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### The McMaster University Act, 1976

# Hearing Committee of the Senate of McMaster University

## **Summary Report**

of the Hearing held under Section VI of the Tenure & Promotion Policy (Procedures For Removal)

#### I. THE HEARING PROCESS

On June 8, 2022, the Senate approved the establishment of a Hearing Committee to hear the charges brought by the President on behalf of the University, against Dr. Scott Watter, a faculty member in the Department of Psychology, Neuroscience and Behaviour. The Hearing Committee (the "Committee") was comprised of three tenured faculty members each at the rank of Professor. The Hearing began in March 2023 and took place in-camera over fourteen days between March-October 2023. The University, Dr. Watter, and the Committee were all represented and advised by legal counsel throughout the Hearing. The Committee heard the testimony of six witnesses, including Dr. Watter, and reviewed thousands of pages of documents that were marked as exhibits. Both the University and Dr. Watter also had the opportunity to make opening and closing statements, and raise procedural questions for determination by the Committee. The Hearing followed the processes contained in the McMaster University Revised Policy And Regulations With Respect To Academic Appointment, Tenure And Promotion (2012) (the "Tenure and Promotion Policy"), the Statutory Powers Procedure Act, and the Procedural Rules adopted by the Committee with the parties' consent. A McMaster University Faculty Association

Observer was present throughout the Hearing, and support was provided to the Committee by the University Secretariat.

#### II. THE ALLEGATIONS

- 2) The Hearing focused on the following key allegations against Dr. Watter:
  - That, despite a clear power imbalance, Dr. Watter engaged in a sexual relationship with a graduate student (Student 1).
  - That Dr. Watter knew Student 1 was engaging in self-harm and that at times she
    had suicidal ideation. At times, the self-harm was so serious that Dr. Watter went
    over to Student 1's apartment so that he could counsel her and treat her wounds.
  - That Dr. Watter was in a position of authority over Student 1 and abused his
    position of trust, power, and authority because he knew Student 1 suffered from
    mental health issues and relied on him for support in dealing with those issues.
  - That Dr. Watter used a website called SeekingArrangement and set the settings on the website for a geographic scope of Westdale and an age of 18+. Through this website, he met two graduate students (Student 2 and Student 3) and had sexual relationships with both of them, with full knowledge that they were McMaster University students.
  - That Dr. Watter used over \$4,000 from Research Grants to hire one of the graduate students (Student 3) without disclosing his relationship with her to the University.
  - That Dr. Watter made use of the SeekingArrangement website to flirt and chat with an undergraduate student (Student 4). Even after knowing the individual was an undergraduate student, Dr. Watter suggested they meet in his office.
- 3) The University contended that this pattern of behaviour was entirely inappropriate and an abuse of Dr. Watter's position and obligations of professionalism and ethical conduct as a faculty member, and that it irreparably damaged the fundamental basis

- of trust necessary for a continued employment relationship, amounting to adequate cause for removal. It was on this basis that the President commenced proceedings for the removal of Dr. Watter under Section VI of the *Tenure and Promotion Policy*.
- 4) In its submissions, the University emphasized the power imbalance inherent in relationships between faculty and students, particularly where there is a direct academic or employment relationship; the trust placed in faculty members not to abuse this power imbalance; as well as the duty to ensure a safe and respectful learning environment for all University community members. The University submitted that faculty members naturally have autonomy, but the corollary is that they cannot breach the trust given to them. In view of Dr. Watter's misconduct and manipulation of vulnerable students, the University argued that Dr. Watter could no longer be trusted to exercise his duties in a professional manner or to conduct himself appropriately with the University's students. As such, the relationship with the University was irreparably harmed. The University referred to the severe adverse impact of Dr. Watter's actions and alleged his conduct brought the reputation of McMaster University into disrepute and potentially exposed the University to a number of legal liabilities.
- 5) Dr. Watter submitted that the investigation process which led to the Hearing was tainted, that the allegations against him were entirely without merit and factually incorrect, and that there was no adequate cause for removal. He further argued that the relationships he engaged in were consensual, that they did not originate by reason of his position at the University, but through external sources, such as the SeekingArrangement website, and that, despite any power imbalances, relationships with students are permissible, provided there is no exploitation or adverse impact. Dr. Watter further submitted that no policy or common law rule precludes a consensual relationship between faculty members and students.

