



Respectful Work & Learning Environment Procedures

Procedures for the Prevention of Harassment and Discrimination

Introduction

1. Preventing Harassment and Discrimination

- a. The University has a legal obligation to take all reasonably practicable steps to prevent harassment or discrimination on grounds prohibited by *The Occupational Health and Safety Act* and *The Saskatchewan Human Rights Code*. As established in the University's Harassment and Discrimination Prevention Policy and incorporated into the revised Policy, renamed The Respectful Work and Learning Environment ("RWLE") Policy, the scope of the policy also includes personal harassment.
- b. Effective prevention of discrimination, discriminatory harassment and personal harassment begins with a policy statement that reflects not only the legal and ethical obligations but also the University's commitment to an environment free of harassment and discrimination where employees and students can live, work and learn in a climate of respect. The University's commitment is demonstrated in a variety of ways, including but by no means limited to the commitment to:
 - 1) act promptly to stop harassment and discrimination brought to the attention of the University and to take steps to prevent its recurrence;
 - 2) developing and implementing both general and specific or targeted communication and education strategies on an on-going basis to increase employee and student awareness and knowledge about the policy, the procedures and their contribution to maintaining a respectful workplace. In addition, to continue to develop and implement targeted educational and developmental programs, workshops and other learning opportunities to meet identified needs and to employ a wide range of media to appeal to, and meet the needs of, targeted audiences.
- c. Creating a climate of respect and maintaining an environment free of discrimination and harassment is a shared responsibility. Employees and students have an obligation not to cause or participate in harassment or discriminatory behaviour. One of the most effective contributions an individual can make to the prevention and elimination of discrimination and harassment is to take prompt, positive and constructive action to address issues when they arise. It is not mandatory to report harassment or discrimination, but employees and students can also make a significant contribution to the prevention of harassment and discrimination by bringing their concerns or complaints to the attention of the University.
- d. An employee or student who believes he or she has been subjected to harassment or discrimination can (and is encouraged to) bring the matter to the attention of the University by contacting the Respectful Workplace Consultant. An out-of-scope person who receives a complaint should contact the Respectful Workplace Consultant for guidance. Such guidance can be provided without the need to identify the parties involved.

Multiple Resolution Options

Every situation is unique, not only in terms of the circumstances, but also with regard to the needs and interests of those involved, their preferred style of handling conflict, the desired outcome and a host of other factors. These procedures provide multiple resolution options for addressing and resolving harassment and discrimination—or resolving conflict before it escalates to the level of harassment. Multiple resolution options offer employees and students an opportunity to choose a course of action that meets their needs. Resolution options fall into three broad categories:

- Personal Resolution (Self-Managed or Assisted)
- Alternative Resolution Options
- A complaint process

2. Personal or Self-Managed Resolution

- a. In many situations, the affected employee or student simply wants the objectionable conduct to stop. Wherever possible, employees and students are encouraged to communicate directly with the other person, firmly and respectfully letting him or her know that their behaviour has caused offence, is unwelcome and should not be repeated. Individuals may not be aware of the impact of their behaviour and a private conversation may be all it takes to stop it. Alternatively, a variation of this direct approach or other self-managed resolution options may be appropriate. (See Alternate Resolution Options).
- b. A person who observes discrimination or harassment may be able to provide immediate, direct assistance by speaking up or speaking out. Where that is not reasonable or appropriate, a witness can still be supportive and helpful by letting the target of the offensive behaviour know what he or she saw and/or heard and offering direct or indirect support to help address the offending behaviour.
 - 1) A witness may also bring the incident to the attention of the Respectful Workplace Consultant; however, a witness cannot lodge a complaint on behalf of the affected employee or student without his or her consent. Where such consent is obtained, it is the employee or student, not the witness, who is the Complainant.
 - 2) Even if no other action is taken, a person who believes he or she has experienced or witnessed harassment or discrimination is advised to make a detailed personal record of the incident as soon as possible after the incident occurs.
- c. It is recognized that direct personal action is not always possible. When an individual is unable to bring the matter directly to the attention of the person responsible, or it is not reasonable, practical or safe to do so, or where the direct approach has been attempted and fails to produce a satisfactory result, he or she should consider seeking assistance.

1) Seeking Assistance

At the local level

- (1) When direct personal action has not been successful, it can be very effective for employees or students to seek assistance at the “local” level, e.g., from professors, instructors, coaches, managers or supervisors or person in authority in their unit, such as their Dean, Director, Associate Vice-President or Vice-President.
- (2) In addition to the above, students may also access the resources within Student Affairs, including the assistance of the Associate Vice-President (Student Affairs) and/or access the resources of their Union, URSU or, if applicable, CUPE, as well as the Student Advocate.

