
Harassment & Discrimination Policy

Mount Saint Vincent University

Approved by the Board of Governors on June 27, 2013;

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PREAMBLE

Mount Saint Vincent University (MSVU) is committed to providing and maintaining an environment that promotes the dignity of human beings. This Policy prohibits harassment and discrimination and affirms that all members of the MSVU community have the right to participate in activities at MSVU without fear of discrimination or harassment.

- 1) To identify the characteristics of discrimination and harassment;
- 2) To increase awareness of and sensitivity to the impact discrimination and harassment have on members of the University community;
- 3) To prevent discrimination and harassment;
- 4) To provide fair procedures for handling complaints of discrimination and harassment when they do occur.

This Policy is to be interpreted in a way that is consistent with its purpose, the principles of fairness, confidentiality, and the responsible exercise of academic freedom.

1.01 The prevention of harassment through education and information within the MSVU community is necessary and important.

1.02 Reasonable attempts should be made to resolve alleged cases of harassment before a formal complaint proceeds and, in resolving an alleged case of harassment, principles of fairness must apply. At anytime the complainant may proceed to step 4.

1.03 The MSVU community is committed to academic freedom and freedom of expression and association. The environment is one in which students, faculty and staff can engage in free enquiry and open discussion.

1.04 This Policy is not to be interpreted, administered, or applied in such a way as to detract from the right and obligation of those in supervisory roles to manage and correct employees and students in accordance with collective agreements or applicable university policies and procedures.

1.05 Members of the MSVU Administration bear responsibility for informing invited visitors of this Policy. Allegations of discrimination, sexual harassment, or personal harassment against such visitors are covered by this Policy.

1.06 Any judgment exercised under this Policy is subject to the "reasonable person" test (i.e., the Glossary defines a "reasonable person test" as "an assessment that takes into account not only what the complainant and respondent experienced, know, or understood about one another or the situation, but also what a reasonable person in each of their circumstances would or ought to have experienced, known, or understood").

1.07 Malicious complaints or inappropriate breaches of confidentiality will be treated as violations of the Policy.

1.08 Employees and students must not harass or discriminate. MSVU, with and through the Harassment & Discrimination Advisor will take necessary steps to ensure the health, safety and security of any person under the scope of this Policy.

ARTICLE 2: DEFINITIONS

2.01 Discrimination

Discrimination is intentional or unintentional differential treatment for which there is no *bona fide* and reasonable justification.

Discrimination imposes burdens, obligations, or disadvantages on specific individuals or groups. The grounds of discrimination prohibited by and including those defined by the Nova Scotia *Human Rights Act* and Mount Saint Vincent University are: age, race, colour, religion, creed, sex, sexual orientation, gender identity, physical or mental disability, an irrational fear of contracting an illness or disease, ethnic, national or aboriginal origin, family status, marital status, source of income, political belief, affiliation or activity, and an individual's association with another individual or class of individuals having protected characteristics.

It is not an infringement of this policy when a program or policy is designed to ameliorate the conditions of disadvantaged individuals or groups.

2.02 Harassment

Harassment within the MSVU context is defined as an incident or series of incidents of vexatious or disrespectful comments, displays or behaviours designed to demean, belittle, humiliate, embarrass, degrade or attempt to exclude; that is known or ought reasonably to be known to be unwelcome or offensive and which adversely affects the employment or academic status of an individual. Harassment may be either deliberate or unintentional. MSVU recognizes two forms of harassment defined below.

2.03 Sexual Harassment

Sexual harassment is unwanted sexual attention which adversely affects the working or learning environment. Sexual harassment may include, but is not limited to:

- (a) Conduct, comment, gesture or contact of a sexual nature that is likely to cause offence or humiliation to any member of the MSVU community to whom such conduct, comment, gesture or contact is directed; or
- (b) Conduct, comment, gesture or contact of a sexual nature that may, on reasonable grounds, be perceived by a MSVU community member as placing a condition of a sexual nature on employment, or opportunity for training, promotion, advancement or other reward; or retaliation for refusal to comply with a request of a sexual nature; or

- (c) Behaviour and remarks of a sexual nature, when such conduct has the purpose or effect of creating an intimidating, hostile or offensive environment.

