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## Discrimination, Sexual Harassment and Harassment

Human Rights and Positive Environment Office

Policy

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**1.0 Purpose**

- 1.1 to inform Members of the University Community what Discrimination, Sexual Harassment and Harassment are and what they should do when they encounter them;
- 1.2 to enable Members of the University Community to obtain informal, confidential advice and guidance on how to address these problems;
- 1.3 to enable Members of the University Community who do not feel safe in approaching the appropriate Person in a Supervisory Position for help to access a process that will help them to approach said Person in Supervisory Position or to attempt to address the problem on their own;
- 1.4 to enable Members of the University Community who have approached the appropriate Person in a Supervisory Position for help but do not feel they have received appropriate help and support, to access a process whereby they can have their concerns addressed by a neutral third party;
- 1.5 to enable Members of the University Community who believe they have faced Systemic Discrimination in the application of the rules, policies, processes and procedures of the University, to access help and guidance in attempting to have that Systemic Discrimination identified and addressed;
- 1.6 to allow for the receipt and processing of Written Complaints where all other efforts have failed to address a problem adequately.

**2.0 Principles**

- 2.1 Discrimination, Sexual Harassment and Harassment are breaches of an individual's responsibilities as a Member of the University Community or breaches of the University's responsibilities to members of its community.
- 2.2 Discrimination, Sexual Harassment and Harassment constitute serious performance issues and are subject to discipline following the normal discipline processes when they are perpetrated by staff, faculty or administrators of the University.
- 2.3 Discrimination, Sexual Harassment and Harassment constitute serious breaches of the Student Disciplinary Code and are subject to discipline following the normal process of the Code when they are perpetrated by students of the University.

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- 2.4 It is the responsibility of every Member of the University Community to conduct themselves in a respectful, collegial manner and to abstain from behaviours that are or could be considered Discrimination, Sexual Harassment or Harassment under this Policy. Every Member should help and support any person who is or appears to be the target of Discrimination, Sexual Harassment or Harassment, to aid them in seeking help in addressing such problems and accessing the protection of this Policy.
- 2.5 It is the responsibility of every Person in a Supervisory Position at the University of New Brunswick to take appropriate action to address Discrimination, Sexual Harassment or Harassment when they become aware that it is or may be happening within the context over which they have supervisory responsibility or elsewhere within the University community. Nothing in this policy derogates from that responsibility.
- 2.6 Persons in Supervisory Positions who become aware that Discrimination, Sexual Harassment or Harassment is or may be happening within the context over which they have supervisory responsibility or elsewhere within the University community may obtain advice from Human Resources, their own supervisor, their Chair or Dean, or the Office of Human Rights and Positive Environment when attempting to address issues of Discrimination, Sexual Harassment or Harassment.
- 2.7 Wherever possible, problems should be resolved informally, without invoking formal procedures. Where it is not possible for a problem to be resolved informally, or where the severity of the allegation warrants it, the Formal Procedure detailed below or the procedures under the Student Disciplinary Code, as appropriate, should be followed.
- 2.8 At any formal stage in this procedure the principles of procedural fairness shall guide the process. This involves informing the Respondent of the substance of allegations against them and providing any relevant documentary evidence. Additionally, the Respondent must have an opportunity to address the case and present relevant evidence. The decision-maker must act fairly and without bias.
- 2.9 At any formal stage in this procedure, any Party shall have, and be informed of, the right to be accompanied by a Representative as described in s. 5.00 of this Policy.
- 2.10 At a formal hearing, the Complainant and Respondent may call witnesses to support their case.
- 2.11 No disciplinary action shall be taken against any Respondent until the case has been fairly adjudicated in accordance with this Policy.
- 2.12 The University may take non-disciplinary steps to create safety and comfort for all parties to a Complaint while the procedures under this Policy are underway (including, but not limited to, separating the parties in the workplace, requiring parties not to communicate directly

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with each other, etc.). In exceptional cases to create a safe working/learning environment, the University may place the Respondent on a leave of absence, typically with pay, while the allegations are fully investigated. Such a leave of absence does not constitute a disciplinary measure.

- 2.13 At every stage in the procedure, the Respondent shall be advised of the nature of the allegation(s) against them, and will be given the opportunity to state their case before any decision is made.
- 2.14 Prior to any interview, the Respondent will be advised in writing of the nature of the allegations against them.
- 2.15 No anonymous documents or materials shall be used in the Formal Procedures under this Policy.

