

# Annual Report to Senate of the Co-ordinator Dispute Resolution Mechanisms 2010 - 2011

Harry Smith

January 24, 2012

---

The Annual Report of the Co-ordinator of Dispute Resolution Mechanisms (CDRM) for the period September 1, 2010 to August 31, 2011, is submitted in keeping with subsection 14(c) of the *Senate Policy on Student Appeals, Rights and Discipline (SARD)*, which requires that the CDRM make an annual report to the Senate on the work of USAB as well as other activities undertaken by the CDRM. This Report covers all areas of activity.

Please refer to Appendix A for the mandate of the CDRM.

## Activities of the Co-ordinator

### *Case Management*

Summary:	<u>2009-10</u>	<u>2010-11</u>
Student cases	206	<b>259</b>
Inquiries by faculty and administration	14	<b>49</b>
Other inquiries from within the University	104	<b>67</b>
Inquiries by persons external to the University	28	<b>41</b>
Staff	14	<b>14</b>

**STUDENT CASES:** The CDRM handled 259 student academic cases for the period from September 1, 2010 to August 31, 2011, compared to 206 student cases a year earlier, and 181 during 2008-09. Frequently, the matter required contact with other individuals or offices but most cases were dealt with through existing faculty, school, or Senate appeal procedures. Starting September 1, 2010, the Governance Officer in the University Secretariat, Ms. Gail MacAllister, began assisting with undergraduate student issues in response to the increasing volume of queries and requests for assistance with appeals. Many student questions or requests for assistance can be addressed within a one hour meeting, although a follow-up meeting or a review of a draft appeal document/supporting documents is often requested by students. This works efficiently where the issues are relatively straight-forward and the route of appeal is clearly set out.

Again this year, several cases were more complex and required multiple meetings with the student involved and with related parties in an effort to monitor/manage a situation or to avoid a more formal dispute resolution process. Increasingly, however, the CDRM is involved in matters that do not fall clearly into the formal appeal channels. These tend to be the more complex cases. They include cases where Campus Security and/or Health Counselling Disability Services may be involved because of concern about or actual incidents regarding student behavior. In some instances a notice of prohibition may have been issued to the student. This type of case may require on-going meetings with the student in addition to multi-party meetings with other stakeholders at the University. It may be necessary to monitor the situation with intermittent contact and no obvious or immediate resolution to the matter. Graduate student issues also have potential to be quite complex and time-consuming, often with the School of Graduate Studies participating formally or informally in the resolution process.

Eighteen students were assisted by a Dispute Resolution Advisor during the reporting period, compared to 17 the previous year.

The CDRM dealt with 49 inquiries from faculty and administration regarding specific cases compared with 14 inquiries in 2009-10 and 53 queries in 2008-09. Another 67 inquiries were received from individuals within the University regarding matters not directly related to academic issues (e.g. administrators inquiring about procedural issues, Notices of Prohibition issued, freedom of information requests, questions from students involved in student government and related to non-academic discipline, students seeking information unrelated to their studies). In one instance the CDRM was asked to conduct an investigation into a student complaint and report to the Dean of the Faculty. Also, the CDRM was asked to mediate a dispute related to an organization within one of the student societies. This involved preliminary meetings with the parties separately and discussions on three separate dates with all parties attending.

Forty-one people external to the University contacted the CDRM for information compared with 28 during the previous reporting period.

STAFF CASES: The CDRM was involved in 14 staff cases providing information, advice, and assistance. This is the same number as recorded the previous year. These cases often require more than one meeting and some require on-going assistance to the staff member over a significant period of time. In two of these cases, the CDRM assisted the staff members in preparing and responding to an investigation regarding concerns of harassment related to management practices. The investigation was conducted by an investigator external to the University. In addition to the cases mentioned above, one grievance from the previous year proceeded to arbitration as provided in the Human Resources Grievance Procedure available to non-bargaining unit general staff at Queen's University. Queen's University Staff Association also is available to assist general staff with workplace issues.

Also during the reporting period, at the request of Human Resources, the CDRM conducted a mediation between two members of separate employee groups within the University that required two sessions. Both parties were represented at the mediation, which was one part of Human Resource's response to this particular dispute.

### NON-BARGAINING UNIT SCHOOL OF MEDICINE ACADEMIC STAFF GRIEVANCES

This policy sets out the grievance procedures for those persons employed by Queen's University in the School of Medicine in an instructional and/or research capacity and who are not members of a bargaining unit that has been certified by the Ontario Labour Relations Board. As the first step in the formal grievance process, the CDRM will consult with the parties and then bring them together in an effort to mediate a resolution to the dispute. A grievance may proceed to Step 2 (arbitration) only if Step 1 did not resolve the grievance.

