

UNIVERSITY  
of GUELPH

CHANGING LIVES  
IMPROVING LIFE

# 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**

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# TABLE OF CONTENTS

## I. THE HUMAN RIGHTS POLICY

|     |  |   |
|-----|--|---|
| 1.  | Foundation Statement .....                           | 3 |
| 2.  | Relationship to the Ontario Human Rights Code.....   | 3 |
| 3.  | Statement of Commitment .....                        | 3 |
| 4.  | Academic Freedom and Human Rights.....               | 3 |
| 5.  | The Coverage of This Policy and Its Procedures ..... | 3 |
| 6.  | Definition of Discrimination and Harassment.....     | 4 |
| 7.  | Fundamental Tenets                                   |   |
| 7.1 | No Discrimination or Harassment.....                 | 4 |
| 7.2 | Reprisals .....                                      | 4 |
| 7.3 | Presumption of Innocence.....                        | 4 |
| 7.4 | Bad Faith Allegations .....                          | 4 |
| 8.  | Duties and Responsibilities .....                    | 4 |
| 9.  | Confidentiality .....                                | 4 |
| 10. | The Human Rights and Equity Office.....              | 5 |

## II. THE PROCEDURES

|      |  |    |
|------|--|----|
| 1.   | General Introduction .....   | 5  |
| 2.   | The Processes for Dealing with Human Rights Issues.....  | 5  |
| 3.   | Human Rights Resource Persons and Fact-Finders   |    |
| 3.1  | Human Rights Resource Persons .....  | 6  |
| 3.2  | Fact-Finders .....   | 6  |
| 4.   | Privacy and Access to Information.....   | 6  |
| 5.   | Informal Resolution of Human Rights Concerns   |    |
| 5.1  | Response to Human Rights Concerns by a Person(s) with Supervisory Responsibilities.....                            | 7  |
| 5.2  | Important Points for Facilitating Resolution of Human Rights Concerns.....   | 7  |
| 6.   | Mediated Resolution of Human Rights Disputes.....  | 8  |
| 7.   | The Formal Complaint Process   |    |
| 7.1  | The Formal Complaint.....  | 8  |
| 7.2  | Actions of the Human Rights and Equity Office on Receiving a Formal Complaint.....                                 | 8  |
| 7.3  | Notice and Response .....  | 9  |
| 7.4  | Assistance and Representation for Complainants, Respondents and Witnesses during the Formal Complaint Process..... | 9  |
| 7.5  | Composition of the Fact-Finding Team .....   | 10 |
| 7.6  | Sunset Clause .....  | 10 |
| 7.7  | Potential Conflict of Interest or Apprehension of Bias.....  | 11 |
| 7.8  | The Fact-Finding Team .....  | 11 |
| 7.9  | The Fact-Finding Team: Initial Actions.....  | 11 |
| 7.10 | Onus and Standard of Proof.....  | 12 |
| 7.11 | Withdrawing a Formal Complaint.....  | 12 |
| 7.12 | Report of the Fact-Finding Team .....  | 12 |
| 7.13 | Process following Submission of the Report of the Fact-Finding Team .....  | 13 |
| 7.14 | Disciplinary Action .....  | 13 |
| 7.15 | Sunset Clause .....  | 14 |
| 7.16 | Records .....  | 14 |
| 7.17 | Timelines.....   | 14 |
| 8.   | Annual Reporting and Use of Records for Statistical Purposes.....  | 15 |
| 9.   | Monitoring and Amendment.....  | 15 |
| 10.  | Staff Human Rights Review Committee.....   | 15 |

## I. THE HUMAN RIGHTS POLICY

### 1. FOUNDATION STATEMENT

The University of Guelph's commitment to the maintenance of human dignity, of individuals and groups of individuals, is central to this Policy. The University 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, persons with supervisory responsibilities, as that term is defined in Section I.8 of this Policy, are expected to address and attempt to resolve human rights issues, whenever possible, through informal discussion or by mediation as outlined in the Procedures to this Policy.

Nothing in the Procedures to this Policy denies or limits access to other avenues of redress available under the law, such as a complaint under the *Ontario Human Rights Code* (*Code*) 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 to authorize conduct that is in contravention of the *Code*, the provisions of the *Code* will prevail.

