

## **University of Guelph Human Rights Procedures Document**

**The University of Guelph Human Rights 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 the Procedures documented in Human Rights at the University of Guelph, approved by the Board of Governors June 3, 2016**

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## 1. GENERAL INTRODUCTION

1.1 The University has developed processes for dealing with human rights issues that are fair and equitable to all members of the community. The Office of Diversity and Human Rights (DHR) has the responsibility, through the Assistant Vice President (AVP) of DHR 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.

1.2 These Procedures are intended to be used in conjunction with the Human Rights Policy. DHR will be responsible for managing the process leading to the selection and training of human rights resource persons, facilitators and fact-finders. Human rights resource persons will be available to any person or group covered by the Policy.

## 2. THE COMPLAINT RESOLUTION PROCESSES

### 2.1 Overview

2.1.1 Where possible the Policy and these Procedures are intended to provide an opportunity for resolution of issues at the lowest level. The Procedures apply to individuals pursuing or responding to concerns or complaints as well as to groups and to systemically based complaints.

2.1.2 The processes are intended to be remedial and seek to understand the consequences and impacts of an incident and who is responsible and to determine what is required of the parties to respond to the harms, encourage action to prevent reoccurrence, and make positive changes in climate and culture for the future.

### 2.2 Definitions

2.2.1 The terms “**concern**” and “**complaint**” are used to refer to separate but sometimes sequential ways in which human rights issues may be raised for resolution. A “**concern**” refers to a matter raised in an initial/exploratory or informal way that may or may not become a clearer articulation of a “**complaint**”.

2.2.2 A “**complaint**” refers to a matter that may be the subject of the Early and Formal Complaint Resolution Processes under the Policy.

2.2.3 The person(s) expressing a concern or complaint is generally referred to as the “**complainant(s)**” and the person(s) responding to a concern or complaint is generally referred to as the “**respondent(s)**”. In systemically based concerns or complaints, the University is typically named as the respondent. Collectively, the complainant(s) and respondent(s) are generally referred to as the “**parties**”.

### 2.3 Resolution Processes

2.3.1 The Policy and these Procedures provide two (2) general processes for the resolution of concerns and complaints:

1. **Early Resolution Process** (Section 4), which may include Personal Resolution and/or Alternative Resolution (AR); or
2. **Formal Complaint Resolution Process** (Section 6).

2.3.2 Initially, each of the parties must be informed of the existence of the Policy and these Procedures, and the steps to be followed must be outlined. All parties should be advised to take notes about the situation, including when the alleged incident or incidents occurred and who was present. DHR shall keep those involved with the matter fully informed as appropriate.

2.3.3 Complainants and respondents are expected to participate in the resolution processes that may apply. Lack of cooperation will not prevent an investigation from proceeding and fact finders may move forward with the information available to them.

2.3.4 Parties have the right to seek the assistance of non-participating support person(s) at each stage of the Resolution Processes. However, during Early Resolution process external legal counsel are not permitted to attend meetings.

2.3.5 The fact that concerns have been raised or resolved in an Early Resolution process does not become part of any performance review or other employment or academic evaluation of the individuals concerned unless consent has been given by the parties or as otherwise provided in a collective agreement or employee group agreement.

2.3.6 Where DHR becomes aware that a party has previously been the subject of a concern or complaint of an egregious or significant nature, DHR will review the matter, give consideration to the wishes of the complainant, and determine whether it should proceed directly to the Formal Complaint Resolution Process in accordance with section 6.1.

## **2.4 Interim Measures**

2.4.1 At any stage of these Procedures, it may be necessary to implement interim measures in order to safeguard the environment of the complainant(s) and/or respondent(s).

2.4.2 Interim measures may be proposed by or to the AVP (DHR), or considered by the AVP (DHR) at the request of the complainant(s) and/or the respondent(s). The AVP (DHR), 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.

2.4.3 Interim measures shall not be construed as discipline or as a finding of breach/no breach of the Policy.

2.4.4 For further guidance, section 6.2 of these Procedures dealing with Interim Measures may be referred to.

## **3. HUMAN RIGHTS RESOURCE PERSONS, FACILITATORS, FACT-FINDERS**

DHR will be responsible for seeking volunteers from the University community to establish a pool of human rights resource persons, facilitators and fact-finders. Volunteers enter a selection process and may be recommended by a sub-committee of the Human Rights Advisory Group (Section 14 of the Policy) to become human rights resource persons, facilitators and fact-finders. The sub-committee will make recommendations to the AVP (DHR), who will be responsible for selecting and appointing human rights resource persons, facilitators and fact-finders. DHR will be responsible for the training provided to the selected volunteers. The term of appointment for a human rights resource person, a facilitator and a fact-finder is twelve months, and any individual may be reappointed for a total of five consecutive terms.

