

# **HUMAN RIGHTS AT THE UNIVERSITY OF GUELPH**

*incorporating the*  
**HUMAN RIGHTS POLICY**  
*and the*  
**PROCEDURES FOR THE RESOLUTION OF  
HUMAN RIGHTS DISCRIMINATION AND HARASSMENT  
CONCERNS, DISPUTES AND COMPLAINTS**

THE UNIVERSITY OF GUELPH HUMAN RIGHTS POLICY AND PROCEDURES ARE SUPPLEMENTAL TO AND DO NOT REPLACE INDIVIDUAL OR GROUP RIGHTS OR RESPONSIBILITIES ARISING FROM THE ONTARIO *HUMAN RIGHTS CODE*

**This document replaces the Sexual and Gender Harassment Policy of the University**



*Policy approved by Board of Governors April 11, 2002*

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## I. THE HUMAN RIGHTS POLICY

### 1. FOUNDATION STATEMENT

The commitment to the maintenance of human dignity, of individuals and groups of individuals, is central to this policy. The University of Guelph is committed to a campus free of discrimination and harassment and is dedicated to the highest standards of human equality and academic freedom. The University actively endorses these standards at every level of the institution and in all aspects of student, faculty and staff life while individuals or groups are acting in a capacity defined by their relationship with the University. As well as promoting these values, those with supervisory responsibilities are expected to address and attempt to resolve human rights issues, whenever possible, through informal discussion or by mediation as outlined in the Procedures section attached to this Policy.

Nothing in the procedures pursuant to this policy denies or limits access to other avenues of redress available under the law, such as a complaint to the Ontario Human Rights Commission or a union or association grievance.

### 2. RELATIONSHIP TO THE ONTARIO HUMAN RIGHTS CODE

The Supreme Court of Canada has stated that the provisions of human rights codes bind universities. Where the provisions of any policy, procedure or practice of the University purport to require or authorize conduct that is in contravention of the Ontario *Human Rights Code*, the provisions of the *Code* will prevail.

### 3. STATEMENT OF COMMITMENT

Violations of human rights will not be tolerated at the University of Guelph. Discrimination and harassment based on grounds prohibited by the Ontario *Human Rights Code* devalue and taint the environment of those covered by this policy. They erode the values and the integrity of the institution. The University of Guelph values:

- every student, employee, alumnus/a and volunteer;

- an environment, for those covered by this policy, that is safe, positive, respectful and conducive to the pursuit of excellence;
- equity, innovation, accountability and accessibility;
- the existence of a collegial governance structure;
- upholding the principles of the equality rights provisions of the *Canadian Charter of Rights and Freedoms*;
- meeting its obligations under the provisions of the Ontario *Human Rights Code*;
- the uniqueness and diversity of our students, employees and community;
- a partnership of students, employees and community.

Under the *University of Guelph Act*, the ultimate responsibility for the educational policy of the University rests with Senate. This includes, but is not limited to, academic issues relating to curriculum (course content, teaching practice and methods of evaluation). It is recognized that, although the Human Rights Policy and Procedures does provide mechanisms for addressing complaints which may involve issues related to curriculum, nothing in this Human Rights Policy and Procedures will be interpreted so as to alter the Senate's jurisdiction in educational policy.

### 4. ACADEMIC FREEDOM AND HUMAN RIGHTS

Academic freedom — the right to examine, question, teach and learn freely — is a basic tenet of University life. The practice of academic freedom is supported by the provisions of the *Canadian Charter of Rights and Freedoms*, which guarantees everyone freedom of thought, belief, opinion and expression. The University of Guelph believes that the ability to investigate, speculate, comment and criticize without deference to prescribed doctrine or authority is a precious freedom that must be protected and nurtured at all times. For the University to maintain its place as a centre of excellence and to nurture its environment of creative and original research, it is crucial that academic and intellectual independence be strong

and secure.

The University acknowledges that situations arise in which there is a perceived conflict between academic freedom and human rights. A violation of either freedom is of grave concern to the institution. With respect to the interplay of human rights protection and the practice of academic freedom, it is the position of the University that, regardless of the subject matter, discussion of controversial issues in or out of the classroom is not a violation of this policy and its procedures. Academic freedom entails the right of all university community members to make statements that challenge and may even offend the sensibilities, ideas and beliefs of others. On the other hand, academic freedom does not entail a right to deny equality to or harass individuals on grounds protected by the *Human Rights Code* and this policy.

## **5. THOSE COVERED BY THIS POLICY**

This policy applies to and covers all University of Guelph administrators, students, employees, Board of Governors and Senate members, clients of the University, employee organizations, attendees, invitees, special-status organizations, volunteers and contractors, while such individuals or groups are acting in a capacity defined by their relationship with the University.

## **6. DEFINITION OF DISCRIMINATION AND HARASSMENT**

Human rights law has defined discrimination and harassment as the wrongful exercise of power, authority or control over others, whether intended or not, based on the following grounds:

- disability
- gender (described as "sex" in the Ontario *Human Rights Code* and including pregnancy and gender identity)
- sexual orientation
- race
- colour
- ancestry
- place of origin
- ethnic origin
- citizenship

- creed (faith)
- age (18 - 64 for the purposes of employment only)
- marital status
- family status
- receipt of public assistance (in accommodation only)
- same-sex partnership status

## **7. FUNDAMENTAL TENETS**

### **7.1 Presumption of Innocence**

Those named in concerns, disputes or formal complaints under this policy will be presumed innocent until a formal decision to the contrary is reached under the terms of this policy.

### **7.2 Bad Faith Allegations**

It is an offence for any person to make an allegation of discrimination or harassment in bad faith, or to initiate a procedure under this policy or to influence an ongoing procedure under this policy in bad faith. A written assertion that a bad faith allegation has been made will be treated as a formal complaint under this policy. If such an allegation is substantiated, it will be subject to the same consequences as complaints of discrimination or harassment.

