



**Handbook for Members of
Advisory Search Committees**

University Secretariat
Concordia University
March 2019

HANDBOOK FOR MEMBERS OF ADVISORY SEARCH COMMITTEES

The *Policy on Senior Administrative Appointments* ([BD-5](#)) approved by the Board of Governors on December 14, 2016, as amended from time to time, states that the University Secretariat shall prepare a Handbook for Advisory Search Committees which shall be provided to each member of the Advisory Search Committee before its first meeting and which shall be used by the Advisory Search Committee to promote fairness and objectivity in the exercise of its functions.

As such, in this Handbook, you will find the following:

1. The *Policy on Senior Administrative Appointments* ([BD-5](#));
2. The Duty to Act Fairly through the Lens of the Rules of Natural Justice – a Handbook published by the University Secretariat; and
3. Guidelines Regarding Hiring Practices and the *Charter of Human Rights and Freedoms*.

Members of Advisory Search Committees are encouraged to raise any questions or concerns that they may have with the Chair of the Committee.

Me Frederica Jacobs
Secretary-General and General-Counsel
March 2019

POLICY ON SENIOR ADMINISTRATIVE APPOINTMENTS

Effective Date: December 14, 2016

Originating Office: Board of Governors

Supersedes /Amends: May 20, 2015

Policy Number: BD-5

PURPOSE

The purpose of this Policy is to set out the rules and procedures to be followed in conducting the search and selection of senior administrators.

SCOPE

This Policy shall apply to all senior administrators who are appointed by the Board of Governors (the “Board”).

DEFINITIONS

For the purposes of this Policy, the following definitions shall apply:

“Chair” means the person to whom the position being searched reports.

“Evaluation Committee” means the evaluation committee established in accordance with the *Policy on the Remuneration and Evaluation of Senior Administrators* ([BD-8](#)).

“Senior Academic Administrator” means an individual who is appointed by the Board in an academic leadership position, including the Provost and Vice-President, Academic Affairs, the Vice-President, Research and Graduate Studies, the Academic Deans, the University Librarian and any other position of equivalent rank and responsibility as determined by the Board.

“Senior Administrator” means the President and Vice-Chancellor, any Senior Academic Administrator or any Senior Non-Academic Administrator.

“Senior Non-Academic Administrator” means an individual who is appointed by the Board in a non-academic leadership position.

The eligibility requirements set out in the General By-Laws shall apply, adapted as required, to faculty members, librarians, members of the administrative and support staff and students appointed to serve on all Advisory Search Committees established under this Policy.

POLICY ON SENIOR ADMINISTRATIVE APPOINTMENTS

Page 2 of 9

POLICY

President and Vice-Chancellor

1. The term of office for the President and Vice-Chancellor (the “President”) shall normally be five years. A standard termination date shall normally be June 30.
2. A President may serve a maximum of two consecutive five-year terms in that office.
3. An Evaluation Committee shall be established when an incumbent has indicated that he/she wishes to seek a second term.
4. An Advisory Search Committee for the President (the “President Search Committee”) shall be established:
 - when an incumbent is completing his/her second consecutive term as President; or
 - when the President has indicated that he/she does not wish to seek a second term; or
 - when the President who is completing a first term has indicated that he/she wishes to seek a second term but has not been recommended for re-appointment; or
 - when the position of President is or is known to imminently become vacant.
5. The Board may extend the term of the President by a period not exceeding one year without undertaking an evaluation.
6. When one of the conditions of article 4 is met, the Board shall establish a President Search Committee whose responsibilities shall include publicizing the vacancy, receiving and evaluating applications, interviewing suitable applicants and selecting a candidate for recommendation to the Board.
7. The establishment of the President Search Committee shall normally be initiated by the Board no later than one year prior to the end of the incumbent’s term of office.
8. The President Search Committee shall be composed of 12 members as follows:
 - Chair
 - 3 external members of the Board, appointed by the Executive Committee of the Board

POLICY ON SENIOR ADMINISTRATIVE APPOINTMENTS

Page 3 of 9

- 4 full-time faculty members, 1 from each Faculty, elected in accordance with the Election Procedures which may be adopted from time to time
- 1 part-time faculty member, elected in accordance with the Election Procedures which may be adopted from time to time
- 1 representative of the administrative and support staff, elected in accordance with the Election Procedures which may be adopted from time to time
- 1 graduate student, appointed by the Graduate Students' Association
- 1 undergraduate student, appointed by the Concordia Student Union

The membership of the President Search Committee shall be ratified by the Board.