#### III. THE COMMITTEE'S JURISDICTION

6) The Committee was required to determine, on a balance of probabilities, whether the University had proven its allegations against Dr. Watter and, if so, whether there was adequate cause for removal.

7) The Committee acknowledged the serious nature of the responsibilities assigned to them under the *Tenure & Promotion Policy*, the importance of ensuring the reliability of the evidence, and the serious consequences for Dr. Watter of the allegations made. The Committee decided this matter *de novo*, and made independent findings based upon the admissible documentary evidence and the testimony the Committee heard.

#### IV. JURISPRUDENCE AND UNIVERSITY POLICY

- 8) The Committee reviewed Section VI of the *Tenure and Promotion Policy* in detail, and gave particular consideration to the definition of adequate cause for removal. The Committee also carefully reviewed the requirements of the *Code of Conduct for Faculty and Procedure for Taking Disciplinary Action* (the "*Code of Conduct*"), along with the *Conflict of Interest Policy for Employees* (the "*Conflict of Interest Policy*"), and the Conflict of Interest Guidelines: Undergraduate Studies and Graduate Studies (the "*Conflict of Interest Guidelines*"). Alongside this, the Committee considered a number of relevant cases relating to the nature of faculty member responsibilities, the trust placed in faculty members, and the consequences of an abuse of that trust.
- 9) Having considered the relevant policies and jurisprudence, the Committee accepted that, under the University's structure, important responsibilities are entrusted to faculty members which must be reasonably exercised in interactions with students. The propriety of each faculty member's interactions with students requires the faculty member to conduct themselves in a professional manner which must be compatible with the trust inherent in their appointment. The Committee was satisfied that a breach of trust and/or an abuse of their position by a faculty member can be adequate cause for removal under the *Tenure & Promotion Policy*.

#### V. THE COMMITTEE'S FINDINGS

10) The Committee found Dr. Watter's conduct to be an abuse of his position as a faculty member, which is incompatible with his professional and ethical obligations owed to students and to his colleagues. The Committee found Dr. Watter breached the requirements of the *Code of Conduct* and *Conflict of Interest Policy* and that his conduct constituted unethical and inappropriate behaviour, amounting to a

fundamental breach of trust which irreparably undermines an ongoing employment relationship.

- 11) In respect to the specific allegations made against Dr. Watter, the Committee's findings were as follows:
  - Despite the clear power imbalance, Dr. Watter engaged in a sexual relationship with a graduate student (Student 1).
  - Dr. Watter knew that Student 1 was engaging in self-harm and that at times she
    had suicidal ideation. At times, the self-harm was so serious that Dr. Watter went
    over to Student 1's apartment so that he could counsel her and treat her wounds.
  - Dr. Watter was in a position of authority and engaged in conduct which was of a sexual nature that exploited Student 1 when she was vulnerable and relying upon him for support. Dr. Watter knew or ought reasonably to have known Student 1 was having mental health issues. Moreover, Dr. Watter's conduct constituted an abuse of his position and the responsibilities and authority entrusted to him as a faculty member.
  - Dr. Watter made use of a website called SeekingArrangement using settings for a
    geographic scope of Westdale and an age of 18+, and engaged in sexual
    relationships with two graduate students (Student 2 and Student 3) with full
    knowledge that they were McMaster University students. 1
  - Dr. Watter used over \$4,000 from Research Grants to hire one of the graduate students (Student 3) without disclosing his relationship with her to the University.
  - Dr. Watter made use of the SeekingArrangement website to flirt and chat with an undergraduate student (Student 4). Even after knowing the individual was an undergraduate student, Dr. Watter suggested they meet in his office.