- (3) Students in co-op placements are encouraged to contact their co-op co-ordinator. Co-op students may also seek the assistance of the Associate Vice-President (Student Affairs), or, in the case of graduate students, the Dean of the Faculty of Graduate Studies and Research.
- (4) Prior to taking action or rendering assistance in the resolution of situations that may involve harassment or discrimination, the individual seeking assistance and/or the person being asked to assist are encouraged to contact the Consultant to discuss the proposed course of action.

From the Respectful Workplace Consultant

- (5) The Consultant is available to provide information about the policy and procedures to any member of the University, including individuals who believe they may have experienced or witnessed discrimination or harassment and those who may have been accused of it, as well as others who may be involved or impacted.
- (6) The Consultant is an impartial, neutral source of information about harassment and discrimination and the operation and interpretation of the policy and procedures. The Consultant is not an advocate for either party.
- (7) One of the Consultant's key roles, and the initial purpose of any consultation, is to provide the individual with the information he or she needs about the policy and process in order to make informed choices.
 - (a) Consultations will typically include a discussion of multiple resolution options available within the broad categories of personal (self-managed) resolution, alternate resolution options and the formal complaint process, including their respective advantages and disadvantages and/or, as required, interpretations and explanations of the Policy and these procedures.
 - (b) The Consultant will advise potential Complainants and Respondents, verbally, in writing and/or by direction to these procedures of their right to procedural fairness and, in particular
 - (i) the right to file a written complaint;
 - (ii) the right to be informed about the complaint made against them and to be provided with a reasonable opportunity to respond to the allegations;
 - (iii) the availability of counselling or other additional or alternative University services and resources, as appropriate and/or applicable;
 - (iv) their right to be accompanied by a support person or representative of their choice, such as a friend, colleague, union representative, student advocate, at any time they are required or entitled to be present;
 - (v) their right, when an investigation has commenced, to withdraw from any further action in connection with the investigation (although the University may proceed with the investigation in its own right) or to suspend the complaint process pending alternate resolution efforts, or, conversely, to cease alternative resolution efforts and file a complaint;
 - (vi) their right to choose other avenues of recourse, including but not limited to filing a grievance, criminal prosecution or civil litigation, filing a complaint with the Human Rights Commission, Occupational Health and Safety or any other option permitted by law.
 - (c) At the conclusion of the consultation, if any, the Complainant alleging discrimination, discriminatory harassment or personal harassment has the option to
 - (i) submit a written, signed Complaint and Request for an Investigation; or

- (ii) submit a written, signed Statement and Request for Action by providing details of the cause for concern, specifying the Alternate Resolution Option proposed and the requested action(s) on the part of the Consultant, if any; or
 - (iii) proceed on his or her own with a self-managed alternate resolution option; or
 - (iv) take no further action.
- (d) The right to file a complaint and *request* an investigation or to submit a statement and a request for action is subject to the following:
- (i) an investigation is not a matter of right. In order for a matter to proceed to investigation, intake and assessment criteria (See Paragraph 5) must be met;
 - (ii) the burden of proof is on the complainant to establish a *prima facie* case of personal or discriminatory harassment or discrimination, i.e., by alleging facts that tend to establish the essential elements of the definition;
 - (iii) the purpose and scope of an investigation is to determine whether there is evidence to support the specific allegations;
 - (iv) if the criteria are not met, the matter will not proceed to investigation unless the provisions of Paragraph 9 apply;
 - (v) a request for action (for assistance with an Alternate Resolution Option) is not a matter of right and does not compel action on the part of the Consultant. If a request for action is declined, the Consultant will provide an explanation and a reasonable alternative;
 - (vi) Allegations of personal harassment, in particular, often have their source in unresolved conflict within the context working or academic relationships. In such cases, consideration of alternate resolution options, as opposed to the formal complaint and investigation processes are strongly recommended.

3. Alternate Resolution Options

a. Choosing and Implementing a Resolution Option

Alternate resolution refers, generally, to options *other than* a complaint process—options which take a problem-solving approach, chosen and controlled by the individuals involved, to achieve a satisfactory resolution. The alternative resolution process does not, in itself, create a formal record, nor will any corrective or disciplinary action be taken or consequences imposed, even if the other party declines to participate or the process fails. In contrast, complaints are handled in accordance with formal procedures and resolution of the issue(s) is by way of a formal decision imposing corrective, preventative, remedial or disciplinary consequences. A formal record is created within the RWLE office, as well as on personal records of the Respondent (employee or student) if disciplinary action is taken. Choosing a resolution option is affected by these and other factors, and the appropriate option will be dependent on what factors are most important to an individual. While alternate resolution efforts are to be encouraged, it should be noted that there *are* circumstances in which a problem-solving approach is not appropriate.

