



REPORT TO
AMY NIXON, GENERAL COUNSEL
TRIKA MACDONALD, ASSOCIATE VICE-PRESIDENT HUMAN RESOURCES
MOUNT ROYAL UNIVERSITY ("MRU")

In this matter of

HARASSMENT AND DISCRIMINATION COMPLAINT
ALLEGATIONS, FINDINGS AND CONCLUSIONS

Submitted by Jennifer Hawkins,
Southern Butler Price LLP (the "Investigator")

February 1, 2021



Complaint and Process

This report is provided to Ms. Amy Nixon, General Counsel and Ms. Trika Macdonald, Associate Vice-President, Human Resources for MRU, pursuant to the Terms of Reference, which are attached at Tab 1. I was asked to conduct an investigation (the "Investigation") into a complaint brought against Ms. Frances Widdowson, tenured faculty member in the School of Arts (the "Respondent") by D.A. Dirks, a contract employee and faculty member in the School of Arts at MRU (the "Complainant").

The Complainant made allegations of harassment and discrimination against the Respondent (the "Allegations"). I was retained to examine the Allegations in the context of MRU's *Code of Conduct – Employees* (the "Code"), the *Personal Harassment Policy*, the *Human Rights Policy* (which are attached at Tabs 2, 3, and 4), and the law. I have also considered Article 23 of the Collective Agreement between the Mount Royal Faculty Association (the "MRFA") and the Board of Governors of MRU, and MRU's *Expression and Free Speech Policy*.

MRU notified the Complainant of its decision to engage Southern Butler Price to investigate their concerns by email on November 16, 2020. I interviewed the Complainant using videoconferencing on 17(4)(d). The Complainant attended their interview with Mr. Derrick Antson, a Labour Relations Officer for the MRFA.

The Respondent was informed of the Investigation on November 16, 2020 and was provided details of the Allegations against her on December 1, 2020. I interviewed the Respondent on December 22, 2020 by videoconference. The Respondent advised that she was aware of her right to representation and chose not to bring a representative to our meeting.

I interviewed Witness A on January 15, 2021 by video conference.

At the beginning of each interview, the participants were advised of the need for honesty and their obligation to maintain confidentiality of both the information that we shared and the fact that the Investigation process was occurring. Each participant acknowledged their understanding of both obligations.

All participants were provided with an opportunity to submit any documents they wished to have considered. The Complainant and Respondent each provided materials which I have reviewed and considered. I have referred to or appended those I considered most relevant to my findings.

The Complainant and Respondent's names have been used in this report. However, in order to protect the privacy of the Witness who was interviewed, the Witness was referred to throughout this report as "Witness A." Another individual who was not a participant in the investigation was referred to as Student A.



Summary of Complaint

The Complainant submitted an undated written complaint to MRU (the “Complaint”), which is attached at Tab 1, Schedule A . In the Complaint and during their Investigation interview, the Complainant alleged that the Respondent engaged in the following behaviours between the fall 2018 and October 2020, including:

- During the fall 2018, attending the Complainant’s pronoun workshop during which the Respondent took an *“argumentative and combative approach,”* asked the Complainant to define socioeconomic class, and publicly stated that she would not use the Complainant’s pronouns (the “Pronoun Workshop”).
- During the winter 2019 semester, attending a professional development session on Equity, Diversity, and Inclusion facilitated by the Complainant and others, and taking a *“combative”* approach to the content involving pronouns (the “Professional Development Session”).
- During a Faculty of Arts session co-presented by the Complainant and Student A (the “Arts Faculty Council Session”) in which the Complainant shared personal experiences as a trans faculty member, recording the session and saying to colleagues following the session, *“Well of course we couldn’t ask questions because those people don’t want to be asked questions”* in a *“mocking”* tone. Following the session, the Respondent provided the recording to the *Western Standard* after which an article was published about the session
- In September 2020, bringing forward a motion which was passed by the Arts Faculty Council: *“Arts Faculty Council express its acknowledgement of the labour of faculty and students in creating an intellectually inclusive environment that supports critical thinking and open inquiry about feminist philosophies pertaining to sex and gender.”* The Complainant alleges the motion is trans-exclusionary in that there are anti-transgender feminist philosophies that are not explicitly mentioned in the motion (the “Arts Faculty Council Motion”).
- In a series of tweets on October 15, 2020, mocking the Complainant’s pronouns and their articulation of feeling *“misgendering fatigue,”* identifying them as *“LGBQ2SLMNOP,”* and sharing information with Jonathan Kay, an editor for the National Post, including screenshots from the Complainant’s PowerPoint from the Pronoun Workshop, which were then included in a series of tweets by Mr. Kay and subsequently published on October 16, 2020 in a *Post Millennial* online article (the “October Tweets”).



Evidence

Complainant

The Complainant said she was a faculty member in the School of Arts Department of Humanities and General Education. The Complainant said that [REDACTED] 17(4)(d) [REDACTED]. They described their work as [REDACTED] 17(4)(d) [REDACTED]. The Complainant said that they are an MRFA representative and [REDACTED] 17(4)(d) [REDACTED].

The Complainant advised that they identified as a “ [REDACTED] 17(1) , trans, [REDACTED] 17(1) .”

The Complainant said that though the Respondent also worked in the Faculty of Arts, the Respondent was in another department. The Complainant said that sometimes they would attend events that the Respondent put on and the Respondent would attend events that the Complainant organized. The Complainant said of the Respondent, “*our perspectives usually don’t intersect*” and they did “*opposite work.*”

Pronoun Workshop

The Complainant described that the Pronoun Workshop they delivered in the fall 2018 was organized through the MRFA and attendance was voluntary. They said that there was a registration form, partly because they wanted to know if the Respondent would be attending. The Complainant said a community agreement was put in place, which laid out the “*ground rules*” for the Pronoun Workshop. The Complainant described the Pronoun Workshop as “*a pronouns educational workshop and not an academic debate forum.*”

During the session, the Complainant recalled that the Respondent asked them to “*define socioeconomic class.*” The Complainant said the Respondent advised that she would not use the Complainant’s pronouns of “*they, them.*” The Complainant said that they found the Pronoun Workshop “*disappointing*” and “*very stressful*” because of the Respondent’s “*combative approach.*” The Complainant said there were students and faculty in the session who tried to “*intervene*” on the Complainant’s behalf in the discussion with the Respondent about the use of pronouns. The Complainant said the Respondent was “*unmoved*” by their perspective and the perspective of those who intervened in the discussion.