<sup>&</sup>lt;sup>1</sup> Secretary's Note: It was not in dispute that Dr. Watter engaged in intimate relations with Student 2 and Student 3, but allegations were only pursued with regard to Dr. Watter's conduct in relation to Student 3.

- 12) In reaching these conclusions, the Committee carefully considered all the reliable documentary evidence, including text messages and photographs, admitted by the Committee and assessed the reliability and credibility of the various witnesses who testified at the hearing. The Committee, for the most part, found the facts obtained from the witnesses with direct knowledge, other than Dr. Watter, to be reliable and often corroborated or objectively established in the admissible documentary record.
- 13) Dr. Watter had a fair opportunity to address the evidence that supported the charges against him, which was obtained from the University's witnesses, and included in the admissible documentary evidence in the formal Hearing Record.
- 14) The Committee found that the credibility of Dr. Watter's testimony was negatively impacted since his explanations at times could not be reconciled with the reliable facts established in the evidence, including documentary materials, photographs, and texts exchanged. Dr. Watter was less than transparent, and his testimony was not believable at other times, especially where the evidence was in dispute. Dr. Watter's testimony on material matters in dispute was not accepted by the Committee where it conflicted with the evidence of other witnesses or when the evidence in the record was determined to be objectively reliable.

#### **Importance of Trust**

- 15) The Committee found that the case was not about consensual relations by a faculty member with adult students. Dr. Watter's conduct is of concern because of the trust inherent in the appointment of a faculty member. The Committee accepted there are lines that cannot be crossed and that the trust relationship is critical to the proper functioning of the University.
- 16) The Committee was satisfied that engaging in a breach of trust or abusing the duties and privileges of an appointment to a faculty position is recognized as misconduct. Faculty members must exercise professional and sound judgment. Dr. Watter inappropriately placed his own self-interests ahead of the interests of students, especially those such as Student 1, with whom he had an academic connection, and who was vulnerable, and engaged in self-harming behaviour.

#### **Power Imbalance**

- 17) The Committee generally accepted there is a power imbalance in a student relationship with a faculty member that will vary depending upon the individual circumstances, but which always exists. The Committee also accepted there is a power imbalance which is inherent in faculty member/student roles, regardless of departmental connection.
- 18) The Committee considered the issue of power imbalance in detail and noted that in an academic community there are clear status differences between students, post-docs, untenured faculty, and tenured faculty. A power imbalance exists, even if the only connection is that the faculty member and student are in the same department. However, in this case there were several other direct academic links, including that Dr. Watter had both taught Student 1 as an undergraduate student, and supervised her as a Teaching Assistant in his course; he was serving as Undergraduate Chair in the department while engaged in a sexual relationship with her; and he taught a graduate course that all students in her program needed to take. Given the nature of her relationship with Dr. Watter, Student 1 felt it would be unethical for her to take the course.
- 19) The Committee found that Dr. Watter exploited this power imbalance when Student 1 was objectively vulnerable and in distress. In deciding to commence and continue in an intimate relationship, Dr. Watter also exploited Student 1's vulnerability. The Committee noted that this intimate relationship provided personal benefits for Dr. Watter, including a sexual relationship.
- 20) Although Dr. Watter attempted to downplay the intimate nature of the relationship, the Committee found ample evidence in the documentary record, including numerous text messages referring to sexual acts that had occurred, that Dr. Watter and Student 1 engaged in multiple forms of sexual contact. The Committee also noted that these sexual interactions often occurred at times when Student 1 had expressed to Dr. Watter she was upset or, at a minimum, she was in a fragile and vulnerable state.