### 3. STATEMENT OF COMMITMENT

Violations of human rights will not be tolerated at the University. Discrimination and harassment based on grounds prohibited by the *Code* devalues and taints the environment of those covered by this Policy. They erode the values and the integrity of the University. The University 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 *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 the 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 this Policy and its Procedures do provide mechanisms for addressing complaints which may involve issues related to curriculum, nothing in this Policy and its Procedures will be interpreted so as to alter the Senate's jurisdiction regarding educational policy.

### 4. ACADEMIC FREEDOM AND HUMAN RIGHTS

Academic freedom — the right to examine, to question, to teach and to 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 in Canada guarantees freedom of thought, belief, opinion and expression. The University believes that the ability to investigate, to speculate, to comment and to 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 University. With respect to the interplay of human rights protection and the practice of academic freedom, it is the position of the University that discussion of controversial issues in or out of the classroom is not a violation of this Policy.

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 discriminate against or harass individuals on grounds protected by the *Code* and this Policy.

### 5. THE COVERAGE OF THIS POLICY AND ITS PROCEDURES

This Policy and its Procedures applies to and covers all University administrators, students, employees, Board of Governors and Senate members, employee organizations, special-status organizations, and invitees, while such individuals or groups are acting in a capacity defined by their



relationship with the University. This Policy and its Procedures also applies to all formal and informal policies, practices, procedures and decision-making processes of the University.

## 6. DEFINITION OF DISCRIMINATION AND HARASSMENT

Discrimination has been defined by the courts as “a distinction, whether intentional or not, but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations or disadvantages on such individuals or groups not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.” Harassment has been defined as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. One incident can be significant or substantial enough to constitute harassment. The University is committed to providing an environment free of discrimination and harassment for the members of its community. This includes harassment and discrimination, whether intended or not, based on the following grounds:

- disability
- gender (described as “sex” in the *Code* and including pregnancy and gender identity)
- sexual orientation
- race
- colour
- ancestry
- place of origin
- ethnic origin
- citizenship
- creed (faith)
- age (18 or more for the purposes of employment only)
- marital status
- family status
- receipt of public assistance (in accommodation only)
- record of offences (in employment only).

## 7. FUNDAMENTAL TENETS

### 7.1 No Discrimination or Harassment

A violation of human rights, including discrimination and harassment, is a breach of this Policy.

### 7.2 Reprisals

It is a breach of this Policy to take a reprisal against an individual because that individual has participated in a process to enforce human rights under this Policy and its

Procedures, the *Code* or other applicable legislation. A written allegation of a reprisal will be treated as a formal complaint under this Policy and its Procedures.

### 7.3 Presumption of Innocence

Anyone named in concerns, disputes or formal complaints under this Policy and its Procedures will be presumed innocent until a formal decision to the contrary is reached under the terms of this Policy and its Procedures.

### 7.4 Bad Faith Allegations

It is a breach of this Policy for any person to make an allegation of discrimination or harassment in bad faith, or to initiate a procedure under this Policy in bad faith 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 and its Procedures. If such an allegation is substantiated, it will be subject to the same consequences as complaints of discrimination or harassment.

## 8. DUTIES AND RESPONSIBILITIES

All members of the University community have the responsibility not to engage in activities that constitute a breach of this Policy. 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 Policy. The University has an obligation to make reasonable accommodation, where appropriate, on grounds covered in the *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 “a person(s) with supervisory responsibilities”) are in positions of trust, power and authority and 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. Persons 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 7.4) have a responsibility to maintain

confidentiality. Communication between a party and his/her counsel or representative under this Policy and its Procedures is not a breach of confidentiality. A breach of confidentiality may constitute a breach of this Policy. However, information disclosed during any stage of an informal concern or a formal complaint, or during mediation, that gives rise to health and safety concerns for any individual should be reported to the University’s Human Rights and Equity Office (HREO) and any other appropriate authority.

Any alleged breach of confidentiality should be reported to the Director of the HREO, who will investigate and make recommendations to a person(s) with supervisory responsibility.

## 10. THE HUMAN RIGHTS AND EQUITY OFFICE

The HREO is responsible for managing processes in a consistent, timely, impartial and fair manner. The HREO is responsible for:

- providing advice to all participants under this Policy and its Procedures;
- assisting persons with supervisory responsibilities in the resolution of human rights concerns;
- managing the fact-finding process;
- 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 persons with supervisory responsibilities any University policy, procedure or practice that appears to discriminate against an individual or a group based on prohibited grounds;
- acting on any equity-related matters that may be referred to the HREO by the President of the University.