### **7.3 Reprisals**

It is an offence for any person to take reprisals against individuals because they have participated in a process using this policy. Written allegations of reprisals will be treated as formal complaints and, if substantiated, will be subject to the same consequences as complaints of discrimination or harassment.

## **8. DUTIES AND RESPONSIBILITIES**

The University has a duty to maintain an environment free of discrimination and harassment for all persons served by it, and to be vigilant against violations of this tenet. The University has an obligation to make reasonable accommodation, where appropriate, on grounds covered in the Ontario *Human Rights Code* and this policy. Quite apart from the general expectations for all members

of the community, the University's administrators, deans, chairs and directors of academic departments, other directors and supervisors (referred to hereinafter as "those with supervisory responsibilities") have a particular duty to take steps to prevent discrimination and harassment on the grounds covered by this policy and to support the implementation of its procedures. Those with supervisory responsibilities are also encouraged to support, where established, special programs designed to eliminate disadvantage caused by discrimination.

## **9. CONFIDENTIALITY**

Confidentiality is preferred and will usually lead to the best outcome for the parties concerned. Therefore, parties to a concern, dispute or formal complaint (including witnesses called during a fact-finding procedure and any other persons involved in addressing the matter as indicated in Part II, Sections 5, 6 and 7.2) have a responsibility to maintain confidentiality. Lifting of confidentiality subsequent to resolution of a concern, dispute or formal complaint is subject to negotiation and agreement by the parties during the resolution process. Breach of confidentiality at any stage will be considered a serious offence and may result in disciplinary action. However, where any member of the University or visitor to the University may be at risk, information pertaining to health and safety may be reported to the appropriate authority at any stage during the process. Further, where confidentiality has been breached, a right of public response may be requested through the appropriate University authority as defined in Part II, Section 7.5 for decisions regarding conflict of interest and/or bias.

## **10. THE HUMAN RIGHTS AND EQUITY OFFICE**

The Human Rights and Equity Office will function with impartiality in carrying out its role as set out in this policy and its procedures.

The Human Rights and Equity Office is responsible for:

- Assisting those with supervisory responsibilities in the resolution of human rights concerns. The mandate of the Human Rights and Equity Office is also to manage the fact-finding process in a consistent, timely and fair manner, and otherwise act on any equity-related matters that may be referred to the office by the President of the University of Guelph.
- Helping those who are involved in the dispute or complaint resolution procedures under this policy to acquire the assistance and support of trained personnel.
- Bringing to the attention of those in positions of responsibility any University policy, procedures and practices that appear to discriminate against individuals or groups based on prohibited grounds.

## **II. THE PROCEDURES**

### **1. GENERAL INTRODUCTION**

The University of Guelph has developed processes for dealing with human rights issues that are fair and equitable to all members of the community. The Human Rights and Equity Office has the responsibility, through its director, to manage these processes and to provide support for all participants in any process, except in cases where an issue may impinge on the Office or its officers. The Human Rights and Equity Office will be responsible for managing the process leading to the selection of Human Rights Resource Personnel who will be trained to support people in dealing with human rights issues. These individuals will be available to any person or group covered by this policy.

### **2. THE PROCESSES FOR DEALING WITH HUMAN RIGHTS ISSUES**

Where possible the policy is intended to provide an opportunity for resolution of issues at the lowest level. The procedures described below not only apply to individuals pursuing or responding to concerns, disputes or formal complaints but they also apply to groups. Three separate processes are possible:

- informal resolution of a Human Rights concern (Section 5);
- mediated resolution of a Human Rights dispute (Section 6);
- formal complaint process (Section 7).

Each of the processes above is complete and self-contained, but individuals have the right to use any of these processes if resolution, satisfactory to the parties involved, is not achieved. At any time during the human rights concern or complaint resolution processes, the parties may request mediation and suspend the process in which they are currently engaged. In addition, informal resolution of a concern may be stopped and replaced by a formal complaint process. To encourage use of mediation, however, information gathered solely during mediation will not be automatically transferable to the process dealing with a formal complaint.

To make sure that formal complaints can be dealt with in a fair, equitable and consistent manner, an investigation will take place by a “fact-finding team”. The composition of this team will be consistent and comprise three people who have been professionally trained to conduct an investigation according to the provision of Section 3 of the procedures. The fact-finding team will provide the relevant authority with a written report. The relevant authority will be either the vice-president (Academic) or the vice-president (Finance and Administration), in normal circumstances. This officer will review the written report and determine whether or not there is sufficient evidence to invoke disciplinary proceedings. The course of such proceedings will depend on the nature of the respondent’s position in the University and will be determined by the processes established for that group. If the complaint is upheld, the responding vice president will also make a decision on whether or not remedial actions should be put in place to prevent a recurrence of the event.

University employees who are covered by a collective agreement or other policy with the University have an obligation to file grievances within a specific period. In such cases, employees may elect to hold the processing of their grievance

in abeyance until such time as their formal complaint under these procedures has been resolved.

Translation services will be provided through the Human Rights and Equity Office should they be needed.

Nothing in this procedure precludes the vice-president (Academic) or vice-president (Finance and Administration) from invoking a fact-finding process in accordance with these procedures in a situation where the University reasonably believes that discrimination or harassment may have occurred, even though no person has complained about a violation of the University’s Human Rights Policy.

### 3. HUMAN RIGHTS FACT FINDERS AND RESOURCE PERSONS

**Fact-Finders:** The University will establish a pool of fact-finders to participate in the resolution of complaints in accordance with the provisions of this procedure. The Human Rights and Equity Office will seek volunteers and nominations on an annual basis from student and employee groups of the University. Volunteers and nominees will be short-listed and selected by a committee composed of the provost and vice-president (Academic), vice-president (Finance and Administration), associate vice-president (Student Affairs) and the director of the Human Rights and Equity Office. In addition, the number of fact-finders in the pool will be determined by the selection committee. The list of those named to the pool will be forwarded to the University’s Judicial Officer or designate, who, when necessary, will appoint persons from the list to fact-finding teams. The Judicial Officer or designate will train the persons selected for the pool of fact-finders. A term within the fact-finders’ pool will be twelve months, and any individual may hold up to five consecutive terms.