9. Members of the President Search Committee shall sit as individuals and not as delegates of their constituencies. Each member is called upon to exercise his/her own judgment in the best interests of the University.
10. A draft profile of the ideal candidate shall be prepared by the President Search Committee. Members of the University community shall be provided an opportunity to comment on the draft profile prior to its submission to the Board for approval. Once approved by the Board, the profile shall guide the President Search Committee's deliberations.
11. A Handbook for Advisory Search Committees, prepared and updated by the Office of the General Counsel, shall be provided to each member of the President Search Committee before its first meeting and which shall be used by the President Search Committee to promote fairness and objectivity in the exercise of its functions.
12. When advertising the position, the qualifications and experience needed for the position shall be described in a way that encourages a diverse pool of qualified candidates to apply.
13. Decisions shall be carried by a majority vote, unless the President Search Committee decides to set a higher standard. Voting shall be by secret ballot upon request of any member.
14. The Chair of the President Search Committee shall only vote when the outcome of a vote results in a tie. This in no way limits the Chair's right of expression during any or all proceedings.

POLICY ON SENIOR ADMINISTRATIVE APPOINTMENTS

Page 4 of 9

15. The President Search Committee shall select up to 3 candidates comprising the short-list for presentation to a Special Committee of the Board (the “Special Committee”) whose members shall be appointed by the Executive Committee of the Board. The Special Committee shall be comprised of 8 members: the Chancellor who shall act as Chair and 7 members of the Board, 5 of whom shall be external members and none of whom serve on the President Search Committee.
16. The Special Committee shall be provided with the relevant documentation and the reasons why the candidates are short-listed for the position and shall have the opportunity to meet with the short-listed candidates. Following the review of the short-listed candidates, the Special Committee shall confer with the President Search Committee to decide which candidate shall be presented to the Board.
17. In the event that the Special Committee and the President Search Committee do not agree upon the candidate to be presented to the Board, a meeting shall be convened between those two committees during which the Special Committee shall convey its reasons for not supporting the President Search Committee’s candidate. Following that meeting, in the event that both committees still disagree on the candidate to be presented to the Board, the President Search Committee shall resume the search.
18. The report of the President Search Committee shall contain a reasoned recommendation, shall reflect its conclusions and shall indicate the numerical vote.
19. The motion embodying the President Search Committee’s recommendation shall be moved by the Chair of the Board.

Senior Academic Administrators

20. The term of office for Senior Academic Administrators shall normally be five years. A standard termination date shall normally be June 30.
21. A Senior Academic Administrator may serve a maximum of two consecutive five-year terms in a given office.
22. An Evaluation Committee shall be established when an incumbent has indicated that he/she wishes to seek a second term.

POLICY ON SENIOR ADMINISTRATIVE APPOINTMENTS

Page 5 of 9

23. An Advisory Search Committee (the “Search Committee”) shall be established:
- when an incumbent is completing his/her second consecutive term as a Senior Academic Administrator; or
 - when a Senior Academic Administrator has indicated that he/she does not wish to seek a second term; or
 - when a Senior Academic Administrator who is completing a first term has indicated that he/she wishes to seek a second term but has not been recommended for re-appointment; or
 - when the position of a Senior Academic Administrator is or is known to imminently become vacant.
24. On recommendation of the President, the Board may extend the term of a Senior Academic Administrator by a period not exceeding one year without undertaking an evaluation.
25. When one of the conditions of article 23 is met, the President shall establish a Search Committee whose responsibilities shall include publicizing the vacancy, receiving and evaluating applications, interviewing suitable applicants and selecting a candidate for recommendation to the President.
26. The establishment of the Search Committee shall normally be initiated by the President no later than one year prior to the end of the incumbent’s term of office.
27. The Search Committee for the Provost and Vice-President, Academic Affairs and the Vice-President, Research and Graduate Studies shall be composed of 12 members as follows:
- Chair
 - 1 external member of the Board, appointed by the Executive Committee of the Board
 - 5 full-time faculty members, 2 from the Faculty of Arts and Science and 1 from each of the other Faculties, elected in accordance with the Election Procedures which may be adopted from time to time
 - 1 part-time faculty member, elected in accordance with the Election Procedures which may be adopted from time to time
 - 1 librarian, elected in accordance with the Election Procedures which may be adopted from time to time