Translation services (including American Sign Language) will be provided through the HREO should they be needed.

In the event that the Director or a staff member of the HREO 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.

## II. THE PROCEDURES

### 1. GENERAL INTRODUCTION

The University has developed processes for dealing with human rights issues that are fair and equitable to all members of the community. The HREO 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 staff members.

The HREO 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 and its Procedures are 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 and to systemically based complaints. Three separate processes are possible:

- informal resolution of a human rights concern (Section II.5);
- mediated resolution of a human rights dispute (Section II.6);
- formal complaint process (Section II.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 is not achieved. At any time during the human rights concern or formal 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 unless all parties to the dispute provide their consent to do so.

To make sure that formal complaints are dealt with in a fair, equitable and consistent manner, an investigation may 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 provisions of Section II.3 of these Procedures. The fact-finding team will provide the relevant authority with a written report including any recommendations made. The relevant authority will be either the Vice-President (Academic), the Vice-President (Finance and Administration), the Vice-President (Research) or the Vice-President (Alumni Affairs and Development) in normal circumstances. The Vice-President will review the written report and, if they agree with the findings and that a violation of the Policy has occurred, will determine whether discipline should apply

and what form it should take. 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. In any formal complaint, the responding Vice-President will determine whether any ameliorative measures need to be taken.

University employees who are covered by a collective agreement or other policy with the University may have an obligation to file grievances within a specific period. In such cases, grievances, once filed, may be held in abeyance until such time as the formal complaint under these procedures has been resolved. Upon the mutual consent of all of the parties to a matter, a grievance shall also be held in abeyance pending the resolution of a human rights concern or mediation process carried out under these Procedures.

The fact-finders' report, without the fact-finders' recommendations and findings of fact, is admissible at arbitration only if subpoenaed. The party who requested the subpoena must also undertake to call as witnesses the persons who were interviewed for the fact-finders' report.

All those who raise concerns, disputes or formal complaints under this Policy may, under S. 34 (1) of the *Code*, file a complaint under the *Code*. However, the complaint must be made within one year of the alleged incident to which the complaint relates or, if there is alleged to have been a series of incidents, within one year after the last incident in the alleged series.

Nothing in these Procedures precludes the Vice-President (Academic), the Vice-President (Finance and Administration), the Vice-President (Research) or the Vice-President (Alumni Affairs and Development) 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 this Policy.

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

#### 3.1 Human Rights Resource Persons

The HREO 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 II.9) and will be deployed from the HREO. 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.

#### 3.2 Fact-Finders

The University will establish a pool of fact-finders to participate in the resolution of complaints in accordance with the provisions of these Procedures. The HREO 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 HREO. 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. External consultants, appointed by the University 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.

### 4. PRIVACY AND ACCESS TO INFORMATION

The University, as an educational institution, is subject to the *Ontario Freedom of Information and Protection of Privacy Act* ("FIPPA"), and information gathered, disclosed or otherwise obtained in relation to a matter under this Policy may constitute personal information as defined in FIPPA.

If personal information is disclosed pursuant to this Policy and its Procedures to a person who is not an employee of the University, such personal information shall only be disclosed to that person in accordance with applicable privacy legislation.

Individuals who may want to request access to records related to this Policy and its Procedures should refer to the University's statement titled, "Protection of Privacy and Access to Information at the University of Guelph".

All correspondence and other documents generated under these procedures must be marked "Private and Confidential." This documentation, whether pursuant to a concern, dispute or formal complaint, is to be held in a secure manner as described in Section II.7.16 of these Procedures.

### 5. INFORMAL RESOLUTION OF HUMAN RIGHTS CONCERNS

#### 5.1 Response to Human Rights Concerns by a Person(s) with Supervisory Responsibilities

Initially, both parties must be informed of the existence of this Policy and its Procedures, and the steps to be followed must be outlined. When this is done, it is important that the person(s) with supervisory responsibilities follow up with both parties to determine how they wish to proceed.

A person(s) with supervisory responsibilities must ensure that upon resolution of a human rights concern, accurate and complete records specific to the case are kept in the respondent's confidential file or in the respondent's official file if she or he is a member of faculty (for the purposes of this Policy and its Procedures a member of the University faculty shall be any member of the UGFA). The person(s) with supervisory responsibilities 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.

There are four (4) options that may be considered to facilitate the resolution of an informal concern. The HREO should be consulted in assessing these options.

