

In this analysis, there will be an analysis of the investigator's finding of fault and wrongdoing with respect to the first complaint filed against Frances Widdowson. This will argue that there was no violation of the laws and policies in question and that the imposition of discipline based on the investigator's findings was a violation of Mount Royal University policy.

1. The investigator made an error in fact by referring to the "Respondent's October Tweets". Although two were posted by Widdowson, only one was found to constitute harassment.
2. There is a dispute concerning whether Widdowson intended to criticize the Complainant personally. The Complainant insists that the tweet was directed at them:

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."* (p. 8 of the report)

The investigator adduces some support for the Complainant's view, but Widdowson denies that the Tweet was personal. Even if we agree that the tweet applies to the Complainant, however, the judgment that Widdowson is guilty of the wrongdoing claimed by the investigator remains false. So, for the sake of argument, the analysis below will proceed on the assumption that the tweet in question was directed at the Complainant.

3. Here is a relevant excerpt from the report:

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 TGBQ2SLMNOP 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*.

The investigator does not justify her findings of fault and wrongdoing and so we are left to interpret them. The key judgment that the investigator makes is that

The Respondent's statements mocked the Complainant's identity. The statements were discriminatory and violate the Harassment Policy and the Human Rights Policy.

This judgment appears to be the basis of the investigator's conclusion 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*.

How might we fairly interpret the investigator's reasoning to try to understand her decision? Since the investigator alleges that Widdowson is guilty of both harassment and uttering discriminatory statements, it will be instructive to examine each of these claims in turn. Consider first the serious charge of discrimination.

With respect to trying to understand the justification that Widdowson was guilty of making discriminatory statements about the Complainant, the following is proposed. As we have noted, the investigator claims that Widdowson's statements in the tweet "mocked the Complainant's identity." Since the Complainant identifies as transgendered, and since gender identity and expression are prohibited grounds for discrimination in both Alberta's *Human Rights Act* and Mount Royal University's *Human Rights Policy*, it follows that if Widdowson "mocked the Complainant's identity" as a transgendered person, then she did make discriminatory statements.

4. Is it reasonable to conclude that Widdowson "mocked the Complainant's identity" as a transgendered person? The Complainant certainly thinks so, as is clear from the investigator's report (pages 7-8):

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."

In the tweet in question one might infer that Widdowson mocked the Complainant for claiming or implying that they are suffering from “misgendering fatigue” and for exaggerating the adverse effects of this. This allegation is connected to the cartoon that accompanies the tweet that the Complainant uses in their workshop in which a (presumably) transgendered person in the cartoon laments that “[b]y the end of the day, I feel like I am slowly being crushed by the seemingly unending burden of the gender binary”.

4.1 There is a crucial difference between wrongly discriminating against someone for *being* transgendered and criticizing a transgendered person for engaging in catastrophizing or hyperbole for exaggerating the adverse effects of being regularly misgendered. To justify the allegation that Widdowson wrongfully discriminated against the Complainant because she mocked their identity, we would need some evidence that she criticized or otherwise mistreated the Complainant for being transgendered where the mistreatment in question was factually incorrect and morally arbitrary - for example, because it was based on an offensive or vituperative or abusive generalization or stereotype. Consider, for illustrative purposes, a comparison.

- (i) Mr. X says, “We should not hire Mr. Y, who is Jewish, because he cannot be trusted to handle money.”
- (ii) Mr. X says, “We should not hire Mr. Y because Mr. Y is a Jew and everyone knows that Jews can’t be trusted to handle money.”

Whereas Mr. X’s statement in (i) is certainly critical and negative, it is not discriminatory. In contrast, Mr. X’s statement in (ii) is discriminatory because in (ii), but not (i), the reason why Mr. X is claiming that Mr. Y should not be hired is *because* he is Jewish. Such stereotyping is morally arbitrary or irrelevant (in other words, wrongfully discriminatory) because obviously there is no connection between being Jewish and being trustworthy as regards the handling of money.

Similarly, imagine Widdowson had tweeted the following:

- (iii) “The Complainant should be mocked because everyone knows that transgendered people all complain about suffering from misgendering fatigue and the Complainant is transgendered.”

If Widdowson had tweeted (iii), then there would be possibly a reason for agreeing with the investigator’s finding that:

The Respondent's statements mocked the Complainant's identity. The statements were discriminatory and violate the Harassment Policy and the Human Rights Policy.

Tweeting (iii) would possibly constitute discrimination under Alberta’s *Human Rights Act*. But that is not the tweet in question. What the Respondent tweeted was “This person has hinted that they are suffering from MISGENDERING FATIGUE.” Note that Widdowson criticized the Complainant for exaggerating their suffering from misgendering fatigue; she did not apply an offensive stereotype (that all transgendered people complain about suffering from misgendering fatigue) *to* the Complainant. Since Widdowson did not offensively stereotype the Complainant, she did not mock the Complainant’s identity as a transgendered person or engage in “targeting” the Complainant’s identity as transgendered. The investigator’s finding to the contrary is undefended and baseless.