## **4. EARLY RESOLUTION PROCESSES**

### **4.1 Overview**

4.1.1 Early Resolution Processes may include Personal Resolution and/or Alternative Resolution (AR). They typically precede, and are distinguished from, the Formal Complaint Resolution Process. Early intervention and resolution are to be encouraged, as appropriate.-

4.1.2 Where either of the parties are members of a union and/or other employee group, they may decline to inform their union that the Early Resolution Processes are being used, although the resolution of a concern or complaint may be required to be supported by a union and/or other employee group or as otherwise provided in a collective agreement or employee group agreement.

4.1.3 Early Resolution processes do not involve an investigation and therefore they do not lead to a finding of a violation of the Policy. The parties may at any time during the Early Resolution Processes choose to withdraw from the process and proceed directly to the Formal Complaint Resolution Process (Section 6).

4.1.4 Once a matter has been resolved to the satisfaction of all parties, the outcome of the Early Resolution process is deemed to be final, unless there is a breach of the terms of the resolution.

## **4.2 Personal Resolution**

4.2.1 A complainant may choose to approach the individual(s) engaging in the alleged behaviour, either in person or in writing, and/or with the assistance of DHR, a support person, or a person(s) with supervisory responsibilities, to advise that the behaviour is offensive and unwelcome to the complainant and request that the behaviour cease. The concern may be resolved at this point and no further action may be required.

4.2.2 This option may not be appropriate in cases where a person(s) with supervisory responsibilities or DHR determines that there is a real or perceived threat to the health and/or safety of employees, the alleged behaviour has impacted other employees, or there is evidence that the complainant fears retaliation.

4.2.3 Where the complainant's efforts at Personal Resolution are not satisfactory and/or the complainant believes that:

- the behaviour is continuing;
- the behaviour is more of a serious nature than can be dealt with by Personal Resolution; or
- Personal Resolution is not appropriate to the specific case.

The complainant may bring their concern to DHR to initiate either the Alternate Resolution or Formal Complaint Processes under these Procedures.

## **4.3 Alternative Resolution (AR)**

4.3.1 Alternative Resolution (AR) may be used to resolve complaints and typically involves a third party acting as a facilitator in direct communication between the parties. A complainant may initiate AR to resolve a concern or complaint with the assistance of a qualified facilitator appointed by DHR. Alternatively, the AVP (DHR) may appoint an external mediator to carry out the mediation.

4.3.2 AR offers a structured and controlled environment that will help the parties reach a fair resolution, and typically includes informal resolution options such as facilitated conversation, intervention, negotiation, mediation, coaching or any other AR method. If any party is not comfortable meeting face-to-face with another party, the facilitator may engage in individual, back-and-forth discussions to attempt a resolution.

4.3.3 A complainant may initiate AR of a concern or complaint through conversation with DHR. The complainant will provide a brief description of the concern or complaint that outlines the following:

- A general description of the nature of the concern
- The date and location of the incident causing the concern
- The number of individuals or witnesses involved in the incident
- Whether an attempt has been made to resolve the matter
- Any desired outcomes.

4.3.4 Alternate Resolution under these procedures is:

- voluntary and will only be used when all parties to a complaint agree;
- 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;
- not a fact-finding process, nor will the facilitator make any decisions about the resolution of a complaint;
- not appropriate when only one party is committed to the process;
- not appropriate in circumstances where there is a significant power imbalance, or where there are allegations of physical violence, threats to safety, serious emotional or physical abuse or intimidation.

4.3.5 Respondent will receive a copy or summary of the particulars of the concern or complaint and a copy of the Policy and these Procedures usually **within five (5) University business days** of DHR receiving the concern or complaint. The respondent will be given **up to five (5) University business days** to provide a written response to the concerns or complaint.

4.3.6 Information obtained during an Alternative Resolution Process or an attempted settlement arising from the process is "confidential" and "without prejudice" and will not be introduced as evidence in any subsequent fact-finding or hearing. The parties to AR will also agree before the start of the resolution that the facilitator cannot be a witness in any proceeding related to the subject matter of the resolution, unless required by law.