One complaint under the *Non-Bargaining Unit School of Medicine Academic Staff Grievances* policy carried over from the previous reporting period. After multiple individual meetings and all-party mediation meetings, the parties determined that grievance could not be resolved and proceeded to arbitration. Another case filed with the CDRM entered Step 1 mediation during the reporting period. At the conclusion of the first meeting the CDRM obtained the consent of the parties and their respective lawyers to adjourn and to resume the mediation at a later date.

#### *Tribunal Administration*

The CDRM is responsible also for providing administrative support to the University Student Appeals Board (USAB) and the Harassment/Discrimination Complaint Board (H/DCB).

Professor Nick Bala (Faculty of Law) was Chair of USAB during this time, and he was willing to serve for another two-year term beginning September 1, 2009. Professor Emeritus Ron Price (Faculty of Law) was an alternate chair during this time.

Twenty-four cases were submitted to be heard by the USAB in the 2010-11 year, compared with ten appeals in 2009-10 and six the previous year. Nine cases were heard and decisions rendered. One case was adjourned to a later date. Six related cases were non-academic matters referred directly to the USAB under SARD s.17(c) and subsequently settled. Four cases were withdrawn. One case was resolved without a hearing. One case was directed back to the faculty to be heard. Two appeals were filed within the reporting period but were not scheduled to be heard during that time.

The USAB sent a brief report regarding an appeal decision<sup>1</sup> to the Senate at the May 25, 2011 meeting requesting that the report be referred to the Senate Education Equity Committee (SEEC). The USAB recommended that the Senate refer this Report, including the USAB appeal Decision, to SEEC having regard to the newly developing policies of the University in relation to educational equity, and to the potential implications of a Decision such as this one for the conduct of academic responsibilities as these may be seen to require or contemplate incorporation of principles of educational equity.

---

<sup>1</sup> "USAB may make recommendations to Senate regarding matters of policy arising from a proceeding decided by USAB" (SARD s.24(a)).

The Chair of the Harassment/Discrimination Complaint Board (H/DCB) during this period was Professor David Freedman (Faculty of Law). At the May 25, 2011, meeting of the Senate, the nomination of Professor Deborah Leighton as Vice-Chair to the H/DCB was ratified. Professor Freedman addressed preliminary issues in one formal complaint submitted to the H/DCB. A date then was scheduled in July 2011 for this case to be heard by the Harassment/Discrimination Complaint Board, with Professor Leighton chairing the proceedings. On the date of the hearing Professor Leighton raised the possibility of mediating the dispute and the parties agreed to proceed in this manner. The mediation resulted in minutes of settlement representing full and final settlement of the complaint.

### *Policy Development*

#### *Review of the Harassment/Discrimination Complaint Policy and Procedure*

The Working Group was established by the Senate for the purpose of reviewing the University's *Harassment/Discrimination Complaint Policy and Procedure*. The Working Group drafted a revised policy entitled *Human Rights Policy and Procedure: Harassment, Discrimination, and Accommodation* for review and comment by the Senate and the Queen's University community. The revised policy was submitted to the Senate on March 24, 2011, as a notice of motion and can be found at <http://www.queensu.ca/secretariat/senate/agendasminutes/032411/HDCPPRpt.pdf>. However, the Collective Agreement between Queen's University and QUFA states that there can be "no amendments to the Policy insofar as it applies to [QUFA Members]...without the consent of the Association" (Article 21.3.2). Comments from QUFA and other members of the University community regarding the draft had been received and reviewed by the Working Group. However, submission of the revised policy to the Senate coincided with preparation for contract negotiations and bargaining between QUFA and the University. As a result, the notice of motion was withdrawn at the April 28, 2011 meeting of the Senate.

### *Committee Work*

During the reporting period the CDRM served as:

- an ex officio member to the Senate Committee on Non-Academic Discipline and Chair of the Committee.
- a member of the Discipline Working Group, a sub-committee of the Senate Residence Committee.
- a member of the Alcohol Awareness Group.
- a member of the Academic Integrity Working Group.
- a member of the hiring committee for the SGPS student advisors.

### *Co-ordination of Advisors*

#### University Dispute Resolution Advisors

The CDRM performs the function of co-ordinating and supervising the University Dispute Resolution Advisors. These are faculty members appointed by the Senate to assist students who are facing adverse academic decisions or other difficulties related to their academic program. Advisors provide students with advice and information about policies and procedures regarding (usually) academic discipline matters. Where possible they facilitate the resolution of academic discipline-related concerns by helping students to identify and evaluate options for resolution.

Referral to an Advisor often follows a meeting with the CDRM. In most instances, University Dispute Resolution Advisors become involved when a student is appealing an academic decision. Frequently an Advisor will accompany a student to a meeting with a faculty member to discuss an allegation of academic dishonesty. As mentioned above, eighteen students were assisted by a Dispute Resolution Advisor during the reporting period. Three Senate-appointed faculty members volunteered their time in this capacity during the reporting period.