Other considerations:

- 1) Conflict rarely resolves itself. To put a stop to harassment and discrimination and to prevent unresolved conflict from escalating to that level, employees and students are encouraged to take action to address the situation as soon as possible. “Taking action” does not necessarily mean lodging a complaint—there are a number of alternative resolution options between “doing nothing” and lodging a formal complaint.
- 2) Every resolution option, from direct personal action to the filing of a formal complaint, has advantages and disadvantages. Before choosing a resolution option, employees and

students are encouraged to discuss their situation, in confidence, with the Consultant in order to identify their interests, needs and desired outcome, to evaluate all the options and to choose the option which best meets their needs.

- 3) Employees and students may prefer to try alternate resolution options on their own, i.e., relying on fellow students or co-workers for assistance with those options requiring a third party, or with the assistance of their manager or the Consultant. Before seeking the assistance of any third party other than the Consultant, the third party and the employee or student are encouraged to discuss the situation, in confidence, with the Consultant who can provide information, guidance, coaching and other resources, as required.
- 4) If an alternate resolution option fails to resolve the matter, or the other party declines to participate, the affected party may choose to propose another resolution option.
- 5) The affected party continues to have the right to file a formal complaint and request an investigation or choose to take no further action.

b. Alternate Resolution Options

- 1) **Direct Approach:** Taken literally, this resolution option involves confronting the offending party in person. Employees and students are encouraged to consider taking a direct approach whenever possible; it can be the quickest, simplest, most effective and most private approach. However, it can also be the resolution option that causes the most apprehension. A confidential discussion with the Consultant, who can provide coaching, information, guidance and resources, can alleviate many of the most common concerns about the direct approach. In addition, variations of the direct approach can provide effective ways to confront the *issue* directly, without a face-to-face meeting with the offending party as the first step. Even when the direct approach has been previously attempted without success, with additional guidance the direct approach, or a variation of it, may still offer the most practical and effective resolution option.

- 2) **Third Party Support:** An individual who prefers to deal with the issue personally but is not comfortable approaching the other party alone may choose to take along a co-worker or fellow student. In this variation of the direct approach, the sole purpose of the third party is to provide silent support, rather than taking an active, participatory role. Nor is the presence of the third party meant to be intimidating or threatening; if it is perceived as such, the other party may not be receptive to this resolution effort.

Note: It is important for individuals providing third party support to understand if they are witness to inappropriate behaviour, they may be called upon as a witness in subsequent proceedings, if any.

- 3) **Third Party Intervention:** A willing third party within the University community may also play a more active, participatory role as an intervener or intermediary. In either case, the third party's role is to act as a channel of communication. As an intervener, the third party conveys the message the affected party is uncomfortable delivering personally; for example, the intervener might identify the behaviour that caused offence and ask the other person to stop. Alternatively, the third party may be (or become) an intermediary, conducting communication back and forth between the parties until all the issues and responses have been "discussed". Even if issues are not resolved in this fashion, the intermediary's efforts often serve to reduce the discomfort that is a barrier to direct communication, paving the way for face-to-face discussion between the parties with or without further assistance.

- (1) The effectiveness of this resolution option is heavily dependent on choosing the most appropriate intervener/intermediary, having regard to the nature of the issue, the parties involved, the desired outcome and other relevant factors. The likelihood of successful intervention is greatly enhanced if the third party is neutral and/or trusted and respected by the parties.

- (2) **Third party intervention by a person in authority:** If the third party intervener is a person in authority, it is particularly important for the third party to clearly establish his or her role as an intermediary and/or facilitator, not to decide who is right or wrong. If the issues are not resolved and a complaint ensues, this third party should not be the decision-maker in the complaint process.
- 4) **Facilitated Resolution:** As suggested above, the efforts of an intermediary may pave the way for face-to-face resolution discussions. If the parties feel they require assistance to achieve resolution, seek assistance, a skilled intermediary may agree to facilitate their resolution discussion. In some situations, the seriousness and/or complexity of the issues may require the services of an individual with facilitation (problem-solving) skills, conflict resolution or mediation training.
- 5) **Mediation:** Mediation is a structured resolution process in which a trained mediator works with both parties in an effort to reach a settlement; if successful, the settlement may be documented in a written agreement. Should mediation fail or the agreement be breached, only the fact that mediation was tried and failed, or led to an agreement that was breached is admissible in a subsequent complaint.
- 6) **Education:** An educational approach is primarily preventative. In some situations, a person who experiences or witnesses harassment does not wish to initiate any personal action to resolve it, or to have it known that they brought the issue forward—but they do want the offensive behaviour to stop. In this approach, the appropriate person in authority, e.g., Dean, Director or Supervisor etc., would be informed, usually by the Consultant, that this preventative action has been requested. The identity of the affected party and the person(s) causing offence are not disclosed by the Consultant, nor is the precise nature of the offensive conduct, if doing so might identify either party. Within these limitations, various educational / preventative strategies (workshops, presentations, videos etc.) would be discussed with a view to subsequent delivery within the unit. Generic solutions often increase awareness within the unit as whole, and can be effective in stopping the specific offensive behaviour; however, follow up is important to ensure that the offensive behaviour has stopped and, if not, to explore further options.
- 7) **Customized:** When considering the applicability of alternate resolution options, it is important to understand that the options listed in this section do not need to be implemented sequentially. To be effective, the alternative resolution option must meet the needs and interests of those involved; consequently, the “best” alternative resolution option may be a variation of an existing option or a customized combination of several options.

