

# **Office of Rights and Responsibilities**

## **Annual Report 2008-2009**

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September 2009



# 1. Introduction

The Office of Rights and Responsibilities (the Office) is charged with administering the Code of Rights and Responsibilities (the Code), which sets standards of conduct for all members of the University. The Advisor, Rights and Responsibilities, has three main functions:

1. To advise and assist University members who have a problem related to someone's behaviour;
2. To receive and expedite formal complaints; and finally
3. To co-ordinate the University's response to any situation where someone's behaviour may pose a danger to others.

The Advisor is strictly impartial and independent; he does not judge complaints nor act as anyone's advocate. He does, however, assist, support and advise individual community members who are victims of harassment, discriminatory behaviour, violence and threatening conduct, etc.

In practical terms, the Advisor works directly with students, staff, faculty and members of the administration to resolve behavioural matters such as, but not limited to, harassment, sexual harassment, discrimination and accommodation issues arising from rights protected by law, disruptive behaviour in classroom settings, as well as incidents of violent and threatening behaviour.

In addition to these major areas of concern, the Code also allows the University, as well as individual members of the University community, to respond to a variety of other conduct related issues such as offences against property (ex., theft or vandalism); abuse of University computing facilities, equipment, networks etc.; alcohol and drug related issues; forgery; and altering of University documents.

During the 2008-2009 reporting period (June 1 to May 31) the Advisor responded to instances in each of the previously stated categories, as well as other areas of concern covered by the Code. The full list of offences covered by the Code can be found in Article 18 of the [Code of Rights and Responsibilities](#). The main areas of concern during 2008-2009 have been the same as in all previous years: issues of conflict between individuals covered by the major categories of harassment, sexual harassment, and threatening and disruptive behaviour.

This report is divided into four main sections: global perspective of complaints and consultations, formal complaints and their outcomes, other activities, and recommendations.

## 2. Global Perspective of Complaints and Consultations

This section provides a statistical and narrative summary of all complaints and consultations received and responded to during the year.

### 2.1 Statistical review of all cases for 2008-2009

The number of cases and consultations handled by the Office during the year was on par with recent years. A total of 184 cases or consultations were received and responded to during the year. (There were 119 cases and 65 consultations.) The distinction made by the Office with respect to these is that a case is recorded when a particular situation merits a file being opened and some action being taken by the Advisor; a consultation is recorded when an individual contacts the Office by phone, e-mail or in person and requires some advice on a particular situation without any follow-up or action taken by the Advisor. Consultations are, thus, rather brief encounters. Cases can occupy the Advisor for anywhere from a few encounters spread out over a couple of hours to major cases that occupy the Advisor's time for the equivalent of days, or even weeks worth of work, spread out over months or extending beyond a year.

The following table is for all cases and consultations responded to during the 2008-09 reporting year.

**Table 1: Code Offences (Alleged) in all Complaints and Consultations**

Code offence (alleged)	Quantity
Discrimination and/or discriminatory harassment (Art. 18.1/18.3)	6
Harassment (Art. 18.3)	64
Sexual Harassment (Art. 18.4)	18
Threatening or violent conduct (Art. 18.5)	29
Property offences (Art. 18.6)	4
Disruptive Behaviour (Art. 18.12)	25
Residence related issues	10
Urgent cases	1
Other University and Non-University related issues	37
<b>Total</b>	<b>194<sup>†</sup></b>

(<sup>†</sup>Note: As some cases allege more than one Code offence the number of alleged offences is greater than the number of cases/consultations.)

The largest number of complaints involves students with problems regarding other students; the second largest group involves student complaints against faculty members. Beyond this, the third largest group is faculty members having problems with students. It is important to note, irrespective of who is making the complaint, or raising the issue, an allegation of discrimination does not necessarily mean that discrimination occurred, that an allegation of harassment does not necessarily mean that harassment occurred, etc.