Professional Development Session

The Complainant described a Professional Development Session in winter 2019 in which they participated as a speaker. The Complainant said the Respondent attended the session and took a combative approach



with them, though the Complainant said they did not recall the Respondent being “*combative*” with the second speaker and could not recall whether she was or was not combative with the third speaker.

The Complainant described their topic as including a discussion about pronouns and how they tried to create classrooms that were universally accessible for students. The Complainant said the Respondent asked about pronouns again and they recalled “*some belaboured conversation around that topic where others intervened to counter [the Respondent’s] view.*” The Complainant recalled one colleague offering an analogy around math and another offering a perspective as a biologist in an effort to counter the Respondent’s view, which they said, “[The Respondent] *either didn’t understand or rejected.*”

The Complainant said they recalled the purpose of their talk to be professional development with tips for making a classroom more equitable and “*not a debate about these major issues.*” The Complainant said the objective of the Professional Development Session was informational and educational, and it was not set up as a debate or a panel.

Arts Faculty Council Session

The Complainant said they were invited by the Dean of Arts (the “Dean”) to speak with the Arts Faculty Council “*to try to address the fact that some faculty members need education but would never go to a workshop.*” The Complainant said that when asked, they considered the proposal seriously, knowing that it could potentially be difficult. The Complainant said that they asked Student A to co-present the session so that they offered two perspectives: an out trans faculty person and an out trans student. The Complainant said they made a decision to limit the presentation time and that they would not take any questions.

The Complainant described that during the presentation, they and Student A identified how 17(1) [REDACTED]. When the session was finished, the Complainant recalled that the Respondent “*immediately asked a question*” and the moderator said, “*No questions*” and the session ended.

Following the session, the Complainant said that several people went to the MRFA Faculty Centre for a drink. It was there that the Complainant said they heard the Respondent speaking “*mockingly to her ‘Rational Space colleagues,’ saying, ‘Well of course we couldn’t ask questions because those people don’t want to be asked questions.’*”

The Complainant said they learned that the Respondent recorded the Arts Faculty Council Session. The Complainant said that they “*assume [the Respondent] provided a recording of the [Arts Faculty Council Session] to the Western Standard,*” which resulted in an article being published that named the Complainant and discussed the Arts Faculty Council Session in a negative way (Tab 1, Schedule A pages 4-7). The Complainant said that while they did not have “*evidence,*” it was “*clearly someone who was in that room ... [the Respondent] did say she recorded [the session], and it doesn’t take a genius to connect the*



dots." The Complainant said that they and Student A only presented to the Arts Faculty Council and did not present together anywhere else on campus.

The Complainant said that they [REDACTED] after having done the presentation to the faculty as requested by the Dean. The Complainant said that because the presentation was about their personal experience as a trans faculty member, rather than an academic debate, they felt that recording the presentation was harassing behaviour and targeted directly at them. They said that they raised their concern about the recording of the session to the Dean and were told that there was nothing that could be done.

The Complainant described [REDACTED].

Arts Faculty Council Motion

The Complainant said that a motion passed at an Arts Faculty Council meeting in support of trans people at MRU. The Complainant said that the Respondent subsequently brought forward her own motion in September 2020, which was passed. The Complainant said that they were not present at the September Arts Faculty Council meeting where the motion was passed. The motion stated:

Arts Faculty Council express its acknowledgement of the labour of faculty and students in creating an intellectually inclusive environment that supports critical thinking and open inquiry about feminist philosophies pertaining to sex and gender.

The Complainant said that while the motion appeared to address academic freedom, "*baked into it was a poison pill, of [the Respondent's] ideologies.*" The Complainant described the motion as "*trans-exclusionary*" because there were anti-transgender feminist philosophies that were not explicitly mentioned in the motion.

The Complainant said that in line with Robert's Rules of Order, once the motion was passed, they were not able to propose amendments.

October Tweets

While the Complainant said they had a Twitter account, they said they did not follow the Respondent on that platform. The Complainant said that someone alerted them about tweets on October 15, 2020, between Mr. Kay and the Respondent, that referred to the Complainant (the "October Tweets").

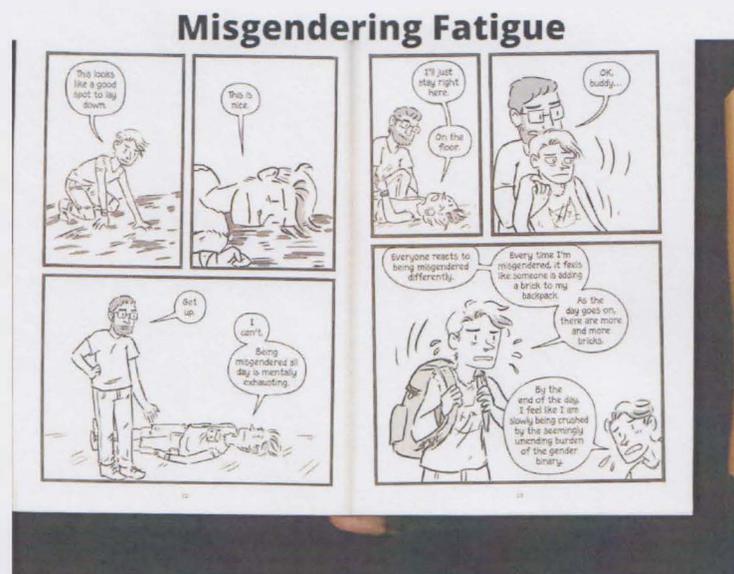
In the Twitter exchanges, the Complainant said that Mr. Kay was "*being fed info by [the Respondent].*" The Complainant said that Mr. Kay wrote about an upcoming session that the Complainant was to facilitate for the MRFA in October 2020 that would include discussion of the MRFA's organizational culture, including policies and procedures, and in the Complainant's words: "*how they were upholding a*



white supremacy culture”, even if unconscious. The Complainant said that there was an email that was sent to MRU faculty members about the facilitated discussion that was somehow shared with Mr. Kay. The Complainant explained that the upcoming MRFA session was the topic of the Twitter exchange between Mr. Kay and the Respondent.