4. Statement and Request for Action

- a. An employee or student may request the Consultant to initiate contact with the other party for purposes of proposing an alternative resolution option or to take other specified action with a view to resolving the issue(s) in a manner other than within the complaint process. Such a request must be written and signed and must include a statement or incident report with the details of the situation or behaviour giving rise to the concern and proposed resolution option to be communicated to the other party and/or desired outcome. Where other action on the part of the Consultant is requested, the agreed action shall also be authorized (documented and signed) by the employee or student before any action is taken by the Consultant. Some or all of this information may be gathered and documented in the course of the consultation meeting(s).
- b. If the Consultant agrees to a request to communicate the proposed alternate resolution option, the Consultant shall
 - 1) provide the other party with a summary of the identified concern(s) and the resolution option proposed and/or outcome desired by the affected party;
 - 2) provide the other party with information as to their rights, responsibilities and options, informing the party that:
 - (1) the proposal is an alternate resolution option, and not a formal complaint or part of an investigation;
 - (2) participation is voluntary and he or she has the option to participate or decline to participate or to counter-propose another form of alternate resolution or modification to the original proposal;
 - (3) his or her agreement to participate in alternate resolution is not an admission of wrongdoing;
 - (4) either party can withdraw from the process at any time;
 - (5) no formal record is created with regard to the parties resolution efforts;
 - (6) the person who initiates an alternate resolution option does not relinquish their right to file a formal complaint if the other party declines to participate or withdraws or alternate resolution efforts fail. He or she may also choose to take no further steps;
 - 3) provide the other party with an opportunity to discuss options with the Consultant, time to consider his or her options and/or to seek advice elsewhere.

5. Complaint and Request for Investigation

a. Lodging a Complaint – Intake and Assessment

- 1) A complaint is initiated by providing the Consultant with a completed Complaint Form or a detailed written complaint, dated and signed by the Complainant, which includes a clear statement requesting an investigation and identifies the Complainant's desired outcome.
- 2) A request for investigation will not be considered and no investigation shall be undertaken in the absence of a signed, written complaint that establishes a *prima facie* case of discrimination or harassment.
- 3) Complaints must be lodged within two years of the last alleged incident. Exceptions based on exceptional circumstances may be made by the Consultant, in consultation with the Associate Vice-President. (Human Resources).
- 4) Before proceeding with a complaint, the Consultant will assess whether

- (a) the complaint is timely;
 - (b) the matter is within the jurisdiction of the University, i.e., involving employees and/or students of the University;
 - (c) whether the allegations are within the scope of the policy and these procedures, i.e., alleging discrimination or discriminatory harassment;
 - (d) whether the complaint establishes a *prima facie* case of discrimination or harassment;
- (2) where the complaint lacks sufficient detail or does not address important evidentiary points, but does tend to establish a *prima facie* case, the Consultant may proceed with an investigative interview with the Complainant to supplement the information in the complaint;
- (3) if the complaint does not involve an employee or student, and only seeks redress from the University, e.g., alleging that the University itself has failed to meet its obligation to provide a safe and healthy environment free of harassment, the matter shall be referred to the Associate Vice-President (Human Resources), who may direct an investigation and order any interim measures or relief that he or she deems fit. The Complainant shall be so notified, in writing, with reasons.
- 5) If the foregoing criteria are not met, the Complainant will be advised of the determination not to proceed. Recognizing that this action does not resolve the Complainant's problem, the Consultant may be able to recommend other problem solving options or refer the Complainant to other University services or resources.
- 6) Upon request, the Consultant will provide either party with general information and guidelines related to the form and content of a complaint or response to a complaint. If further assistance is required to prepare a complaint or a response, either party may seek such assistance from a union representative, a trusted friend or colleague or anyone else he or she deems appropriate.
- 7) The Consultant shall ensure that the Complainant and the Respondent have been
- (a) provided with a copy of the policy and these procedures;
 - (b) advised that all those involved in a discrimination or harassment complaint are expected to maintain confidentiality, particularly within the work, learning or living unit in question, and shared professional and social circles. Any person breaching confidentiality may be subject to discipline or other appropriate action;
 - (c) advised that retaliation or the threat of retaliation or reprisal against anyone involved in the complaint process is considered to be a serious offence and may be subject to discipline or other appropriate action;
 - (d) advised that threats or any other safety concerns should be reported to the Consultant;
 - (e) informed of their right to be accompanied by a support person of their choice, including a union representative or student advocate, at any stage in the proceedings where he or she is entitled or required to attend. The role of the support person is to
 - (i) provide moral support, keeping in mind that the Complainant and the Respondent are responsible for expressing their own thoughts and feelings, and for full disclosure of information related to the allegations;
 - (ii) support the investigator's objective of conducting a full, fair and impartial investigation;
 and that
 - (iii) the support person cannot be a witness in the investigation; and