##### *Option 1: Discussion of the concern between the parties*

In some cases it may be appropriate for the person(s) with supervisory responsibility to suggest to the person expressing the concern that she or he approach the person whose behaviour gives or gave cause for concern, making it clear why the behaviour was or is viewed as unacceptable. This option may not be appropriate if concerns have been raised about personal safety or intimidation or if there is a belief that a situation will escalate as a result of any direct communication.

##### *Option 2: Inform the respondent of the concern and of this Policy and its Procedures*

At the request of the person expressing the concern, the person(s) with supervisory responsibilities will advise the person who is the object of the concern of the concern and explain the University's expectation of appropriate behaviour. The person(s) with supervisory responsibility will provide a copy of this Policy and its Procedures to the person who is the object of the concern.

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

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

##### *Option 4: Conduct informal inquiry into the concern*

In such cases, the person(s) with supervisory responsibilities conducting the inquiry must be careful to obtain information in a balanced fashion which may mean speaking to all those with information relevant to the concern. The person(s) with supervisory responsibilities will follow up with all parties in order to determine whether or not the informal concern was resolved to the satisfaction of all parties and whether or not the resolution was and is consistent with this Policy and its Procedures.

At any time during the informal complaint process, the parties may agree to participate in mediation in accordance with Section II.6 of this Policy and its Procedures.

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

(i) A person(s) with supervisory responsibilities may facilitate a resolution by helping the person with a concern to select the appropriate option from Section II 5.1 of these Procedures. When a course of action is selected, the person(s) with supervisory responsibilities will monitor the situation and, if necessary, hold meetings (together or separately, as appropriate) with all parties to ensure that it is implemented and effective for the parties involved.

(ii) The person(s) with supervisory responsibilities should advise all parties to take notes about the situation, including when the alleged incident or incidents occurred and who was present.

(iii) 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, the person(s) with supervisory responsibilities will ensure that there has also been compliance with the terms of this Policy and its Procedures.

(iv) The person(s) with supervisory responsibilities will advise all parties of their right to seek the assistance of a union or employee association representative.

(v) The HREO shall monitor the implementation of any resolution reached under this section and shall ensure that those involved with the matter are kept fully informed.



## 6. MEDIATED RESOLUTION OF HUMAN RIGHTS DISPUTES

Where alleged harassment is the basis of a 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 is alleged, the parties to mediation may include the individual disputing the policy, practice or procedure, as well as a person(s) with supervisory responsibilities 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.

At any stage during either the informal resolution of a concern or a formal complaint process, any party may request mediation. Mediation is voluntary, and will only be used when all parties to a complaint agree. Mediation can be a practical way to help all sides to a complaint understand the other party's or parties' position and allows all parties to be involved directly in the process. Mediation is not a fact-finding process, nor will the mediator make any decision about the resolution of a complaint.

Mediation does not lead to disciplinary outcomes unless agreed to by the parties concerned. Mediation offers a structured and controlled environment that will help the parties reach a fair resolution.

A person(s) with supervisory responsibilities will advise all 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 unless all parties to the dispute provide their consent to do so.

The parties to mediation will also agree before the start of the mediation that the mediator cannot be a witness in any proceeding related to the subject matter of the mediation, unless required by law.

Whenever mediation is sought, the HREO will provide for an approved trained mediator who is acceptable to all parties to the mediation. When a mediator(s) is drawn from an area of the University community, she/he will be from an area other than those of the parties to the mediation.

Any settlement or resolution must be mutually accepted by the parties to the mediation and approved by the Human Rights and Equity Office and by those persons with

supervisory responsibilities who bear responsibility for implementing or monitoring the terms of the agreement. Meetings required for mediation sessions will be scheduled by the HREO. These meetings should take place as quickly as possible after mediation is requested and should take into account the availability of the parties and the mediator.

The HREO shall monitor the implementation of any settlement or resolution reached under this section and shall ensure that those involved with the matter are kept fully informed.

## 7. THE FORMAL COMPLAINT PROCESS

### 7.1 The Formal Complaint

To initiate a formal complaint, the complainant must complete, sign and date the prescribed formal complaint form and file it within the time limit set out in Section II.7.17 of this Policy and its Procedures.

Usually, it will be the individual or group affected by the alleged discrimination or harassment who will file a formal complaint. A formal complaint may also be made by persons representing the complainant(s). In all cases, the formal complaint form will be forwarded to the University's Human Rights and Equity Office.