## **2.2 Narrative summary of all cases for 2008-2009**

**The following summary of selected cases is meant to give a sense of the kinds of issues that arise and the role the Advisor plays in assisting to resolve them.**

### **Discrimination and/or discriminatory harassment:**

- This case is an example of a religious accommodation issue that could have become a discrimination complaint. A professor scheduled a mid-term exam on a high holy day observed by the student. When the student brought this to the attention of the professor the alleged response was dismissive and sarcastic. The student felt she was being ignored and her concern not taken seriously. Her request was for a make-up date for the exam. The professor was prepared to make an accommodation, but the allegation was that it was being done in a demeaning and belittling fashion. The Advisor's role in this case was to listen to the student, and assure her that the University takes these matters seriously. He contacted the Chair of the department to discuss the matter and to make sure an appropriate accommodation was made. Secondly he discussed with the Chair the importance of these accommodation issues being taken seriously, and handled respectfully.
- A graduate student was upset at a grade he had received and the results of the re-evaluation he had requested. He contacted the Dean's Office and suggested this was the result of racism, and that the professor responsible for the re-evaluation had colluded with the course professor to discriminate against him. There was absolutely no evidence to support this, the record indicated that both the evaluation and re-evaluation were done fairly, and in fact the student's grade was entirely consistent with past performance. The issue at hand was that an allegation was being made that could not be substantiated, and the student was putting himself at risk by making such a serious allegation that could have been considered as libelous or harassing by the accused professors. The Advisor met with the Associate Dean to go over the results of the grading and re-evaluation to make sure all was correct. Then he met with the student and the Associate Dean to go over the grading issues and to discuss the allegations of collusion and discrimination. The student agreed ultimately that the grading was fair, and he agreed to send the Dean a retraction of his allegations.

### **Harassment:**

- This harassment case involves a dimension that is all too common: conflict that arises as a result of disagreements experienced in group work or team projects. Two graduate students were involved in a class project together. Over the semester the relationship became extremely difficult and strained. The female student received permission from the professor to complete her part of the project on her own. This angered the male student who allegedly began sending her harassing e-mails, text messages, and phone messages. What evidence existed was

sufficiently vague that formal action was not feasible, however the female student continued to feel threatened and this had continued for several months. One dimension of this case was that, before the difficulties began, she had agreed to take a book out of the library for him. He had never returned the book, and she now had a library fine of \$220. She was also afraid that the two would end up in future classes together. The Advisor met with the female student several times over the course of the year to help her deal with the situation. He contacted the Library administration and had them cancel the fine and restore her borrowing privileges. The Advisor also checked each student's course registration and was able to assure her that he was not registered in any of her courses. This was an example of an on-going "case management" situation that required periodic intervention over the course of 8 months, responding to the situations as they arose, and supporting the student as needed over that period.

- Again, another graduate student: This student became convinced that one of her professors was harassing her, conspiring against her and spying on her in a variety of situations. She made a series of allegations against him in writing and in person. The professor was very concerned about the allegations, both in terms of his reputation and his ability to continue to instruct her. The Advisor met with the professor several times, and also discussed the matter with the Chair of the department. There was no substance to any of the allegations. The professor wanted to resolve the matter informally, but wanted a retraction of the allegations as well. The Advisor met with the student several times over the year in very long and difficult meetings. The objective was to try to get her to understand that her allegations were not rational, and to try to convince her to seek professional help. The objective was to also keep her balanced enough that she could complete her course with the professor. She eventually agreed, under duress, to write an apology and retraction to the professor. This closed the matter in a formal sense, however some months later she began making additional accusations, including that the Advisor was spying on her. It is certainly possible that this matter could continue into the new academic year.

### **Sexual Harassment:**

Most of these cases involve female students being harassed by ex-boyfriends, friends or acquaintances. Usually the situation is such that the student does not want to take formal action. In these cases the Advisor advises the student on how best to handle the situation herself, in some cases the Advisor meets with the male student to warn him about his behaviour. In more serious cases the student is advised to go to the police, in these cases a representative from Concordia Security often accompanies the student. It is fairly common for at least one or more such cases to result in a formal complaint under the Code of Rights and Responsibilities, however this did not occur during 2008-09. Code complaints in the past that have gone to a hearing have resulted in suspensions, and even expulsion from the University.

### 3. Formal Complaints and Their Outcomes

This section provides a statistical summary of the formal complaints received during the year, as well as a review of the outcomes and processes followed in resolving the formal complaints.