- 21) At its most extreme this occurred when Student 1 was resorting to excessive alcohol consumption and increasingly frequent cutting and self-harm and was reliant upon Dr. Watter for counselling and guidance. In the Committee's view, Dr. Watter encouraged Student 1 to engage in cutting repeatedly engaging in flirting and sexual innuendo in his text messages, advising her about wound care and methods to reduce scarring, providing medical supplies such as steri-strips, and utilizing his medical training to treat her wounds at a time when Student 1 was repeatedly informing him that she had mental health challenges.
- 22) The Committee was satisfied that Dr. Watter knowingly decided to pursue an intimate relationship with Student 1 when she was vulnerable, objectively in a crisis, and informing him repeatedly, including in text communications and photographs, that she was experiencing mental health challenges.
- 23) The Committee noted that the University has formal mental health supports available. In the Committee's view, Dr. Watter had reasonable opportunities to direct Student 1 to external supports for assistance whether at the University, in the local community, or elsewhere. These were ignored by Dr. Watter to the detriment of Student 1's well-being. The Committee also found that Dr. Watter contributed to the mental health challenges confronting Student 1, since the increasing frequency and severity of her cutting behaviour escalated during their intimate relationship. Dr. Watter exploited and manipulated Student 1 when she was vulnerable, for his own personal gain and benefit. The Committee found this conduct incompatible with Dr. Watter continuing in his appointment as a faculty member.
- 24) The Committee found that Dr. Watter also exploited Student 3 for his own personal benefit, and misused the power imbalance that existed between them, regardless of the consensual nature of their sexual activities. In that case the misconduct was not the existence of the sexual relationship but Dr. Watter's failure to disclose the conflict of interest created by their intimate relationship when he hired Student 3.
- 25) Dr. Watter testified he recognized the inherent risks when a faculty member has an intimate relationship with a student, but believed the issue of power imbalance to be

wrapped up in the question of consent. He testified that since he addressed the power imbalance issues with both Student 1 and Student 3 his conduct was, therefore, acceptable. The Committee found it more likely that Dr. Watter's attempt to reassure each student who expressed doubts about having an intimate relationship with a faculty member was manipulative. The Committee also found his testimony addressing the power imbalance to be self-serving, evasive, and not credible.

#### **Conflict of Interest**

- 26) Dr. Watter conceded in his testimony that hiring Student 3 as his research assistant in the summer of 2017 breached the University's *Conflict of Interest Policy*. Under this policy, a conflict of interest exists "when an employee of the University engages in an intimate relationship with a person who reports to them in an employment or supervisory relationship [...]." The *Conflict of Interest Policy* requires the disclosure of such conflicts of interest to the President and/or the appropriate Vice-President, along with recommended procedures to remove the employee from the conflict or potential conflict of interest.
- 27) Dr. Watter failed to disclose his ongoing intimate relationship with Student 3 when he hired her. The evidence confirmed Student 3 was paid \$5,900.00 out of his research grant funds, and that he lied when he was directly asked about it by the University's Security Services. Dr. Watter conceded Student 3's employment as a research assistant was, in hindsight, inappropriate.
- 28) The Committee was satisfied that Dr. Watter engaged in conduct with Student 3 which abused his position and the responsibilities entrusted to him as a faculty member, and which took advantage of the power imbalance between them. The Committee found that Dr. Watter's conduct in relation to Student 3 confirms that he cannot be trusted to fulfill his obligations as a faculty member.

#### <u>Undergraduate Student Interaction</u>

29) Dr. Watter's use of the SeekingArrangement website was not in dispute. In addition to the two graduate students whom he met through the website and engaged in sexual

- relations with (Student 2 and Student 3), Dr. Watter also exchanged messages with a 23-year-old, whom he understood was an undergraduate student (Student 4).
- 30) The Committee was satisfied that Dr. Watter knew or reasonably knew he would likely be interacting with students on a website which marketed itself as transactional and invited "sugar daddies" and "sugar babies" to join. The Committee found Dr. Watter's suggestions that he tried to avoid students on the website not to be credible. The Committee accepted that Dr. Watter and Student 4 did not ultimately meet and that the conversation between them ended. However, Dr. Watter did not end their discussions when he discovered this individual was an undergraduate student; instead he suggested they could meet in his office on campus. The reputational interests of other faculty members and the University were placed at risk, and this seemed to be of no concern to Dr. Watter. The Committee indicated that at a minimum, scheduling an initial meeting privately in an office setting with an undergraduate student is reckless, especially when the contact is initiated on a website which is known to be transactional.
- 31) While the allegation involving the undergraduate student has been proven, the Committee recognized that it would not, on its own, provide adequate cause for removal. However, Dr. Watter's conduct with an individual whom he perceived to be an undergraduate student would, in the Committee's view, warrant a written warning at a minimum if considered on its own, and is also relevant to the trust concerns identified by the Committee.

