

**Faculty and Academic Staff Relations
Office of the Provost and Vice President (Academic)**

Mode of Operation and Procedure

The following procedure and mode of operation shall be followed, for the investigation of allegations of Workplace Harassment which are non-code based:

- a) The Assistant Vice President (Faculty and Academic Staff Relations) (FASR), Tracey Jandrisits, in consultation with the Director, HREO or designate, will establish a fact finding team. The Team will consist of three people who have been trained to conduct an investigation. Normally the Team will consist of the dean, the AVPR FASR, and a third person drawn from the list of trained fact finders held by the Judicial Officer. In the case where the complainant is not a Member of the UGFA or CUPE 3913, the Director of Staff Relations will also serve as a member of the Fact Finding Team.
- b) The Fact Finding Team will disclose to one another any potential conflicts of interest that they have with any of the parties to the complaint. The AVPR FASR will determine whether a declared potential conflict of interest will result in the replacement of the member in question. The nature and circumstances of all declared conflicts of interest, together with the fact finding team's conclusions regarding the matter, will be noted in writing in both the draft and final report concerning the formal complaint.
- c) The complainant or respondent 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 AVPR of FASR. The Challenge will then be provided to the Provost and Vice-President (Academic) and the decision with regard to the potential for conflict of interest or bias will be made

within five (5) working days of having received the challenge. The decision will be final.

- d) The AVPR FASR, in consultation with the dean will determine if any immediate action or interim measures are required, such as making arrangements for alternative supervisory relationships, or discontinuing contact between the complainant and respondent during the period of the investigation and resolution process.
- e) The AVPR FASR will, within two (2) university working days of receipt of the Incident Report, notify the respondent in writing of receipt of the Incident Report and will include a copy of the Incident Report and the description of the procedure which shall be followed for investigation.
- f) The AVPR FASR will ask the respondent, in writing, to provide to the office of FASR a written response to the formal complaint within the following ten (10) University working days.
- g) The AVPR FASR will then provide the respondent's written response to the complainant and ask that the complainant in writing provide any written reply within ten (10) working days.
- h) The fact finding process will commence on the expiry of the time permitted for response under f) or g) above, whichever is later.
- i) The complainant and respondent are encouraged to seek the assistance of one (1) or more of the following individuals: human rights resource person from the roster maintained by the HREO; Union representative; employee; colleague or legal counsel.
- j) 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 stop a fact finding process.

Fact Finding Process:

The fact finding team will conduct an investigation and 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 the 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.

Allegations of harassment must be proven on a “balance of probabilities”, the same standard used in human rights inquiries and civil law matters. The onus of proof lies on the party making the complaint.

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 the complaint is amendable to mediation, the fact finding team will consider the University’s legal responsibility to provide an environment free from harassment and whether the matter involves express or implied threats, intimidation or coercion.

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 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 those potential witnesses. It may also be necessary to re-interview the complainant and/or respondent before issuing the draft report.

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 following:

- a) Nature and circumstances of all declared potential conflicts of interest, together with the conclusions regarding those matters or the outcome of any challenges.
- b) Allegations giving rise to the formal complaint, or counter complaint if applicable;
- c) Any responses of the respondent and complainant;
- d) The list of persons interviewed by the fact finding team;
- e) The witnesses identified, but who were not considered relevant to the complaint or who were not available;
- f) The nature of the evidence provided by the complainant, respondent and the witnesses;
- g) Findings of fact including whether workplace harassment occurred;
- h) One of the three recommendations:
 - i. That the case be closed on the grounds of insufficient evidence of workplace harassment;
 - ii. That procedures be initiated that could lead to disciplinary action against the respondent;
 - iii. that procedures be initiated that could result in disciplinary action against the complainant on the grounds of a malicious, vexatious or trivial complaint.

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 the complainant or respondent to extend the timeline for commenting upon the draft report of the fact finding team, based on reasonable grounds, shall be considered by the fact finding team and permission for such an extension shall 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) working days.

Copies of the final report of the fact finding team will be distributed by the AVPR FASR, to the parties, the Dean, and the Provost.

Decision - Provost and Vice-President (Academic)

The Provost, in receipt of the final fact finding report, will decide in consultation with the Dean, and in accordance with the terms and conditions of the Collective Agreement, what action will be taken.