

Complete Policy Title:

**Hearing Procedures for the Board-Senate
Hearing Panel for Discrimination,
Harassment, and Sexual Violence**

Policy Number (if applicable):

Approved by:

Senate / Board of Governors

Date of Most Recent Approval:

**May 17, 2017 / June 8, 2017
effective June 8, 2017**

Date of Original Approval(s):

**December 14, 2016 / December 15, 2016
effective January 1, 2017**

Supersedes/Amends Policy dated:

**Amends hearing procedures for *Discrimination,
Harassment, and Sexual Harassment: Prevention
and Response***

Responsible Executive :

University Secretariat

Enquiries:

[Policy \(University Secretariat\)](#)

DISCLAIMER:

*If there is a Discrepancy between this electronic policy and the written copy held
by the policy owner, the written copy prevails.*

TABLE OF CONTENTS

SECTION I: BOARD-SENATE HEARING PANEL FOR DISCRIMINATION, HARASSMENT AND SEXUAL VIOLENCE..... 1

SECTION II: INITIATION OF A HEARING..... 2

FACULTY 2

 Parties to the Hearing 2

 Burden of Proof..... 2

 Submissions..... 2

STUDENTS 3

 Parties to the Hearing 3

 Burden of Proof..... 3

 Submissions..... 3

DISCLOSURE AND RESPONSE 4

ESTABLISHMENT OF A TRIBUNAL 4

SECTION III: PROCEDURAL RULES FOR HEARINGS 5

PARTIES TO THE HEARING 5

BURDEN OF PROOF AND BASIS OF DECISION 5

ADMINISTRATIVE SUPPORT 5

NOTICE OF HEARING 6

CLOSED HEARINGS 6

OTHER PARTIES 6

RECESS OR ADJOURNMENT 6

EVIDENCE 7

WITNESSES..... 7

REPRESENTATION 7

RECORDING 7

ORDER OF THE HEARING 8

DELIBERATIONS BY THE TRIBUNAL..... 9

TRIBUNAL DECISION..... 10

RECOMMENDATION OF THE TRIBUNAL 10

APPENDIX B: GLOSSARY OF TERMS 11

APPENDIX C: RELATED POLICIES AND LEGISLATION 12

SECTION I: BOARD-SENATE HEARING PANEL FOR DISCRIMINATION, HARASSMENT AND SEXUAL VIOLENCE

1. The Board-Senate Hearing Panel for Discrimination, Harassment and Sexual Violence shall consist of six faculty members, three undergraduate students and three graduate students appointed by the Senate; and six staff members appointed by the Board of Governors. Student members shall serve for staggered two-year terms and faculty and staff members for staggered three-year terms. No member shall serve for more than two consecutive terms, but on the expiration of two years after having served the second of two consecutive terms, such person may again be eligible for membership on the Hearing Panel. In addition, the Chair of the Panel has the authority to appoint, on an *ad hoc* basis, faculty, staff and students who are not members of the Panel to serve on Tribunals as auxiliary Panel members (see [Appendix A: Glossary of Terms](#)).
2. The Chair and one Vice-Chair shall be appointed by the Senate from among the faculty members appointed by the Senate and one Vice-Chair shall be appointed by the Board of Governors from among the members appointed by the Board of Governors.
3. The Chair of the Panel may delegate their authority under this Policy to one of the Vice-Chairs.
4. The Board-Senate Hearing Panel for Discrimination, Harassment and Sexual Violence is responsible for the adjudication of Hearings under the *Policy on Discrimination and Harassment: Prevention and Response* and the *Sexual Violence Policy*, as well as for Appeal Hearings on matters related to those two policies that have been adjudicated under the Code of Student Rights and Responsibilities.
5. Members of the Hearing Panel will receive generic training provided by the Equity and Inclusion Office in the particular sensitivities which surround Discrimination, Harassment, and Sexual Violence 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 applicable Policy.
6. The University Secretary, in consultation with the [Director, Human Rights & Dispute Resolution](#) (Equity and Inclusion Office), will ensure that the members of the [Hearing Procedures for the Board-Senate Hearing Panel for Discrimination, Harassment and Sexual Violence](#) receive training in the particular sensitivities surrounding Sexual Violence.
7. 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. The University Secretary will provide those identified to serve as a Tribunal member with additional training regarding the hearing procedures.