#### **Breach of University Policies**

- 32) The University, in addition to relying upon the *Tenure & Promotion Policy*, also submitted that Dr. Watter's conduct breached at least two other policies: the *Conflict of Interest Policy*, and the *Code of Conduct*.
- 33) The Code of Conduct states that each faculty member "is responsible for conducting himself or herself in a professional and ethical manner towards colleagues, students, staff, and other members of the university community." The Code of Conduct also requires disclosure in "circumstances which may reasonably introduce or appear to

- introduce bias into any academic or administrative decision to which they may be a party".
- 34) The University submitted that Dr. Watter's conduct with Student 1 breached the Code of Conduct because it was highly unethical and unprofessional for Dr. Watter to enter into an intimate and sexual relationship with a student with whom he was academically connected, and whom he knew was vulnerable, both academically and mentally. The Committee, therefore, accepted the submission that Dr. Watter's conduct with Student 1 breached the Code of Conduct.
- 35) The University further submitted that Dr. Watter breached the *Code of Conduct* by repeatedly failing to behave in a professional and ethical manner towards students and other members of the University community, as exemplified by his use of the SeekingArrangement website which was described as both unethical and unprofessional. It was submitted that Dr. Watter also did not take any steps to avoid conflicts of interest with University students, including undergraduate students, on the SeekingArrangement website. The Committee accepted the University's position.
- 36) In relation to Student 3, Dr. Watter conceded that his failure to disclose their intimate relationship breached the *Conflict of Interest Policy*, but he denied any other breach of University policy. The Committee found that Dr. Watter's conduct regarding Student 3 also breached the *Code of Conduct*.

#### VI. IS REMOVAL JUSTIFIED?

- 37) In determining whether removal was justified the Committee considered the detailed submissions of the parties, as well as the mitigation submissions made on behalf of Dr. Watter. The University submitted that the totality of Dr. Watter's conduct, including his breaches of University policies, was incompatible with the required trust which is a fundamental term of his employment relationship and that his removal as a faculty member was the appropriate penalty.
- 38) Dr. Watter submitted that his failure to disclose his relationship with Student 3 under the *Conflict of Interest Policy* was the extent of his misconduct, and that his

relationships with students over whom he exercised no direct control or power was not misconduct. He further submitted that, in fact, these consensual student relationships were permitted by McMaster's policies.

- 39) Dr. Watter suggested a written warning was appropriate and that he should continue as a tenured professor because he had already been punished significantly as a result of false allegations made against him which had immense personal consequences.
- 40) Dr. Watter submitted that since he had no disciplinary history, these matters should be considered to be isolated incidents. The Committee accepted that Dr. Watter had no disciplinary history but noted that a clean disciplinary record does not assist in this situation, given the severity of the misconduct, which cannot reasonably be described as isolated. The Committee also considered Dr. Watter's submissions with regard to the original investigation, and the impact of the criminal proceeding on Dr. Watter, and determined this evidence was not relevant to whether the allegations pursued by the University were proven.

#### VII. THE COMMITTEE'S CONCLUSIONS

- 41) The Committee's conclusions are included **below in their entirety and verbatim**, save for the inclusion of non-identifying descriptors for parties other than Dr. Watter.
  - For the reasons the Committee has outlined, the charges which were established support adequate cause for Dr. Watter's removal.
  - Under the Tenure & Promotion Policy, adequate cause "for removal exists, if it has been established that a faculty member has unreasonably neglected his or her academic responsibilities, or has been guilty of such unethical academic behaviour as to impair his or her usefulness as a member of the University. However, it is understood that the words "adequate cause" must necessarily be interpreted in the context of each removal case".
  - The Committee has carefully considered the allegations against Dr. Watter and has concluded that Dr. Watter breached the trust inherent in his

appointment; he abused his position; and he breached the University's *Code* of *Conduct* and the *Conflict of Interest Policy*. The Committee is not satisfied that any decision, other than removal, is a reasonable option.