2.04 Personal Harassment

Personal harassment is behaviour directed toward a specific person or persons that would be considered, by a reasonable person, as creating an intimidating, humiliating, or hostile work or learning environment.

Personal harassment may include, but is not limited to:

- (a) Physical assault;
- (b) Communication that is abusive or offensive, including threatening, yelling, bullying, ridiculing, and/or derogatory comment, that negatively impacts MSVU work, studies, or participation in the MSVU community;
- (c) Behaviour that denies an individual or individuals their dignity and respect and that adversely affects the working or learning environment. This includes inappropriate behaviour that is directed toward an individual or individuals that is a prohibited ground of discrimination under the Nova Scotia *Human Rights Act*.

ARTICLE 3: HARASSMENT & DISCRIMINATION ADVISOR

3.01 MSVU will appoint a Harassment & Discrimination Advisor (the Advisor) who shall report directly to the President. The Advisor will carry out the duties of the office in a confidential, fair and impartial manner, consistent with the principles of natural justice and due process.

3.02 The Advisor will act as resource to the Harassment & Discrimination Policy Committee and as directed by the President, will work with Human Resources, and Student Services to communicate to all members of the MSVU community on all aspects of harassment and discrimination for the purpose of educating the community.

3.03 The Advisor will maintain confidential records, subject to certain powers of production, search and seizure by various legal authorities and the courts.

3.04 The Advisor will monitor the effectiveness of this Policy and will report to the President of the University on the activities of the Harassment & Discrimination Office annually, while maintaining confidentiality as required under the Policy and will make recommendations, if any, on revision of this Policy.

3.05 The Advisor will co-ordinate support services, internally and externally, for those who have experienced harassment or discrimination.

3.06 The Advisor's Office will maintain a list of external Investigators to conduct investigations when a Formal Complaint is made under Article 5 and to act on behalf of the Advisor in investigating and attempting to resolve Informal Complaints under Article 5 as may be required from time to time.

3.07 When a Formal Complaint is made under Article 5, the Advisor will appoint one or two external Investigators to conduct an investigation from the list of Investigators maintained by the Advisor's Office.

3.08 The Advisor will be responsible for facilitating informal resolution processes whenever possible.

3.9 The Advisor's office will maintain a list of qualified, available and willing mediators from within the MSVU community.

3.10 The Advisor shall make recommendations to the Harassment & Discrimination Policy Committee, regarding eg, training & education, or proposed changes to the policy.

3.11 The Office of the Advisor will be reviewed every four years. The review will be coordinated through the office of the President of the University and will receive recommendations from the Harassment & Discrimination Policy Committee.

ARTICLE 4: HARASSMENT & DISCRIMINATION POLICY COMMITTEE

4.01 A Harassment & Discrimination Policy Committee (Committee) shall be appointed by the constituency groups listed below.

4.02 The Harassment & Discrimination Policy Committee shall be made up of the following:

One representative from the student body

One representative from the Administration

One representative from each of the employee unions and employee groups on campus as follows:

Managers & Professional Administrators

Canadian Union of Public Employees

International Union of Operating Engineers (custodial/steam plant)

International Union of Operating Engineers (security)

Mount Saint Vincent University Faculty Association

Nova Scotia Government Employees Union

Resource:

The Advisor

4.03 Appointment to the Committee shall normally be for a term of two years, recognizing that each constituency group has its own recommendation process. A member may be renewed for up to two additional terms. If a member cannot complete her term, another representative from the member's constituency group will be appointed to the Committee in accordance with established procedures. Every effort will be made to reflect the diversity of the MSVU community in the composition of the Committee. A Chair for the Committee shall be elected from the membership at the first meeting of each academic year, which should be called by the Chair or in the absence of the Chair, the President. The Chair eligible for re-election as long as she remains on the committee.