A person(s) with supervisory responsibilities who receives a formal human rights complaint on the prescribed form will retain a copy and forward the original of the complaint to the HREO.

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

On receiving a formal complaint, the Director of the HREO will 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 one (1) year;
- (iv) there are any safety or health concerns that require immediate action.

The Director will establish a fact-finding team as described in Section II.7.5 to work within the timelines set out in Section II.7.17.

Immediately after the formal complaint is filed, the Director of the HREO, in consultation with the appropriate person(s)

with supervisory responsibilities 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 formal complaint process. Interim measures, if required, are to be implemented by the appropriate University personnel.

Immediate actions may be taken by the University upon the recommendation of the Director of the HREO in consultation with the appropriate person(s) with supervisory responsibilities or academic personnel where the University determines that:

(i) the continued proximity of the parties will impair the ability of any party or any other person to function in relation to studies or to work or in relation to the University's residential environment;

(ii) there has been a reprisal or there exists the threat of reprisal; or,

(iii) a complainant or a respondent poses a safety risk.

If the University determines 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, University 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 is without prejudice and should not be viewed as "discipline" or a "transfer" within the meaning of any collective agreement or policy.

### 7.3 Notice and Response

The HREO will:

(i) within two (2) University working days of receipt of the formal complaint:

- (a) notify the appropriate person(s) with supervisory responsibilities in writing of the formal complaint;
- (b) notify the complainant in writing of receipt of the formal complaint and include a copy of this Policy and its Procedures;
- (c) notify the respondent in writing of receipt of the formal complaint and include a copy of this Policy and its Procedures and the formal complaint form with any attachments.

(ii) ask the respondent in writing to provide to the HREO a written response to the formal complaint within the following ten (10) University working days;

(iii) communicate to the complainant in writing the respondent's written response and ask the complainant in writing to provide to the HREO any written reply within ten (10) University working days;

(iv) strike a fact-finding team within ten (10) University working days of receipt of a formal complaint form;

For the purposes of these Procedures, University working days refer to Monday to Friday of any calendar week on which the University is open.

The fact-finding process regarding a formal complaint will commence on the expiry of the time permitted for response under (ii) or (iii) above, whichever is later.

### 7.4 Assistance and Representation for Complainants, Respondents and Witnesses during the Formal Complaint Process

Individuals involved in the formal complaint process are encouraged to seek the assistance of one (1) or more of the following individuals:

- human rights resource person from a roster maintained by the HREO;
- union or association representative or legal counsel;
- representative of a student organization such as the CSA;
- employee, colleague, friend or relative;

- when requested and at the discretion of the Director of the HREO the assistance of an appropriately trained individual unassociated with the HREO.

### 7.5 Composition of the Fact-Finding Team

The fact-finding team will consist of three (3) people who have been trained to conduct an investigation under this Policy and its Procedures. The composition of the fact-finding team 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 is said to have occurred. The HREO will establish a fact-finding team composed in the following ways depending on the position of the respondent. For respondents who are:

#### (i) Deans or staff directors

- the Director, the Associate Director or a Human Rights Advisor of the HREO;
- the Vice-President to whom the respondent reports, or the Vice-President's designate;
- one (1) additional fact-finder drawn from the pool held by the University's Judicial Officer.

#### (ii) Chairs or academic directors

- the Director, the Associate Director or a Human Rights Advisor of the HREO;
- the Dean to whom the respondent reports, or the Dean's designate (determined by the Provost);
- one (1) additional fact-finder drawn from the pool held by the University's Judicial Officer.

#### (iii) Vice-Presidents, the President of the University or members of the Board of Governors

- the Director, the Associate Director or a Human Rights Advisor of the HREO;
- a University Vice-President;
- one (1) additional fact-finder drawn from the pool held by the University's Judicial Officer.

#### (iv) Members of the HREO\*

- a Vice-President;
- a departmental chair or staff director;
- one (1) additional fact-finder drawn from the pool held by the University's Judicial Officer.

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

#### (v) Faculty

- the Director, the Associate Director or a Human Rights Advisor of the HREO;
- the Associate or Assistant Dean from within the

respondent's college or that person's designate (determined by the Provost);

- one (1) additional fact-finder who is a member of the faculty and who is drawn from the pool held by the University's Judicial Officer.