SECTION II: INITIATION OF A HEARING

8. The Board-Senate Hearing Panel for Discrimination, Harassment, and Sexual Violence holds Hearings for matters that have been referred to Hearing by the Provost and Vice-President (Academic), and for appeals that have been filed by a Student Responding Party.

FACULTY

9. Hearings for faculty are initiated under the *Policy on Discrimination and Harassment: Prevention and Response* and/or the *Sexual Violence Policy* by the Provost and Vice-President (Academic) when:
 - a) the faculty member does not accept the recommendations of the Provost and Vice-President (Academic); or
 - b) the Provost and Vice-President (Academic) believes that suspension from the University for a period of time is the appropriate sanction.

Parties to the Hearing

10. Parties to Hearings shall include the:
 - a) Initiating Party (the Provost and Vice-President (Academic)); and
 - b) Responding Party (the faculty member about whom allegations have been made).

Burden of Proof

11. At the hearing the Initiating Party (the Provost and Vice-President (Academic)) has the burden of proof to present evidence, and demonstrate on a balance of probabilities, to satisfy the Tribunal, that the alleged violation of the *Policy on Discrimination and Harassment: Prevention and Response* and/or the *Sexual Violence Policy* has occurred.

Submissions

12. Within **five business days** of making the decision to refer a matter to a Hearing, or confirming that the conditions for initiating a Hearing have been met, the Initiating Party shall deliver to the University Secretary:
 - a) a cover letter referring the matter to a Hearing, that shall include:
 - (i) preference for an open or closed Hearing;
 - (ii) the recommended sanctions and/or remedies;
 - (iii) the names of witnesses to be called; and
 - (iv) the name of the Initiating Party's counsel/advisor (if applicable).
 - b) any materials the Initiating Party wishes to submit to the Tribunal as evidence in support of their position.

STUDENTS

13. In matters related to the *Policy on Discrimination and Harassment: Prevention and Response* and/or the *Sexual Violence Policy* that have been adjudicated under the *Code of Student Rights and Responsibilities*, and where the sanctions include a suspension, expulsion, or withdrawal (involuntary), a student may appeal the decision made by the Associate Vice-President (Students and Learning) & Dean of Students ("Dean of Students") to the Board-Senate Hearing Panel for Discrimination, Harassment and Sexual Violence.
14. The decision from a lower level stays in effect unless and until it is overturned on appeal. This means that submitting an appeal will not prevent the decision being appealed from being carried out.

Parties to the Hearing

15. Parties to Hearings shall include the:
 - a) Initiating Party (the Student who is appealing the decision of the Dean of Students); and
 - b) Responding Party (the Dean of Students, whose decision is being appealed).

Burden of Proof

16. At the hearing the Initiating Party has the burden of proof to present evidence, and demonstrate on a balance of probabilities, to satisfy the Tribunal, that the Dean of Students acted or decided the matter in an unfair, unreasonable or unjust way.

Submissions

17. Within three weeks of receipt of the relevant decision the Initiating Party shall complete an **Appeal Form** and deliver it to the University Secretary. The application shall include the following information:
 - a) a copy of the decision being appealed;
 - b) a statement (description) of the appeal;
 - c) the precise grounds for the appeal;
 - d) the relief sought;
 - a) preference for an open or closed Hearing
 - b) the names of witnesses to be called;
 - c) the name of the Initiating Party 's counsel or advisor (if applicable); and
 - d) any materials the Initiating Party wishes to submit as evidence in support of their position.