- Trust is critical in a university context where a high degree of autonomy and independence is enjoyed by faculty members. Therefore, it is fundamental that faculty members must be trusted to protect and contribute to a safe and respectful working and learning environment for all University community members.
- The Committee is satisfied there is a clear academic link that is relevant to Dr. Watter's conduct with both Student 1 and Student 3. In its decision, the Committee has found Dr. Watter engaged in a serious breach of trust and abused his position by exploiting Student 1 for personal gain while she was vulnerable. In the Committee's view, Dr. Watter's conduct has caused irreparable harm which requires his removal. The credibility concerns the Committee had with Dr. Watter's testimony are also relevant to the trust inherent in his appointment and the Committee is satisfied that a penalty other than removal is not appropriate, given the nature of the misconduct.
- Dr. Watter's conduct was incompatible with the core values of the University and cannot be reconciled with how a faculty member should be reasonably expected and trusted to conduct themselves. The public as well as current and prospective students must be able to trust faculty members. A faculty member's conduct is relevant to the public's confidence in the academic profession and the institution. The interests of students and their well-being must be reasonably protected by a faculty member if they are to meet a fundamental obligation and the duties which are implicit in their appointment. Faculty members must conduct themselves in a manner that is consistent with or complies with University policy.
- Certain core values are sacrosanct. A faculty member cannot harm a student and, at the very least, cannot exploit or contribute to the deterioration of the

well-being of a vulnerable student. Exploiting a student's vulnerability in these circumstances for personal benefit crosses acceptable boundaries. Dr. Watter's personal interests and the sexual benefits he obtained from the relationship with Student 1 and Student 3 were a primary motivation for his conduct. In the Committee's view, this motivation may explain Dr. Watter's conduct, as well as why the interests and well-being of Student 1 were minimized or appear to be an afterthought for him. Dr. Watter's conduct was not simply confined to his private life. It crossed the line and negatively impacted members of the University community.

- Dr. Watter's conduct is unbecoming, unprofessional, and discreditable. Moreover, the Committee finds it is clearly inconsistent with the fundamental obligations that can be reasonably expected of a faculty member. In this case, Dr. Watter's conduct was a serious breach of trust and abuse of his position which provides adequate cause for his removal. The Committee is satisfied that the trust necessary for a continued employment relationship between Dr. Watter and the University has been irreparably damaged.
- The Committee also finds that the University has established in the evidence that Dr. Watter's conduct cannot be reconciled with McMaster University's reputational interests and potentially exposes the University to a legal claim(s) and liabilities. Dr. Watter's conduct is also incompatible with the reputational interests of other faculty members. However, the Committee was not persuaded that the petition seeking Dr. Watter's removal when he was charged criminally should be given any weight and it was not relied upon by the Committee. At the time, there was uncertainty over the outcome of the criminal charges, and he was ultimately acquitted. Therefore, the Committee gives no weight to the petition.
- The Committee finds that Dr. Watter cannot reasonably continue as a tenured professor with research responsibilities and fulfill the obligations of his appointment because his conduct has irreparably breached a viable relationship with the University. The institution cannot maintain its standing in

the academic community unless high standards are expected from its faculty members when their conduct is considered.

Having considered the parties' submissions, including those concerning any
mitigating factors, the Committee remained of the view that Dr. Watter's
removal is a just outcome. For all the reasons identified, the Committee finds
that adequate cause for Dr. Watter's removal has been established.

This summary has been prepared by the University Secretary as required by Section VI, paragraph 15, of the *Tenure and Promotion Policy*. This summary has been approved for public release by the Executive and Governance Committee, as the designated committee of the University's Board of Governors.

Dated this 27th day of May 2024

Andrea Thyret-Kidd University Secretary