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

4.4.1 Any party to an Alternative Resolution Process may challenge the participation of a facilitator (described in Section 3) on the ground that the individual has a potential conflict of interest in the outcome of the matter, that there is a reasonable apprehension of bias on that individual's part, or that the facilitator does not have the training or qualifications to conduct the process.

4.4.2 A challenge will normally be raised, in writing, to the AVP (DHR) **within two (2) University business days** upon receipt of such notification. The AVP (DHR) may then appoint a new facilitator. This may include the next person appointed from the pool of volunteers or another qualified facilitator as appointed by the AVP (DHR). If this facilitator is refused by any of the parties, they must provide reasons, in writing, to the AVP (DHR) **within two (2) University business days**, whose decision shall then be final.

The AVP (DHR) may appoint an external mediator to carry out the process at any time.

4.4.3 For further guidance, section 6.6 of these Procedures dealing with Potential Conflict of Interest of Apprehension of Bias may be referred to.

#### **4.5 Timelines**

4.5.1 Meetings required for the Alternative Resolution sessions will be scheduled by DHR. These meetings should take place as quickly as possible after the facilitator is requested and will take into account the availability of the parties and the facilitator.

4.5.2 Reasonable efforts will be made to begin the Alternative Resolution **within five (5) University business days** after the parties agree to this option. Depending on the option selected and the availability of parties, the Alternative Resolution typically will conclude **within fifteen (15) University business days** of beginning this process. Should additional time be needed at any step of these procedures, extension of time will not be unreasonably withheld and parties will be informed accordingly.

## **4.6 Settlement**

4.6.1 If the parties agree to resolve the concern or complaint through an Alternative Resolution process, the facilitator may assist in documenting the outcomes. Any settlement document must be mutually accepted by the parties and must be consistent with the Human Rights Policy as confirmed by DHR. In the case of employees, any settlement must be made in consultation with the appropriate University representatives (e.g. HR/FASR). Subject to section 4.6.2, a copy of the signed resolution agreement will be provided to all parties and will be provided to those person(s) with supervisory responsibilities, as reasonably necessary, who may bear responsibility for implementing or monitoring the terms of the settlement. Alternative Resolution does not lead to disciplinary outcomes unless agreed to by the parties concerned.

4.6.2 A resolution of a concern or complaint may be required to be supported by a union and/or other employee group in the case of parties who are employees. DHR will monitor compliance with the terms of the Policy and these Procedures. Any settlement agreement will be subject to the application of any rights a respondent or complainant may have under a collective agreement or contract with the University or under another University policy or procedure.

4.6.3 Upon resolution of a concern or complaint through settlement during the Early Resolution Process, DHR will keep accurate and complete records specific to the case in a confidential file in accordance with DHR's record retention protocol.

## **5. MEDIATION RESOLUTION PROCESS [DELETED]**

## **6. THE FORMAL COMPLAINT RESOLUTION PROCESS**

### **6.1 The Formal Complaint**

6.6.1 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 6.14 of these Procedures.

6.6.2 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).

6.6.3 Nothing in these Procedures precludes the Vice- President (Academic), the Vice-President (Finance, Administration and Risk), the Vice-President (Research) or the Vice-President (External) from filling a complaint 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.

6.6.4 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 DHR.

6.6.5 In all cases, the formal complaint form will be forwarded to the University's Office of Diversity and Human Rights.

### **6.2 Actions of the Office of Diversity and Human Rights on Receiving a Formal Complaint**

6.2.1 On receiving a formal complaint, the AVP (DHR) will review the formal complaint to determine if:

- the University has jurisdiction;



- the allegation(s) is (are) based on a prohibited ground;
- the most recent alleged incident occurred within the past one (1) year;
- upon initial examination, sufficient evidence appears to exist to support a case for investigation (*prima facie*).

6.2.2 In case of a systemic complaint, the AVP (DHR), in consultation with the appropriate VP, shall determine who will respond to the allegations.

6.2.3 After determining 6.2.1 above and upon ensuring that there are no safety and health concerns that require to be addressed immediately, DHR will establish a fact-finding team as described in Section 6.5 to work within the timelines set out in Section 7.

6.2.4 The AVP (DHR), 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 interim 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 resolution process.