**Human Rights Resource Persons:** The Human Rights and Equity Office will be responsible for seeking volunteers from the University community to establish a pool of human rights resource persons trained to provide advice to individuals or groups who become engaged in these procedures. Human rights resource persons will be chosen by a

sub-committee of the Human Rights Advisory Group (Section 9) and will be deployed from the Human Rights and Equity Office. External consultants, appointed by the University, will train those selected for the pool of resource persons. A term within the resource persons' pool will be twelve months, and any individual may hold up to five consecutive terms.

#### **4. CONFIDENTIALITY**

Any alleged breach of confidentiality will be addressed by the fact-finding team, who will determine whether or not there was a breach and will recommend how to proceed to the appropriate person with supervisory responsibilities. (See Part I, Section 9).

All correspondence and other documents generated under these procedures must be marked "Private and Confidential." This documentation whether pursuant to a concern, dispute or complaint is to be held in a secure manner as described in Section 7.13 of these procedures.

### **5. INFORMAL RESOLUTION OF HUMAN RIGHTS CONCERNS**

#### **5.1 Response to Human Rights Concerns by those with Supervisory Responsibilities**

Those with supervisory responsibilities must ensure that accurate and complete records are kept in a confidential file specific to the case, or in the respondent's personal file (Special Plan, Article 27) if s/he is a member of faculty or professional librarians. When the concern process is terminated or completed, all documentation pertaining to the case will be transferred to secure storage as described in Section 4 of the procedures. They must ensure that the fact that concerns have been raised or resolved does not become part of any performance review or other evaluation of the individuals concerned unless permission has been given.

Initially, both parties must be informed of the existence of this policy and these procedures, and the steps to be followed must be outlined. When this is done, it is important that the person with supervisory responsibilities follow up with both

parties to determine how they wish to proceed. There are three options that those with supervisory responsibilities should consider to manage human rights concerns. The Human Rights and Equity Office can be consulted in assessing these options.

#### ***Option 1: Suggest discussion of the concern between the parties.***

The supervisor will suggest to the person expressing the concern, where appropriate, that she or he approach the person whose behaviour gives cause for concern, making it clear why the behaviour is viewed as unacceptable and gives rise to concern.

#### ***Option 2: Inform the respondent of the concern and of the Human Rights policy.***

The supervisor will explain the concerned person's understanding of the University's expectation of appropriate behaviour and provide the person whose behaviour is in question with a copy of *Human Rights at the University of Guelph*.

#### ***Option 3: Provide third-party assistance.***

If either party is not comfortable speaking privately with the other, a person who is trained to facilitate the resolution of human rights concerns and who is acceptable to both parties may assist.

With each option, the person with supervisory responsibilities will follow up with both parties to see whether the concern was resolved to the satisfaction of both parties, and that the resolution is consistent with this policy and these procedures.

#### **5.2 Important Points for Facilitating Resolution of Human Rights Concerns**

(i) Those with supervisory responsibilities may facilitate a resolution by helping the person with concerns to develop a plan of action. This plan may include a variety of initiatives, such as the person with concerns speaking with or writing to the person whose behaviour is being questioned. Such communication could include a statement that the alleged incident is possibly in violation of University policy and request an end to the alleged behaviour. When a plan is developed, the person with supervisory responsibilities will monitor the situation and, if necessary, hold meetings (together or separately, as appropriate) with both parties to ensure that the plan is implemented and effective

for the parties involved.

(ii) Those involved should be advised to take notes about the situation, including when the alleged incident or incidents occurred and who was present.

(iii) Note that, in some cases, it will not be appropriate to propose to the person with concerns that he/she speaks privately about her/his human rights concerns with the person whose behaviour is in question. For example, if concerns have been raised about personal safety or intimidation, or if the person concerned believes that the situation will escalate as a result of a private confrontation, the person concerned should be supported in pursuing other options.

(iv) When human rights concerns arise, a resolution supported by a union and/or other employee group is desirable, whenever applicable and possible. In such circumstances, those with supervisory responsibilities will ensure that there has also been compliance with the terms of this policy and these procedures.

## **6. MEDIATED RESOLUTION OF HUMAN RIGHTS DISPUTES**

Where alleged harassment is the basis of the dispute, mediation involves a third party acting as a facilitator in direct communication between the two disputants. Where systemic discrimination or a failure to accommodate a person with a disability is alleged, the parties to mediation may include the individual disputing the policy, practice or procedure, as well as those with supervisory responsibility in the matter. Mediation is not appropriate when only one disputant is committed to the process. Mediation may not be appropriate in circumstances where there have been allegations of physical violence, threats to safety, serious emotional or physical abuse or intimidation or where the relationship between the disputants is that of supervisor and supervisee. Mediation does not lead to disciplinary outcomes unless agreed to by the parties concerned.

Those with supervisory responsibilities will advise both parties to mediation that information obtained during mediation or an attempted settlement arising from the mediation is “off the record” and/or

“without prejudice” and will not be introduced automatically as evidence in any subsequent fact-finding or hearing. Mediators cannot be compelled to give evidence in any future or concurrent university proceeding regarding any information disclosed during the mediation process.

Whenever mediation is sought, the Human Rights and Equity Office will provide or approve trained mediators who are acceptable to both parties. The mediator(s) will be drawn from areas of the University community other than those of the disputants.

Any settlement must be mutually accepted by the parties and approved by the Human Rights and Equity Office and by those with supervisory responsibilities who are responsible for implementing or monitoring the terms of the agreement.

