedings and their potential effects upon those concerned, all of those involved in the process, whether as Complainants or Respondents, or as personnel involved in the investigation process, must be careful to respect the personal integrity of all parties and ensure that they do not engage in statements that may defame the character of those involved and subject themselves to accusations of libel or slander.