### 3.0 Definitions

- 3.1 When used in this Policy, the following terms shall have the meanings set out below, unless otherwise noted:
  - 3.1.1 *Complainant*: the person, people or group that alleges being affected by the alleged Discrimination, Sexual Harassment or Harassment; the term shall be used in this Policy in the singular form but shall be read to include plural forms where appropriate.
  - 3.1.2 *Complaint*: the matter about which a Complainant begins the processes and procedures set out in this Policy.
  - 3.1.3 *Discipline*: shall mean, in each particular case and each particular context, what that term has traditionally meant at the University of New Brunswick (under Collective Agreements, the Student Disciplinary Code and normal Human Resource practices), but shall include any other remedial steps deemed appropriate under the circumstances, including but not limited to education, awareness, community service and other similar processes.
  - 3.1.4 *Discrimination*: differential treatment of an individual or group of individuals which is based, in whole or in part, on one or more Ground as defined herein, and which thus has an adverse impact on the individual or group of individuals; or the application of a seemingly fair and equal rule, policy, process or procedure to an individual or group of individuals which, as a result of one or more Ground of that individual or group of individuals, has an adverse impact on the individual or group of individuals that is not or would not be suffered by other individuals or

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groups of individuals, who do not share such Ground(s), upon whom the rule, policy, process or procedure is or might be applied.

- 3.1.5 *Formal Complaint*: the written document that sets out the subject matter about which the Complainant begins the processes and procedures set out in this Policy, signifying that the Complaint shall be dealt with through the Formal Procedures herein.
- 3.1.6 *Founded*: at the end of the formal process, a Complaint may be determined to be proven upon a balance of probabilities (Founded). Where a Complaint is determined to be Founded, the Respondent to the Complaint may be subjected to discipline.
- 3.1.7 *Grounds*: As defined in the New Brunswick Human Rights Act to include race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity, and extended by UNB to include grounds and exceptions defined by relevant collective agreements. Note: resolution of complaints based on grounds *beyond those* included in the New Brunswick Human Rights Act may be limited to the internal processes of the university.
- 3.1.8 *Harassment*: behaviour which serves no legitimate purpose and which the instigator knows, or ought reasonably to know, has the effect of creating an intimidating, humiliating, hostile or offensive environment. Examples of behaviour which constitutes Harassment include but are not limited to: bullying, intimidation, coercion, physical assault, vexatious or malicious comment, or the abuse of power, authority or influence. Behaviour conducted in whole or in part through electronic means (such as e-mail, web postings, text messaging and other forms of electronic behaviour) shall be included within this definition. The reasonable exercise of administrative or academic authority does not of itself constitute Harassment.
- 3.1.9 *Malicious*: at the end of the formal process, a Complaint may be determined by the University to have been filed by the Complainant (Malicious) for inappropriate reasons. Where a Complaint is determined to be Malicious, the Complainant may be subjected to discipline.
- 3.2.0 *Member of the University Community (or Member)*: This term shall include any and all of the following:
- a. Students (including, but not limited to, full-time, part-time, visiting, College of Extended Learning, Saint John College, under-graduate and graduate students);

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- b. Staff (including, but not limited to, full-time, part-time, term, continuing or other staff employed by the University or employed by any other individual or organization where work is carried out on University Premises);
  - c. Faculty (including, but not limited to, full-time, part-time, tenured and untenured, contractual, stipendiary, term, guest lecturers, nurse clinicians, instructors, librarians and faculty members);
  - d. Administrators (including, but not limited to, the President, Vice-Presidents, Associate Vice-Presidents, Assistant Vice-Presidents, Deans, Associate Deans, Assistant Deans, Chairs and Directors);
  - e. Visitors to campus (including, but not limited to, users of campus recreation, fitness, cultural, athletic, library and other services who are not captured in other categories in this definition);
  - f. Guests of any other Member of the University Community while on University Premises;
  - g. Postdoctoral Fellows, Visiting Professors and Visiting Scholars;
  - h. Applicants for employment positions or admission to courses or academic programs where the alleged Sexual Harassment, Harassment or Discrimination is alleged to have taken place during the appointment or admission process.
- 3.2.1 *Officer*: the Human Rights Officer of the University of New Brunswick or their successor AND a minimum of four other persons appointed by the Vice-President (Fredericton) and the Vice-President (Saint John) to act as Officers in the implementation of this Policy. The Human Rights Officer together with these appointees will comprise the Committee of Officers, a self-governing, collegial body working together to enhance the positive environment of the University.
- 3.2.2 *Party/Parties*: the Complainant and Respondent to a Complaint.
- 3.2.3 *Person in a Supervisory Position*: a person who, by virtue of their position within the University or in a particular situation, is responsible for the safety and well-being of other Members of the University Community. This includes, but is not limited to, the President, Vice-Presidents, Deans, other members of university administration, administrative and academic supervisors, managers, directors, Chairs, Directors of Undergraduate and Graduate Studies, and faculty members, instructors or similar teaching staff in a classroom, lab or other academic setting.