The Complainant said, “[The Respondent] *didn’t like that I was doing this* [the upcoming MRFA session], *and this is when the article appeared in the Post Millennial, which mentioned me by name and included screenshots from my [Pronoun] Workshop*”. The *Post Millennial* article was published on October 16, 2020, and a copy is attached at Tab 5.

In the October Tweets, Mr. Kay described that the Complainant had previously done a Pronoun Workshop, attached a screenshot of a cartoon from the Pronoun Workshop, and then wrote that the Complainant would be reviewing the white supremacy culture of the MRFA. The cartoon from the Pronoun Workshop and which was included in Mr. Kay’s tweet is reproduced here:



The tweet, the Complainant said, was published in the *Post Millennial* article. The Complainant said the “Jonathan Kay connection” between the tweets and the *Post Millennial* article was concerning as the Respondent “*would have provided him [Mr. Kay] with that information.*”

The Complainant provided screenshots of the pertinent Twitter exchanges (attached at Tab 1, Schedule A, pages 8-10) which remain publicly available on Twitter. In one tweet, the Respondent wrote:



I don't know why @DrTony33280677's [an unrelated party] upset with @JonKay for INSISTING on the gender identity of an MRU colleague. This colleague has hinted that they are suffering from MISGENDERING FATIGUE. Kay's tweet is just amplifying a silenced TGBQ2SLMNOP voice! #LetTheSubalternSpeak

The Complainant said that in this tweet, the Respondent was *"personally mocking my pronouns and the fact that I talk about misgendering fatigue."*

The Complainant said they filed the Complaint because *"when you start tweeting at people, whether you call it satire or not, and engage in mockery of identity and pronouns in a public forum beyond MRU, it's not a debate about transgendered people, it's targeting identities."*

Respondent

The Respondent said she had worked at MRU since 2008 and she was a political scientist. She said she was a *"fervent supporter of freedom of expression and academic freedom"* and she was part of the Rational Space Network, which she described as a group at MRU that worked to allow difficult philosophical conversations to take place at the university. Starting in 2018, the Respondent said the Rational Space Network had run a critical thinking series which *"resulted in quite a lot of opposition from other faculty members."*

The Respondent said she was a tenured professor and *"the reason I've been given tenure is so that I can raise questions about things that others cannot in society."*

The Respondent said that she and the Complainant did not know one another and did not work together. The Respondent said that the Allegations *"pretty much contain all the interactions that [she] had with [the Complainant]."* In general response to the Allegations, the Respondent said, *"My interaction with [the Complainant] is not personal at all. It concerns ideas, which is my job: to ask questions about various ideas, not on a personal level."*

For the past four years, the Respondent said she had been subjected to *"various types of tactics by a number of colleagues,"* which she had documented. She described that 45 faculty members were *"trying to mob [her] and get [her] fired."* Given the Respondent's stated concern about witnesses that I might call, she provided me with a list of faculty members who she said would be biased against her.

The Respondent said there were approximately 39 faculty members who belonged to a *"secretive"* anti-racism coalition and she believed the Complainant was a member of this group. In September 2020, the Respondent said this group *"mobilized students to put forward a petition that demanded [the Respondent] be terminated."* The Respondent said that it was possible this Complaint was an *"end run"* because the group was not successful in their efforts to have the Respondent terminated from her employment at MRU. The Complainant provided me with the names of two witnesses who attended the



Pronoun Workshop, and one of the names was on the Respondent's list. For this reason, I chose to interview the other individual.

Prior to the Investigation interview, the Respondent provided a written response to the Complaint via email on December 4, 2020 (attached at Tab 6). I have considered this response, as well as the Respondent's verbal evidence from our interview, summarized below.

Pronoun Workshop

The Respondent recalled that she attended the Pronoun Workshop because it was part of her area of expertise, as she taught feminism. She said that she was interested in the various arguments and trying to understand what the *"various ideologies pertaining to trans activism are arguing,"* which *"requires asking people to define things."* The Respondent said the Pronoun Workshop took place in an *"academic context"* and there was not a statement that no questions could be asked.

The Respondent said that because this allegation was *"years old,"* she could not remember exactly what she said at the time. The Respondent said that she had been very concerned about the *"academic argument around compelled speech and pronouns, as an academic matter — not a personal matter."* The Respondent said she did recall talking about compelled speech at the Pronoun Workshop. The Respondent said, *"I can't imagine I said I would not use their pronouns. I think that is in all likelihood false."*

The Respondent said that even if she was *"argumentative and combative, in a university context that would not be called harassment."* The Respondent said, *"It's possible that [the Complainant] thinks that anyone who argues with them is argumentative and combative."*

The Respondent said that she did recall asking about the definition of classism and said, *"That's what we do as academics. We have to understand terminology. Whenever I'm engaging with people professionally, I focus on ideas and not individuals."*

The Respondent said that she did not recall debating with the Complainant but said, *"It's entirely possible. That's what we do as academics."*

Professional Development Session

The Respondent said that the Professional Development Session was *"so long ago, I'm reluctant to say things because I'm not entirely sure. I'm basing my comments on what I would typically do, and I usually do have arguments."*

The Respondent said that although this session was not intended to be about pronouns, *"it turned out to be. It was [the Complainant's] Pronoun Workshop again."* The Respondent said, *"To be honest, I don't even remember asking any questions about pronouns. I have no recollection of a discussion about [the*



Complainant's] *pronouns either.*" The Respondent said that while she did not recall any math analogies being used to explain the use of pronouns, she did recall participating in a discussion around microaggressions and the difficulties of determining when a microaggression had occurred.

Arts Faculty Council Session

The Respondent described that this Arts Faculty Council Session *"happened out of order. That presentation shouldn't have happened. The agenda has to be approved and presentations are supposed to be academic matters, not airing of feelings. The Dean was acting outside Robert's Rules of Order. Questions should be allowed to be asked."*

The Respondent described the Arts Faculty Council Session was a session in which the presenters were *"telling people how they should behave."* As such, the Respondent said that this was something she felt faculty members should be asking questions about — *"Why should this be demanded of faculty?"* While she said she could not recall any specifics about this session, the Respondent said, *"My question would likely have been about the fact that we were not able to ask questions, which is very inappropriate for Arts Faculty Council."*

The Respondent said that she recorded sessions for her memory and to discuss the subject matter with colleagues who were not at the session. The Respondent said that she shared the recording of this Arts Faculty Council Session with some colleagues. The Respondent said, *"It was never my intent that it be shared with the media, and I don't know if any of them did."*

The Respondent said, *"This was not a secret presentation. [The Complainant] and the student were making this presentation all over the university."* The Respondent said that she understood why there was concern about the media obtaining a copy of the recording, but she said, *"It had nothing to do with me."* The Respondent said that she made a statement at a subsequent Arts Faculty Council meeting, acknowledging that she had recorded the Arts Faculty Council Session but that she had not released the recording to the media. The Respondent suggested that someone else must have also recorded the session and provided the recording to the media.

