

Senate Working Group
To Review the
Harassment/Discrimination Complaint Policy and Procedure

Notice of Motion
March 24, 2011

Background

Following Keith Norton's report *Review of the Harassment/Discrimination Complaint Policy and Procedure of Queen's University at Kingston, Ontario* to Senate in November 2007, the Senate appointed a Working Group to review his recommendations and to make changes to the existing policy and procedure. The Working Group has revised the document in an effort to improve upon the *Policy and Procedure's* clarity, scope, applicability, fairness, and due process.

Analysis and Discussion

The Working Group considered current legislation and case law in addition to the recommendations prepared by Mr. Keith Norton, which can be found at http://www.queensu.ca/secretariat/senate/Jan24_08/Norton.pdf.

An earlier draft of the revised policy was circulated for comment to those individuals/units who interact directly with the Human Rights Office and its *Policy and Procedure* in the resolution of issues. Many of those suggestions were incorporated in the document.

The Working Group submitted an Interim Report to the Senate on March 25, 2010, including a draft of the document as it existed at that time. An email was sent to members of the University community using the University's listserv. The email included a link to the revised Policy and a form to respond with comments. The Working Group considered all comments submitted.

The Working Group now submits a revised policy entitled *Human Rights Policy and Procedure: Harassment, Discrimination, and Accommodation*.

Some of the more significant changes to the Policy are outlined below for consideration:

1. The document has been reordered. Definitions are located within the body of the Procedure rather than as a section immediately following the Policy itself. The definitions are more global and include a definition of accommodation. A final section comprising a glossary to provide more detail has been added at the end of the document.
2. The Policy section has annotations along the side of the text.
3. Sections 3, 4, and 5 respectively address the applicability of the procedure for non-University members and with respect to non-University employment, placement, internships, instructional field courses and practica, and to campuses outside of Kingston.
4. A fact-finding process (Section 27) may be used to assist in the direction or resolution of discrimination and/or harassment complaints.
5. The time frame to pursue a complaint (section 24) now is within 12 months of the incident, consistent with the new Ontario Human Rights Tribunal's time frame.

6. A respondent will be referred to the Coordinator, Dispute Resolution Mechanisms or a delegate to eliminate the perception of conflicts of interest when respondents are referred directly to an Adviser by a Human Rights Office staff member.

The Working Group thanks the Senate Educational Equity Committee for its December 2010 Report both in response to the University Student Appeal Board decision referred to it by the Senate, and for its comments regarding the *Human Rights Policy and Procedure* generally.

Recommendation:

It has been the Working Group's objective in preparing the *Human Rights Policy and Procedure: Harassment, Discrimination, and Accommodation* to express the necessity of providing safeguards for members of the University community against harassment and discrimination, and to create a procedure that provides consistency and fairness in dealing with complaints whether made by students, staff, or faculty. Accordingly, the Working Group submits this Notice of Motion with the recommendation:

1. **That at its meeting on April 28, 2011, the Senate approve the *Human Rights Policy and Procedure: Harassment, Discrimination, and Accommodation 2011*;**
2. **That the *Human Rights Policy and Procedure: Harassment, Discrimination, and Accommodation 2011* be submitted for approval to the Board of Trustees at its meeting of May 6 and 7, 2011;**
3. **That upon approval by the Board of Trustees, the *Human Rights Policy and Procedure: Harassment, Discrimination, and Accommodation 2011* will replace the existing policy and will come into effect immediately.**

Respectfully submitted,
Harry Smith, Chair

Working Group Membership:

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QUEEN'S UNIVERSITY
HUMAN RIGHTS POLICY AND PROCEDURE
Harassment, Discrimination
and
Accommodation

Final Draft

March 24, 2011

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POLICY STATEMENT

prohibited grounds of discrimination

Queen's University believes in the necessity of providing safeguards for its members against harassment and discrimination. Every community member has a right to the provision of services, living accommodation and employment, without discrimination(including harassment) because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, age, marital status, family status, disability.