4.04 Committee members will carry out their duties in a confidential, fair and impartial manner, consistent with the principles of natural justice and due process.

4.05 The Committee shall be responsible for:

- 1) maintaining communication between the various MSVU constituency groups and the Committee;
- 2) participating in ongoing Committee meetings and activities;
- 3) in consultation with the Advisor, monitoring the effectiveness of the Policy and making recommendations for change, and recommending changes as needed to the Board of Governors';
- 4) formally reviewing the Policy every four years, and recommending changes as needed to the Board of Governors';
- 5) in consultation with the Advisor, Human Resources, and Student Services, proposing ongoing education and awareness programs among all University constituencies;
- 6) in consultation with the Advisor, Human Resources, and Student Services, proposing ongoing training sessions on issues of discrimination and harassment.

4.06 The administrative support will be provided by the President's Office.

ARTICLE 5: COMPLAINT RESOLUTION PROCEDURES**Step 1: Personal Intervention**

5.01 An individual who believes that she is being discriminated against or harassed can choose from the following initial options: a) if she believes that addressing her concerns directly with the other person will be unfeasible, she should proceed to step 2; but b) if she believes that addressing her concerns directly with the other person will be helpful, she will be encouraged and supported in making a request to the person who is engaging in the behaviour to cease the offensive/unwelcomed comments and/or behaviour.

Step 2: Consultation

5.02 Any person who believes she is being harassed or discriminated against, and is not satisfied with the outcome at step 1, should move to step 2 by discussing the incident with either:

- or her supervisor;
- or her department head\Director\Dean;
- or Human Resources or Student Services;
- or Harassment & Discrimination Advisor.

5.03 Supervisors are obligated to deal with issues of harassment and discrimination which are brought to their attention. The supervisor's options are to:

- speak directly to the individuals involved;
- assist and support the complainant and/or respondent to talk directly to the other individual;
- consult with the Advisor;
- refer the complainant and/or respondent to the Advisor.

5.04 If a person makes a complaint to their supervisor or department head and the matter remains unresolved, those individuals must report the complaint to the Advisor. The supervisor or department head may deal with minor complaints in consultation with the Advisor.

5.05 In certain circumstances interim measures may be necessary to ensure the safety, security and well being of a complainant and/or a respondent and the smooth operation of the University community. In consultation with Human Resources, it may be prudent and/or necessary to move an individual or to impose conditions as are appropriate in the circumstances until such time as there is a resolution of the complaint. Such measures are precautionary and shall not be considered disciplinary. Careful consideration will be given to

protecting the individuals involved and ensuring that the rights of those involved in the complaint are not prejudiced.

Step 3: Informal Complaint Stage

5.06 An informal complaint is a complaint that does not result in discipline or dismissal and proceeds under the informal processes set out in Article 5.07.

5.07 The Advisor shall explain the Policy to the individual and help her determine if her situation falls within the mandate of the Policy. Depending on the nature of the complaint, the Advisor may recommend any of the following courses of action:

- have the Advisor work directly with the individuals involved in the complaint with the goal of reaching an informal resolution;
- request mediation with a trained mediator, as outlined in Article 6 of this policy;
- proceed to Step 4 by having the complainant file a formal complaint;
- refer the individual to other sources of assistance such as counsellors, police, union representatives, sexual assault centres or the Human Rights Commission.

5.08 When a complaint does not fall within the scope of this Policy, the Advisor shall direct individuals to seek recourse through their supervisor, collective agreement, or other appropriate means.

Step 4: Formal Complaint Stage

5.09 When informal measures under Step 3 does not result in a resolution of a matter, the formal complaint process may be implemented.