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- 3.2.4 *Representative*: a person trained to act as Representative of a Party under this Policy.
- 3.2.5 *Respondent*: the person, people or group accused of Discrimination, Sexual Harassment or Harassment; the term shall be used in this Policy in the singular form but shall be read to include plural forms where appropriate.
- 3.2.6 *Response*: the written document that is prepared by the Respondent to a Formal Complaint, setting out the Respondent's position on the matters alleged in the Formal Complaint and any evidence the Respondent may wish to put forward.
- 3.2.7 *Sexual Harassment*: conduct of a sexual nature such as, but not limited to, verbal abuse or threats of a sexual nature, unwelcome sexual invitations or requests, demands for sexual favours, or repeated innuendos or taunting about a person's body, appearance or sexual orientation when:
- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic status, or academic accreditation, or;
  - b. submission to or rejection of such conduct by an individual is used as the basis for employment, or for academic performance, status or accreditation decisions affecting such individual, or;
  - c. such conduct interferes with an individual's work or academic performance, or;
  - d. such conduct creates an intimidating, hostile or offensive working or academic environment.
- Behaviour conducted in whole or in part through electronic means (such as e-mail, web postings, text messaging and other forms of electronic behaviour) shall be included within this definition.
- 3.2.8 *Systemic discrimination*: policies, practices or attitudes that appear to be neutral on their surface but that may, whether by design or impact, have the effect of limiting an individual's or group's right to opportunities generally available to others, based on one or more personal characteristics or prohibited grounds.
- 3.2.9 *Unfounded*: at the end of the formal process, a Complaint may be determined not to have been proven upon a balance of probabilities (Unfounded). A finding of Unfounded does not mean that the Complaint was brought for inappropriate reasons but simply that the evidence to support the Complaint was insufficient to

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warrant a finding that the Complaint was Founded. Where a Complaint is determined to be Unfounded, no disciplinary action may be taken against either Party.

- 3.3.0 *University Official*: the first level of management responsible for the Respondent(s). This is normally the Dean of a Faculty or the Director in staff units. In cases where the Official is the respondent, the appropriate Vice-President shall delegate someone to fill this role.
- 3.3.1 *University Premises*: the physical campuses of the University of New Brunswick in Fredericton, Saint John, Miramichi, Moncton, Bathurst and, without limitation, such other locations wherein University sponsored/sanctioned activities are undertaken, including all grounds, buildings and facilities located thereon, and the virtual campus of the University of New Brunswick, including all electronic locations (including, but not limited to, websites, on-line teaching and communication platforms, chat rooms, social programming websites and other similar electronic locations) whether or not such electronic locations are hosted and supported by facilities and staff of the University.

### 4.0 Officers

- 4.1 The Human Rights Officer and a minimum of four other persons with suitable experience and training, as appointed by the Vice-President (Fredericton) and the Vice-President (Saint John), shall act as Officers under this Policy.
- 4.2 The Human Rights Officer and all other persons appointed as Officers under s. 4.1 above shall form a Committee of Officers, with the Human Rights Officer serving as Chair. This Committee shall be responsible for the implementation of this Policy and for the performance of each such Officer in carrying out their duties under this Policy. This Committee shall report to the President of the University and no one else (except as required under s. 11.00 Public Reporting herein). The Committee will meet three to four times each year to review the implementation of this Policy.
- 4.3 Any employee appointed as an Officer under s. 4.1 above shall carry out their responsibilities as an Officer under this Policy with due care and diligence and shall, to the best of their abilities, avoid being placed into a situation where their duties under this Policy might conflict with their duties or obligations under their normal employment with the University or otherwise place them in a conflict of interest.
- 4.4 No person shall, as a result of an existing relationship (be it professional, supervisory or personal) with a person appointed as an Officer under s. 4.1, attempt to use that relationship to influence, control or in any other way interfere with the Officer in the performance of their duties under this Policy.



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- 4.5 Where any person feels that a serious concern has arisen with regard to an Officer, their performance of their duties under this Policy or a potential conflict of interest (of the kind contemplated by s. 4.4 or of any other kind) the person shall bring that concern to the Committee of Officers, and the Committee shall take steps to address that concern. Where the concern is of a significant nature or where efforts to address a concern by the Committee of Officers are not successful, the concern may be brought to the President for consideration.