4.2 What about the other part of the tweet? Is this a discriminatory statement? The investigator found that the “statements” in the tweet were discriminatory. Here again is the tweet in question:

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

Widdowson’s statement that “Kay’s claim is just amplifying a silenced TGBQ2SLMNOP voice!” is arguably satirical and mocking but why think that the reference to the pronouns exhibits discrimination towards the Complainant for being transgendered? Even the Complainant claims that Widdowson was “personally mocking my pronouns” as opposed to personally mocking the Complainant in the tweet. Furthermore, even if the Complainant is justified in thinking that the tweet was “personally mocking my pronouns”, and even if one asserted that mocking someone for their pronouns was indirectly mocking them, that is, once again, different than mocking that person for *being* transgendered, let alone discriminating against them for being transgendered. To think otherwise is to assume that all transgendered people must embrace the sort of initialism that the Respondent is mocking. However, to attribute this sort of *political* belief, which includes, for example, the conviction that all LGBTQ+ persons form a unified community with common and harmonious political goals, would be to *engage* in stereotyping and would *itself* be offensive because it would deny to individual transgendered persons their right to dissent to and disassociate from such views. Once again, the investigator’s contention that Widdowson’s tweet mocked the Complainant’s identity as transgendered and was therefore discriminatory is undefended and baseless. Therefore, the finding that the Widdowson violated Alberta’s *Human Rights Act* – a serious allegation – is false.

5. It was argued in section 4 that Widdowson did not make discriminatory statements about the Complainant. However, the investigator also found that Widdowson was guilty of harassment. Moreover, there are some *prima facie* reasons for thinking that Widdowson did harass the Complainant under MRU policy. For example, among the examples of personal harassment cited in Mount Royal University’s *Harassment Policy* (in section D Definitions under subsection 2 Personal Harassment) is “public reprimand, ridicule, sarcasm or humiliation” and Mount Royal’s *Human Rights Policy* defines “Personal harassment” in section D Definitions, subsection 12, as “behaviour which is known or ought reasonably to be known as unwelcome.” Thus one could argue that since Widdowson’s comments constituted public ridicule, and that they were sarcastic and should have been known to be unwelcome, they therefore were harassing under the policies in question.

5.1 Before we draw this conclusion we need to examine both the investigator’s report and Mount Royal policy more carefully. The investigator judged that Widdowson violated two MRU policies, the *Employee Code of Conduct* and the *Personal Harassment Policy*, and one law, Alberta’s *Occupational Health and Safety Act*. As for the two MRU policies, the investigator highlighted some relevant passages. Specifically, she noted the relevance of section 2 and subsection 2.11 (under E Guiding Principles) of the Mount Royal *Employee Code of Conduct*, which read as follows:

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:

...

2.11 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.

This requirement that MRU employees interact in ways that respect the dignity of others is also featured in the *Harassment Policy*, which the investigator also quotes. The first quoted passage is from Section C (Policy) and the second is from section D (Definitions):

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.

Also consider section 1.4 of Mount Royal University's *Human Rights Policy* (under C Policy Statement, section 1 Principles):

1.4 Mount Royal recognizes the variety of rights enjoyed by members of the campus community, including rights that are unique to the campus environment, such as academic freedom. Notwithstanding the range of values and interests held by members of our community, international conventions, the Canadian Charter of Rights and Freedoms, provincial Human Rights legislation and legal decisions all recognize the paramount importance and unique status of Human Rights. In all cases, the rights of individuals as protected by the *Alberta Human Rights Act*, the Mount Royal Personal Harassment Policy and/or this Policy are superordinate to other rights and freedoms in the campus community. Academic freedom does not imply the right to engage in any action that demeans the freedom or dignity of other individuals in the campus community.

The linking of respect with the protection and promotion of dignity in all three of these policies is wise because it establishes a reasonable threshold for identifying conduct as wrongfully harassing in an academic context - one that balances the need for a safe working environment with a recognition that in an academic setting, academics should not be prevented from engaging in robust disagreements in the course of discharging their primary duties to pursue and promote the truth and the advancement of knowledge. However, to clearly understand this threshold we must understand what it means to respect someone as a bearer of dignity or to not disrespect someone so as to demean them and deny them their status as bearers of dignity.