- (iv) the investigator may terminate or postpone the interview if the behaviour of the support person is deemed inappropriate; and
 - (v) any costs associated with the attendance of a support person shall be borne by the Complainant or the Respondent, as the case may be.
- 8) A Complaint and Request for Investigation will not proceed if, in the opinion of the Consultant, a complaint is frivolous, vexatious, malicious or retaliatory; if such a determination is made, the Complainant will be advised in writing. A frivolous complaint is one that is trivial and/or without serious content. A vexatious complaint is one that is primarily intended to vex or annoy the Respondent, rather than secure a remedy. A malicious complaint is a complaint made in bad faith, i.e., an intentionally false accusation, or a complaint intended to harass or harm the Respondent rather than secure a remedy. A retaliatory complaint is a complaint made in bad faith, solely or primarily for the purpose of "getting back at" a member of the University community.
- 9) When a Complaint is determined to be frivolous, vexatious, malicious or made in bad faith or retaliatory, that finding is forwarded to the appropriate Associate Vice-President, Dean, Director or Manager for consideration of disciplinary action; fraudulent, retaliatory and/or malicious complaints made in bad faith may result in a Complaint initiated by the University pursuant to the RWLE policy and these procedures and/or other applicable University policy.

Notification

- 10) Upon completion of the intake and assessment of the complaint, the Respondent shall be notified in writing that a complaint has been lodged, provided the complaint meets the criteria set out in the preceding section. The Respondent will be provided with a copy or summary of the allegations, identifying the Complainant. The Respondent will also be provided with a copy of the policy and these procedures.
- 11) The Consultant shall inform the relevant Dean(s), Associate Vice-President(s), Director(s) or Manager(s) for each party that a complaint has been filed and an investigation initiated. Where appropriate, the Consultant will also recommend and/or discuss the need for interim measures.

Response

- 12) The Respondent shall have the right (but is not obliged) to respond in writing, within 14 days of being notified. The response, if any, should either acknowledge or deny the validity of the allegations in whole or in part, provide additional information, and/or propose a resolution of the complaint. A request for an extension of the response period will not be unreasonably withheld.
- 13) The Respondent is entitled to the same level of assistance in the process as is available to the Complainant. If he or she has not already done so, the Respondent has the right to meet with the Consultant to obtain information, guidance and assistance and discuss options. The Consultant will not directly assist the Respondent to prepare his or her response; a Respondent may seek such assistance from a union representative, a trusted friend or colleague or anyone else he or she deems appropriate.
- 14) The Complainant shall be provided with a copy or summary of the response and has the right (but is not obliged) to respond to the investigator, in writing, within 7 days. The Complainant may, in his or her response, accept the Respondent's proposed resolution, if there is one; propose or request an alternate resolution, withdraw some or all of the allegations, or rebut the Respondent's contradictory evidence or affirmative defence.
- 15) The Respondent is provided with a summary of the Complainant's response, which ends this stage of the process.