All community members at Queen's are expected to uphold and abide by the Policy by refraining from any form of harassment or discrimination, and by cooperating fully in any process under this document.

duty to accommodate

Implicit in the duty not to harass or discriminate is a positive duty to accommodate on the grounds listed above.

equity programs

The obligation to provide a harassment and discrimination free environment may also be met by special programs designed to contribute to the elimination of harassment and discrimination, or whose goal is to assist underrepresented persons or groups to achieve equal opportunity.

Supervisory and Administrative Responsibility

discrimination free environment

All supervisors, both academic and staff, shall strive to create an environment free of harassment and discrimination, and responsive to issues of accommodation in their area of responsibility. It is the responsibility of all supervisors to be aware of what constitutes harassment, discrimination and accommodation based on human rights grounds. Supervisors shall have knowledge of the Procedures that are in place for dealing with allegations of harassment, discrimination or a lack of accommodation, and shall cooperate in the processing of complaints made under this Procedure.

knowledge of Policy

cooperation with complaint process

Supervisors will not condone or ignore activities within their areas of responsibility which violate the rights of students, faculty or staff. They will ensure that all those for whom they have responsibility are aware that any form of harassment and discrimination based on the grounds enumerated above, or analogous grounds, in all their manifestations is prohibited. They will ensure that any complaints will be attended to immediately and effectively, including referring individuals to the complaint Procedure.

attention to complaints

authority of Boards

When some component of an appeal involves issues of harassment, discrimination or lack of accommodation, University Boards, such as academic

appeal boards shall consider these issues in their decisions.

Role of the Human Rights Office

appointment
of human
rights advisors

community
awareness

administration
of process

In the fulfillment of these obligations, the University has established a Human Rights Office and provided for the appointment of a Director and Advisors responsible for issues of human rights. Among the responsibilities of the Office are those of: increasing awareness among the University community of the effects of harassment and discrimination, including the effects of the lack of accessibility and/or accommodation for persons with disabilities; of providing educational programs to all segments of the community, including supervisory personnel; of providing support for individuals and groups who are the targets of harassment and discrimination; and of administering the Procedure established under this document.

Reason for this Procedure

consistent
process

prevention

accessible
process

informal
resolution

It is assumed that a centralized Procedure is necessary to ensure consistency and fairness in dealing with complaints of harassment or discrimination, whether they are made by students, staff or faculty. The Procedure is designed, in part, to prevent harassment and discrimination by educating and informing members of the University community as to what constitutes such behaviour. It is also intended to provide a framework which is accessible to the community in that it is complainant driven, ensuring that, as far as possible, the initiation and pursuit of a complaint will not be an intimidating experience, and the principles of natural justice will be followed for both complainants and respondents.

Thus, the emphasis is on informal resolution, using facilitation/negotiation, save where the nature of the matter necessitates a more formal process. It is intended that the existence of this document should help create the kind of environment which nurtures and supports the work of all faculty, staff and students. This does not preclude the right of individuals to seek the expertise of the Ontario Human Rights system or other form of legal remedy.

enhancement
of academic
freedom

Academic excellence can only be achieved when all members of the community are free to work, teach and learn in an environment which does not exclude or discriminate against them. This Policy and Procedure have been formulated to ensure the protection of these essential elements of academic freedom.

PROCEDURE

Application

1. General application of the Policy and Procedure

- a) Any member of the University community may seek advice at any time (see s.21) or make a complaint of harassment or discrimination under this Policy against another member of the University community (see s.23).
- b) Those who are considered members of the University community include: unionized or non-unionized full-time, part-time, temporary, casual and contract staff, grant-paid employees as well as those who work to gain experience or for benefits, such as volunteers, co-op students, interns and apprentices; faculty members, including adjunct professors, visiting scholars and post-doctoral fellows; full-time and part-time students, exchange students and students attending Queen's School of English.
- c) Students, staff and faculty members also include former students, staff and faculty members who raise allegations of harassment/discrimination which occurred while they were still members of the University community if the incident(s) occurred within the time limit set out in this document (see s.23).