POLICY ON SENIOR ADMINISTRATIVE APPOINTMENTS

Page 6 of 9

- 1 representative of the administrative and support staff from a unit where the position is being searched, elected in accordance with the Election Procedures which the Board may adopt from time to time
 - 1 graduate student, appointed by the Graduate Students' Association
 - 1 undergraduate student, appointed by the Concordia Student Union
28. The Search Committee for the Academic Deans other than the Dean of Graduate Studies shall be composed of 10 members as follows:
- Chair
 - 1 external member of the Board, appointed by the Executive Committee of the Board
 - 4 full-time faculty members from the Faculty where the position is being searched, elected in accordance with the Election Procedures which may be adopted from time to time
 - 1 part-time faculty member from the Faculty where the position is being searched, elected in accordance with the Election Procedures which may be adopted from time to time
 - 1 representative of the administrative and support staff from the Faculty where the position is being searched, elected in accordance with the Election Procedures which may be adopted from time to time
 - 1 graduate student from the Faculty where the position is being searched, appointed by the Graduate Students' Association
 - 1 undergraduate student from the Faculty where the position is being searched, appointed by the Concordia Student Union
29. The Search Committee for the Dean of Graduate Studies shall be composed of 10 members as follows:
- Chair
 - 1 external member of the Board, appointed by the Executive Committee of the Board
 - 5 full-time faculty members, 2 from the Faculty of Arts and Science and 1 from each of the other Faculties, elected in accordance with the Election Procedures which may be adopted from time to time
 - 1 representative of the administrative and support staff from the School of Graduate Studies, elected in accordance with the Election Procedures which may be adopted from time to time

POLICY ON SENIOR ADMINISTRATIVE APPOINTMENTS

Page 7 of 9

- 2 graduate students, 1 of whom shall hold a part-time teaching contract, appointed by the Graduate Students' Association
30. The Search Committee for the University Librarian shall be composed of 10 members as follows:
- Chair
 - 1 external member of the Board, appointed by the Executive Committee of the Board
 - 4 librarians, elected in accordance with the Election Procedures which may be adopted from time to time
 - 1 part-time faculty member, elected in accordance with the Election Procedures which may be adopted from time to time
 - 1 representative of the administrative and support staff from the Libraries, elected in accordance with the Election Procedures which may be adopted from time to time
 - 1 graduate student, appointed by the Graduate Students' Association
 - 1 undergraduate student, appointed by the Concordia Student Union
31. Members of the Search Committee shall sit as individuals and not as delegates of their constituencies. Each member is called upon to exercise his/her own judgment in the best interests of the University.
32. A draft profile of the ideal candidate shall be prepared by the Search Committee. Members of the University community shall be provided an opportunity to comment on the draft profile prior to its finalization by the Search Committee. Once finalized, the profile shall guide the Search Committee's deliberations.
33. A Handbook for Advisory Search Committees, prepared and updated by the Office of the General Counsel, shall be provided to each member of the Search Committee before its first meeting and which shall be used by the Search Committee to promote fairness and objectivity in the exercise of its functions.
34. When advertising a position, the qualifications and experience needed for the position shall be described in a way that encourages a diverse pool of qualified candidates to apply.
35. Decisions shall be carried by a majority vote, unless the Search Committee decides to set a higher standard. Voting shall be by secret ballot upon request of any member.