The Respondent said that she did not recall saying *"Well of course we couldn't ask questions because those people don't want to be asked questions"* in the MRFA Faculty Centre. She said, *"I was probably annoyed about not being able to ask questions. It was highly inappropriate of the Dean. ... The Dean should not be bringing in people to give activist presentations before we can even vote on the agenda."* The Respondent said that her concerns had nothing to do with the Complainant but rather that at Arts Faculty Council sessions, in the Respondent's view, faculty members should be allowed to ask questions.

The Respondent said, *"Those people' seems personal. I can't recall if I would have said 'those people,' but I was annoyed about not being able to ask questions."*



Arts Faculty Council Motion

The Respondent said that she found this particular allegation to be “preposterous.” She said:

To say that putting forward a motion which one disagrees with, but does nothing to discuss or change it, and then when it passes to say it’s harassing... I’m amazed. This is exactly what we’re supposed to be doing as professors.

The Respondent said that the reason for the motion was because the Dean had made comments that could possibly have been interpreted as saying, “We should be careful about what we say about trans activists.” The Respondent circled the Dean’s statement in a copy of the minutes from January 2020, pasted below:

4.1.12 Additional Items

- We will have 4 new chairs, 3 of which are waiting on their offer letters. David Hyttenrauch will be taking over as Chair of Interior Design.
- The collaborative BA with Medicine Hat College in Criminal Justice has been put on hold by senior administration due to budget concerns
- Arts is a place that we can have debate, we are known for being critical and not always agreeing. But it is important that we do this in a respectful way. Please be mindful when making choices that affect others.

The Respondent said she wanted to put forward the motion so it was clear that although one can respect trans people, that does not mean that one should be limiting discussion about feminist philosophies pertaining to sex and gender. The motion, she said, was to clarify this possible interpretation of the Dean’s comment circled above.

October Tweets

The Respondent said that she used her Twitter account to “engage in satirical commentary, not as me, but as my satirical character Frances McGrath,” which was based on Tatiana McGrath (a parody Twitter account run by comedian and columnist Andrew Doyle).¹

The Respondent described her use of Twitter as “an attempt to draw attention to some of the more strange kinds of things that are happening at the university, in a satirical way.” While she acknowledged that she typed the comments on that Twitter account, she said, “It’s not meant to be my view on it.” The

¹ Online at: https://en.wikipedia.org/wiki/Titania_McGrath



Respondent also described her use of social media as not being associated with her work at the university, but rather something she did in her private life.

The Respondent said that she viewed her Twitter account as an opportunity to vent about things, on her own time. She said, *"I've done nothing to affect [the Complainant] in their workplace."* The Respondent said that her Twitter account had *"nothing to do with MRU"* and she did not name the Complainant by name.

The Respondent said that she did not send the email about the Complainant's facilitation of the MRFA meeting in October 2020 to Mr. Kay. The Respondent said that the email about the MRFA session went to *"100 people"* and it *"must have identified [the Complainant]."* She said she saw that Mr. Kay had posted about it on Twitter. The Respondent said that she was on sabbatical and had not seen the email about the session and did not share it with Mr. Kay.

The Respondent said that the Complainant's Pronoun Workshop presentation was on the Internet and could be found by searching the Complainant's name. The Respondent said, *"I didn't in fact remember [the Complainant] showing the cartoon on the Pronouns Workshop"* The Respondent said that in the October Tweets, she was responding to Mr. Kay and what he had found on the Internet, and that she had not provided any of that information to him.

The Respondent relayed that she had never met Mr. Kay personally, but he published excerpts of a book that she had written in 2008. She said that she had *"nothing to do"* with Mr. Kay obtaining information about MRU or the Complainant's Pronoun Workshop presentation. She said that she was just *"defending Jonathan Kay"* on Twitter.

The Respondent said that she was *"satirizing the cartoon and the letters [TGBQ2SLMNOP]."* She said, *"It was not me mentioning a specific individual, it was more of a general statement, and exaggeration."* She said the use of the term *"MRU colleague"* was very generic. The Respondent said, *"I find it hard to believe that saying a cartoon is a bit exaggerated, with satirical intent, is harassment of a particular individual in their workplace when they're not even mentioned by name, in an account that has nothing to do with MRU."*

In respect of her tweet that included *"TGBQ2SLMNOP,"* the Respondent said that she found it difficult to keep track of the letters, which were arranged differently all the time.

The Respondent said that the Twitter discussion about the MRFA facilitated discussion and the person delivering it (the Complainant) *"was not intended to be in any way demeaning to a particular individual or anything. It was not about MRU — it was that the MRFA affects policy."*



The Respondent said, *“This is not how I conduct myself at work. This is not how I conduct myself with colleagues when I interact in the workplace. This is my private affairs.”*

In an email to me on January 5, 2021, the Respondent wrote:

... we discussed that I had referred to “an MRU colleague” in one of the tweets that is being complained about. I forgot to point out during our meeting that I made this reference because I was replying to “Dr. Tony” (an anonymous twitter troll) who asked “Why has this random individual gotten HIS hands on internal university communications and why does HE think that it is important to insist on the gender identity of one of our colleagues?” Therefore, my point was not to specifically refer to the Complainant, but to repeat the wording that was used by “Dr. Tony”. My tweets were intended to generically refer to some of the characteristics of LGBTQ+ activism, not to make assertions about an individual.

Witness A

Witness A said he was an associate professor in the Faculty of Arts. Witness A said that he knew who the Complainant was because he attended the Pronoun Workshop and because he saw the Complainant at Arts Faculty Council meetings. Witness A described his relationship with the Respondent in the same way: no personal connection and he knew who the Respondent was from seeing her at various Faculty of Arts meetings and other sessions at MRU.