5.2 In the service of this goal, we can distinguish between three different senses of the word "respect". In the first sense, to respect someone means "to act politely or considerately towards them". To be disrespectful in this sense is to be rude, as when someone says, "It was disrespectful of him to interrupt her when she was speaking." In a second sense "respect" is a synonym for "esteem" and thus to disrespect someone in this sense means "to devalue them regarding some merit-based quality or qualities". For instance, a coach employs this second sense when she opines that "We lost because we did not respect our opponents". The coach means that they failed to hold the opposition in sufficient regard during their preparation for the game and this substandard preparation caused them to

underperform and lose. Finally, in a third sense “respect” means “to regard as a bearer of dignity capable of autonomously directing one’s affairs and life”. To respect someone in this third sense is to acknowledge their right and capacity to live and direct their own life, or in the case of people who have diminished competency, to direct the parts of their lives to the extent to which they are able to do so. This third sense is the one employed when someone remarks that “It was an overdue mark of respect that a woman’s right to vote was finally recognized in Canadian law.”

These three different senses of the concept of “respect” are distinct. To claim that citizens should be respected by being accorded equal fundamental liberty rights means much more than it would be rude not to extend them these rights. The wrong of depriving someone of their fundamental rights is not the trivial one of treating them impolitely; it is a *gross* harm because it would be to treat them as things or tools to be used for the benefit of others and to thereby deny their status as autonomous persons and bearers of dignity. This is what it means to demean someone. Similarly, being treated with respect in the deeper, third sense is owed to persons regardless of merit or judgments of esteem, at least beyond a basic level of competency. We express our conviction that people who are capable of directing their life, or some aspect or aspects of their life, should be respected as bearers of dignity regardless of how well (beyond the basic level of competency) they in fact do so. Consider another illustration:

- (iv) Ms. A had tremendous respect for Ms. B’s oratory skills.
- (v) Ms. A demonstrated respect for Ms. B’s right to freedom of expression.

The word “respect” is used in the second (esteem) sense in (iv) and the third (dignity) sense in (v). These uses connote different meanings. For although it may be ethical to respect or disrespect in the esteem sense someone’s oratory skills, it is unethical to disrespect in the dignity sense anyone’s right to freedom of expression, regardless of how well they might exercise that right.

5.3 By requiring that employees “conduct interactions in a mutually respectful manner, respecting the personal dignity of all” (MRU *Employee Code of Conduct*), by defining “harassment” as conduct that demeans and denies individuals “their dignity and respect” (MRU *Harassment Policy*), and by insisting that “Academic freedom does not imply the right to engage in any action that demeans the freedom or dignity of other individuals in the campus community” (MRU *Human Rights Policy*) these important Mount Royal University policies clearly indicate that their references to “respect” are to “respect” in the third, dignity sense.

This is as it should be considering faculty members’ ethical duties to honour each other’s basic liberty rights. Furthermore, this is the main point made in MRU’s *Human Rights Policy* in the passage I just quoted. Here is the longer passage from section A (Purpose), subsection 1.4 of that document:

Mount Royal recognizes the variety of rights enjoyed by members of the campus community, including rights that are unique to the campus environment, such as academic freedom. Notwithstanding the range of values and interests held by members of our community, international conventions, the Canadian Charter of Rights and Freedoms, provincial Human Rights legislation and legal decisions all recognize the paramount importance and unique status of Human Rights. In all cases, the rights of individuals as protected by the *Alberta Human Rights Act*, the Mount Royal Personal Harassment Policy and/or this Policy are superordinate to other rights and freedoms in the campus community. Academic freedom does not imply the right to engage in any action that demeans the freedom or dignity of other individuals in the campus community.

The significance of this section of the policy is that it clearly demarcates the limits of academic freedom rights, at least in one important respect. It sets a clear ceiling for rights to academic freedom below which they should be invoked and beyond which they do not apply. Specifically, it says that the right to academic freedom does not include a right to demean others or disrespect them in the dignity sense.

This ceiling or threshold is significant not just for demarcating the boundaries of academic freedom; it also provides guidance regarding how we should balance the value of academic freedom against the disvalue of harassment, and more generally, how we should balance esteeming the value of academic freedom against the reasonable need for employees at Mount Royal to enjoy a safe working environment. Specifically, an academic cannot appeal to their right to academic freedom to justify demeaning someone else or treating them disrespectfully in the dignity sense. On the other hand, Mount Royal University's conduct and harassment policies should not be used to suppress, chill, or limit academic debate, discussion, and criticism that falls below the ceiling. Neither should they be used to intimidate or otherwise threaten any academic who wishes to engage in such below-the-ceiling conduct. This means that a complainant cannot stifle the exercising of an academic's right to academic freedom where the academic engages in disrespectful conduct in either the first, politeness sense or the second, esteem sense.

5.4 With this deeper analysis from sections 5.1-5.3 in mind we can now reconsider the initial presumptive conclusion that Widdowson's comments were harassing because they were sarcastic public ridicule that she should have known to be unwelcome. Again assuming that the tweets were directed at the Complainant, one might contend that although they did not mock the Complainant's identity as a transgendered person, they did mock the Complainant for exaggerating their tribulations regarding the experiencing of misgendering fatigue and for endorsing the LBGTQ+ initialism that the Respondent satirized as "*TGBQ2SLMNOP*".