#### Staff Advisors

In late October 2010 the President of QUSA submitted the names of five QUSA members for the Principal to appoint as staff advisors. During the 2010-11 reporting period, the CDRM worked with staff members or, if an advisor was requested, she or he was referred to the Queen's University Staff Association. Another option available to staff members is to be accompanied or represented by any Queen's employee who has been employed for at least 12 months and who does not report to the same department head. The CDRM was contacted by 14 staff members over the course of this reporting period.

In March, 2010 the United Steelworkers (USW) filed an application with the Ontario Labour Relations Board to represent general staff employees of Queen's University and a vote of affected employees was held on March 31, 2010. Starting in September 2010, mediation/arbitration discussions began about the membership of the new staff bargaining unit and in December 2010 the USW was certified to represent Queen's general staff.

For support staff who are not members of the USW bargaining unit and who are represented by the Queen's University Staff Association (QUSA), the Memorandum of Understanding between the University and QUSA remains in effect.

### *Thank You*

Thank you to those faculty members who have volunteered as University Dispute Resolution Advisors again this year and who have made themselves available when the CDRM called regarding a student in need of assistance with an academic appeal or meeting:

Professor Robin Dawes, School of Computing  
Professor Patrick Oosthuizen, Mechanical and Materials Engineering  
Professor Marsha Singh, Physics, Engineering Physics and Astronomy

The service of faculty and student Senators who have given their time to sit as members of the University Student Appeal Board also is greatly appreciated.

Thank you to those members of the University community who, as Advisors, were available to assist respondents with the Harassment/Discrimination Complaint Procedure:

Paul Banfield, University Archivist  
Professor Ellie Deir, Faculty of Education  
Professor Greg Wanless, Drama

Finally, thank you to the many faculty members, staff, and senior administrators I called upon at various times throughout the year either for assistance or to gather information and clarify circumstances. The cooperation received by the CDRM often makes it possible to narrow the scope of a dispute, to focus on the main issues in question, and sometimes to resolve disputes without resorting to formal and lengthy procedures.

Respectfully submitted,

Harry Smith, M.I.R., LL.B.  
Co-ordinator, Dispute Resolution Mechanisms  
University Secretariat

## **Appendix A**

### **Mandate of the CDRM**

*Case Management* - The mandate of the office of the CDRM is to promote the informal resolution of academic and non-academic discipline matters, including those of Queen's staff who have a work related problem or grievance. The Co-ordinator provides information on Queen's policies and procedures and can help students and staff identify and evaluate options for resolution. The CDRM does not act as an advocate for any party in a process but rather for the process itself. Depending on the nature of the matter, the CDRM may make a referral to other resources at Queen's.

*Tribunal Administration* - In addition to working with users of the dispute resolution mechanisms, the CDRM serves as administrator of the University Student Appeal Board and the Harassment/Discrimination Complaint Board. In this capacity, the CDRM receives materials filed with the boards, circulates copies amongst the parties and the chairs, co-ordinates the selection of board members, and schedules and organizes the hearings.

*Mediation* – Students who have been affected by an academic or non-academic discipline decision, or who are alleged to have committed an academic or non-academic offence, may contact the CDRM to discuss the options available to them. Following an initial consultation, the CDRM may attempt to facilitate the informal resolution of the dispute.

*Non-Bargaining Unit School of Medicine Academic Staff Grievances* – The formal grievance process is invoked when the grievor files with the CDRM a Notice of Intention to Grieve setting out the grounds of the appeal. The CDRM mediates the Step 1 meeting(s) and prepares the meeting memorandum.

*Policy Development* - The CDRM also serves a consultative role for Queen’s administrators by offering input and recommendations regarding policies or procedures for dispute resolution mechanisms throughout the university. The CDRM may also be called upon to provide input on questions of procedural fairness in the implementation of dispute resolution mechanisms.

*Education* - In addition, the CDRM has an educative function within the University. The office may be invited to present at conferences or seminars on academic or non-academic discipline or on administrative law and procedural fairness. The CDRM may also be requested to work with an adjudicative body on campus – be it a faculty sub-committee or a non-academic discipline tribunal – to educate members on questions of jurisdiction and due process.

*Committee Work* - The CDRM has committee responsibilities on the standing Senate Committee on Non-Academic Discipline (SONAD) and on other ad hoc committees or working groups.

*Co-ordination of Advisors* - The CDRM is responsible for co-ordinating the activities of such various advisor groups as the University Dispute Resolution Advisors, the Harassment/Discrimination Respondent Advisors, and the Staff Advisors. This involves assessing and meeting their training needs, monitoring caseloads, and receiving and dealing with concerns raised by the advisors about the practical application of policies or processes relating to the resolution of disputes. The CDRM is a member of the hiring committee for the SGPS student advisors.