Witness A was not included on the Respondent’s list of faculty members who she believed would be biased against her.

Pronoun Workshop

Witness A said that he recalled attending the Pronoun Workshop in 2018. He described himself as a [REDACTED] 17(1) [REDACTED].” Witness A said the Complainant was an engaging and respectful speaker who was an “ambassador for marginalized people.” He said that the Complainant was “handling the workshop really well, and then [the Respondent] did her thing.”

Witness A said that he recalled the Respondent’s conduct during the Pronoun Workshop because he had seen “the exact same thing every time [they were in meetings together].” He described the Respondent’s conduct as a “pattern.” Witness A said that while he could not recall the questions the Respondent posed verbatim, “they were constant, condescending, and disingenuous.” Witness A mimicked the tone of voice that the Respondent used, and he said, “It’s a pattern. I’ve heard it since, and that’s why I can imitate it.” Witness A said, “Inevitably the meeting becomes all about [the Respondent] and there is no way to get the meeting back on track.” Witness A said that he recalled the Respondent took notes of the Complainant’s responses.



Witness A explained that he felt the questions the Respondent asked in the Pronoun Workshop were disingenuous because it was clear the Respondent knew the answer and she was using a condescending tone of voice. He described the Respondent as “relentless.” Witness A said it was his view that the Respondent did not attend the Pronoun Workshop in good faith.

Witness A said that he did not recall the Respondent specifically saying to the Complainant that she would not use the Complainant’s pronouns. Witness A said that the Respondent shared her views about the use of pronouns, which “echoed the Jordan Peterson stuff that was breaking at the time, about compelled speech.” He said she was “sharing her concerns that if she refused to use the pronouns, there’d be a problem.”

Assessment of Credibility

Where the facts were in dispute, I have applied the test set out by the British Columbia Court of Appeal in the case of *Farnya v. Chorny* [1952] 2 D.L.R. 354, to assess credibility, which is as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of the witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth.

I found that the Complainant was candid and forthright in providing their evidence. They provided a clear depiction of their perspective of the events. There were, however, aspects of the Complaint which were based on speculation, or in the Complainant’s words, “connecting the dots,” such as in respect to the Respondent sharing the recording of the Arts Faculty Council Session with media and sharing information with Mr. Kay. I note, however, that the Complainant was clear in these instances that they did not have “evidence” of the particular actions alleged.

I found that Witness A was honest and forthright in providing his evidence. Witness A had nothing to gain by being untruthful in this process and did not have any particular connection with either the Complainant or Respondent. Witness A exhibited a good recollection of the Pronoun Workshop, despite that it took place over a year ago.

I initially found the Respondent to be evasive and reluctant to participate in the Investigation process. But once she did engage in the process, I found her to be forthcoming and drew no adverse inference from



her initial communications and reluctance. She acknowledged that she regularly debated in meetings or workshops, and she exhibited passion about her ability to engage in difficult, philosophical discussions. Her evidence that she did not say to the Complainant during the Pronoun Workshop that she would not use the Complainant's preferred pronouns was corroborated by Witness A. In some instances, the Respondent gave evidence that was contrary with the Complainant's first-hand evidence. For example, the Respondent said that the Complainant and Student A delivered their presentation several times across campus, and the Complainant said that they only delivered it once, to the Arts Faculty Council. In these circumstances, I prefer the direct evidence of the Complainant.

I found both the Complainant and Respondent to be generally forthright in their evidence. Where there were material discrepancies in the evidence, they were resolved by the documents, Witness A's observations, and as outlined above — relying on direct versus indirect evidence.

Policies

As noted at the outset, the Terms of Reference require that I draw a conclusion as to whether there has been any breach of the Code, the *Personal Harassment Policy*, the *Human Rights Policy*, and/or the law, based on my findings of fact.

The following portions of the Code and Policy are pertinent.

The Code identifies guiding principles and expectations for employees:

E. GUIDING PRINCIPLES

1. *The University is committed to maintaining an environment free from violence and harassment.*
2. *The following guiding principles apply to the conduct of Employees in the course of carrying out their University responsibilities, as appropriate to their role:*
 - 2.1 *comply with applicable laws, University policies and procedures, contractual commitments and collective agreements;*
 - ...
 - 2.10 *cultivate an equitable, diverse and inclusive environment, free from discrimination, harassment and violence; and*
 - 2.11 *conduct interactions in a mutually respectful manner, respecting the personal dignity of all, while not limiting the right of participants to challenge beliefs, views and opinions and to engage in rational debate.*



The Personal Harassment Policy provides:

1.3 *All members of the Mount Royal community have a responsibility to ensure that the learning and work environment are free from Personal Harassment and need to promote a harassment free environment. They are expected to act on this responsibility whenever necessary, whether or not they are in receipt of a complaint. The expertise and assistance of the Diversity and Human Rights Advisor is available to all members of the Mount Royal community.*

...

2.1 *In keeping with Mount Royal's institutional goal of becoming an employer of choice within the Canadian post-secondary community and to establish and maintain an environment in which the dignity and worth of all members of the Mount Royal community are respected, it is the policy of Mount Royal that discrimination and/or harassment of students and employees is unacceptable and will not be tolerated.*

...

Personal Harassment is conduct or comments which are intimidating, threatening, demeaning or abusive and may be accompanied by direct or implied threats to grade(s), status or job and is behavior which is known or ought reasonably to be known as unwelcome. Personal Harassment takes many forms and can be a source of great anxiety to an individual. It may be so serious and unrelenting that the person who is being, or has been, harassed feels it necessary to change their job or course of study. Harassment has the impact of creating a work or study environment that is hostile, affects the integrity and dignity of and limits individuals in their pursuit of education, research or work goals.