#### (vi) University staff

- The Director, the Associate Director or a Human Rights Advisor of the HREO;
- the supervisor to whom the respondent reports, or the supervisor's designate;
- one (1) additional fact-finder who is a University staff member and who is drawn from the pool held by the University's Judicial Officer.

#### (vii) Students

- the Director, the Associate Director or a Human Rights Advisor of the HREO;
- two (2) additional fact-finders one drawn from the pool held by the University's Judicial Officer, and of whom at least one (1) will be an undergraduate or graduate student, as appropriate.

#### (viii) Invitees of University premises and programs

- the Director, the Associate Director or a Human Rights Advisor of the HREO;
- one (1) senior employee from the University's Human Resources Division;
- one (1) additional fact-finder drawn from the pool held by the University's Judicial Officer.

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

- the Vice-President (Finance and Administration) and the Vice-President (Academic) will determine the composition of the fact-finding team including whether or not to include non-University personnel.

### 7.6 Sunset Clause

Upon approval by the University Board of Governors, Sections II 7.5 (v) and (vi) of these Procedures shall remain in effect for three (3) years. With adequate notice to all unions and employee associations and by the end of the three year period Sections II 7.5 (v) and (vi) of these Procedures shall be reviewed and shall be resubmitted to the Board of Governors for reconsideration.

### 7.7 Potential Conflict of Interest or Apprehension of Bias

Immediately after a fact-finding team has been struck, 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.

After the fact-finding team has been established, the parties are to be notified of the members of the fact-finding team.

Any party to a formal complaint may promptly challenge the participation of one (1) 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 that individual's part. A party raising the challenge will promptly state the challenge, upon becoming aware of it, in writing to the Director of the HREO.

Where the Director of the HREO has received a challenge to the participation of one (1) 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 a challenge by faculty, 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 HREO 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 (5) University working days of having received the challenge, and the decision will be final.

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 draft and the final report concerning the formal complaint.

### 7.8 The Fact-Finding Team

If the fact-finding team determines that a fact-finding should proceed, the fact-finding team will:

(i) conduct an investigation which includes interviewing the parties and relevant witnesses, and requesting and reviewing the relevant documentation. All reasonable attempts will be made to interview the complainant first. Usually, the respondent will be interviewed second because the respondent has the right to make a reply to the allegations made against the respondent. If a party or witness declines to participate in the fact-finding process, the process will proceed to a conclusion and a report will be prepared by the fact-finding team. In all circumstances, interviews with witnesses will occur after the parties have been given an opportunity to be interviewed. In cases of alleged systemic discrimination the parties may, at the discretion of the fact-finding team, make submissions in writing without the necessity of being directly interviewed. Any party may seek assistance from any of the individuals referred to in Section II.7.4 of this Policy and its Procedures and, if desired, be accompanied by up to two (2) of these individuals during interviews during the fact-finding process;

(ii) provide the relevant authority with a written report of the fact-finding team including any recommendations made. The relevant authority will be either the Vice-President (Academic), the Vice-President (Finance and Administration), the Vice-President (Research) or the Vice-President (Alumni Affairs and Development) in normal circumstances.

### 7.9 The Fact-Finding Team: Initial Actions

The fact-finding team will attempt to make all decisions by consensus. Where this is not possible, the fact-finding team will vote on the issue and abide by a majority decision. The report of a fact-finding team may reflect, without attribution, a different view of all or any part of the report held by a member of the fact-finding team.

Upon the request of all parties, the fact-finding team may decide to suspend any fact-finding in the event that the parties agree to participate in 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 recommend to the appropriate Vice-President to postpone, suspend or cancel any fact-finding if its continuance would duplicate or prejudice another proceeding. 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 formal complaints in order to comply with negotiated timelines. (Should a grievance proceed under a collective agreement or other policy established with the University rather than through this Policy and its Procedures, the University reserves the right to continue with its own fact-finding to address the matter in compliance with its obligations under the *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 need not result in a separate fact-finding. The allegations raised by the respondent may be addressed within the scope of the original fact-finding.

Once established, the fact-finding team will devise a written plan under which it will interview the complainant, the respondent and witnesses. 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, efforts 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.

#### **7.10 Onus and Standard of Proof**

Allegations of breaches of the Policy must be proven on a “balance of probabilities”, the same standard used in human rights inquiries and civil law matters, and not on the more stringent criminal law standard of “beyond a reasonable doubt.” The onus of proof lies on the party making the complaint.