### 5.0 Representation

- 5.1 Any Party to a Complaint shall be entitled to have another individual accompany them and, where appropriate, represent them at any stage of the Procedures outlined herein. At no stage of the informal or formal processes in this policy, however, may a Party or other individual be represented by a lawyer.
- 5.2 A Party may choose his or her own Representative but, to ensure that all Members of the Community involved in a Complaint under this Policy have access to a trained, knowledgeable person to support and, where appropriate, represent them, the Officers shall maintain a "List of Representatives" made up of Staff Members, Faculty Members and Students who have consented to so act and who have undergone appropriate training for the task. The Human Rights Officer shall design and implement appropriate training for the Representatives at least once per year. A Representative shall serve for a renewable term of three years.
- 5.3 A Party may ask an individual from the List of Representatives maintained by the Officers under 5.2 above to represent them; if the individual declines to represent the Party, the Party may invite someone else to serve as their Representative.
- 5.4 Where a Party is a member of a recognised employee union or association, that Party may have, as their Representative, an officer of the said union or association.

### 6.0 Scope and Application

- 6.1 This Policy applies to all Members of the University Community.
- 6.2 This Policy applies to behaviours on University Premises, off University Premises but involved in the business of the University activities sanctioned by, sponsored by or representing the University of New Brunswick (including, but not limited to, athletic events, cooperative placements, clinical placements, academic or professional conferences, volunteer activities, and academic or research field work) or off University Premises where such behaviour has an impact on another Member of the University Community.

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- 6.3 This Policy shall also apply to the use of and participation in electronic or web-based activities by Members of the University Community which have an impact on another Member of the University Community, whether or not such electronic or web-based activities are entered into on University Premises or make use of University facilities or equipment.
- 6.4 If, after bringing a Complaint (either under the Informal Processes or the Formal Process) under this Policy, a Complainant chooses to initiate a legal action or a complaint to the New Brunswick or Canadian Human Rights Commission based on substantially the same facts and involving the same Parties as the original Complaint under this Policy, then the Officer, University Official or Vice-President (as the case may be) then administering the Complaint shall consider whether or not the Complaint should be suspended pending the outcome of the other, external action. The decision of whether or not to suspend the Complaint shall be communicated to the Parties.

### 7.0 Time Limits

- 7.1 Subject to section 7.2, Complaints must be brought to the attention of the Officer or a University Official within twelve months of the last of the following:
- 7.1.1 The last act that represents or contributes to the alleged Discrimination, Sexual Harassment or Harassment;
  - 7.1.2 The submission of the final grade for an academic course where the Complainant is a Student, the Respondent is Faculty Member and the alleged Discrimination, Sexual Harassment or Harassment took place in the context of the particular academic course;
  - 7.1.3 The end of the Complainant's relationship with the University of New Brunswick (whether by way of termination of employment, withdrawal from academic participation, retirement or resignation from employment or other) where the Complainant alleges that the alleged Discrimination, Sexual Harassment or Harassment caused or contributed to the end of that relationship;
  - 7.1.4 The completion of a hiring or admission process where the Complainant alleges the Discrimination, Sexual Harassment or Harassment took place during the hiring or admission process.
- 7.2 The Officer or University Official may extend the time for bringing a Complaint forward at the request of the Complainant only where, in the opinion of the Officer or University Official, it is fair and just to do so.

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### 8.0 Informal Process

- 8.1 The University recognizes that it is imperative that Members of the University Community have access to expert, objective advice and guidance related to issues of Discrimination, Sexual Harassment and Harassment. Further, the University recognizes that Members will be much more willing to seek such advice and guidance if they feel confident that this informal consultation process will remain confidential and will not result in the creation of any obligation on their part, or on the part of the Officer with whom they consult, to take any action.
- 8.2 The University must take action with regard to information relating to Discrimination, Sexual Harassment or Harassment once it is brought to the attention of a Person in a Supervisory Position. As a result, the University shall designate certain members of its community (hereinafter to be called "Officers" and to include the Human Rights Officer, identified Human Resource Consultants and/or trained Harassment and Discrimination Advisors) who are, by definition, not Persons in Supervisory Positions to provide confidential, no-obligation advice and guidance to members of the University community under this Policy.
- 8.3 An Officer who is consulted by a Member shall advise that Member that their discussions are confidential and shall not result in any action taken without the permission and direction of the member except in the following circumstances:
- Where the information provided by the Member to the Officer suggests to the Officer that the consulting Member or any other person is or may be in immediate physical danger;
  - Where the information provided by the Member to the Officer suggests to the Officer that a criminal offence has been or will be committed;
  - Where the information provided by the Member to the Officer suggests to the Officer that a child or other vulnerable person is being harmed, abused or in any other way injured; or
  - Where required to be disclosed under the law.  
Where any of the above is true, the Officer shall have an obligation to take steps to address the situation appropriately, including advising University administration and, where appropriate, University Security and the local police of the situation.
- 8.4 Members who consult Officers shall be deemed to acknowledge that the Officer will take no action regarding the subject matter about which the Member has consulted the Officer unless specifically directed to do so by the Member. Should a Member wish to create an obligation to act on the part of the University or one of its members, the Member must

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bring their concerns forward to a Person in a Supervisory Position who is not an Officer as defined in the Policy.