Personal Harassment can include, but is not limited to, remarks, jokes or actions which demean or humiliate another person and which deny individuals their dignity and respect. Some of the examples outlined below may cause mild irritation if occurring only once, but if repeated, become Personal Harassment. Other examples are very clearly harassment even if they occur only once; all are inappropriate and unacceptable:

- *setting arbitrary or unachievable workloads in an unreasonable manner and making threats associated with failure to achieve;*
- *verbal and/or physical intimidation;*
- *ostracism;*
- *excessive supervision;*
- *public reprimand, ridicule, sarcasm or humiliation;*
- *constant criticism or trivializing of achievements;*
- *bullying, which can be defined as offensive, malicious, intimidating, insulting or humiliating behavior, often associated with the misuse of power or position;*
- *academic bullying; for example, asserting a position of intellectual superiority in an aggressive, abusive or offensive manner or making threats of academic failure.*

The Human Rights Policy prohibits discrimination and includes the following definition of discrimination:



as one or a series of unwanted behavior or communication in any form including by telephone and electronic format, directed towards an individual or members of an identifiable group because of a prohibited ground of Discrimination. Prohibited grounds of Discrimination, as identified by the Act, and at Mount Royal are (see Appendix 1):

<i>Race</i>	<i>Colour</i>
<i>Ancestry</i>	<i>Place of Origin</i>
<i>Religious Belief</i>	<i>Mental Disability</i>
<i>Physical Disability</i>	<i>Sexual Orientation</i>
<i>Age</i>	<i>Source of Income</i>
<i>Marital Status</i>	<i>Gender</i>
<i>Family Status</i>	<i>Gender Identity and Expression*</i>

**Gender Identity and Expression is not currently enumerated in the Act. [Investigator's note: they are now enumerated in the Act.]*

However, the Alberta Human Rights Commission has interpreted the enumerated ground of gender to protect individuals from Discrimination on the basis of gender identity and expression.

Discrimination is behavior which is may be rooted in prejudicial attitude. Discrimination is an act of differentiated treatment towards an individual as a member of a group or towards a group, which can disadvantage an individual or group. Discrimination often excludes an individual from a right or privilege to which he/she would otherwise be entitled.

Whether it is colleague to colleague, supervisor to subordinate, subordinate to supervisor, employee to student, student to employee, or student to student, Discrimination introduces a disruptive element into Mount Royal's environment which endangers the well-being and job performance or educational experience of the individual.

The Respondent spoke to her Collective Agreement right to Academic Freedom during our interviews. I have included the full provision here:

ARTICLE 23 – ACADEMIC FREEDOM

23.1 The common good of society depends upon the search for knowledge and its free exposition. Academic freedom in educational institutions is essential to both these purposes in the teaching function of the institution as well as in its scholarship and research.

23.2 Academic freedom as a right belongs to the individual faculty member, not the Faculty Association or the University. Academic freedom does not confer legal immunity nor does it diminish the obligation to meet employment duties and responsibilities.



- 23.3 *Academic staff shall not be hindered or impeded in any way by the institution or the faculty association from exercising their legal rights as citizens, nor shall they suffer any penalties because of the exercise of such legal rights. Academic members of the community are entitled, regardless of prescribed doctrine, to freedom in designing and carrying out research and in publishing the results thereof, freedom of teaching and of discussion, freedom to criticize the University and the faculty association, and freedom from institutional censorship.*
- 23.4 *Academic freedom does not require neutrality on the part of the individual. Rather, academic freedom makes commitment possible. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge.*
- 23.5 *In exercising the freedom to comment and criticize, academic staff members have a corresponding obligation to use academic freedom in a responsible manner. This implies a recognition of the rights of other members of the academic community and a tolerance of differing points of view.*

Finally, MRU's Expression and Free Speech Policy are also relevant to the analysis and were specifically discussed by the Respondent.

A. PURPOSE

This Policy states the University's position on the rights and responsibilities of individuals engaging in free speech at Mount Royal University. This includes the right to communicate opinions and ideas without interference, censorship, or sanction, including the right to engage in peaceful protest regarding the content of free speech of others.

1. PRINCIPLES

- 1.1 *The University strives to ensure its community is diverse and fulfills its commitment to inclusiveness and equality. It is committed to providing an environment where all members of the community may engage freely and openly in the pursuit of knowledge. The University is an academic institution of free and open inquiry where all of its members have the opportunity to speak, write, listen, challenge and learn free from harassment or discrimination, in accordance with University policies and applicable collective agreements.*
- 1.2 *The University unequivocally embraces its institutional responsibility to ensure the free and open exchange of ideas in the spirit of intellectual and critical enquiry. The University will not suppress presentations or debate whether or not the points of view being expressed are thought to be offensive, unwise, immoral, extreme, harmful, incorrect or wrongheaded.*
- 1.3 *It is for individuals, not the University, to make their own judgments relating to the quality of thoughts being expressed and to act, not in effort to suppress speech, but to openly and vigorously challenge those ideas to which they oppose.*

...



1.7 Any expression of speech may not violate Canadian, provincial or municipal law. The University will restrict expression that violates the law, falsely defames an individual, or constitutes a threat, harassment or hate speech under the law that unjustifiably invades substantial privacy or confidentiality of interests.

Law

There are three main legal issues in the Complaint: whether the Respondent harassed the Complainant contrary to Alberta's *Occupational Health and Safety Act*, whether the Respondent discriminated against the Complainant contrary to Alberta's *Human Rights Act*, and whether the Respondent's online conduct is subject to MRU's policies and the law pertaining to workplace conduct.

Harassment

The Alberta *Occupational Health and Safety Act* defines 'harassment' as follows:

s.1 (q) "harassment" means any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action by a person that the person knows or ought reasonably to know will or would cause offence or humiliation to a worker, or adversely affects the worker's health and safety, and includes

(i) conduct, comment, bullying or action because of race, religious beliefs, colour, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, gender, gender identity, gender expression and sexual orientation, and

(ii) a sexual solicitation or advance,

but excludes any reasonable conduct of an employer or supervisor in respect of the management of workers or a work site.

The test for determining if conduct constitutes harassment is objective. This means that there does not have to be an improper motive or intent, and it also means that the Complainant's subjective view of the conduct does not establish that harassment occurred. The question is whether the Respondent knew or ought to have known that the conduct would be unwelcome:

A finding of harassment can only be made if there is objective evidence to support that claim. The fact that [the grievor] honestly felt that she was being harassed, and the fact that she suffered greatly, is not enough to make this claim succeed. ... The grievance is against the Employer. This grievance can only succeed if the objective evidence supports a finding that there has been abusive conduct as a result of the improper use of power or a departure from reasonable norm. Harassment also includes actions which annoy, harm, persecute and embarrass another person, as well as subject someone to vexatious attacks, questions and unnecessary unpleasantness.