DISCLOSURE AND RESPONSE

18. Within **ten business days of receipt** of the Initiating Party's submission, the University Secretary shall forward a copy to the Responding Party.
19. Within **fifteen business days of receipt**, the Responding Party shall deliver to the University Secretary the following information:
 - a) a written reply to the Initiating Party's submission;
 - b) preference for open or closed Hearing;
 - c) names of witnesses to be called;
 - d) the name of Responding Party's counsel or advisor, if applicable; and
 - e) any materials the Responding Party wishes to submit as evidence in support of their position.
20. The University Secretary shall within **five business days of receipt** forward a copy of this reply to the Initiating Party.
21. No matter shall be placed before the Tribunal unless the parties have completed, to the satisfaction of the University Secretary, the requisite submissions as outlined above. The University Secretary shall notify the party of any deficiencies in the submission.

ESTABLISHMENT OF A TRIBUNAL

22. When the University Secretary receives a referral to Hearing from the Provost and Vice-President (Academic), or an appeal is filed by a student, the University Secretary shall forward to the **Initiating Party and the Responding Party** a list of the members of the Board-Senate Hearing Panel for Discrimination, Harassment and Sexual Violence. The parties shall be given the opportunity to express, in writing, any objections they may have concerning any members of the Panel.
23. After careful consideration of any such objections, the Chair of the Board-Senate Hearing Panel for Discrimination, Harassment and Sexual Violence shall select the members of the Tribunal. The Chair shall approve the Tribunal Chair and Tribunal members and, through the University Secretary, shall so inform the Tribunal members, and the parties to the Hearing. When either party has objected to the Chair, a Vice-Chair shall rule on the objection and shall select the members of the Tribunal.
24. The Tribunal shall consist of three members who are without any reasonable apprehension of bias. The Tribunal shall be appointed by the Panel Chair and shall be chosen from among the relevant and/or appropriate association/constituency members of the Hearing Panel. If deemed necessary for Hearings involving multiple parties, the Panel Chair, in consultation with the Vice-Chairs (where appropriate), may appoint a five-member Tribunal.
25. A Tribunal Chair external to the University with legal training, expertise and experience in university matters may be appointed by the Panel Chair, in consultation with the Vice-Chairs (where appropriate), when the University has been named as a Responding Party, or a University Initiated Investigation has been referred to a Hearing.

SECTION III: PROCEDURAL RULES FOR HEARINGS

26. All Hearings convened under this Policy follow the procedures detailed below, subject to the Tribunal exercising its discretion to adhere to a variation of the procedures, in the interest of procedural fairness. Tribunals shall not be charged with investigative duties.
27. The Hearing shall be conducted in accordance with the principles of procedural fairness, namely the right to receive notice, to be heard and to know the case against one. The Hearing shall follow the applicable procedural rules specified in the [Statutory Powers Procedure Act](#), and set out in this Section.
28. The Tribunal shall have the right to control its own process, and, in this regard, if the Tribunal determines that variations to the procedures would lead to a fair, just and efficient resolution of the Hearing, it has the power to make any Order in furtherance of this objective. Where any procedural matter is not dealt with specifically in this Policy the Tribunal may, after hearing submissions from the parties, establish an appropriate procedure. Any procedural requirement contained in this Policy may be waived with the consent of the Tribunal and of all the parties.
29. A Hearing is the final step the parties may take within the University.
30. The Tribunal has sole jurisdiction to hear and to make a final adjudication for Hearings under this Policy. In some instances a Hearing may involve matters outside the Tribunal's jurisdiction and may require action by the President. In such instances, the Tribunal's decision may take the form of a recommendation to the President, with the President maintaining the discretion to accept or deny such a recommendation.
31. If two or more proceedings before the Hearings Panel involve the same or similar questions of fact or Policy, the Chair of the Panel, after seeking written input from the parties, may decide:
 - a) to consolidate the proceedings or any part of them; or
 - b) to hear the proceedings at the same time; or
 - c) to hear the proceedings one immediately after the other.