6.2.5 Interim measures, if required, are to be recommended by AVP (DHR) and implemented by the appropriate University personnel.

6.2.6 Interim measures may be taken by the University upon the recommendation of the AVP (DHR) in consultation with the appropriate person(s) with supervisory responsibilities or academic personnel where the University determines that:

- 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;
- there has been a reprisal or there exists the threat of reprisal; or,
- a complainant or a respondent poses a safety risk.

6.2.7 If the University determines that one or more of the above three conditions or risks exist:

1. 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.
2. 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:
  - An employee respondent (or complainant, if appropriate) will be placed on home assignment without loss of wages and benefits.
  - A student respondent (or complainant, if appropriate) will be excluded from one or more of their 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, to the point of undue hardship pending the outcome of the situation.

3. 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.

### **6.3 Notice and Response**

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

#### ***DHR will:***

6.3.2 Within two (2) University working days of receipt of the formal complaint:

- Notify the appropriate person(s) with supervisory responsibilities, in writing, of the formal complaint;
- Notify the complainant, in writing, of receipt of the formal complaint and include a copy of the Policy and these Procedures;
- Notify the respondent, in writing, of receipt of the formal complaint and include a copy of the Policy and these Procedures and the formal complaint form with any attachments.

6.3.3 Inform the respondent, in writing, of their opportunity to submit to DHR a written response to the formal complaint within the following ten (10) University working days;

6.3.4 Communicate to the complainant, in writing, the respondent's written response and ask the complainant, in writing, to provide to DHR any written reply within ten (10) University working days;

6.3.5 Establish a fact-finding team within five (5) University working days of receipt of the complainant's reply or the deadline to respond as provided;

6.3.6 After the fact-finding team has been established, DHR will notify parties of the members of the fact-finding team, in writing, within ten (10) University working days after receiving the complainant's reply or the deadline to respond whichever is earlier.

6.3.7 The fact-finding process will commence on the expiry of the time permitted under 6.3.6 above.

6.3.8 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. The filing of a counter-complaint must be made within 10 University working days of receiving notice of complaint and supporting documentation.

### **6.4 Assistance and Representation for Complainants, Respondents and Witnesses during the Formal Complaint Resolution Process**

6.4.1 Individuals involved in the formal complaint resolution 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 DHR;
- Union or association representative or legal counsel;
- Representative of a student organization such as the CSA, GSA;
- Employee, colleague, friend or relative;
- When requested and at the discretion of the AVP (DHR) the assistance of an individual unassociated with DHR.

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

6.5.1 The fact-finding team will normally consist of three (3) people and will reflect 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. DHR will establish a fact-finding team composed in the following ways depending on the position of the respondent. In exceptional circumstances, the AVP (DHR) may appoint an external investigator to carry out the role of a fact-finding team. Any party to a formal complaint may promptly challenge the participation of an external investigator 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 challenge must be raised, in writing, to the AVP (DHR) within 2 (two) University working days upon receipt of such notification.

6.5.2 For respondents who are:

### ***(a) Deans or staff directors***

- The AVP (DHR) or a Human Rights Advisor of DHR;
- The Vice-President to whom the respondent reports, or the Vice-President's designate;
- One (1) additional fact-finder drawn from the pool.

### ***(b) Chairs or Academic Directors***

- The AVP (DHR) or a Human Rights Advisor of the DHR;
- 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.

### ***(c) Vice-Presidents, the President of the University or Members of the Board of Governors***

- The AVP (DHR) or a Human Rights Advisor of DHR;
- A University Vice-President;
- One (1) additional fact-finder drawn from the pool.

### ***(d) Members of DHR\****

- A Vice-President;
- A departmental chair or staff director;
- One (1) additional fact-finder drawn from the pool.

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

### ***(e) Faculty, Librarians and Veterinarians***

- The AVP (DHR) or a Human Rights Advisor of the DHR;
- 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, librarians and/or veterinarians and who is drawn from the pool.

### ***(f) University Staff***

- The AVP (DHR) or a Human Rights Advisor of DHR;
- DHR to appoint a supervisor to whom neither the complainant nor the respondent report;
- One (1) additional fact-finder who is a University peer or staff equivalent (where possible) and who is drawn from the pool.

### ***(g) Students***

- The AVP (DHR) or a Human Rights Advisor of the DHR;
- Two (2) additional fact-finders one drawn from the pool, and of whom at least one (1) will be an undergraduate or graduate student, as appropriate.