Canada Safeway Ltd v United Food and Commercial Workers Union, Local 401 (DM Grievance), [2012] AGGA No. 69 (Ponak) at para 122



Discrimination

The Complainant alleged that the Respondent said that she refused to use their preferred pronouns and commented on their status in social media, and as such, their gender identity played a role in the Respondent's conduct towards them and that the Respondent's conduct therefore violated Alberta's *Human Rights Act*.

Section 7 of Alberta's *Human Rights Act* prohibits discrimination:

... because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or of any other person.

In assessing whether a prima facie case of discrimination is established, Alberta's Human Rights Commission follows the three-part test set out in *Moore v. British Columbia (Education)*, 2012 SCC 61 at para 33:

... to demonstrate prima facie discrimination, complainants are required to show that they have a characteristic protected from discrimination under the Code; that they have experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact. ...

(See for example: *Facey v Bantrel Management Services Co.*, 2018 AHRC 9 (CanLII))

Online Conduct

The October Tweets involve posts made by the Respondent on her Twitter account. It is well established that employees can be disciplined for posts made on social media and articulated to the public by other means, where there is a nexus between their comments or posts and the workplace.

In *Tenaris Algoma Tubes Inc. and USWA Local 9548*, [2014] OLAA 180, 244 LAC 94th, 63 (Trachuck), the grievor uploaded posts to his Facebook public profile that included humiliating comments about a female employee. When confronted, the grievor apologized to the employer, wanted to apologize to the employee, and removed the posts from his Facebook page. The employer dismissed the grievor. The grievance was dismissed. The Arbitrator confirmed that employers have the right to discipline employees for inappropriate comments made in social media provided that there is a nexus between the comments and the workplace. The Arbitrator determined that the posts were not "off-duty" conduct because they were intended to be read by other employees. The Arbitrator concluded that the employer's anti-violence and anti-harassment policies were sufficient to let employees know that this type of conduct would not be tolerated and stated it was not essential that the policies refer specifically to Facebook or other forms of social media. The Arbitrator concluded that the fact the grievor apologized and that he took the posts down were not sufficient to mitigate against the decision to terminate.



In *Alberta v. AUPE, 2011 CanLII95004 (AB GAA) (Ponak)*, the grievor was dismissed for posting a personal blog that insulted and ridiculed her colleagues, managers, and the agency for which she worked.

[page 32] *She referred to management as imbeciles, her supervisor as “Nurse Ratched”, and her workplace as a lunatic asylum. She wrote about a number of her colleagues in extremely insulting, hurtful, and mean-spirited terms. She alluded to the gay lifestyle of one co-worker, ridiculed the sex life of another, and mocked the menopausal memory lapses of a third. Although the Grievor used aliases for her colleagues, not their real names, the individuals about whom she had written were easily identifiable to those in the department and perhaps others who interacted with the department in question. In the original award, it was the Board’s conclusion that the contents of the blogs destroyed the employment relationship, particularly between the Grievor and her immediate colleagues. Perhaps with heartfelt apologies the employment relationship could have been restored, but the reality is that no such apologies occurred and, as the testimony of her supervisors and co-workers made clear, by the time of the arbitration hearing the likelihood of rebuilding a viable working relationship was negligible.*

Arbitrator Ponak held that the blog comments irreparably damaged the employment relationship and the grievor did not show genuine remorse or understanding of the nature of her misconduct.

Findings of Fact and Analysis

Pronoun Workshop and Professional Development Session

The evidence supports that the Respondent expressed views contrary to those delivered by the Complainant during the Pronoun Workshop and Professional Development Session. I accept the Complainant’s and Witness A’s evidence that the Respondent was argumentative and that she used a particular tone — described as insincere and condescending by Witness A, and combative by the Complainant.

The Respondent acknowledged that she spoke to the issue of compelled speech, the requirement to use certain pronouns, and the implication to freedom of speech: an argument more publicly made by Jordan Peterson, a professor of psychology at the University of Toronto.

The evidence does not support a finding that the Respondent said she would not use the Complainant’s pronouns during the Pronoun Workshop, and there is no evidence that the Respondent specifically misgendered the Complainant during the Pronoun Workshop or on other occasions.

I chose not interview any attendees at the Professional Development Session because on a prima facie analysis of the allegations that the Respondent’s approach was “*combative*” and that the Respondent engaged in “*some belaboured conversation around that topic where others intervened to counter her*



view”, I do not find that the Respondent engaged in harassment or discrimination or violated MRU’s policies.

The Complainant described that the Pronoun Workshop and the Professional Development Sessions were intended to provide information and were not forums for debate. While I do not find that this conduct constituted harassment or discrimination or that she breached the Code, I would caution the Respondent to consider her tone and approach when engaging in these discussions. The Code requires that she “conduct interactions in a mutually respectful manner, respecting the personal dignity of all” when she challenges her colleagues’ beliefs and engages in rational debate.

Arts Faculty Council Session

I accept the Respondent’s evidence that she was angry that the Complainant’s presentation did not follow Robert’s Rules of Order and that faculty were not entitled to ask questions. I find, on a balance of probabilities, that the Respondent did say, “Well of course we couldn’t ask questions because those people don’t want to be asked questions” and that she was referring to the Complainant and her co-presenter.

The comment was directed towards two individuals who identify as LGBTQ and as such, was perceived by the Complainant as being discriminatory. Applying the law outlined above, I do not find that this single comment constituted harassment or discrimination.

The Respondent acknowledged that she recorded the Arts Faculty Council Session, but there is insufficient evidence to establish that it was the Respondent who shared the recording with the *Western Standard*.

Arts Faculty Council Motion

Robert’s Rules of Order ensure that there is an opportunity to discuss and vote on motions during Arts Faculty Council meetings. Faculty are entitled to put forward motions for debate and approval.

I accept that the Complainant was not present when the motion was passed to put forward an amendment or to engage in debate. I do not find, however, that the language of the motion put forward by the Respondent constitutes harassment or discrimination towards the Complainant.

October Tweets

I accept that the email that identified the Complainant as having been engaged to facilitate a discussion for the MRFA was delivered to many faculty members. I also confirmed that the Complainant’s Pronoun Workshop is posted on the MRFA’s website and can be found by searching the Complainant’s name in Google. There is insufficient evidence to establish that the Respondent provided these documents to Mr. Kay.