Meetings required for mediation sessions will be scheduled by the Human Rights and Equity Office. These meetings should take place as quickly as possible after mediation is sought and should balance convenience for the complainant, the respondent and the mediator.

## **7. THE FORMAL COMPLAINT PROCESS**

### **7.1 The Formal Complaint**

For a formal complaint to be made under these procedures, the complainant must complete the prescribed formal complaint form (see attached form), which must be signed and dated. Usually, it will be the individual affected by the alleged discrimination or harassment who will file a formal complaint. Formal complaints may also be made by persons representing the complainant. In all cases, the formal complaint form will be forwarded to the University's Human Rights and Equity Office. Those with supervisory responsibilities who receive a formal human rights complaint on the prescribed form will retain a copy and forward the original of the complaint to the Human Rights and Equity Office.

## **7.2 Assistance and Representation for Complainants, Respondents and Witnesses During the Formal Complaint Process**

In the preparation of a formal complaint, individuals are encouraged to seek the assistance of any of the following individuals:

- human rights resource person from a roster maintained by the Human Rights and Equity Office;
- union or association representative;
- representative of a student organization;
- employee, colleague, friend or relative.

Persons who are parties to the fact-finding process may seek assistance from any of these individuals and, if desired, be accompanied by up to two of these individuals during the process.

## **7.3 Actions of the Human Rights and Equity Office on Receiving a Formal Complaint**

On receiving a formal complaint, the director of the Human Rights and Equity Office will establish a fact-finding team as described in Section 7.4. The director will also review the formal complaint to determine if:

- (i) the University has jurisdiction;
- (ii) the allegation(s) is (are) based on a prohibited ground;
- (iii) the most recent alleged incident occurred within the past six months;
- (iv) there are any safety or health concerns that require immediate action.

Immediately after the formal complaint is filed, the director of the Human Rights and Equity Office, in consultation with the appropriate supervisory or academic personnel, will determine if any immediate action or interim measures are required to protect the University community or any of its members. These measures may include limiting access to facilities, making arrangements for alternative grading or supervisory relationships, or discontinuing contact between the complainant and the respondent during the period of the proceedings. Interim measures, if required, are to be implemented by the appropriate University personnel. Thus, the director of the Human Rights and Equity Office, in consultation with the appropriate supervisory or academic personnel

shall, on a balance of probabilities, determine whether or not:

- (i) the continued proximity of the complainant and respondent will impair the ability of either to function at their studies, at work or in their University residential environment;
- (ii) there has been a reprisal or the threat of reprisal exists;
- (iii) the complainant or respondent poses a safety risk.

Where it has been determined that one or more of the above three conditions or risks exist:

- (i) The respondent (or the complainant, if appropriate) will be relocated to another area in the workplace without loss of wages and benefits, pending final disposition of the formal complaint.
- (ii) If this is not possible or if it can be shown that the respondent or complainant poses a safety risk to others, pending final disposition of the formal complaint:
  - (a) An employee respondent (or complainant, if appropriate) will be placed on home assignment without loss of wages and benefits.
  - (b) A student respondent (or complainant, if appropriate) will be excluded from one or more of her/his classes, residence or the University in accordance with the University's regulations governing student behaviour. Where such precautions are taken with respect to a student, the student's studies will be supported pending the outcome of the situation.
- (iii) To the extent practicable, other users of University premises or premises where University programs take place who are respondents will be required to have no contact, either direct or indirect, with a complainant until the fact-finding has been concluded and its recommendations acted on.

Note that a temporary separation pursuant to this provision should not be viewed as "discipline" or a "transfer" within the meaning of any collective agreement or policy.

In the event that the director of the Human Rights

and Equity Office is either a complainant or a respondent to a formal complaint, the role of the director as outlined in this section will be assumed by a person appointed by the president of the University.

#### **7.4 Composition of the Fact-Finding Team**

The path taken in pursuing a formal complaint is determined by the particular capacity in which a respondent individual or group was functioning in relation to the university when the event(s) leading to the allegation(s) of the complainant are said to have occurred. Whenever a written complaint has been filed, the Human Rights and Equity Office will establish a fact-finding team composed in the following ways depending on the position of the respondent:

**(i) Deans and staff directors**

- the director of the Human Rights and Equity Office or a human rights consultant from the Human Rights and Equity Office;
- the vice-president or designate to whom the respondent reports;
- one additional fact-finder drawn from the pool held by the University's Judicial Officer.

**(ii) Chairs and academic directors**

- the director of the Human Rights and Equity Office or a human rights consultant from the Human Rights and Equity Office;
- the dean or designate (determined by the provost) to whom the respondent reports;
- one additional fact-finder (see above).

**(iii) Vice-presidents, the president of the University and members of the Board of Governors**

- the director of the Human Rights and Equity Office or a human rights consultant from the Human Rights and Equity Office;
- a university vice-president;
- one additional fact-finder (see above).

**(iv) Members of the Human Rights and Equity Office\***

- a vice-president;
- a departmental chair or staff director;
- one additional fact-finder (see above).

\* the fact-finding team will be established by the University President in this case

**(v) Faculty and professional librarians**

- the director of the Human Rights and Equity Office or a human rights consultant from the Human Rights and Equity Office;
- the chair or director to whom the respondent reports;
- one additional fact-finder (see above).

**(vi) University staff**

- The director of the Human Rights and Equity Office or a human rights consultant from the Human Rights and Equity Office;
- the supervisor or designate to whom the respondent reports;
- one additional fact-finder (see above).

**(vii) Students**

- the director of the Human Rights and Equity Office or a human rights consultant from the Human Rights and Equity Office;
- two additional fact-finders, of whom at least one will be an undergraduate or graduate student, as appropriate.

**(viii) Other users of university premises and programs**

- the director of the Human Rights and Equity Office or a human rights consultant from the Human Rights and Equity Office;
- one senior employee from the University's Human Resources Division;
- one additional fact-finder (see above).