#### 3.1 Statistical Review of Formal Complaints Received During 2008-2009

Of the 119 case files dealt with during 2008-09 a total of 16 were either received at the outset as formal complaints, or became formal complaints as the response to the case evolved. This is a somewhat smaller than normal number of formal complaints relative to the total number of cases handled during the year.

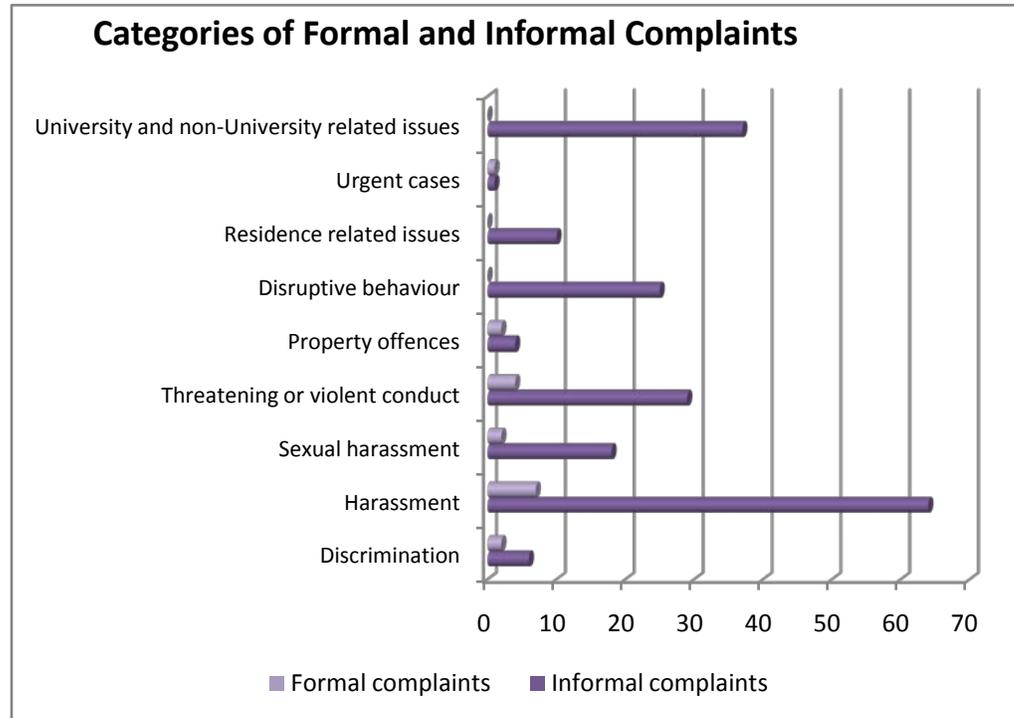


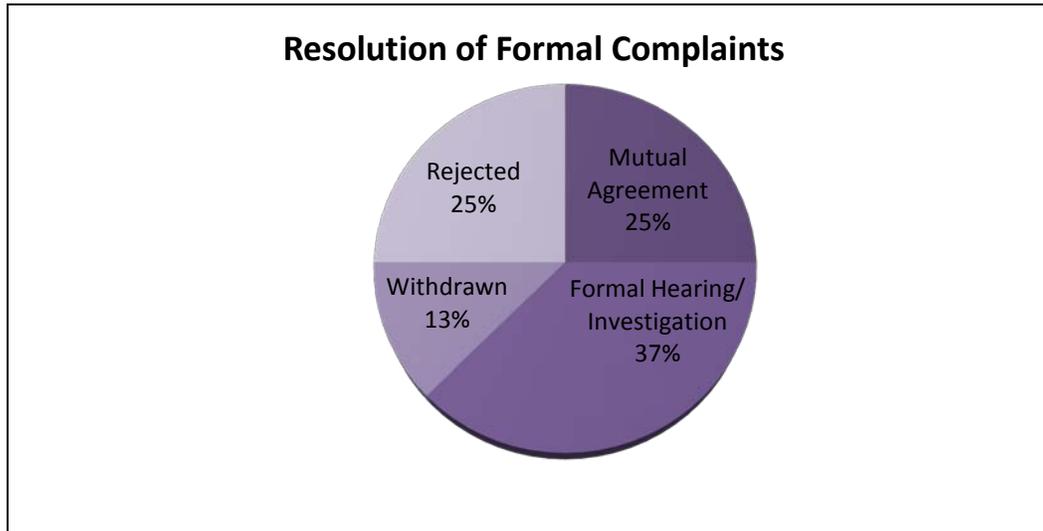
Table 2 outlines a detailed review of the formal complaints handled.