POLICY ON SENIOR ADMINISTRATIVE APPOINTMENTS

Page 8 of 9

36. The Chair of the Search Committee shall only vote when the outcome of a vote results in a tie. This in no way limits the Chair's right of expression during any or all proceedings.
37. Prior to finalizing its recommendation to the President, the Chair of the Search Committee for a Dean or the University Librarian shall confer with the President. In the event that the President does not agree with the recommendation, the President shall direct that the search resume or that it be postponed.
38. The report of the Search Committee to the President shall contain a reasoned recommendation, shall reflect its conclusions and shall indicate the numerical vote.

Senior Non-Academic Administrators

39. The term of office of Senior Non-Academic Administrators shall be normally for a defined term but may be for an indefinite period.
40. In the case of a defined-term appointment, the term shall be normally for a period not exceeding five years. Defined-term appointments are renewable.
41. The President shall recommend to the Board the appointment of Senior Non-Academic Administrators. The President shall consult with members of the administrative units who will report to the Senior Non-Academic Administrator or persons who would most likely interact with the Senior Non-Academic Administrator.
42. Prior to making the recommendation to the Board, the President shall provide the Human Resources Committee with the opportunity to meet with the candidate for Senior Non-Academic Administrator.
43. The Human Resources Committee shall be provided with the relevant documentation and the reasons why the candidate is the person being recommended by the President to the Board. If the Human Resources Committee disagrees with or has strong reservations about the recommendation, it shall so inform the President and shall provide the President with the reasons why it finds the recommended candidate unacceptable. If the President nevertheless decides to make the recommendation to the Board, he/she shall inform the Board as to the Human Resources Committee's disagreement with the recommendation.

POLICY ON SENIOR ADMINISTRATIVE APPOINTMENTS

Page 9 of 9

44. In the case of a defined-term appointment, the Board may extend the term of a Senior Non-Academic Administrator by a period not exceeding one year without undertaking an evaluation.

Confidentiality

45. By agreeing to serve on a Search Committee, members are presumed to undertake to respect the limits of confidentiality and owe a duty to one another to protect the free expression of opinion in deliberations as to preserve the integrity of the process. Members shall, at all times, respect the standards of integrity, civility and ethical behavior.
46. All Search Committees shall meet *in camera* and their deliberations shall be strictly confidential, including the identity of all candidates and all documentation related to the search.
47. In cases where a material breach of confidentiality has taken place and after a due process, exclusion from the Search Committee may follow without a replacement. In cases where a breach of confidentiality is deemed less severe, a minor sanction, such as a reprimand, may ensue. Due process, defined as applying the rules of natural justice, comprises two elements:
- *Audi alteram partem* – the duty to give a person against whom a complaint is made a reasonable opportunity to present his/her case;
 - *Nemo iudex in causa sua debet esse* – the duty to ensure that all steps leading to a decision are untainted by bias.

**THE DUTY TO ACT FAIRLY
THROUGH THE LENS OF THE
RULES OF NATURAL JUSTICE¹**

Handbook for Members of Advisory
Search Committees

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¹ The information provided for in this Handbook is 'inspired' by Concordia University's Handbook for Members of University Tribunals and Administrative Decision-Making Bodies which focuses on the Rules of Natural Justice in a different context. For more information regarding the Rules of Natural Justice, please see

https://www.concordia.ca/content/dam/common/docs/policies/official-policies/2011_Natural_Justice.pdf

THE DUTY TO ACT FAIRLY THROUGH THE LENS OF THE RULES OF NATURAL JUSTICE

I. INTRODUCTION

The rules of natural justice are presumed to apply to bodies entrusted with judicial or quasi-judicial functions only. No such presumption arises with respect to bodies charged with performing administrative functions.

On the other hand, an administrative body does have a duty to act fairly in arriving at decisions with potentially serious effects on someone's rights, interests or status.

This does not mean that the duty to act fairly applies in the same way to all administrative decisions. The duty to act fairly is flexible and changes from situation to situation, depending upon:

- the nature of the function being exercised;
- the nature of the decision to be made;
- the relationship between the body and the individual;
- the effects of that decision on the individual's rights; and
- the legitimate expectations of the person who is the object of the decision.

The Quebec Court of Appeal has repeatedly confirmed that the duty to act fairly applies to universities.