- 8.5 Officers shall be available to meet, on a confidential, no-obligation basis, with Members of the University Community who feel they are facing, or know someone who might be facing, Discrimination, Sexual Harassment or Harassment.
- 8.6 The Officer shall provide a consulting Member with advice and guidance on the following topics:
- what constitutes Discrimination, Sexual Harassment or Harassment under University policy, collective agreements and the law;
  - the applicability of the definitions of Discrimination, Sexual Harassment or Harassment to the situation brought forward by the Member;
  - the Member's options as to how to attempt to address the situation in an informal manner, including discussing the possibility of the member approaching the Respondent to discuss the matter and other tactics that might resolve the situation quickly and effectively;
  - the supports available to the member as the attempt to deal with the situation, including the Member's Union or Association, the Student Advocate, the International Student Advisor, Human Resources and Organizational Development, the Office of Human Rights and Positive Environment, Student Counseling, the Employee Assistance Plan, Student Health, Campus Security, the Accessibility Centre and any other similar supports that might be appropriate;
  - the formal processes, both within and outside the University, available to the member for dealing with the situation, including the Formal Procedures under this Policy, the grievance provisions of the various Collective Agreements, the Student Disciplinary Code, the Residence Code of Conduct, the New Brunswick Human Rights Act;
  - the Member's rights with regard to consulting a lawyer as distinct from representation by a lawyer during internal processes;
  - the possible consequences of bringing a malicious complaint under any process;
- 8.7 The Officer may, with the consent of the consulting Member, take steps to attempt to aid in the resolution of the concern, including:
- Helping the Member plan and implement a discussion with the Respondent;
  - Helping the Member draft a letter to the Respondent;
  - Helping the Member make contact with a University or outside resource or an appropriate person in a supervisory position who might be able to aid in resolving the concern;
  - Making contact with the Respondent with a view to creating a conversation which may lead to a resolution of the concern;

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- Providing advice and guidance to the Respondent on the topics set out in section 8.06 above;
- Working with Human Resources and Organizational Development, Student Affairs and Services, Residential Life or any other appropriate University entity to take non-disciplinary steps to create safety and comfort for all Parties while the procedures under this Policy are underway (including, but not limited to, separating the Parties in the workplace, requiring Parties not to communicate directly with each other, etc.);
- Obtaining information that might aid the Member in resolving the concern;
- Working with Human Resources and Organizational Development, Student Affairs and Services, Residential Life or any other appropriate University entity to arrange Mediation of the concern as set out below, should Mediation be deemed appropriate and acceptable to the Parties;
- Any other steps that the Officer might feel would help to resolve the concern in an informal fashion and to which the consulting Member consents.

8.8 In taking steps under section 8.7 above, the Officer shall ensure that they do nothing that might compromise their neutrality and objectivity in the matter, that might display an actual or perceived preference for one Party or another, or that might breach the legitimate right of all the Parties involved to have the matter dealt with in a reasonably confidential manner.

8.9 Confidentiality during Informal Process and Formal Procedures under this Policy shall be enjoined on the Officer and any other third-party member of the University who becomes involved in addressing the concern. While it is usually in the best interests of all that the Parties maintain the confidentiality of the process as well, it is recognized that Parties must be allowed the ability to deal with the situation, concern or complaint in an appropriate fashion, including consulting with counselors, friends and family members about the situation, concern or complaint.

8.10 When a concern is resolved through an informal process, the Parties may enter into a resolution agreement, which sets out the terms of the resolution. If such an agreement is entered and one Party, at a later date, feels another Party has breached the terms of the agreement, a Complaint may be made under this Policy with regard to the breach and such breach, if proven, shall be considered Discrimination, Sexual Harassment or Harassment, as appropriate.