5.10 An individual who feels that she has been harassed or discriminated against may submit her complaint to the Advisor in writing on a form provided through the office of the Advisor. The complainant should include a detailed account of the alleged conduct that forms the basis of the complaint.

5.11 Once the formal complaint process has begun, each successive step should begin within ten (10) working days of the conclusion of the previous step until the complaint is resolved.

5.12 Upon receiving a formal complaint, the Advisor will determine whether the alleged conduct falls within the definition of personal harassment, sexual harassment, or discrimination as defined in this Policy. If the Advisor concludes that the alleged conduct would not constitute a violation of this Policy, the Advisor may decide not to proceed and will inform the complainant of this decision in writing.

5.13 At any point during the formal complaint stage the parties may, by mutual agreement, suspend the formal complaint process and request mediation with a trained mediator, as outlined in Article 6 of this policy.

5.14 When the Advisor finds sufficient grounds to proceed under the Policy, the Advisor will appoint an external Investigator(s) and provide a copy of the complaint to the Investigator as soon as possible.

5.15 The Investigator must deliver a copy of the complaint to the respondent within ten (10) days of being appointed and inform both parties that she will be conducting an investigation into the allegation.

5.16 The respondent has the right to respond to the complaint to the Investigator in writing, within ten (10) working days from the date the respondent receives the complaint.

5.17 The Investigator shall deliver a copy of any reply by the respondent to the complainant. On receipt of a respondent's written reply, the complainant may (1) accept the reply as resolution of the complaint, (2) propose a counter-resolution to be presented to the respondent, or (3) elect to proceed with an investigation or decision and instruct the Investigator accordingly.

5.18 A complainant may withdraw at any time from these proceedings. A withdrawal does not automatically end the investigation. The Investigator may elect to proceed with the investigation, if it would be in the best interests of the MSVU community.

5.19 A complainant has 12 months to file a formal complaint unless there are extenuating circumstances that prevent the filing of the complaint within this time frame.

Investigation Procedures

5.20 The Investigator(s) will investigate within the framework of procedural fairness ensuring each party's right to know, understand and respond to allegations.

5.21 The Investigator(s) will provide an opportunity to both the complainant and the respondent to provide verbal and/or written information related to the alleged conduct. The Investigator(s) may interview witnesses when they are identified by the Investigator(s) as having relevant knowledge.

5.22 The complainant and respondent will be provided with an opportunity to respond to information provided by a witness.

5.23 The Investigator(s) will submit a final report to the President, within forty (40) working days of the start of the investigation.

5.24 The final report of the investigation will contain a:

- (a) Summary statement of the background of the complaint including a description of the allegations and response;
- (b) Summary of the process followed;
- (c) Summary of the statements provided by the witnesses and the respondent;
- (d) Copy of any pertinent documentation;
- (e) Discussion of the allegations relating to the evidence gathered;
- (f) Opinion as to whether or not the allegations have been proven on a balance of probabilities;

- (g) Description of any mitigating or aggravating circumstances affecting either party; and,
- (h) Recommendations for remedial action or sanctions.

ARTICLE 6: MEDIATION

- 6.01 At any time after a formal or informal complaint has been received, the parties may attempt to resolve the complaint through mediation provided both parties consent to the mediation process.
- 6.02 A trained mediator will conduct the mediation session(s) with the parties. A mediator will be recommended by the Advisor and shall be mutually agreed upon by the parties. Mediation will begin within ten (10) working days of receiving a complaint.
- 6.03 The format of the mediation process must be accepted by both the complainant and the respondent and a mediated settlement must consider university policies and collective agreements.
- 6.04 Any agreement reached during mediation must be provided to each party and to the Advisor and remains confidential. No record of mediation will be entered into an employee or student file. A record of the mediation agreement will be kept in the Harassment & Discrimination Office for seven years and then destroyed.
- 6.05 If mediation fails to resolve the complaint, either party may elect to pursue a formal complaint. Strict adherence to the timelines established under Article 5 will be followed. If mediation begins after a formal complaint has already filed, all timelines established under Article 5 will be frozen for the duration of the mediation process.