**(ix) Other individuals or groups not covered by categories above**

- the vice-president (Finance and Administration) and the vice-president (Academic) will determine whether the matter should be referred to an external alternative dispute resolution process or a retired judge as appropriate.

In each case, the fact-finding team will, in conformity with all other parts of this procedure, complete the fact-finding report.

#### **7.5 Potential Conflict of Interest or Apprehension of Bias**

Immediately after a fact-finding team has been convoked, the fact-finders will disclose to one another any potential conflicts of interest that they have with any of the parties to the formal

complaint. The fact-finding team will determine whether a declared potential conflict of interest will result in the replacement of the member in question.

The nature and circumstances of all declared potential conflicts of interest, together with the fact-finding team's conclusions regarding the matter, will be noted in writing in both the preliminary and the final report concerning the formal complaint.

Any party to a formal complaint may challenge the appointment of one or more individuals to a fact-finding team on the ground that the individual has a potential conflict of interest in the outcome of the matter or that there is a reasonable apprehension of bias on his/her part. A party raising the challenge will state the challenge in writing to the director of the Human Rights and Equity Office.

Where the director of the Human Rights and Equity Office has received a challenge to the appointment of one or more members of a fact-finding team, the director will immediately forward all documentation regarding the challenge to the vice-president (Finance and Administration) in the case of faculty, professional librarians, students or other users of university premises and programs and to the provost and vice-president (Academic) in the case of staff challengers. Likewise, challenges raised by chairs, academic directors, deans, or staff directors will be directed to a vice-president to whom the challenger does not report. A challenge made by a vice-president will be directed to the chair of the Board of Governors, whereas a challenge raised by the president of the University, by a member of the Board of Governors, or by a member of the Human Rights and Equity Office will be directed to the provost and vice-president (Academic).

The decision of the vice-president, or the chair of the Board of Governors, with regard to the potential for conflict of interest or for bias will be made within five University working days of having received the challenge, and the decision will be final.

## **7.6 The Fact-Finding Team: Initial Actions**

The fact-finding team will attempt to make all

decisions by complete agreement. Where this is not possible, the fact-finding team will vote on the issue and abide by a majority decision.

The fact-finding team may decide to suspend any fact-finding in the event the formal complaint is amenable to — and the parties mutually decide to resort to — mediation. In determining whether a formal complaint is amenable to mediation, a fact-finding team will consider factors such as:

- the University's legal responsibility to provide an environment free from harassment and discrimination;
- whether the matter involves express or implied threats, intimidation or coercion.

The fact-finding team may decide to postpone, suspend or cancel any fact-finding if its continuance would duplicate or prejudice another proceeding or bring the administration of this policy and procedure into disrepute. In coming to a decision, the fact-finding team will consider such factors as:

- the University's legal responsibility to provide an environment free from harassment and discrimination;
- the recognition that grievances may be filed simultaneously with complaints in order to comply with negotiated timelines; (Should a complainant under these circumstances elect to grieve a human rights matter under his/her collective agreement or other policy established with the University rather than through this policy and procedures, the University reserves the right to continue with its own fact-finding to address the matter in compliance with its obligations under the Ontario *Human Rights Code*.)
- other legal procedures that may be initiated to protect statutory rights;
- the wishes of the parties.

The filing of a counter-complaint by a respondent against a complainant regarding matters subject to a fact-finding under these procedures will not result in a separate fact-finding. The allegations raised by the respondent will be addressed within the scope of the original fact-finding.

In the event that the fact-finding team determines that a fact-finding should take place, it will devise

a written fact-finding plan under which it will interview the complainant, the respondent and all witnesses whom the fact-finding team determines to have any information relevant to the allegations. In addition, the fact-finding team will list those persons who, although named as witnesses, in its view had no information bearing on the allegations or were not available for interview. If it appears to the fact-finding team that other persons not named by the parties may have information related to the formal complaint, every effort should be made to interview these potential witnesses. It may also be necessary to re-interview the complainant and/or respondent before issuing the draft report.

### 7.7 Right to Respond

During the fact-finding process, every attempt will be made to interview the complainant first. Usually, the respondent will be interviewed second because the respondent has the right to reply fully to allegations made against her/him and to name her/his witnesses. If a party or witness declines to participate in a fact-finding process, the process will proceed to a conclusion and any resulting recommendations will be forwarded to the appropriate person(s) with supervisory responsibilities. In all circumstances, interviews with witnesses will occur after the complainant and respondent have been given an opportunity to be interviewed.

### 7.8 Standard of Proof and Rules of Evidence

Conclusions about whether a specific allegation did or did not occur are based on a “balance of probabilities”, the same standard used in human rights inquiries and civil law matters, and not on the more stringent standard of “beyond a reasonable doubt” used in criminal trials. Fact-finding teams will gather evidence in a manner which is consistent with the rules of evidence observed by the University of Guelph tribunals to which they ultimately report.

### 7.9 Withdrawing a Formal Complaint

A formal complaint may be withdrawn at any time, but the withdrawal of the formal complaint must be done in writing. The withdrawal of a formal

complaint will not stop a fact-finding process if the fact-finding team has a reasonable belief that:

- discrimination or harassment has occurred;
- the withdrawal of the formal complaint would prejudice the respondent;
- the formal complaint was in bad faith.

In such circumstances, the fact-finding team will proceed to conduct or complete a fact-finding into the matter.

### 7.10 The Fact-Finding Report

Once the fact-finding is complete, the fact-finding team shall give a draft report to the parties detailing (*see section 7.14 on timelines*):

- allegations giving rise to the formal complaint;
- grounds in this policy that have allegedly been violated;
- any responses of the respondent and complainant as outlined in Section 7.7;
- findings of fact;
- one of four recommendations:
  - a. that the case be closed on the grounds of insufficient evidence of a breach of this policy;
  - b. that a settlement be reached without the possibility of disciplinary action;
  - c. that procedures be initiated that could lead to disciplinary action against the respondent;
  - d. that procedures be initiated that could result in disciplinary action against the complainant on the grounds of a malicious, vexatious or trivial complaint.