8.11 A Complaint determined to be Malicious shall be subject to discipline.

### 9.0 Informal Process – Mediation

9.1 If the Officer deems that Mediation is appropriate and the Parties consent, the following shall occur:

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- 9.1.1 The Complainant shall provide the Officer with a written, signed summary of their concerns, giving details of the alleged Discrimination, Sexual Harassment or Harassment, including, to the best of his or her recollection, dates, times, places and names of individuals involved;
- 9.1.2 Within five working days from the date of receipt of the written Complaint, the Officer shall inform the Respondent of the allegation(s) and will provide the Respondent with a copy of the Complaint;
- 9.1.3 Upon receipt of the written Complaint, the Respondent shall have the following rights:
- a. To consult with the Officer to discuss the Complaint and their rights under the process;
  - b. To consult with and have the on-going support of their Union or Association representatives throughout the process;
  - c. To prepare and deliver a Response to the Complaint within fifteen working days of receipt of the Complaint (though the Respondent shall not be required to submit a written Response);
  - d. To decide whether or not they wish to take part in Mediation, which decision shall be communicated to the Officer within five working days of the Respondent's receipt of the Complaint.
- 9.1.4 If all Parties agree to take part in Mediation, the Officer shall promptly consult with all Parties on the choice of a Mediator.
- 9.1.5 Any Party may request an extension to time limits and it shall be granted by the Officer unless it is unfair or unreasonable to do so.
- 9.2 All Parties must agree as to the choice of Mediator. The Mediator chosen must be unbiased, independent of all parties and acceptable to the University (as represented by the Officer). If the Parties cannot agree on a Mediator, the Complainant may choose to proceed through the Formal Procedures.
- 9.3 Mediation will begin as soon as possible after the Mediator is chosen and retained by the University. Under normal circumstances, Mediation will be concluded within ten working days of the appointment of the Mediator, unless the Mediation period is extended by mutual agreement of the Parties. The options for resolution shall be of a voluntary nature.

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- 9.4 The work of the Mediator and all discussions that form part of the Mediation shall remain confidential and may not be used in future proceedings. If a mediated resolution is proposed that would require the cooperation of the University or its representatives, the University (as represented by the appropriate University Official) must be made a Party to the Mediation and agree to any resolution. If a mediated resolution is achieved, the Parties shall enter and sign a written resolution agreement (Mediated Resolution Agreement), a copy of which shall be filed with the Officer.
- 9.5 If no mediated resolution is achieved within the time allotted, or if, at any time during the Mediation, the Mediator comes to the conclusion either that no resolution is possible or that the Mediation process has become a forum for further Discrimination, Sexual Harassment or Harassment, the Mediator shall advise the Parties and the Officer in writing that the Mediation is at an end with no resolution achieved.
- 9.6 In the event that the Mediator advises that the Mediation is at an end with no resolution achieved, the Complainant has the following options:
- They may withdraw the Complaint;
  - They may request that the Complaint be dealt with under the Formal Procedures (Section 10.0) under this Policy.
- 9.7 A breach of a Mediated Resolution Agreement shall be considered an offence under this Policy. Should a Party to an Agreement allege that another Party has breached the terms of the Agreement, they may ask that Mediation be resumed or they may file a Formal Complaint alleging such breach under the Formal Procedures under this Policy. In the latter case, the Formal Procedures shall address the issue of whether or not a breach of the Agreement has occurred; it shall not revisit the Agreement nor question whether or not the Agreement was fair. A finding that the Agreement has been breached shall be dealt with in the same way that a finding of Discrimination, Sexual Harassment or Harassment would be dealt with under this Policy.

### 10.0 Formal Procedures

- 10.1 If the Complainant wishes to file a Formal Complaint, the following shall occur:
- 10.1.1 If the complainant and the respondent are both students, the complainant will be directed to contact the Commissioner of Student Discipline and the provisions and procedures under the Student Disciplinary Code shall be followed and the proceedings under this Policy with regard to the particular complaint shall end.
- 10.1.2 In all other cases, the Complainant will provide the Officer with a written signed Formal Complaint giving details of the alleged Discrimination, Sexual Harassment or Harassment, including dates, times, places, witnesses and name of the Respondent. If the Complainant brought this Discrimination, Sexual Harassment

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or Harassment to the attention of Persons in Supervisory Positions who failed to deal with the Discrimination, Sexual Harassment or Harassment, those Persons in Supervisory Positions may also be named as Respondents;

- 10.1.3 Within two working days from the date of receipt of the completed Formal Complaint, the Officer will notify the University Official in writing that a Formal Complaint has been made
- 10.2 From this stage until a decision has been rendered according to this Policy, the Officer shall continue to be neutral and shall assist at all stages of the processing of the Formal Complaint, so that both the Complainant and the Respondent can be assured that action is being taken as expeditiously as possible. Normally the Formal Procedures shall be completed within three months.
- 10.3 Once the Officer has informed the University Official of the receipt of the Formal Complaint, the University Official shall be responsible for notifying in writing within five working days the Respondent accused of Discrimination, Sexual Harassment or Harassment that a Formal Complaint has been lodged against them, giving a copy of the Formal Complaint, any other documentary evidence, and informing them of the right to union or other representation.
- 10.4 Where, in the opinion of the University Official in consultation with the Officer, it is deemed appropriate to do so, the University Official shall be responsible for arranging an Investigation of the allegations contained in the Formal Complaint. The University Official may appoint an outside investigator to conduct the investigation.
- 10.5 An investigation under this section shall be conducted expeditiously with due regard to confidentiality for all parties concerned (the Officer may be contacted for advice on these matters). The Investigator shall follow appropriate procedures in conducting the investigation, ensuring that due process and administrative fairness are respected throughout.
- 10.6 The Investigator shall, upon completion of the investigation, produce a set of findings, which shall include whether the allegations contained in the Complaint are Founded, Unfounded or Malicious, on a balance of probabilities.
- 10.7 The findings of the Investigator shall be delivered to the University Official upon completion of the Investigation. The University Official shall, upon receipt of the findings, review said findings, where appropriate review the Complainant's and Respondent's official file (if any) and prepare a final report, complete with recommendations as to the disposition of the Formal Complaint, along with all relevant material, which final report shall be forwarded to the appropriate Vice-President.