Accordingly, decisions made by members of Concordia University's committees and governing bodies must be in conformity with the requirements of the law, the relevant University policies and regulations. With this in mind, this Handbook is intended to serve as a general framework and guide for Concordia University's Advisory Search Committees. It is not, however, intended to substitute for legal counsel, and readers are invited to contact the University Secretariat as the need arises.

Please note that where the term "body" is used in this Handbook, it is used in a generic sense, to refer to administrative decision-making bodies such as Advisory Search Committees.

THE DUTY TO ACT FAIRLY THROUGH THE LENS OF THE RULES OF NATURAL JUSTICE

II. NATURAL JUSTICE

While the duty to act fairly is less onerous than a strict adherence to the rules of natural justice, it is nonetheless helpful to have a high level overview of those rules.

Natural justice has been described as “*fair play in action – the principles and procedures which in any particular situation or set of circumstances are right and just and fair*”. The two key pillars of natural justice are:

Audi alteram partem – the duty to give persons affected by a decision a reasonable opportunity to be heard.

Nemo iudex in causa sua debet esse – the duty to reach a decision untainted by bias.

Audi Alteram Partem (The Right to be Heard)

The content of this rule is flexible and varies from situation to situation depending upon the nature of the function being exercised.

Whether the person is “heard” “on paper” (i.e. an application for a particular position) or in person (i.e. an interview), the form has to be fair, impartial and appropriate in the specific circumstances. All prospective candidates are entitled to be treated fairly and equally.

Nemo Iudex in Causa Sua Debet Esse (The Rule Against Bias)

A mere reasonable apprehension of bias that a body did not or will not act impartially is sufficient to call into question a particular decision.

A reasonable apprehension of bias can be presumed where a member of a body has an interest in the matter they are called upon to decide. Most often, the interest is pecuniary, however small the amount may be, but it may also arise from a personal friendship or from a family or professional relationship with the person likely to be affected by the decision. If a member of a body believes that their interests or relationships would lead to a reasonable apprehension of bias, they must declare the situation and, if necessary, step down.

THE DUTY TO ACT FAIRLY THROUGH THE LENS OF THE RULES OF NATURAL JUSTICE

At any time during the process, a member of a body may create a reasonable apprehension of bias by the way they act towards the person that their decision is to affect. A reasonable apprehension of bias may exist even if bias is not real, but only reasonably perceived.

A member of a body may familiarize themselves with a file prior to the selection process and form an opinion as to the subject matter, but they may not, at that stage, express an opinion in public.

Members of an Advisory Search Committee have a duty to exercise their role fairly and impartially. All prospective candidates should be treated equally, with courtesy, dignity and respect. In the same vein, members of an Advisory Search Committee should refrain from having any private communications with prospective candidates or other persons about any potential candidate. Such communications are likely to give rise to a reasonable apprehension of bias.

III. THE DUTY TO ACT FAIRLY

This duty arises from the same general principles as do the rules of natural justice. Its existence, scope and extent will depend upon the factors mentioned above: the nature of the function being exercised; the nature of the decision to be made; the relationship between the body and the individual; the effects of that decision on the individual's rights; and the legitimate expectations of the person who is the object of the decision.

In the final analysis, the question to be answered is: Did the Advisory Search Committee, on the facts, act fairly towards the person in question and did it fairly follow its own procedures?

IV. CLOSING REMARKS

This Handbook provides a high level overview of the rules of natural justice and the duty to act fairly. University committees are not judicial or quasi-judicial bodies and as such have considerable discretion in elaborating their procedures. As long as basic safeguards are met, University committees have significant latitude in establishing their own procedures. However, once these procedures are established, they must be respected.

The University Secretariat is available for consultation and would be pleased to review procedures or answer specific questions with any interested committees.



**GUIDELINES REGARDING HIRING PRACTICES AND THE
*CHARTER OF HUMAN RIGHTS AND FREEDOMS***

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GUIDELINES REGARDING HIRING PRACTICES AND THE *CHARTER OF HUMAN RIGHTS AND FREEDOMS*

I. INTRODUCTION

The present document has been prepared by the University Secretariat and is based upon a document drafted by the *Commission des droits de la personne et des droits de la jeunesse*² regarding potential discrimination during a hiring process. The University Secretariat has reproduced below, sometimes with minimal modifications, the most relevant excerpts of the Commission's document insofar as the University's Advisory Search Committees are concerned.