PARTIES TO THE HEARING

32. Parties to Hearings shall include the Initiating Party and the Responding Party.

BURDEN OF PROOF AND BASIS OF DECISION

33. At the Hearing the Initiating Party has the burden of proof, as described in [Section II](#) (clauses 9 and 13).

ADMINISTRATIVE SUPPORT

34. Administrative support for the Tribunal will be provided by the University Secretary.

NOTICE OF HEARING

35. A Hearing shall be commenced as soon as possible following the appointment of the Tribunal.
36. An attempt shall be made to schedule the Hearing at a time and place convenient for the Tribunal and for the parties to the Hearing. However, any party whose reasons for absence are not considered valid by the Tribunal's Chair, or whose absence may cause unreasonable delay, shall be notified that the Tribunal will proceed in that party's absence.
37. The parties shall be given reasonable, written notice of the Hearing.
38. Parties to the Hearing shall be given the opportunity to submit written or other documentary evidence prior to the Hearing and any such evidence shall be made available or be accessible to the members of the Tribunal and to all parties prior to the Hearing.
39. Prior to the Hearing, members of the Tribunal shall be provided with the Hearing Record that includes all materials submitted by the parties.
40. 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 Policy.

CLOSED HEARINGS

41. Hearings shall be held *in camera* unless either the Initiating Party or the Responding Party requests that the hearing, or some part of the hearing, should be held in public. In the event of such a request, the Hearings Committee shall hear representations from all parties. In making its ruling, the Hearings Committee 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.

OTHER PARTIES

42. If other persons, in addition to the Initiating Party and the Responding Party, have been specified or added as parties to the proceedings, the procedure described above shall be altered by the Tribunal to provide an opportunity for such additional parties to be heard in accordance with the principles of natural justice and procedural fairness.

RECESS OR ADJOURNMENT

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

EVIDENCE

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

WITNESSES

48. Parties to the Hearing and the Tribunal have the right to call and question witnesses.
49. Any person appearing before the Tribunal as a witness shall be required to give evidence under affirmation or oath.
50. The Tribunal has discretion to limit the testimony and questioning of witnesses to those matters it considers relevant to the disposition of the case.
51. **Parties are responsible for contacting their own witnesses; for making all arrangements for witnesses to attend the Hearing; for paying any costs associated with their appearance before the Tribunal; and for absorbing the costs of any legal counsel attending on their behalf.**
52. The Tribunal Chair has the power to compel an unwilling witness to attend, and parties may contact the University Secretary to request the Chair's assistance in this regard. The power to compel a witness is derived from the *Statutory Powers Procedure Act*. An unwilling witness may be compelled by the Chair under summons to testify where the written request by the party for the summons demonstrates the witness' testimony is relevant and related to the alleged facts of the case.
53. Other than parties, witnesses are present in the Hearing room only during the time they are testifying.

REPRESENTATION

54. Parties to the Hearing have the right to represent themselves, or be advised/represented by, for example, a friend, colleague, union representative, or advisor, or legal counsel. The costs of any representation are to be borne by the party retaining such representation.
55. The Tribunal shall have independent legal counsel arranged through the University Secretary.

RECORDING

56. The Hearing shall be recorded for convenience purposes only. Any malfunction of the recording device or subsequent loss of the recording shall not invalidate, in any way, the related Hearing. The recording shall be held in confidence by the University Secretary for the duration of the Hearing, and will be disposed of in a secure manner after the release of the Tribunal's decision.