The outcome of any subsequent process is independent of the recommendations of the fact-finding team.

The complainant and respondent have the right to comment in writing on the draft report before a final report is issued. The complainant and respondent must submit their comments to the fact-finding team within the timeframe outlined in Section 7.14. Based on the results of the fact-finding process and the responses to the draft report, the fact-finding team will prepare a final report. The timelines for preparation and submission of the draft and final report of the fact-finding team are outlined in Section 7.14.

Requests by the complainants or respondents to extend the timeline for commenting upon the draft report, based on reasonable grounds, will be submitted to the fact-finding team for consideration. Permission for such an extension will not be unreasonably withheld.

Copies of the final report will be distributed by the Human Rights and Equity Office to the complainant and the respondent and, in the case of the parties' refusal or inability to mediate, to the appropriate authority (defined by the respondent's group) as follows:

- students - associate vice-president (Student Affairs)
- staff - vice-president to whom the respondent reports
- members of the Human Rights and Equity Office - University President
- faculty, professional librarians, chairs, academic directors, deans and staff directors - provost and vice-president (Academic)
- vice presidents - University President
- the University President and members of the Board of Governors - Chair of the Board of Governors
- Chair of the Board of Governors - vice-chair of the Board of Governors
- other users of University premises or programs - either the provost and vice-president (Academic) or the vice-president (Finance and Administration) as appropriate

### **7.11 Process Following Submission of the Fact-Finders' Report**

- (i) For members of the University community, the authority in receipt of the final fact-finding report will determine whether sufficient evidence exists to proceed with the case and, if so, whether a procedure should be initiated that could lead to disciplinary action. In cases involving faculty, the Disciplinary Tribunal proceedings will be invoked according to Faculty Policy (Section F Part 4). In cases involving students, the proceedings will be dealt with through Student Rights and Responsibilities and managed through the judicial process by the associate vice-president

(Student Affairs). In cases involving staff, a Staff Human Rights Committee will be established by either the vice-president (Academic) or vice-president (Finance and Administration) to review the case and the possible outcomes. Officers of the University, including members of the Board of Governors, for whom no such procedure is in place, will follow a tribunal path in parallel with that laid out for faculty and professional librarians and, in such cases, the tribunals will be established by the authority to whom the final fact-finding report was submitted (Section 7.10).

- (ii) The merits of a case against other users of University premises or programs will be determined by the provost and vice-president (Academic) or by the vice-president (Finance and Administration).

### **7.12 Disciplinary Action**

#### **Unsubstantiated Complaints**

With the exception of a finding that a complaint is malicious, vexatious or trivial (Section 7.10), no further action will be taken if a complaint is not substantiated. Consistent with Section 7.13, no record will be kept of an unsubstantiated complaint.

#### **Complaints Substantiated by Tribunals, Hearing Panels or Grievance Boards**

A substantiated complaint will result in discipline according to the established procedures of the tribunal, hearing panel or grievance board which examined the case. Tribunals for members of groups without such negotiated procedures will determine disciplinary action in parallel with the policies set out for the faculty and professional librarians.

#### **Complaints substantiated against respondents who are other users of university premises or programs**

Outcomes must be deemed appropriate for the individual situation and may include such responses as a letter of disapproval and warning, revocation of permits or contracts, issuance of a no-trespass warning and/or notification to the police of the violation of this policy.

#### **Systemic Discrimination**

In such circumstances, a hearing panel will refer its recommended actions to the University vice-president(s) responsible for the affected area(s).

### **Procedures to Inform Complainants and Respondents of Decisions**

Procedures established in negotiated agreements will be followed where applicable. In the case of a tribunal for a case against an officer of the University who has no such negotiated agreement, the procedures established for faculty and professional librarians will be followed. Parties to a formal complaint against other users of University premises or programs will be informed of the outcome of the case, in writing, either by the provost and vice-president (Academic) or by the vice-president (Finance and Administration).

#### **7.13 Records**

Records of fact-finding and other processes in connection with a formal complaint under this policy against a member of faculty or professional librarians will be held in the office of the provost and vice-president (Academic) as prescribed for records of tribunals under Faculty Policies. Access to such records will be in accordance with the provisions of the Special Plan Agreement with respect to personal files. Records pertaining to respondents of all other groups will be kept in the University's Human Rights and Equity Office. For all groups, records will be held for two years from the date of the final decision. If by that time there is no further activity in the matter, no fact-finding processes under these procedures or other related policy or legislation involving a party to the original complaint, or no further activity in relation to the original complaint, all records of the complaint will be destroyed.

Whenever a formal complaint has been substantiated, the appropriate supervisor will ensure that a record of the disciplinary outcome be placed in the respondent employee's official personal/confidential file in the case of faculty members or professional librarians and in the respondent's file held in the Human Resources Division in the case of staff members and in their dean's confidential files in the case of student respondents. Where the respondent belongs to

another group, the record of disciplinary outcome will be held subject to the provisions of any applicable agreement and policies, or by the office of the vice-president (Finance and Administration) or vice-president (Academic).

If there is a previous record of less than two years standing on file, a prior disciplinary record established under this policy may be submitted to a hearing panel to assist the panel in determining the appropriate disciplinary outcome in a subsequently substantiated matter.

There will be no access to files or other materials obtained or generated during or after attempts to resolve a human rights matter, unless compelled by law, except to the parties directly involved in the formal process i.e., not witnesses.

#### **7.14 Timelines**

All formal complaints must be reported within six months of the most recent alleged discriminatory or harassing behaviour, as prompt reporting protects the rights of all parties to a complaint. This six-month time limit does not apply when the deadline has passed as a result of a complainant or disputant attempting to resolve the matter either informally or through mediation. Further, the time limit may be extended where the complainant's delay has occurred in good faith and does not prejudice the respondent in defending against the complaint.