ARTICLE 7: SANCTIONS AND REMEDIES

- 7.01 The final decision on what remedial action or sanction is required will be determined by the President within fifteen (15) working days of receipt of the Investigator's final report.
- 7.02 If a person is a member of a bargaining unit, any formal recommendation for remedial or disciplinary action shall be made in accordance with relevant provisions of the applicable collective agreement as they relate to discipline, suspension and/or discharge.
- 7.03 Where there is no collective agreement, the President shall send the recommendation for remedial or disciplinary action to the appropriate Dean, Director or Department Head.
- 7.04 Discipline will be appropriate to the offence and relevant circumstances of the case.

ARTICLE 8: APPEAL PROCESS

8.01 A complainant or respondent who disagrees with the President's decision or the investigative process has the right to an appeal.

8.02 In the case of unionized employees with collective agreements providing express grievance and arbitration procedures for disciplinary decisions made under this Policy, the right of grievance and arbitration of discipline shall serve as the appeal process.

8.03 In all situations other than those identified in Article 8.02, the appeal process under Article 8.04 shall apply.

8.04 Appeals:

- (a) All appeals must be submitted in writing to the MSVU President specifying the grounds and nature of the appeal within ten (10) working days of receipt of the final decision provided under Article 6.
- (b) The President shall select two Senior Administrative Officers who were not involved in the original decision, to determine if there are grounds for an appeal using a decision making framework. These individuals shall conduct any investigation necessary to determine if there appear to be legitimate concerns with the original finding.
- (c) If there are grounds for an appeal, the Senior Administrative Officers will select an Appeals Committee, composed of two administrative officers, and one non-administrative employee or student.
- (d) The Appeals Committee shall be guided by the decision making framework and the Committee's decision shall be binding.

OTHER RECOURSE

This Policy is not intended to affect any legal rights of MSVU community members or any rights or obligations contained within any existing code of student conduct, collective agreement or other approved employee agreement. Notwithstanding the existence of this Policy, every person continues to have the right to seek assistance from internal bodies such as Student Affairs, Students' Union, union or workplace organizations, Human Resources, etc., or external agencies such as the Nova Scotia Human Rights Commission or the police.

If a complaint on the same issue is being dealt with through another forum, (for example, grievance procedures, complaint to the Human Rights Commission, police department), the formal complaint procedure under this policy will not proceed until the matter has been dealt with in the other forum and a written decision from that forum has been received by the Harassment & Discrimination Policy Committee.

INTERIM MEASURES

In certain circumstances, interim measures may be necessary to ensure the safety, security and well being of the complainant, respondent and/or the University community. It may be prudent and/or necessary to move an individual or to impose conditions as are appropriate in the circumstances until such time as there is a resolution of the complaint. Such measures are precautionary and shall not be considered disciplinary. Careful consideration will be given to protecting the individuals involved and ensuring that the rights of those involved in the complaint are not prejudiced.

CHANGE TO PROCEDURES

In order to ensure that fairness and due process are available to all individuals, it may be necessary, from time to time, for changes to be made to the investigation procedures outlined above.

COMPLAINTS AGAINST THE SUPERVISOR, DEPARTMENT HEAD, DIRECTOR, OR DEAN

A complaint of discrimination or harassment, involving the Supervisor, Department Head, Director, or Dean as a respondent, shall be made to the Advisor.

COMPLAINTS AGAINST THE HARSSMENT & DISCRIMINATION ADVISOR

A complaint of discrimination or harassment, involving the Advisor as a respondent, shall be made to the President or her designate.

REPRISALS

All members of the MSVU community have the right to consult with the Advisor's Office regarding concerns they may have about harassment or discrimination.