**Table 2: Code Offences (Alleged) in Formal Complaints**

Code offence (alleged)	Quantity
Discrimination (Art. 18.1)	2
Harassment (Art.. 18.3)	7
Sexual Harassment (Art. 18.4)	2
Threatening or violent conduct (Art. 18.5)	4
Theft or abuse of computing facilities (Art. 18.10)	1
Unauthorized entry into University property (Art. 18.11)	1
Forging or knowingly altering University documents (Art. 18.14)	2
Unlawful distribution, possession, use, etc of controlled substances (Art. 18.16)	1
Unauthorized use or duplication of University name, logos, etc. (Art. 18.19)	1
<b>Total</b>	<b>21<sup>‡</sup></b>

(<sup>‡</sup>Note: As some complaints allege more than one Code offence the total number offences listed above is greater than the total number of formal complaints.)

Even when a formal complaint is received it is still sometimes possible to avoid a hearing through a settlement mutually agreeable to both parties. Of the 16 formal complaints received, 4 were settled in this way. Six complaints went to a formal hearing or investigation. Six complaints were not heard--2 complaints were ultimately withdrawn by the complainant, and 4 formal complaints were rejected by the Advisor as being without sufficient merit.



### 3.2 Narrative Review of Outcomes and Processes

**The following is a summary of the process followed and outcomes/decisions of each of these formal complaints.**

It is particularly useful for the University community to see what decisions have been taken with respect to formal Code of Rights and Responsibilities complaints: that the principles of natural justice and due process have been respected, that frivolous complaints have been dealt with appropriately, and that appropriate action has been taken when complaints have proceeded to a formal hearing or investigation.

Four formal complaints against students were settled prior to the hearing date, thus avoiding the formal hearing:

- One of the Faculties, through its Dean, filed a formal complaint against a student who had made a death threat against a staff person in an e-mail response to a mass mailing sent out by the Faculty. The student was upset at receiving what he regarded as SPAM or junk-mail from the University. The mailing was a standard informational notice sent out to all students in the Faculty. The student's reaction was clearly excessive, and the University took the appropriate action to protect its employee. Upon investigation it became clear, however, that the death threat was not serious. The Advisor met with the student twice and discussed an appropriate

resolution with the Dean's Office. The student issued a formal apology to the employee who received the death threat, and he was made to understand that such language is not tolerated at Concordia, or elsewhere for that matter.

- A student forged the signature of an employee in one of the Faculties on a University document in order to facilitate an off-campus rental application. The Faculty filed a formal complaint against the student. The Advisor met with the student, who was made to understand the seriousness of his actions. The Faculty stipulated that it not only wanted written apologies from the student, but also a sanction of community service as provided for in the Code. The student readily agreed, and the complaint was withdrawn.
- A graduate student was discovered to have accessed several University computer networks without authorization. The Faculty's IT experts carefully traced his activities and a formal complaint was filed. The Advisor contacted the student, who explained that he had not had any malicious intent. As with the previous cases, the seriousness of his actions was impressed upon him. He was genuinely fearful of the possible negative consequences of his actions. The Faculty wanted a clear acknowledgement from him of the inappropriateness of his actions, and a written commitment not to do anything similar in the future. This was done, and again the complaint was withdrawn.
- The most serious of these settled formal complaints occurred in November. A student who was experiencing a great deal of stress and frustration sent out a Facebook message suggesting that he was going to emulate the Virginia Tech murders. One of the student's Facebook "friends" brought this immediately to the attention of Concordia Security, who informed the police. The student was arrested, and the University proceeded with an immediate suspension using the President's emergency powers contained in Article 38 of the Code. The student was released without being charged, however the court imposed a number of conditions on his release. The Advisor, assisted by Concordia Security, met the student at an off-campus location due to the suspension. It was determined that the student was likely not a serious threat, however the University had to exercise due diligence in protecting its members and itself. The student, who was accompanied by a student advocate, agreed to a formal settlement which would see the suspension continue until he could submit a psychiatric evaluation to the University verifying that he was not a danger to himself or others. The agreement also required that he undergo an alcohol abuse program, as this was clearly a contributing factor, and that he be seen regularly by a counsellor at our own Counselling and Development department once he was allowed to return to school. The Advisor met with him regularly to follow his progress and he was ultimately allowed to resume his studies in the Fall 2009 term.