To seek a waiver of the six-month time limit for filing formal complaints, complainants who are faculty members, professional librarians or students will seek, through the fact-finding team, the approval of the vice-president (Finance and Administration). To seek a waiver of the six-month time limit for filing formal complaints, staff members will seek, through the fact-finding team, the approval of the provost and vice-president (Academic).

No timelines under these procedures are in effect until the Human Rights and Equity Office receives the completed and signed formal complaint form.

Meetings required under these procedures should occur as quickly as possible on a balance of convenience for the complainant, the respondent and the Human Rights and Equity Office. From the initiation of the fact-finding process, which will be

taken as the time when the Fact-Finding Team is agreed, to the issuing of a draft report to the parties, a fact-finding process will be completed within 50 University working days. Requests by the fact-finding team to extend any timeline established under these procedures, based on reasonable grounds, will be submitted to the vice-president (finance and administration) in the case of faculty, professional librarian or student respondents and to the provost and vice-president (academic) in the case of staff respondents.

The Human Rights and Equity Office will:

- (i) within two University working days of receipt of the formal complaint:
  - a. notify the appropriate person(s) with supervisory responsibilities of the formal complaint;
  - b. notify the complainant in writing of receipt of the formal complaint and include a copy of the *Human Rights Policy* of the University of Guelph;
  - c. notify the respondent in writing of receipt of the formal complaint and include a copy of the *Human Rights Policy* and the formal complaint form with any attachments.
- (ii) within the following ten (10) University working days solicit a written response to the complainant's allegations from the respondent;
- (iii) communicate the respondent's written response to the complainant and within 10 University working days solicit a written reply to the respondent's response;
- (iv) within 10 University working days of receipt of a formal complaint form strike a fact-finding team. The fact-finding process into the formal complaint will commence on receipt of the complainant's reply in (iii) above.

## **8. ANNUAL REPORTING AND USE OF RECORDS FOR STATISTICAL PURPOSES**

The Director of the Human Rights and Equity Office will provide a written report, annually, to the University President regarding the numbers, types and outcomes of cases relating to this policy and these procedures encountered at the University of Guelph in the preceding year. In turn, subject to

application of discretionary powers, the President will release the report to the university community. Statistics for the report, or for other purposes, may be derived from confidential records, but will be worded in such a way as to maintain the anonymity of persons named or otherwise involved in proceedings. For statistical purposes all allegations of discrimination or harassment will be reported without names or specific details. In the data gathering and reporting process, a distinction will be made between inquiries, concerns, mediated disputes and complaints.

## **9. MONITORING AND AMENDMENT**

A Human Rights Advisory Group (HRAG) will be established to advise the director of the Human Rights and Equity Office on matters pertaining to this policy. HRAG will comprise two representatives from each employee group, two undergraduate and two graduate students, a representative from the senior executive of the University and the director of the Human Rights and Equity Office who will also chair the Group. Apart from the director of the Human Rights and Equity Office, members of HRAG will be nominated annually to the Advisory Group by the appropriate constituency group. The mandate of the committee will be to advise the director of the Human Rights and Equity Office on the following:

- use of this policy and its procedures;
- proposed changes to the policy and procedures;
- preparation of the annual report to the president, including analysis of statistical information about use of the policy;
- timing and process for a formal review of the policy and its procedures to be recommended to the president;
- appointment of Human Rights Resource Persons by action through a subcommittee of the committee.

## **III. GLOSSARY OF TERMS**

The glossary contains definitions of terms and phrases commonly used in dealing with human rights matters. The terms and phrases do not necessarily represent strict academic definitions of each item but reflect their use in human rights

matters. Evolution in the understanding of any of these terms may be considered during an amendment process as outlined in Part II, Section 9.

**Academic Freedom** means “academic freedom” as defined in the Special Plan Agreement. This definition of academic freedom also applies *mutatis mutandis* to all others covered by this policy.

**Accommodation** *see* Duty to Accommodate.

**Age** means an age that is 18 years or more, except in cases of employment, in which case age means an age that is 18 years or more and less than 65 years.

**Ancestry** means a line of people from whom one is descended; family descent.

**Bad Faith** exists when an allegation is made for dishonest, vexatious or malicious reasons.

**Bias** is a propensity, predisposition or prejudice. The apprehension of bias occurs when an individual or group believes that another individual or group cannot assess a matter fairly because of bias. Reasonable apprehension of bias exists when there is reasonable belief that an individual or group will pre-judge a matter.

**Citizenship** accrues to all persons born in Canada or all persons who have become naturalized in Canada.

Colour *see* Race

**Condonation** occurs when breaches of the Ontario *Human Rights Code*, this policy or its procedures are tacitly accepted: for example, ignoring racist jokes or failing to respond to complaints. The Ontario *Human Rights Code* states that corporate liability can result when those with supervisory responsibilities condone (implicitly or explicitly) any discriminatory or harassing behaviour of others.

**Creed** is defined as a professed system and confession of faith, including both beliefs and observances or worship. A belief in a god or gods or a single supreme being or deity is not a requisite.

**Disability** means that a person has or has had, or is believed to have or have had:

- any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and,

without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair or other remedial appliance or device,

- a condition of mental or psychological impairment,
- a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- a mental disorder, or
- an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997.

**Discrimination** is any practice or behaviour, whether intentional or not, that negatively affects an individual or group on the basis of one or more of the prohibited grounds defined by the Ontario *Human Rights Code* or this policy. Discrimination may be direct or indirect. Requirements, qualifications or factors that appear neutral may be discriminatory if they have the effect of preferring, excluding or restricting a group of persons on the basis of a prohibited ground under the Ontario *Human Rights Code*, this policy or its procedures. Discrimination may also arise as a result of hate-group activity.