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- 10.8 Each Party shall be entitled to a copy of the Investigator's findings. If discipline is being recommended against one or both Parties, such Party shall also be entitled to receive notice of the discipline being recommended and the information, documentation and materials upon which the recommendation for discipline has been based. No Party, however, shall be entitled to receive confidential or personal information, including a recommendation as to discipline, about another Party except in accordance with 10.13 below.
- 10.9 The Vice-President shall review all the material submitted to them and shall meet with the people concerned to discuss the University Official's report. The Vice-President shall decide whether or not a formal hearing is required. In the case of a formal hearing, the following procedure shall be followed:
- 10.9.1 The hearing shall be held in the presence of the Complainant, the Respondent, the appropriate Vice-President or their delegate, and any representative that may be permitted by relevant collective agreements or this Policy.
- 10.9.2 The Vice-President will ask the Complainant and/or the Respondent to state why the findings and recommendations are not agreeable to them.
- 10.9.3 The meeting will proceed under the direction of the Vice-President based on the responses to (10.9.2) above.
- 10.9.4 Any questions of anyone present are to be directed to the Vice-President who shall determine whether the question is to be asked and, if so, of whom.
- 10.9.5 Witnesses, if any, will be excluded from the hearing until called to testify. Questions of a witness may be directed by the Vice-President only in accordance with (10.9.4) above. In particular, the Vice-President will require prior notice as to witnesses.
- 10.10 After the requirements of 10.9 and 10.10 have been satisfied, the Vice-President (or the President, if necessary) shall decide upon a course of action, taking into account report of the University Official and the need for consistency with decisions on Discrimination, Sexual Harassment or Harassment (as the case may be) cases previously made. They shall either confirm or amend, in accordance with the evidence presented at the hearing under s. 10.10, the finding that the Complaint is Founded, Unfounded or Malicious and shall inform the Complainant and Respondent of the decision taken.
- 10.11 Should the Complaint be determined to be Founded, the Vice-President shall decide upon appropriate steps to be taken to address the situation, including but not limited to disciplinary sanctions and measures for remedying or mitigating any academic or

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employment harm or disadvantage suffered by any person(s) as the result of the incident(s) and behaviour complained of. The Vice-President, in considering the possibility of disciplinary steps against the Respondent, shall consider (as far as allowed under any applicable collective agreement, policy or practice) any previous disciplinary measures taken against the Respondent as contained in the Respondent's official file (if any). The Vice-President may, at this stage of the proceedings, consult with appropriate university officials for guidance.

10.12 Should the Complaint be determined to be Malicious, the Vice-President shall decide upon appropriate steps to be taken to address the situation, including but not limited to disciplinary sanctions and measures for remedying or mitigating any academic or employment harm or disadvantage suffered by any person(s) as the result of the Malicious Complaint. The Vice-President, in considering the possibility of disciplinary steps against the Complainant, shall consider (as far as allowed under any applicable collective agreement, policy or practice) any previous disciplinary measures taken against the Complainant as contained in the Complainant's official file (if any). The Vice-President may, at this stage of the proceedings, consult with appropriate university officials for guidance.

10.13 Once a decision has been made by the Vice-President under 10.11, 10.12 and 10.13, the Vice-President shall communicate, in writing, that decision, the reasons therefore, and the appropriate steps to be taken to the Parties and, where one or more Union(s) has been involved in the process, to the President of that/those Union(s). Where the appropriate steps to be taken include disciplinary action against one or more individuals, information about that disciplinary action shall be omitted from the information about the decision to be given to the Complainant and their Union (if any) except where necessary to ensure the comfort and safety of the Complainant.

### 11.0 Public Reporting

11.1 Notwithstanding the confidentiality requirements set out in this Policy, the Human Rights Officer shall have the right and obligation to compile, by June 15 of each year, an Annual Report of the activities under this Policy in the previous academic year (May1 to April 30).

11.2 In preparing the Annual Report, the Human Rights Officer shall be given access to the records maintained under this Policy by any Officers (as defined herein) or any other members of the University community.