The Respondent did not dispute that she tweeted that “*this colleague*” said they were suffering “*misgendering fatigue*” and wrote that Mr. Kay’s tweet “*was amplifying a silenced LGBTQ2SLMNOP voice.*” Though the Respondent did not specifically mention the Complainant by name, I find that the Respondent intended these comments to be about the Complainant and that the Complainant was easily identifiable in the context of the October Tweets, which identified that they had conducted the Pronoun Workshop and would be engaged to facilitate a discussion with the MRFA. While made in her personal time, there is sufficient connection to the workplace for the relevant policies and law to apply: the Respondent’s statements were about an MRU colleague the series of tweets identified both MRU and the Complainant.

The Respondent’s statements mocked the Complainant’s identity. The statements were discriminatory and violate the Harassment Policy and the Human Rights Policy. I have considered Article 23 of the Collective Agreement and the Expression and Free Speech Policy, and their application does not change my findings. The October Tweets were not made in the course of academic discussion, research or teaching, and because of my finding that the Tweets were discriminatory, they are not protected by the Expression and Free Speech Policy.

Conclusion

In conclusion, taking into account all of the evidence, I find that there was insufficient evidence to substantiate allegations pertaining to the Respondent’s contact with media outlets. The Respondent’s conduct during the Pronoun Workshop, Professional Development Session, the Arts Faculty Council Session, and in putting forward the Arts Faculty Council Motion, did not breach MRU policy or the law.

I find that the Respondent’s October Tweets did violate the Code, the Harassment Policy, and the Human Rights Policy and constituted Discrimination under Alberta’s *Human Rights Act* and Harassment under Alberta’s *Occupational Health and Safety Act*.

All of which is respectfully submitted.

Jennifer Hawkins

Dated: February 1, 2021

Investigation Terms of Reference

Jennifer Hawkins (the "Investigator") is retained by Mount Royal University (the "University") to conduct investigations on its behalf pursuant to the General Retainer Agreement dated March 19, 2020 between the University and Southern Butler Price LLP. The Investigator shall conduct an investigation into complaints that have been made against Frances Widdowson, an employee of the University. This Investigation Terms of Reference sets out the University's expectations for the investigation of these complaints.

The allegations that are the subject of this investigation are attached to this document as Schedule A.

These allegations engage the Mount Royal University Personal Harassment Policy attached to this document as Schedule B. If at any time there is an indication that another University policy may apply, such as the Code of Conduct – Employees, or the Human Rights Policy, the Investigator will inform Ms. Nixon of same.

The purpose of this investigation is to determine, on a balance of probabilities, whether the alleged incidents occurred.

The Investigator will investigate using any means they deem appropriate in the circumstances, subject to the principles of procedural fairness. This will include determining who should be interviewed and what, if any, written statements or documents are required.

Participants, including the Complainant, the Respondent and any witnesses, may be accompanied during their interview by a representative from the Mount Royal Faculty Association.

The Investigator will request written confirmation from Ms. Nixon prior to conducting interviews of any additional witnesses, beyond the Complainant and Respondent.

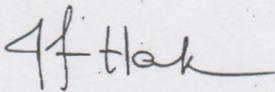
All interviewees should be instructed that this investigation is confidential and that they have an obligation to maintain this confidentiality. Similarly, the Investigator will carry out the investigation with sensitivity to all concerned and will share information only on a "need-to-know" basis and only to the extent necessary to ensure a fair investigation, recognizing that while confidentiality is expected in this process it cannot be guaranteed.

The investigation report will include a summary of the allegations; evidence considered; any assessment of credibility that is required to render a determination; the findings of fact; and a determination of whether there has been a breach of law and/or applicable University Policy ("Confidential Investigation Report").

Although the Investigator will make findings of fact based on the investigation, the final determination with respect to the appropriate response to the Complaint rests solely within the discretion of the University.

The Confidential Investigation Report will be delivered to Amy Nixon and Trika MacDonald.

Terms established on November 12th 2020



Jennifer Hawkins
Investigator



Amy Nixon
General Counsel, Mount Royal University

Schedule A

- During the Fall 2018 semester [redacted] facilitated a voluntary pronouns workshop as MRFA's Diversity and Equity Committee Chair.
- [redacted] Non-Responsive
- [redacted] Non-Responsive
- Frances Widdowson attended the workshop, was disruptive, and said that she would not use [redacted] pronouns. Non-Responsive
- During the Winter 2019 semester [red] facilitated a Professional Development day session regarding Equity, Diversity, and Inclusion.
- At the PD session Frances Widdowson was combative regarding content attendees tried to intervene. Non-Responsive
- [redacted] Non-Responsive
- During the Fall 2019 semester they were asked by their Dean to speak to Arts Faculty Council regarding how faculty could be supportive of trans identified people. [red] invited [redacted] (SAMRU) to co-lead the presentation.
- That they structured the presentation around giving tips on interacting with trans individuals, and that no questions were permitted.
- That Frances Widdowson recorded the session and later participated in a gathering in the MRFA Faculty Centre where [redacted] were mocked. Non-Responsive
- Frances Widdowson subsequently gave the recording to a right-wing blogger who wrote a derogatory article about the presentation. The article is attached.
 - In January/February 2020, after Faculty Council, [redacted] spoke with their Dean. 24(1)(b)(i)
- That after all of this occurred, colleagues brought forward a motion to Arts Faculty Council in support of the work of [redacted] in January 2020. The motion passed.
- In September 2020, Frances Widdowson brought forward a trans-exclusionary radical feminist motion in retaliation at AFC. The motion passed.
- Tweets from Jonathan Kay and Frances Widdowson regarding [red] and their pronouns followed in October 2020. Tweets from FW screen shots included.
 - A right-wing Post Millennial article named [red]d their work at MRU: <https://thepostmillennial.com/mount-royal-faculty-association-admits-to-white-supremacy-culture>
"John Southern" a notorious racist doxxer posted on the site: <https://www.irehr.org/2019/11/22/canadian-anti-fascists-targeted-by-john-southern/>
 - [redacted] Non-Responsive
 - On November 2, 2020 Widdowson demands a report regarding the white supremacy culture workshop that [red] was asked to facilitate regarding the MRFA's policies, procedures, and structure on October 23, 2020

Non-Responsive