ORDER OF THE HEARING

57. The first item of business for the Tribunal shall be to determine whether the Hearing shall be closed.
58. At the outset of the Hearing, the Chair shall:
- a) identify the nature of the case;
 - b) review the order of the Hearing;
 - c) note for the record the documentary information submitted by the parties to the Hearing, including any preliminary or procedural orders;
 - d) note the names of the witnesses for each party;
 - e) confirm the likely dates for sitting and the projected length of the Hearing;
 - f) raise, or request the parties to raise, any and all preliminary issues concerning composition of the Tribunal and other unaddressed procedural matters; and
 - g) proceed to deal with any matters raised in (f) above before the commencement of the substantive portion of the Hearing, by either proceeding directly to the Hearing or considering and rendering a decision on matters raised in (f) above.
59. The Initiating Party is the first party heard. The Initiating Party's opening statement shall contain a brief description of their case and the recommended sanctions and remedies or relief sought (as appropriate).
60. Following the completion of the Initiating Party's opening statement, the Responding Party may present their opening statement at that time, or may defer until completion of the Initiating Party's case.
61. Following the Responding Party's opening statement (if presented) the Initiating Party presents their case.
- a) The Initiating Party's case presents the evidence relating to their case, which may include any or all of the following:
 - (i) Initiating Party's oral testimony;
 - (ii) oral testimony of Initiating Party's witnesses; and
 - (iii) documents or other evidence in support of this testimony (if admissible).
 - b) Questioning of the Initiating Party and their witnesses by the Responding Party and/or by the Tribunal occurs at the close of each person's testimony.
62. Following the completion of the Initiating Party's case, the Responding Party may present their opening statement if they elected to defer until the completion of the Initiating Party's case.

The Responding Party's opening statement shall contain a brief reply to the Initiating Party's case, outlining the main points of their case.

- a) The Responding Party's case presents the evidence to support their defence, which may include any or all of the following:
 - (i) Responding Party's oral testimony;
 - (ii) oral testimony of Responding Party's witnesses; and
 - (iii) documents or other evidence in support of this testimony (if admissible).
 - b) Questioning of the Responding Party and their witnesses by the Initiating Party and/or by the Tribunal occurs at the close of each person's testimony.
63. The Initiating Party and their witnesses may have the right to offer testimony or other evidence in reply to the issues raised in the Responding Party's case.
64. **After this point in the Hearing, no new evidence or witnesses may be introduced.**
65. The parties are entitled to make closing arguments, and to summarize briefly the main points of their cases, in the following order:
 - a) Initiating Party
 - b) Responding Party
 - c) Initiating Party (in reply)
66. The Tribunal may alter the order described above in the interest of fairness to any or all of the parties.
67. While procedural fairness is essential, the Tribunal reserves its right to direct, curtail or encourage the organisation of witnesses, testimony and evidence in the interests of enhancing the clarity, relevance and efficiency of the proceedings.

DELIBERATIONS BY THE TRIBUNAL

68. Following the formal Hearing, the Tribunal shall deliberate in closed session and shall reach a decision. After deliberation and decision in closed session solely with members of the Tribunal is complete, the Tribunal may solicit the assistance of the University Secretary and the Tribunal's legal counsel regarding the precise form or wording of any order and reasons for judgement to support its decision.
69. The Tribunal shall consider the Complainant's impact statement, and any mitigating and/or contextual factors in determining appropriate sanctions and remedies (found in the relevant Policy: *Policy on Discrimination and Harassment: Prevention and Response*, the *Sexual Violence Policy*, and/or the *Code of Student Rights and Responsibilities*) and the reasons for the decision shall be clearly articulated in writing to the parties.
70. Sanctions are decided based on the merits of the case and shall be proportional to the severity of the offence. The Tribunal shall consider the Complainant's impact statement, and any mitigating and/or contextual factors in appropriate sanctions and remedies, and the reasons for the decision shall be clearly articulated in writing to the parties.

71. The existence of any previous findings of violation of the relevant Policy will be taken into account when sanctions are determined, and the severity of sanctions may be greater as a result. Sanctions may be used independently or in combination for any single violation and may be varied.