Reprisal or threat of reprisal against an individual who seeks consultation with the Advisor's Office or a complainant, respondent or witness in an informal or formal complaint under this Policy may be considered harassment and subject to the provisions of this Policy.

MALICIOUS COMPLAINTS

Complaints that are deliberately and maliciously filed in order to damage the reputation of an individual or group may be considered harassment. Such complaints are not to be confused with complaints made in good faith that are ultimately found to be without merit.

TIME LIMITS

Individuals with concerns about discrimination and/or harassment are encouraged to attempt to resolve their concerns in an expedient manner and at an informal level.

If an individual requires an extension of time for filing a formal complaint, the request must be made to the Advisor for a decision. The onus will be on the complainant to establish that there is a reasonable cause for the delay and that the delay will not prejudice the respondent's case.

This Policy applies to both current and former members of the MSVU community.

CONFIDENTIALITY

All information, records and documents obtained as a result of inquiries or complaints made under this Policy will be kept in a confidential file in the office of the Advisor.

All members of the MSVU community involved in a complaint are expected to maintain confidentiality. The exceptions to complete confidentiality are:

- where disclosure is necessary to carry out the procedures outlined in this policy;
- where disclosure is required by law;
- where, in the University's opinion, disclosure is necessary to ensure health and safety.

CONFLICT OF INTEREST

In carrying out his or her duties, the Advisor will disclose any actual or apparent bias or conflict of interest of which she is aware. Where there is an actual or perceived bias or conflict of interest, the Advisor will not participate in a decision-making role in a matter.

GLOSSARY**Complainant**

Any person who seeks recourse under this Policy as someone who has allegedly been the subject of discrimination or harassment or who is aware of situations or incidents that may be having a discriminatory and adverse impact upon another member(s) of the MSVU community.

Confidentiality

Confidentiality is not the same as anonymity. Terms of confidentiality include the need to disclose information that restores a unit or classroom to effective functioning or to enable an effective investigation.

Days

Refers to business days. Weekends and statutory holidays are not included in calculating the number of days referred to in this Policy.

Formal Complaint

A written allegation of harassment submitted to the Advisor based on actions defined as harassment or discrimination.

Informal Complaint

An Informal Complaint is initiated when the Advisor is informed of offensive conduct that the complainant wants handled informally without disciplinary action being imposed on the alleged offender.

Investigator

An individual, external to MSVU, with professional accreditation and expertise to evaluate and investigate issues related to fair treatment, harassment or discrimination policies.

Mediation

Is a voluntary process. It involves the intervention by an acceptable, impartial, neutral third party to assist the parties to negotiate an acceptable settlement of the issues in dispute.

Mediator

A person who is trained in mediating disputes. The mediator must be impartial and viewed as a neutral third party to the disputants. The mediator has no decision-making authority. Mediators will normally be selected from a list of trained mediators who are members of the Mount Saint Vincent University community.

Physical Assault

Physical assault is defined in this policy as a wilful attempt or threat to inflict injury upon another person. It may include touching, hitting or striking or the threat to do so where the victim has reason to fear or expect immediate bodily harm.

Reasonable Person Test

An assessment that takes into account not only what the complainant and respondent experienced, knew, or understood about one another or the situation, but also what a reasonable person in each of their circumstances would or ought to have experienced, known, or understood.

Respondent

Any person against whom an allegation or a complaint of discrimination or harassment has been made pursuant to this Policy. The term refers to both the singular and the plural.

Supervisor

An individual who is in a position of authority and who exercises a supervisory role with respect to others. This includes, but is not limited to: administrators, deans, directors and managers.

University Community

All individuals who study, work, teach, instruct, conduct research, administrate, supervise, volunteer, provide resources, services, or support to Mount Saint Vincent University or otherwise engage in university activities, on or off campus.

Visitors

Alumnae, individuals staying in the residences, members of university committees, and others engaged in business on campus.

Witness

An individual who provides information in the course of an investigation about what she has seen, heard or otherwise observed.