The objective in all these cases was to resolve the matter at hand in the most effective and constructive manner possible, without the necessity of going to a formal hearing; and to do so in a manner which provides a positive learning experience for the student while

protecting the safety of all University members and the interests of the University or complainant.

Six complaints proceeded to either formal hearings, or formal investigations as provided for in the respondent's collective agreement. Three of these were complaints against students brought by University personnel. For complaints brought against students the Code process stipulates a hearing in front of a student tribunal in which all the tenets of natural justice are respected. The other three complaints were brought by students against faculty. In complaints brought against employees who are covered by a collective agreement the procedure specified in the collective agreement is followed. In the case of complaints brought against Faculty members, whether full-time or part-time, it is the responsibility of the relevant Dean to investigate.

- The residence administration was responsible for two formal complaints against students that proceeded to hearings.

A residence student was charged for repeated violations of Article 18.16 of the Code: "Unlawful distribution, possession, use, sale, etc., of a controlled substance." The residence administration takes this matter very seriously, not only is it illegal, but smoking anything in residence constitutes a health and safety hazard for all residents. The complaint was upheld at hearing, and the student was given a deadline to vacate the premises and was barred from entering any of the residence buildings again.

A former resident was charged with repeatedly being in the student residences after being barred the previous year. His presence was considered disruptive given that he had been barred from Residence the previous year for repeated behavioural violations. The complaint was upheld at hearing and the student was sanctioned with a letter of reprimand, he was formally barred from Residence, and he was given a community service sanction.

- A student was charged by a staff member for forging the staff member's signature in order to access equipment he was not authorized to have. As the ultimate purpose of the forgery was academic gain he was also charged under the Academic Code of Conduct. The complaint was not upheld at hearing. The hearing panel members felt that the evidence linking the student to the forgery was not strong enough.

Three formal complaints were filed by students against Faculty members.

- Two harassment complaints were filed by a graduate student against two full-time professors in her department. One complaint was for sexual harassment, the other for harassment. As per the Faculty members' collective agreement the complaints were investigated by the Dean of the Faculty. Both complaints were upheld in part, and appropriate action was taken.

As part of the consultation, the Advisor liaised with several University Departments, as well as the student, to ensure the student received adequate and pertinent support.

- A complaint was filed by an undergraduate student against a part-time Faculty member for discriminatory harassment. The complaint alleged that the Faculty member used inappropriate language and asked inappropriate questions in a conversation outside of class that dealt with racial issues. A final determination on this complaint has not been released as of the writing of this report.

Two formal complaints were withdrawn by the complainants before they could proceed to a hearing. In one case, a student filed a harassment and discrimination complaint against another student. The matter was related to the CSU election campaigning in March. The complainant chose to withdraw her complaint only days prior to the scheduled hearing. The other complaint involved a Faculty complaint against a graduate student who had allegedly abused his position as a marker of undergraduate exams for personal financial benefit. In discussions with the Associate Chair and the Office of the General Counsel, it was determined that the complaint would more appropriately be filed under the Academic Code of Conduct.

Four complaints were rejected by the Advisor. The Advisor has the authority to do this when the complaint is not supported by sufficient evidence, or when it appears to be frivolous, trivial, vexatious or made in bad faith.

- Two complaints by graduate students made against another graduate student for harassment were rejected because they were not supported by sufficient evidence that the alleged activity constituted harassment. Both complaints appeared to be related to partisan conflicts connected to the GSA elections in April.
- A staff member wished to file formal psychological harassment complaints against both a manager and a coordinator of units he had to deal with in the course of his duties. In the opinion of the Advisor, the situations he described did not constitute harassment, but rather University personnel attempting to exercise their responsibilities as managers.