**Duty to Accommodate** may be invoked where a factor or qualification is imposed in good faith but has the effect, when applied, of preferring or adversely affecting an individual or group of individuals on the basis of a prohibited ground under the Ontario *Human Rights Code* or this policy. For example, this could apply where a person with a disability is otherwise unable to carry out the essential requirements of employment or the essential requirements that are necessary to access a service. Accommodation is not required if it would pose an undue hardship. For example, reasonable accommodation in the provision of education does not mean that the University’s academic standards should be compromised.

**Ethnic Origin** refers to a group of people having a heritage and a common ancestry or shared historical past, as well as identifiable physical, cultural, linguistic and religious characteristics.

**Family Status** means the status of being in a parent-and-child relationship.

**Gender** is the cultural definition of behaviour defined as appropriate to the sexes in a given society at a given time.

**Gender Identity** is an individual's sense of his/her gender. This belief is not contingent on the individual's biological sex.

Handicap *see* Disability

**Harassment** is a form of discrimination based on one or more of the prohibited grounds identified by the Ontario *Human Rights Code* or by this policy. The *Code* defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome." Harassment may be either subtle or blunt and may include verbal or physical abuse, jokes, slurs, graffiti, pejorative or demeaning names, hate-group activity and ostracism. Sexual harassment can include a sexual advance, request for sexual favours or sexual flirtation or banter that is known, or ought reasonably to be known, to be unwanted. It is particularly pernicious where the solicitation or advance is made by any person in a position to grant, confer or deny a benefit, privilege or advancement to the person subjected to the harassment.

**Invitees** are persons who enter University lands and property through either express or implied permission. Their business may be connected to University business or with activities that the University conducts or permits to be conducted on its land or property.

**Marital Status** is the status of being married, single, widowed, divorced, separated or living with a person of the opposite sex or the same sex.

**Merit and Foundation** must be found for a matter to proceed under this policy and its procedures. A matter may be said to be without foundation if, although the facts alleged can be proven, it cannot succeed on its merits. For example, a matter will not be able to succeed on its merits if the University lacks the jurisdiction to hear it or where

the allegation is not based on a ground covered by this policy. This would include circumstances where the undisputed facts clearly provide a defence.

**Negative Environments or Climates** are created by acts or omissions that permit offensive, hostile or intimidating climates for individuals or groups based on one or more of the prohibited grounds of discrimination. These acts or omissions can have the effect of "poisoning" the environment. In this context, discriminatory behaviour by those covered by this policy while engaged in university affairs or at university-related events, can have a negative effect on the University community.

A negative environment is characterized by condonation of, or participation in, such matters as: pinups, language or graffiti that demeans groups on the basis of prohibited grounds identified either by the Ontario *Human Rights Code* or by this policy; failure to implement special programs; and the failure to review and change policies, practices and procedures that discriminate on any ground prohibited by this policy.

**Place of Origin** covers characteristics that are strongly associated with a particular place, including a country, state, province, group of countries or city.

**Race** refers to a group of people of common ancestry, distinguished from others by physical characteristics such as colour of skin, shape of eyes, hair texture or facial features. (This definition refers to the common usage of the term *race* when dealing with Human Rights matters. It does not reflect the current scientific debate about the validity of phenotypic descriptions of individuals and groups of individuals). The term is also used to designate the social categories into which societies divide people according to such characteristics. Race is often confused with ethnicity. Various types of broad-based groups (e.g. racial, ethnic, regional and religious) are rarely mutually exclusive, and the degree of discrimination against any one or more varies from place to place, and over time.

**Reprisal** may take the form of threat, attempts to intimidate and denial of opportunity. It may also take the form of undue focus on the rights of

individuals or groups to claim and enforce their rights under this policy.

**Same-Sex Partnership Status** is the status of living with a person of the same sex in an enduring and permanent relationship.

**Sex** is female biological distinctiveness from males and vice versa. In this policy and procedures, complaints made on the ground of gender identity shall be considered under the ground gender.

**Sexual Harassment** occurs when a person receives unwelcome sexual or sexualized attention from another person whose comments or conduct are known, or should reasonably be known, to be offensive, inappropriate, intimidating, hostile or unwelcome. Sexual harassment includes situations in which a person in a position of authority (a supervisor or teacher, for example) shows unwelcome sexual attention to an employee or student, and in which reprisal occurs, or is threatened, if the sexual attention is rejected. It also includes an environment in which sexist jokes and materials are allowed. It may occur between persons of different or the same sex.

**Sexual Orientation** is defined as feelings of attraction for the same sex, for the opposite sex or for both sexes and does not require sexual activity or intimacy.

**Special programs** are designed to remove systemic barriers to equality in employment. Such programs involve identifying and eliminating discriminatory policies and practices, remedying the effects of past discrimination, and ensuring appropriate representation of designated groups. Employment equity programs require goals and timetables to be set to achieve fairness in the representation of designated groups in the workplace.

A **stereotype** is an inaccurate generalization made with reference to a personal characteristic. Specifically, it involves the attribution of a characteristic or set of characteristics to a group, which is then imputed to the individual members of that group because of their membership in it. One takes a preconceived or fixed notion about a group of individuals identified by a personal characteristic, and assumes that all individuals identified by that personal characteristic fit that

preconceived idea.

**Staff Human Rights Committee:** will be a committee set up by an appropriate vice-president to review findings from an investigation in a human rights formal complaint. The committee will comprise a University department director and two University staff members, at least one of whom will be non-managerial. The committee will, in accordance with the rules of fairness governing such matters, receive, review and consider the records of the fact-finding team involving staff respondents that have been conducted under this policy and its procedures. The Committee may interview witnesses and review records and materials from the University relevant to the complaint.

**Student** is defined under this policy and these procedures as an individual who is enrolled as either a full-time or part-time student at the University or an individual who is on a field placement from the University or enrolled as a co-op student in any University program.

**Supervisory Responsibility** is imputed under this policy and these procedures to a University employee who is in a position of trust, power or authority.