Investigation

- 16) A fair, thorough and complete investigation of the complaint will be conducted as expeditiously as possible. Both the Complainant and the Respondent are entitled to know the progress of the investigative process, and may contact the investigator for that purpose at any stage of the proceedings.
- 17) The investigator shall collect, review, analyze and assess the facts with respect to the merits or veracity of the allegation(s). Facts are derived from evidence provided by the Complainant, the Respondent, as well as witnesses and other evidence, if any, and may include inferences drawn by the investigator from the evidence gathered.
- 18) A typical investigation involves, but is not necessarily limited to, the information gathered in the complaint/response process, supplemented by interviews, if necessary, with the Complainant, Respondent and witnesses and the review of any applicable documentary, physical, corroborative or contemporaneous or other evidence. An interview with the Respondent will be requested if their prepared response statement does not address important evidentiary points, is non-responsive, or lacks sufficient detail.
- 19) The investigator is solely responsible for determining the scope of the investigation, including which witnesses, if any, are to be interviewed. Witnesses may include anyone who can provide information, records or details regarding an allegation or the circumstances surrounding a Complaint. When material facts are not in dispute, interviewing witnesses may be unnecessary.
- 20) There is an obligation on members of the University community to co-operate in the investigation of a complaint.
- 21) If a Respondent refuses to cooperate, in most cases it will be both possible and appropriate to proceed with an investigation without a statement (response) or interview of the Respondent.
- 22) The investigator's interview notes or a transcribed summary / statement based on the notes shall be reviewed for accuracy and signed by the interviewee.
- 23) In the absence of exceptional circumstances, interviews will be conducted in person. If necessary, further clarification of information presented in the complaint, the response or gathered in the interview process may be obtained by telephone or an exchange of letters (including e-mail).
- 24) The scope of the investigation shall be limited to the original allegations made by the Complainant. Should additional allegations arise or be raised at any time, the Complainant must file a supplementary complaint, and the notification and response process repeated.
- 25) If the matter complained of is also under investigation by the police or another external agency (Saskatchewan Human Rights Commission, Saskatchewan Labour), the University, at its discretion, shall continue, stay or terminate the investigation or any other proceedings related to the matter.
- 26) Investigations will normally be conducted by the Consultant. As required, alternate or additional internal or external investigators may be designated. The Consultant shall not act as investigator where there is a conflict of interest or a reasonable apprehension of bias. In addition to the Consultant's ethical responsibility to identify actual or potential conflicts of interest, it is the responsibility of the Complainant and the Respondent to identify a perceived apprehension of bias or conflict of interest prior to the commencement of the investigation or at the earliest opportunity. Pending a determination of the issue by the Associate Vice President (Human Resources) the complaint/investigation process will be suspended.

Reporting: Preliminary Draft and Final Report

- 27) The Consultant/Investigator is not the decision maker; ultimately, responsibility for the resolution of the complaint rests with the designated person in authority in the Respondent's Faculty, academic unit or administrative unit, such as the Vice-President, Associate Vice-President, Dean, Director or Manager, based on the findings in the investigative report. To assist him or her to make an informed decision, the investigator's report must not only be fair and impartial, but also thorough, complete and useful, and shall include a clear statement as to whether, on balance of probabilities
- (a) the allegations in the complaint are substantiated; or
 - (b) the allegations in the complaint are unsubstantiated; or
 - (c) there is insufficient evidence on which to base a finding; or
 - (d) behaviour on the part of both parties violated the Policy.
- 28) Where the Respondent is a student, the decision will be made by, or in consultation with, the Vice-President (Student Affairs). Where the designated person in authority *is* named as the Respondent, the decision will be made by the next most senior, out-of-scope person in the Faculty, academic unit, or administrative unit with the authority to address personnel matters.
- 29) Upon completion of the investigation, the investigator shall provide written notification and a targeted date for completion of the preliminary (draft) investigative report to the Complainant, the Respondent and to the appropriate person(s) in authority for each party, i.e., their respective Dean, Director, Vice-President, Associate Vice-President or Manager.
- 30) Wherever possible, the preliminary report should be completed and the process for distributing the preliminary report should begin, within 21 days of the completed investigation. Prior to distribution, the Consultant will review the draft report to ensure compliance with *The Local Authority Freedom of Information and Protection of Privacy Act*.
- 31) A preliminary draft of the final report will be first provided to the Complainant who shall have the right, but not an obligation, to respond within 7 days of receipt. Together with the comments of the Complainant, if any, the draft report will be provided to the Respondent, who shall have 7 days to respond. Before concluding the preliminary draft stage, the Respondent's comments are provided to the Complainant for his or her final response or comment, if any (within 7 days), which ends the exchange.
- 32) The final report is prepared and distributed within 14 days of the Complainant's final response to the draft report, if any. The final report is strictly confidential and distribution is limited to those who "need to know".
- 33) Taking into account the parties responses, if any, to the draft report, the final report will include the investigator's opinion on whether the allegations are or are not substantiated, and whether the policy has been violated. The investigator will not make specific disciplinary recommendations; however, the report will, in most cases, provide information that is important to the determination of appropriate disciplinary action by the person in authority. The investigator's report also serves as a guide to remedial actions necessary to correct deficiencies in the workplace; as such, the report may include recommendations (corrective, preventative, educational or remedial, e.g., training and development) to correct deficiencies and/or restore the health of the work or learning environment.
- 34) Unless the Vice-President, Associate Vice-President, Dean, Director or Manager seeks clarification of the report in any respect, or matters arise requiring further investigation and/or supplementary reports, the submission of the final report ends the investigator's role in the process. To ensure legislative compliance, the role of the Consultant will be on-going for remedial and preventative purposes, and follow-up.