#### **7.11 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 may 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 may prejudice the respondent;
- the formal complaint was in bad faith.

In any such circumstance, the fact-finding team may proceed to conduct or to complete the fact-finding into the matter.

#### **7.12 Report of the Fact-Finding Team**

Once the fact-finding process is complete, the fact-finding team will give a copy of its draft report to the parties detailing:

- the nature and circumstances of all declared potential conflicts of interest, together with the fact-finding team’s conclusions regarding those matters or the outcome of any challenges as set out in Section II.7.6 of these Procedures;
- allegations giving rise to the formal complaint or counter-complaint if applicable;
- grounds in this Policy that have allegedly been violated;
- any responses of the respondent and complainant;
- the list of persons interviewed by the fact-finding team;
- the witnesses identified, but who were not considered relevant to the complaint or who were not available;
- the nature of the evidence provided by the complainant, respondent and the witnesses;
- findings of fact;
- one of five 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 measures be taken to remedy systemic discrimination;
  - e. 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 any recommendations that might arise from consultations between the appropriate Vice-President and the HREO.

The parties have the right to comment in writing on the draft report of the fact-finding team before a final report is issued. The parties must submit their comments to the fact-finding team within ten (10) University working days.

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

Based on the results of the fact-finding process and the responses to the draft report of the fact-finding team, the fact-finding team will prepare a final report within ten (10) University working days.

Copies of the final report of the fact-finding team will be distributed by the HREO to the parties and 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 HREO - University President
- faculty, librarians, veterinarians, 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
- invitees - either the Provost and Vice-President (Academic) or the Vice-President (Finance and Administration) as appropriate.

#### **7.13 Process Following Submission of the Report of the Fact-Finding Team**

(i) For members of the University community, the Vice-President in receipt of the final fact-finding report will decide whether to accept or reject the findings and any subsequent recommendations that might arise from consultations with the HREO. This decision is final subject to any rights that may exist under another policy or procedure.

In the event that Vice-President in receipt of the final fact-finding report accepts the findings in the report, that Vice-President shall consult with the HREO with a view to establishing recommendations aimed at removing any identified barriers and restoring the learning, living or working environment of the individual parties.

In the event that findings of fact do not support a violation of this Policy, yet, if in the view of the Vice-President in receipt of the report, the facts so warrant, the Vice-President may consult with the HREO with a view to establishing recommendations that could serve to ameliorate the circumstances or remove the barriers which in the view of the fact-finding team gave rise to the formal complaint. It is understood that in this instance, ameliorative steps recommended by the fact-finding team do not in any respect reflect upon the culpability of the respondent to the formal complaint.

A violation of this Policy may constitute a basis for discipline of the respondent(s). It is the responsibility of the

Vice-President in receipt of the final fact-finding report to determine whether, subject to the application of any rights the respondent may have under a collective agreement or contract with the University or under another University policy or procedure, discipline should apply.

A finding in the report that a formal complaint is trivial, frivolous or vexatious constitutes a basis for discipline of the complainant. It is the responsibility of the Vice-President in receipt of the final report of the fact-finding team to determine whether, subject to the application of any rights the complainant may have under a collective agreement or contract with the University or under another University policy or procedure, discipline should apply.

(ii) In cases involving allegations of systemic discrimination, the Vice-President in receipt of the final report of the fact-finding team will determine whether sufficient evidence exists to implement in whole, in part or not at all the recommendations of the fact-finding team.

(iii) For invitees, the Vice-President in receipt of the final report of the fact-finding team will determine whether to accept or reject the recommendations in the report and this decision is final subject to any rights or contracts with the University.

(iv) Once the fact-finding team submits its final report to a Vice-President and once, where appropriate, the Vice-President has consulted the HREO about any steps that could ameliorate the circumstances or remove any identified barriers that gave rise to the complaint, the formal complaint process is at an end.

(v) All communications between the HREO and the Vice-President in receipt of the final report are confidential.

(vi) The HREO will monitor the implementation of any recommendations that a Vice-President undertakes to implement under this section and will ensure that those involved with the matter are kept fully informed.

#### **7.14 Disciplinary Action**

##### ***Unsubstantiated Complaints***

With the exception of a finding that a complaint is malicious, vexatious or trivial (Section II.7.13), or that ameliorative steps should be taken, no further action will be taken if a complaint is not substantiated. Consistent with Section II.7.16, no record will be kept of an unsubstantiated complaint.