***(h) Invitees of University Premises and Programs***

- The AVP (DHR) or a Human Rights Advisor of DHR;
- One (1) senior employee from the University’s Human Resources Division;
- One (1) additional fact-finder drawn from the pool.

***(i) Other Individuals or Groups not Covered by Categories Above***

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

**6.6 Potential Conflict of Interest or Apprehension of Bias**

6.6.1 At any point in time, after a fact-finding team has been established, the fact-finders will disclose to the AVP (DHR) any potential conflicts of interest that they have with any of the parties to the formal complaint. The AVP (DHR) will consult with the appropriate Vice-President to determine whether a declared potential conflict of interest will result in the replacement of the member in question.

6.6.2 After the fact-finding team has been established, DHR will inform the parties.

6.6.3 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 within two (2) University working days of meeting with fact finding team state the challenge, in writing to the AVP (DHR).

6.6.4 Where the AVP (DHR) has received a challenge to the participation of one (1) or more members of a fact-finding team, the AVP (DHR) will immediately forward all documentation regarding the challenge to the Vice-President (Finance, Administration and Risk) 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.

6.6.5 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 DHR will be directed to the Provost and Vice-President (Academic).

6.6.6 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.

6.6.7 The nature and decisions of all declared potential conflicts of interests and apprehensions of bias, 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.

**6.7 Role of the Fact-Finding Team**

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

1. 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. 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 based on the investigation findings. In most 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 6.4 of these Procedures and, if desired, be accompanied by up to two (2) of these individuals during interviews in the fact-finding process;

2. Provide the relevant authority through the AVP (DHR) with a written report of the fact-finding team including any recommendations as outlined in 6.10. The relevant authority will be either the Vice-President (Academic), the Vice-President (Finance, Administration and Risk), the Vice-President (Research) or the Vice-President (External) in normal circumstances.

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

6.8.1 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.

6.8.2 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 normally 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, Administration and Risk) 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.

6.8.3 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.

6.8.4 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:

### **1. A Settlement**

Where parties agree to enter into a settlement, DHR in consultation with relevant University stakeholders will provide support in drafting the terms of settlement. This settlement agreement will be subject to the application of any rights the respondent or complainant may have under a collective agreement or contract with the University or under another University policy or procedure.

### **2. Participate in Mediation;**

At any time during formal complaint resolution processes, the parties may request mediation and ask to suspend the process in which they are currently engaged.

6.8.5 The AVP (DHR) in consultation with the fact finding team will determine under the circumstances whether the formal complaint is suitable to mediation or settlement. In doing so they will consider factors including but not limited to:

- 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;
- other legal procedures that may be initiated to protect statutory rights;
- the wishes of the parties;
- the recognition that grievances may be filed simultaneously with formal complaints in order to comply with negotiated timelines.

Note: Should a grievance proceed under a collective agreement or other policy established with the University rather than through the human rights Policy and these 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*;

## 6.9 Withdrawing a Formal Complaint

6.9.1 A formal complaint may be withdrawn at any time, 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 may have occurred;
- the withdrawal of the formal complaint may prejudice the respondent; or,
- the formal complaint may have been made in bad faith.

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

## 6.10 Report of the Fact-Finding Team

6.10.1 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 decisions of all declared potential conflicts of interests and apprehension of bias, together with the fact-finding team's conclusions regarding those matters or the outcome of any challenges as set out in Section 6.6 of these Procedures;
- allegations giving rise to the formal complaint or counter-complaint if applicable;
- grounds in the Policy that have allegedly been violated;
- any responses of the respondent and complainant;
- the nature of the evidence provided by the complainant, respondent and the witnesses;
- findings of fact;
- conclusion: that on a balance of probabilities the Policy has been breached or not;
- **one of five recommendations as follows:**

6.10.2 If policy was not breached;

- that the case be closed on the grounds of insufficient evidence of a breach of the Policy;

6.10.3 If fact finders determine that the complainant was malicious, vexatious and trivial;

- that procedures be initiated that could result in disciplinary action against the complainant on the grounds of a malicious, vexatious or trivial complaint.

6.10.4 If policy was breached;

- that procedures be initiated that could lead to remedial action e.g. education;
- that procedures be initiated that could lead to disciplinary action against the respondent;
- that measures be taken to remedy systemic discrimination;

6.10.5 The outcome of any subsequent process is independent of any recommendations that might arise from consultations between the appropriate Vice-President and DHR.