These guidelines constitute a high level overview of certain considerations regarding hiring practices as well as questions and pitfalls to avoid. They are not intended to substitute for legal counsel.

II. PROHIBITION OF DISCRIMINATION AT THE TIME OF HIRING

Although employers enjoy broad discretion in the selection of candidates seeking a job, this discretion must be exercised in accordance with the rights and freedoms guaranteed by the [*Charter of Human Rights and Freedoms*](#) (the "Charter").

Sections 10 and 16 of the Charter specifically prohibit employers from discriminating during the hiring process. Discrimination occurs when an employer distinguishes or excludes a candidate based upon:

"race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap."³

Discrimination also takes place when an employer excludes a candidate based upon their criminal record, if the latter is in no way connected with the employment or if the person has obtained a pardon.⁴

² "L'application et l'interprétation de l'article 18.1 de la Charte des droits et libertés de la personne" adopted at the 625th meeting of the Commission, held February 26, 2016, under resolution COM-625-7.2.2
http://www.cdpcj.qc.ca/Publications/forms_employment.pdf

³ S. 10 of the Charter.

⁴ S. 18.2 of the Charter.

GUIDELINES REGARDING HIRING PRACTICES AND THE *CHARTER OF HUMAN RIGHTS AND FREEDOMS*

Section 18.1 of the Charter prohibits, in an employment application form or employment interview, the collection of information regarding any ground mentioned in section 10 of the Charter. Consequently, members of an Advisory Search Committee must refrain from asking direct or indirect questions with a view to obtaining information that relates to these grounds.

Members of Advisory Search Committees should keep in mind with these general principles while conducting a selection process:

- The sole fact of asking questions pertaining to a prohibited ground listed in section 10 of the Charter is sufficient to constitute a violation of the Charter, even if it is established that the question has no relation to the decision to refuse to hire.
- It is not necessary that employment be denied for discrimination to occur. The mere presence of a discriminatory question before hiring is sufficient to prove that the right protected by the Charter has been infringed.
- The member's intention, when the question is asked, is irrelevant. Asking questions pertaining to prohibited grounds of discrimination out of curiosity, to break the ice or to lighten the interview process does not defend or justify violating the right protected under the Charter.
- The fact that a candidate answers a discriminatory question cannot automatically be interpreted as a waiver of their protected right under the Charter. However, persons who, voluntarily and without being invited by the employer, disclose information protected under the Charter cannot subsequently allege violation of their protected right to equality.

That being said, the answers to some questions needed to assess a candidate's qualifications may sometimes, incidentally or inadvertently, provide information regarding prohibited grounds. For instance, a person's given name can indicate their sex. The name of an educational institution or the address of a previous employer may occasionally indicate the person's national origin, but section 18.1 does not prohibit such questions. However, the Charter prohibits the use of such indications to exclude a candidate based on these criteria.

**GUIDELINES REGARDING HIRING PRACTICES AND THE
*CHARTER OF HUMAN RIGHTS AND FREEDOMS***

III. SUMMARY

The Charter encourages a rigorous approach in the selection process, by leading the employer, and thus, members of an Advisory Search Committee, to focus on candidates' professional qualifications with respect to the requirements of a job rather than on a prohibited ground of discrimination or stereotypic generalizations relative to these grounds or characteristics.

With this in mind, members of an Advisory Search Committee must avoid questions concerning: race, sexual gender, civil status (i.e. marital status), sexual orientation, age, ethnic or national origin (i.e. place of birth or citizenship), pregnancy (including questions about having or intentions to have children), language, religion (including religious convictions or practices), political convictions and social conditions. Members of an Advisory Search Committee must also avoid taking into consideration any of these prohibited grounds of discrimination during a selection process.

The University Secretariat is available for consultation and would be pleased to answer specific questions regarding this matter.