11.3 The Annual Report shall contain the following information:

11.3.1 Aggregate, statistical information regarding the number and kinds of consultations and complaints that have been addressed under this Policy in the past year and in previous years, where appropriate;

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- 11.3.2 Aggregate, statistical information regarding the use of the Policy and its processes by members of the various constituencies on campus, where available and appropriate;
  - 11.3.3 Aggregate, statistical information about the outcomes of the consultations and complaints brought forward under the Policy, where available and appropriate;
  - 11.4.4 Such other information as the Human Rights Officer considers appropriate to communicate to the University community issues facing the University community related to Discrimination, Sexual Harassment and Harassment and the activities undertaken under this Policy.
- 11.4 The Human Rights Officer, in preparing the Annual Report, shall take appropriate steps to ensure that the confidentiality of the Policy is respected and the privacy of Parties to consultations and complaints is maintained. Where the respect for confidentiality and privacy may be seen to conflict with the ability to report fully the activities under this Policy, confidentiality and privacy shall have priority, even if, as a result, the Annual Report does not meet the requirements set out in 11.3 above.
- 11.5 The completed Annual Report shall be formally submitted to the various Presidents and Vice-Presidents, provided as information to the University Senates and the Board of Governors and published on the University website, with an announcement of its publication made through all normal e-news services.

### 12.0 Records Retention and Disposal

- 12.1 The records accumulated during the processing of any consultation or complaint shall be managed in a secure and confidential manner in the Office of Human Rights and Positive Environment, as set out below:
- 12.1.1 Where a consultation or complaint has been addressed entirely through the informal process under this Policy, without resort to Mediation or formal adjudication, for a period of two (2) years, measured from the date when the Officer has noted that the complaint has been resolved or come to an end;
  - 12.1.2 Where a consultation or complaint has been mediated under this Policy, for a period of two (2) years, measured from the earlier of the following:
    - a. the expiry of any mediated resolution agreement; or
    - b. the ending of the relationship between the University and the Complainant;

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- 12.1.3 Where a complaint has been processed under the Formal Procedures set out in this Policy, for a period of seven (7) years, measured from the earlier of the following:
- c. the date the final decision with regard to the formal complaint has been fully and completely implemented; or
  - d. the ending of the relationship between the University and the Complainant.
- 12.2 During the period of retention, access to these records shall be limited to the Officer involved, the Human Rights Officer and the parties at the discretion of the Officer.
- 12.3 Copies of any Mediation resolution agreement or the final decision rendered under the Formal Process shall, however, be made available by the Officer to other university officials as required to ensure the appropriate implementation of the said agreement or decision.
- 12.4 After the period of retention set out in 12.1 above has expired for any given consultation or complaint, the records related to that consultation or complaint shall be destroyed in a confidential fashion. If, however, further problems between the parties of a particular issue are brought to the attention of a Human Rights Officer prior to the expiry of the period of retention set out in 12.1 for the records related to that original issue, the records related to the original issue between the said parties shall be retained until the expiry of the retention period for the records related to the new issue.

### 13.0 Consent and Implied Consent

- 13.1 Any person wishing to make use of the provisions of this Policy shall be deemed, by approaching an Officer, to have consented to the collection and retention of records of the consultation and complaint as set out in section 12.0 above.
- 13.2 The Officer shall explain this deemed consent, as well as the confidentiality rules and limits set out in 8.0, to any person who approaches the Officer under this Policy.
- 13.3 If a person requests that their issue be dealt with through either the Mediation or Formal Procedures set out in this Policy, the Officer shall provide to the person a Consent Form that contains, at a minimum, the following:
- 13.3.1 an acknowledgment that the person has been given a copy of this Policy and has read and understood it;
  - 13.3.2 a direct instruction to the Officer to begin Mediation or Formal Procedures under this Policy;

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- 13.4 The person shall be asked to sign a copy of the Consent Form described above for retention as part of the records of the matter.
- 13.5 The Officer shall provide the person with a copy of the Consent Form for the person's own private records.

### 14.0 Review and Revision of This Policy

- 14.1 This Policy shall undergo a full review by a Committee made up of representatives of university administration, employees and students, once every four years or upon request of the Committee of Officers contemplated by 4.2 above.
- 14.2 The review Committee contemplated in 14.1 shall also include the Human Rights Officer and shall be chaired by the Associate Vice-President (Academic) Learning Environment.
- 14.3 No changes may be made to this Policy except upon recommendation to the Board of Governors, and their acceptance of such recommendation, by a Committee as contemplated in 14.1.
- 14.4 In any given Complaint under this Policy, however, the parties may agree to amend the processes set out herein, with the consent of the Officer and the Vice-President.