## **4. Other Activities**

**This section provides a review of the activities of the Advisor, Rights and Responsibilities, outside of the primary mandate of the Office.**

The primary responsibility of the Advisor is to respond to complaints and other instances of problem behaviour brought to him by members of the University community, to advise and to assist these individuals in resolving the problems. This leaves very little time for other activities, however the Advisor takes every opportunity afforded him to inform the

University community of the services of the Office, and to educate members of the University community regarding preventing and managing dangerous and disruptive behaviour, as well as responding to harassment and sexual harassment situations.

To this end, the Advisor gave presentations at orientation events for new faculty Chairs, TAs, and students. The Advisor was invited to speak during the New Student Program orientations, orientations for residence students and Peer Helpers, as well as workshops for new TAs on managing disruptive behaviour in the classroom (delivered four times) and to library staff on responding to difficult situations.

The Advisor participated on committees looking into the future of Chaplaincy, as well as the University's overall response to harassment and violent and threatening behaviour.

The Advisor continued to serve as Facilitator for the University's Procedure on Psychological Harassment.

Due to budgetary constraints, professional development for the Office was limited. One conference was attended during the year, the annual Canadian Association for the Prevention of Harassment and Discrimination in Higher Education conference, at which the Advisor delivered a workshop on emergency response procedures. The conference was held in Halifax in May.

External activities included service on the Boards of Directors of the John Howard Society of Quebec and the John Howard Society of Canada, as well as that of Catholic Community Services of Montreal.

## **5. Recommendations**

**This section contains recommendations arising from formal and informal complaints, consultations, and activities outside of the primary purview of the Office.**

As the Code of Rights and Responsibilities is scheduled for a major review in the autumn of 2009 recommendations in this report will focus on Code review issues. Areas of concern that will be brought to the Code review committee by the Advisor will include:

- A general rationalization of the Code along with a number of housekeeping issues
- A recommendation that the Code clearly state that the University may take formal action against a member who has committed an offence against a visitor on campus. Such a provision would primarily be intended to deal with instances of violence and other forms of aggression against visitors. Currently the Code limits formal complaints to matters between University members.

- A clarification of Article 18.2 of the Code dealing with the promotion of hatred against identifiable groups. The article is not meant to limit freedom of expression as the Code specifically protects this, however a recent decision by the Federal Human Rights Commission calls into question certain aspects of federal legislation on hate speech on the grounds that it does limit freedom of expression. Thus it would be prudent for the University to review the Code provision on this.
- A recommendation that the entire section of the Code dealing with complaints against faculty, administrative staff and support staff be reviewed to harmonize it with provincial legislation on psychological harassment and the University's own Procedure on Psychological Harassment.

This last issue leads to another, related, recommendation: that the role of the Advisor with respect to the Procedure on Psychological Harassment be clarified. The Advisor took on the role of Facilitator for this procedure when it was written in 2004, and has served as Facilitator since then. The fact that one individual is responsible for applying two separate policies that mandate different procedures for responding to psychological harassment has been awkward. The University needs one coherent policy for this important matter, in addition to what is negotiated in collective agreements. It is the Advisor's opinion that the most appropriate location for this is within the Code of Rights and Responsibilities as part of a global approach to behavioural issues.

As part of that global approach to behavioural issues the Office engages in various awareness and educational opportunities designed to both inform the community of the services of the Office and to educate with respect to appropriate behavioural expectations. This is done, in part, through various publications, such as pamphlets, posters and other media. In recent years, budget constraints have limited the ability of the Office to maintain its publications. As well, these same budgetary constraints have prevented the Advisor from pursuing important professional development opportunities, particularly an ongoing series of workshops on mediation and alternative dispute resolution techniques. The ability to engage in these activities is essential if the Office is going to successfully fulfill its mandate. The Office must have an appropriate budget to do this.

A final recommendation has to do with the physical space of the Office itself, that which is shared with the Ombuds Office. For some time now, our two offices have been discussing a move to new space for our combined services, a move that is primarily intended to resolve important security and confidentiality concerns both offices share. We strongly recommend that this initiative be given priority to ensure the confidentiality and safety of our clients and staff.

In closing, the Office would like to thank all its partners throughout the University for working together to make Concordia University a safe and civil environment for all of its members.