TRIBUNAL DECISION

72. The Tribunal's decision shall be final and shall include:
- a) the membership of the Tribunal;
 - b) the background of the file;
 - c) a summary of the case of the Initiating Party and the Responding Party;
 - d) the Tribunal's findings of fact;
 - e) the Tribunal's decision and the reasons for the decision; and
 - f) any sanctions and/or remedies recommended by the Tribunal, as applicable.
73. The Tribunal shall supply a written report of its decision with reasons to the University Secretary, who, in turn, shall distribute a complete copy thereof to:
- a) the parties;
 - b) the President;
 - c) the Director, Human Rights and Dispute Resolution;
 - d) to such other individuals as the Tribunal deems appropriate and/or necessary
74. In accordance with the applicable sections on Confidentiality in the *Policy on Discrimination and Harassment: Prevention and Response* and/or the *Sexual Violence Policy*, the Complainant will receive information about any sanctions/remedies taken by the University, within the constraints of relevant legislation. In all cases, information about any sanctions/remedies that have a direct impact on the Complainant will be provided to them.
75. Where required by a professional licensing body, the results of the Hearing may also be communicated to that professional licensing body.
76. At the discretion of a tribunal, public reports or statements may be issued identifying the Responding Party: following a Hearing, when a Responding Party is exonerated and wishes that fact to be known publicly.
77. Hearing files shall be retained by the University Secretary for seven years after the completion of the hearing, after which they will be disposed of in a secure manner. The Tribunal's Decision shall be kept permanently.

RECOMMENDATION OF THE TRIBUNAL

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

APPENDIX A: GLOSSARY OF TERMS

Advisor

A person of the individual's choice who acts in a supportive or advisory role during a Hearing (e.g. union representative, friend, family member, legal counsel). The Advisor may represent the individual at a Hearing before a Tribunal of the Board-Senate Hearing Panel for Discrimination, Harassment, and Sexual Violence.

Auxiliary Panel Members

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

Balance of Probabilities

Balance of Probabilities is the test to be met to show, by the weight of the evidence presented, that all of the facts necessary to uphold the Initiating Party's case have a greater likelihood of being true than not.

Complainant

The individual who filed a Complaint alleging a violation of a Policy for the University's response.

Confidentiality

Refers to the obligation of an individual or organization to safeguard entrusted information. The practice of confidentiality includes obligations to protect information from unauthorized access, use, disclosure, modification, loss or theft.

Hearing (Closed)

A closed hearing is closed to all but those who have a specific right to be present.

Initiating Party

The Initiating Party is the individual who is initiating the Hearing.

Responding Party

The individual or entity who is responding to the Initiating Party's case.

Student

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

Support Person

A person of the individual's choice who acts in a supportive role but is not an active participant in the process (e.g. friend, Elder, parent, religious advisor).

APPENDIX B: RELATED POLICIES AND LEGISLATION

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

- [Academic Freedom, Statement \(SPS E1\)](#)
- [Bill 132, Sexual Violence and Harassment Action Plan Act \(Supporting Survivors and Challenging Sexual Violence and Harassment\), 2016](#)
- [Code of Conduct for Faculty and Procedures for Taking Disciplinary Action](#)
- [Code of Student Rights and Responsibilities](#)
- [Conflict of Interest Guidelines- Undergraduate Studies and Graduate Studies](#)
- [Discrimination and Harassment: Prevention & Response, Policy on](#)
- [Workplace Accommodation, Policy on](#)
- [Freedom of Information and Protection of Privacy Act](#)
- [Ministry of Training, Colleges and Universities Act](#)
- [Human Rights Code](#)
- [Occupational Health and Safety Act](#)
- [Personal Health Information Protection Act](#)
- [Senate Resolutions re Group Conflict](#)
- [Senate Mediation Procedures](#)
- [Sexual Violence Policy](#)
- [Sexual Violence Response Protocol](#)
- [Statement on Building an Inclusive Community with a Shared Purpose](#)
- [Statement and Guidelines on Inclusive Communications](#)
- [Tenure and Promotion Policy \(McMaster University Revised Policy and Regulations with Respect to Academic appointment, Tenure and Promotion\)](#)
- [Violence in the Workplace, Policy on](#)