6.10.6 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.

6.10.7 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.

6.10.8 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.

6.10.9 Copies of the final report of the fact-finding team will be distributed by the AVP (DHR) to the parties and to the appropriate authority (defined by the respondent's group) as follows:

- Students - Associate Vice-President (Student Affairs)
- Employees - Vice-President to whom the respondent reports
- Members of DHR - University President
- 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, Administration and Risk) as appropriate.

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

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

6.11.2 In the event the Vice-President receives and accepts the report, that Vice- President shall consult with DHR with a view to establishing recommendations aimed at removing any identified barriers and restoring the learning, living or working environment of the individual parties.

6.11.3 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 DHR 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.

6.11.4 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.

6.11.5 A finding in the report that a formal complaint is malicious, vexatious or trivial may constitute 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.

6.11.6 In cases involving allegations of systemic discrimination, the appropriate authority 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.

6.11.7 For invitees, the appropriate authority in receipt of the final report of the fact-finding team will determine whether to accept or reject with reasons, the recommendations in the report and this decision is final subject to any rights or contracts with the University.

6.11.8 Once the fact-finding team submits its final report to the appropriate authority through the AVP (DHR), and once, the appropriate authority has consulted DHR 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.

6.11.9 All communications between DHR and the Vice-President or any other appropriate authority in receipt of the final report are confidential.

6.11.10 DHR will monitor the implementation of any recommendations that a Vice-President or the appropriate authority undertakes and will ensure that those involved with the matter are kept fully informed.

## **6.12 Disciplinary Action**

### **6.12.1 Complaints Upheld by the Appropriate Authority**

Complaints upheld by the appropriate authority may result in discipline according to the established procedures applicable to the employee or student in question.

### **6.12.2 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 (see Section 8).

### **6.12.3 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.



## **6.13 Records**

### **6.13.1 Records Held by DHR**

Records pertaining to all complaints under the Policy will be retained by DHR. Access to such records will only be in accordance with the applicable University policies, agreements and applicable legislation or law. The retention period for records will be in accordance with the DHR Records Retention Protocol published on University Secretariat website. The Retention Period may be extended if the matter has proceeded to an external proceeding, such as a complaint under the *Code*. Upon expiry of the retention period, all records regarding the complaint will be destroyed.

### **6.13.2 Unsubstantiated Complaints**

With the exception of a finding that a complaint is malicious, vexatious or trivial (Section 6.11), or that ameliorative steps should be taken, no further action will be taken if a complaint is not substantiated. Records of an unsubstantiated complaint will be kept by DHR. The said records shall be held by DHR in case further action is taken outside the University and only accessed with written approval of the AVP (DHR).

Any records of fact-finding and other processes with a formal complaint under the Policy will be removed from an employee's official file if an arbitrator under a collective agreement finds that no discipline is warranted.

### **6.13.3 Records Held in Employee/Student Official File**

Where a formal complaint has been substantiated against an employee, a record of the disciplinary outcome will be placed in the respondent employee's official personal/confidential file in accordance with applicable University policies and/or collective agreements.

Where a formal complaint has been substantiated against a student, a record of the disciplinary outcome will be retained by AVP (Student Affairs) in accordance with any applicable agreement and policies.

If there is a previous record of less than two (2) 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. \*As per sunset clauses in the relevant collective agreement(s).

## **7. TIMELINES**

7.1 All complaints must be initiated and filed with DHR 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.

7.2 To seek an extension of the one (1) year time limit for filing a complaint, a complainant who is a faculty member or a student will seek, through DHR, the approval of the Vice-President (Finance, Administration and Risk). For a complainant who is a staff member, approval for an extension of the one (1) year time limit will be sought through DHR from the Provost and Vice-President (Academic).

## **8. 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 the Policy. The committee will be comprised of a University department director and two (2) University staff members, at least one (1) 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.

## **9. APPROVAL**

The Provost and Vice-President (Academic), Vice-President (External), Vice-President (Research) and Vice-President (Finance, Administration and Risk) will review any proposed enhancements or amendments to the Procedures by AVP (DHR) and make recommendations to the President, with copy to AVP (DHR). The President shall make the final decision. The President will report annually to the Board of Governors on the implementation of the Policy and on any enhancements or amendments made to these Procedures.