Decision

- 35) Within 14 days after receipt of the investigator's report, the Respondent's Vice-President, Associate Vice-President, Dean, Director or Manager will make a determination whether the policy has been violated or, if not, whether the conduct that forms the substance of the complaint amounts to misconduct by the Respondent and, if so, in either case, whether discipline consistent with any applicable collective agreements is warranted.
- 36) The Vice-President, Associate Vice-President, Dean, Director or Manager is responsible for communicating his or her determination to both the Complainant and the Respondent, and taking all further actions arising from the determination as he or she deems fit.
- 37) Where disciplinary action is warranted, to ensure consistency with action taken in similar cases, the Vice-President, Associate Vice-President, Dean, Director or Manager will consult with the Associate V.P. (Human Resources) before imposing discipline. The Vice-President, Associate Vice-President, Dean, Director or Manager shall also consult with the Consultant with regard to an appropriate corrective, preventative and/or remedial action plan, including targeted educational opportunities.
- 38) The Complainant has the right to know that corrective action has been taken as a result of the report, but not the specifics of any disciplinary action. Note that "corrective" action may include disciplinary action, but the term also encompasses preventative, educational and remedial measures
- 39) Any disciplinary action taken by the Vice-President, Associate Vice-President, Dean, Director or Manager is subject to the grievance-arbitration process of the applicable collective agreement or, for students, by appeal to Council Discipline Committee.
- 40) If the complaint is substantiated, a letter will be placed in the Respondent's personnel or student file, to be retained in a manner consistent with University policy. The letter shall not name the Complainant or contain any information by which the Complainant could be identified.

Closure

- 41) When the matter is closed, the respective Dean(s), Vice-President(s), Associate Vice-President(s), Director(s) or Manager(s) shall return their copy of the final report and any other documentation pertaining to the complaint and/or investigation to the Consultant to be retained in the confidential files of the Respectful Work and Learning Environment Office.
- 42) Whether recommended in the Investigator's report or not, Dean(s), Vice-President(s) Associate Vice-President(s), Director(s) or Manager(s) are legally responsible for monitoring their unit to prevent harassment and discrimination and implementing appropriate measures to restore the health and effective functioning of their unit(s). The services of the Consultant are available on an on-going basis to assist in the fulfillment of those obligations.
- 43) This responsibility may include, if appropriate and with due respect to the confidentiality of the process and the individuals involved, making a clear statement to the unit that an investigation was conducted and the issue is resolved.

Withdrawal or Dismissal of a Formal Complaint

44) The Complainant may request that a formal complaint be withdrawn by delivering the request, in writing, to the Consultant. The Respondent's Vice-President, Associate Vice-President, Dean, Director or Manager, as the case may be, shall be notified and in consultation with the Consultant, will determine whether or not the investigation is to continue and notify the Complainant of the decision. The Respondent will be notified in writing if the complaint is withdrawn and the investigation will be discontinued.

Note: The University may have an obligation to continue the investigation, particularly in situations where harassment was severe, or others may be at risk.

45) Where a complaint has been dismissed or withdrawn, the Respondent may request remedial measures; where it is determined that there has been no violation of University policy, the Vice-President, Associate Vice-President, Dean, Director or Manager, if requested by the Respondent, may issue a statement that there has been no violation of University policy by the Respondent. The statement must not disclose the name of the Complainant.

GENERAL PROVISIONS

6. Confidentiality, Records and Use of Information

- a. Addressing allegations of discrimination and harassment requires the collection of sensitive personal information; use and disclosure of such information is limited to those who "need to know". In addition to the legislation which requires the protection of personal information, confidentiality is required so that employees and students who believe they have experienced harassment or discrimination are willing to come forward, secure in the knowledge that their privacy will be respected and the confidentiality of their issue will be protected as far as possible. Confidentiality is also required to protect the reputations and interests of the person accused of harassment or discrimination and to maintain the health and effective functioning of the units of which they are part. Accordingly, all members of the University community who are involved in a complaint procedure and those in whom they confide are expected to maintain confidentiality, particularly within the work, study or living area and in shared professional and social circles. Any person breaching confidentiality may be subject to disciplinary or other appropriate action.
- b. Subject to any exceptions provided in these Procedures and to the extent required by law, all written and oral information that is created, gathered, received or compiled pursuant to these procedures is to be treated as strictly confidential by the Respondent and Complainant, their representatives, witnesses, and University officials. It may be used only for the purpose of resolving the issues raised and only by those persons who are necessarily involved in the resolution of those issues.
- c. To be clear, confidentiality does not necessarily mean anonymity. The rules of natural justice and procedural fairness include the fundamental principle that at the earliest opportunity in the complaint process, the Respondent must be fully informed of the allegations and the identity of the Complainant and provided with the opportunity to provide full answer and defence.
 - 1) Anonymous reporting: A person who believes he or she has experienced harassment or discrimination may wish to report the occurrence yet preserve their anonymity. Such reports can provide valuable information that can enhance the focus of education and awareness strategies to prevent harassment and discrimination. However, no direct action can be taken in response to anonymous reports.
- d. Where a serious and immediate threat to safety exists, the University has a legal duty to warn any community members at risk. This duty, embodied in the University's Workplace Violence Policy

and Procedures, may require the procedures in this Policy, including confidentiality, to be set aside in order to protect members of the University community from a serious threat.