### **Complaints Upheld by Vice-Presidents**

Complaints upheld by Vice-Presidents may result in discipline according to the established procedures applicable to the employee or student in question.

### **Where Disciplinary Action is Disputed**

Respondents who dispute disciplinary action proposed by a Vice-President may have recourse to the established procedures of the tribunal, hearing panel or grievance procedure which is applicable to their status within the University. Members of employee groups without negotiated procedures may seek a review of the decision to impose discipline through the Staff Human Rights Review Committee.

### **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.

### **7.15 Sunset Clause**

Upon approval by the University Board of Governors, Sections II 7.12, 7.13 and 7.14 of these Procedures shall remain in effect for three (3) years. With adequate notice to all unions and employee associations and by the end of the three year period Sections II 7.12, 7.13 and 7.14 of these Procedures shall be reviewed and shall be resubmitted to the Board of Governors for reconsideration.

### **7.16 Records**

Records of fact-finding and other processes in connection with a formal complaint under this Policy against a member of faculty, will be held in accordance with the provisions of the appropriate policies or agreements relating to faculty. Records pertaining to respondents of all other groups will be kept in the HREO. Access to such records will only be in accordance with the applicable University policies, agreements and applicable legislation or law. For all groups, records will be held for two (2) years from the date of the final report of the fact-finding team. If by that time there is no further process undertaken with respect to the complaint, such as a complaint under the *Code*, all records regarding the complaint will be destroyed. All records pertaining to an unsubstantiated complaint will be destroyed subsequent to the conclusion of the fact-finding. Any records of fact-finding and other processes with a formal complaint under this Policy will be removed from an employee's official file

if an arbitrator under a collective agreement finds that no discipline is warranted.

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 a faculty member, 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 the appropriate Vice-President to assist in determining the appropriate disciplinary outcome in a subsequently substantiated matter.

### **7.17 Timelines**

All formal complaints must be initiated and filed with the HREO within one (1) year of the most recent alleged discriminatory or harassing behaviour. This time limit may be extended where the complainant's delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

To seek a waiver of the one (1) year time limit for filing a formal complaint, a complainant who is a faculty member or a student will seek, through the fact-finding team, the approval of the Vice-President (Finance and Administration). To seek a waiver of the one (1) year time limit for filing a formal complaint, a complainant who is a staff member will seek, through the fact-finding team, the approval of the Provost and Vice-President (Academic).

Meetings required under these procedures should occur as quickly as is reasonably possible. From the initiation of the fact-finding process, to the issuing to the parties of a draft report of the fact-finding team, a fact-finding process will be completed within fifty (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 a respondent who is a faculty member, or a student, and to the Provost and Vice-President (Academic) in the case of a staff respondent.

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

The Director of the HREO will provide a written report, annually, to the University President regarding the numbers, types and outcomes of inquiries, concerns, disputes and complaints under this Policy and its Procedures in the preceding year. In turn, 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 HREO on matters pertaining to this Policy and its Procedures. HRAG will be comprised of two (2) representatives from each employee group, two (2) undergraduate and two (2) graduate students, one (1) representative from the senior executive of the University and the Director of the HREO who will also chair HRAG. Apart from the Director of the HREO, members of HRAG will be nominated annually by the appropriate constituency group. The mandate of HRAG will be to advise the Director of the HREO on the following:

- use of this Policy and its Procedures;
- proposed changes to the Policy and its Procedures;
- preparation of the annual report to the President, including analysis of statistical information about use of this Policy and its Procedures;
- timing and process for a formal review of this Policy and its Procedures to be recommended to the President;
- appointment of human rights resource persons under II.3.1 by action through a subcommittee of HRAG.

## **10. STAFF HUMAN RIGHTS REVIEW COMMITTEE**

*(For those employees who are not covered by a grievance procedure within a collective agreement or contract with the University).*

The Staff Human Rights Review Committee, drawn from a pool of university community members, may, upon request, review the decision made by a Vice-President to impose

discipline on an individual as a result of a violation of this Policy. The committee will be comprised of 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. The Committee may interview witnesses and review records and materials from the University relevant to the complaint.





The University of Guelph Human Rights Policies 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 previous version of Human Rights at the University of Guelph approved by the Board of Governors April 11, 2002

Approved by the Board of Governors October 7, 2009