Although one might reasonably argue that the Respondent's tweets were mocking, the question is whether the Respondent's tweets should be regarded as protected under MRU's *Expression and Free Speech Policy*. According to Merriam-Webster, in one sense "mock" means to "treat with contempt or ridicule: deride". Furthermore, "contempt" refers to a "feeling that a person is deserving of scorn" and "scorn" is defined as "the feeling or belief that someone or something is worthless". Therefore, in one sense there is a link between mocking someone and disrespecting them in the dignity sense of "disrespect". However, according to the Oxford Dictionary, to "mock" someone is to "laugh at somebody/something in an unkind way, especially by copying what they say or do". And indeed, not only does this meaning suggest that one can be mocked for a variety of reasons of varying degrees of seriousness, but this corresponds to our ordinary way of speaking. Someone might mock someone for the way they part their hair or for the style of their shirt, but in doing so they neither intend to deprive them of dignity or suggest that they are worthless or despicable, or undeserving of respect in the dignity sense.

Likewise, mocking or making fun of or criticizing someone for exaggerating their tribulations regarding the experiencing of misgendering fatigue and for endorsing LBGTQ+ initialism does not deprive someone of their dignity or suggest that they are worthless or despicable, or unworthy of respect in the dignity sense, nor would a reasonable person attribute such intent to someone who tweeted what Widdowson tweeted. Although, such tweets might be disrespectful in both the first

(polite) sense of “disrespect” and the second (esteem) sense, it is false and unreasonable to conclude, as both the Complainant alleges and the investigator finds, that the Respondent’s action exceeded the threshold for not applying Mount Royal’s *Expression and Free Speech Policy*.

5.5 In view of all this it is worth considering how applying the investigator’s decision will violate both the intent and the letter of MRU’s *Expression and Free Speech Policy*. Here is a passage from that policy, specifically section C (Policy Statement) Statement of 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.

1.4 Members of the University community have the right to criticize and question the points of views expressed by others at the University, but may not obstruct or interfere with the free speech of others.

1.5 Free speech is an essential element of a university’s culture and therefore neither the University, nor any of its members, will attempt to shield students from ideas or opinions they disagree with or find offensive. While mutual respect and civility are valued, they may not be used as a justification to limit free speech.

When we correctly interpret Widdowson’s tweets as falling under MRU’s *Expression and Free Speech Policy* we see that she should not be censured for harassment. For although one may well argue that Widdowson’s comments constituted public ridicule, and that they were sarcastic and should have been known to be unwelcome, these are not sufficient reasons for stifling or censoring the tweets. As noted in section 1.2 “The University will not suppress presentations or debate ... [where] the points of view being expressed are thought to be offensive, unwise, immoral, extreme, harmful, incorrect or wrongheaded.” Furthermore, “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.” (1.3) If the Complainant views Widdowson’s tweets as having broken Canadian law, then they are free to avail themselves of the resources of the law in seeking justice. Moreover, “Members of the University community have the right to criticize and question the points of views expressed by others at the University ...” (1.4).

Clearly, if we accept the investigator’s contention that Widdowson’s tweets were indeed work related, then she was merely exercising her right to criticize the Complainant and question their views. Indeed, as noted in 1.4, finding against Widdowson and censoring or punishing her for exercising this right would constitute obstruction of, or interference with, her right by University administration. In other words, the University violated its own policy by finding against Widdowson. Finally, “While mutual respect and civility are valued, they may not be used as a justification to limit free speech” (1.5). Howsoever much the University would like academics to be civil and kind - where being kind, in this case, is Widdowson not criticizing the Complainant – it should not conflict with Widdowson discharging her duties as an academic and a free citizen. Not only should Widdowson rank discharging

her duties over being nice, but the University has a duty, according to its own policy, to support her in this decision.

6. Considering that Widdowson's critical remarks and conduct did not mock "the Complainant's identity" (as was shown in section 4) and that she did not disrespect the Complainant in the dignity sense, her conduct and remarks should have been judged as protected under Mount Royal's *Expression and Free Speech Policy*. Consequently, the investigator's judgment that the Respondent's "Tweets were ... not protected by the Expression and Free Speech Policy" was an error. When we consider that policy we see that Widdowson's tweets were protected.

Since the investigator's decision that the Widdowson's tweets "constituted Discrimination under Alberta's *Human Rights Act*" and since this is false (as was shown in section 4) and since the investigator's decision that "that the Respondent's October Tweets did violate the Code, the *Harassment Policy*, and the Human Rights Policy" and since, as was shown in section 5, that this is also false, the investigator's decision against Widdowson should have been disregarded and the discipline applied following the decision should be rescinded.