- e. Information concerning a complaint may be provided to appropriate University officials on a need-to-know basis. This may include situations where there are security or safety issues or cases involving repeat complaints or a pattern of related behaviour. Any person so informed shall also be informed of the disposition of the complaint and is bound by confidentiality requirements.
- f. Either party may discuss his or her case in confidence with his or her supervisor, legal counsel, support person(s), student advocate and/or union representative. The Consultant and his or her designates may discuss specific cases and their dispositions for educational purposes provided that no identifying information is disclosed.
- g. All records and reports of inquiries, consultations, complaints and investigations made to or undertaken by the Consultant (“the information”) are confidential and will be treated as “supplied in confidence”;
 - 1) The information is subject to *The Local Authority Freedom of Information and Protection of Privacy Act*;
 - 2) The office of record shall be the RWLE Office and the information shall be kept in a secure location with restricted access.

7. Obstruction and Retaliation

- a. Fear of reprisal or retaliation often prevents Complainants, witnesses and others from coming forward with their concerns, thereby undermining the spirit and intent of the Policy and these procedures. The University considers reprisal or retaliation, or threat of reprisal or retaliation to be a serious offence.
- b. No one shall suffer reprisal for bringing forward, in good faith, a complaint or concern about discrimination or harassment or for refusing to violate University policies and procedures. Any person who engages in retaliation or threat of retaliation shall be subject to discipline.
- c. Threats or other safety concerns associated with one’s involvement in a concern or complaint of harassment or discrimination should be reported immediately to the Consultant, the Vice-President, Associate Vice-President, Dean, Director or Manager and, where appropriate, Campus Security. If necessary, interim preventative, remedial and/or disciplinary measures may be taken.
 - 1) Interim preventative and remedial measures are precautionary, not disciplinary. In the context of the allegations in the complaint, interim measures are not to be viewed as an assessment of the credibility anyone involved in the complaint or as an indication as to the ultimate disposition of the complaint.
- d. Any person whose action or inaction obstructs the application of these procedures or who breaks an undertaking of agreement will be subject to discipline.

8. False Accusations

- a. Complaints made in good faith are not false accusations, even if the allegations are found to be unsubstantiated.
- b. Knowingly making a false accusation of harassment, discrimination or retaliation is a serious violation of this Policy. Anyone who knowingly makes a false accusation of harassment, discrimination or retaliation or knowingly provides false information in the course of investigation of a complaint may be subject to administrative and/or disciplinary action.

9. Action Initiated or Continued by the University

- a. In order to prevent harassment and discrimination, the University has the responsibility to use these procedures, in its own right, to initiate or continue action, including the investigative process to determine if systemic or other problems exist in the work or learning environment. Situations where such an investigation may be required include, but are not necessarily limited to situations
 - i. where there is a focused pattern of enquiries, concerns and/or complaints over a period of time which suggests the existence of a problem that has not been addressed adequately, effectively or at all;
 - ii. where there is reason to believe that a systemic problem exists in the working or learning environment which causes, or contributes to, or encourages harassment
- b. The University, acting through the responsible Vice-President, Associate Vice-President, Dean, Director or Manager may initiate these procedures or continue them even if the request for action or complaint has been withdrawn or the parties have reached a resolution through alternative resolution options. This decision is taken in consultation with Respectful Workplace Consultant and or the Associate Vice-President (Human Resources).
- c. The University will normally initiate or continue action or a complaint only where the alleged discrimination or harassment may have had a serious impact on the parties and/or the University, where the case is important to the goals of the University, where the Respondent has previously been the subject of substantiated complaint(s) of discrimination or harassment, or where concerns about a pattern of conduct exist as established from University records.
- d. Where the University initiates or continues these procedures, the responsible Vice-President, Associate Vice-President, Dean, Director or Manager becomes the notional Complainant and any rights or responsibilities assigned to him or her by these procedures are assumed by the individual to whom they report.

10. Effect on Collective Agreements

- a. Individuals are encouraged to use these procedures to address issues which are, or may be, harassment or discrimination. However, nothing in these procedures is intended to limit or amend the provisions of any collective agreement or restrict or discourage individuals from exercising his or her rights as a member of a collective bargaining unit.
- b. Any disciplinary action taken on an employee who is a member of a collective bargaining unit may be appealed through the grievance-arbitration procedures of the applicable collective agreement.
- c. Students may appeal disciplinary action to the Council Discipline Committee.

11. Review of Procedures.

- a. These procedures may be amended from time to time as required, and in consultation with the Occupational Health Committee.