2. Application of the Policy and Procedure for Non-University community members

- a) Non-University community members include, but are not limited to, volunteers, visitors to the University, contractors, their employees and agents, vendors of goods and services and their employees and agents, and others similarly connected to the University. It also includes individuals who are applying for employment, or registration into a program or applying to live in Queen's residences or housing.
- b) Non-University community members may have concerns about harassment/discrimination at Queen's. They are encouraged to express their concerns to a Human Rights Advisor in the Human Rights Office. These Procedures may be used where a non-University community member makes a complaint against a student, employee, or faculty member who was involved in the course of their work or study or participation in University activities and programs at the time of the alleged incident and is still a member of the University community.
- c) These Procedures do not apply to non-University community members against whom a complaint is made. However, non-University community members are expected to conduct themselves in any University-related activity in a manner consistent with this Policy. Allegations of harassment/discrimination against a non-University community member may be reported to

a Human Rights Advisor or an appropriate University agent. Such allegations, if substantiated, may result in suspension of University privileges, such as access to the campus or other appropriate actions.

3. Non-University employment, placement, internships, instructional field courses and practica

- a) The University has no control over organizations, companies, agencies or institutions that employ students, or those who supervise students doing placements, internships, instructional field courses or practica outside of the University. Thus, Queen's Procedures cannot be used to address student complaints of harassment/discrimination in these non-University venues.
- b) In situations where our members are involved in placements, etc. outside of the University, the University needs to respond to ensure that individuals are given opportunities to work in harassment and discrimination-free environments. Individuals may utilize this Procedure in cases where they feel the University has not met this obligation.
- c) Many such organizations will have their own Procedures to deal with harassment/discrimination and students are encouraged to access these Procedures; or alternately, the legal services of the Ontario Human Rights Tribunal. The Queen's Human Rights Office's advisors are available to individuals who wish to discuss the incidents and examine their options. Although the procedures cannot be used in a non-University venue, in these cases, assistance, liaison, and referral services will be provided.
- d) Queen's University expects external organizations to provide students with a harassment and discrimination free environment. Thus, whether students have access to complaint Procedures or not, they are strongly encouraged to report such incidents to their coordinator, faculty advisor, supervisor, department head or a Human Rights Advisor as appropriate.

4. University campuses/sites outside of Kingston

This Policy applies to Queen's campuses outside of Kingston, such as the International Study Centre, and Queen's sites outside of Kingston such as the Queen's University Biological Station, etc. Administrators of such campuses have a responsibility to ensure that the policies are applied and that an appropriate Procedure is in place to inform individuals of their responsibilities and to allow them to access their rights as outlined in this Policy.

Definitions

For additional information refer to Appendix A.

5. Prohibited Grounds

Queen's University recognizes that all members of the University community have the right to be free from harassment and discrimination. This includes the right to be accommodated for all enumerated

grounds This Policy prohibits discrimination or harassment on the basis of the following grounds, and any combination of these grounds:

- a) Age; Creed (religion); Sex (including pregnancy and breastfeeding); Gender Identity; Family status (such as being in a parent-child relationship); Marital status (including the following status whether in a same sex or opposite sex relationship: being married, single, widowed, divorced, separated, or living in a conjugal relationship outside of marriage); Disability (including mental, physical, developmental or learning disabilities); Race; Ancestry; Place of origin; Ethnic origin; Citizenship; Colour; Record of offences (criminal conviction for a provincial offence, or for an offence for which a pardon has been granted).
- b) Association or relationship with a person identified by one of the above grounds;
- c) Perception that one of the above grounds applies.

6. Discrimination

Discrimination means any form of unequal treatment based on a Ground enumerated above, which imposes extra burdens and/or denies benefits. It may be intentional or unintentional. It may involve direct actions that are discriminatory on their face, or it may involve rules, practices or procedures that appear neutral, but have the effect of disadvantaging certain groups of people (systemic discrimination). Discrimination may take obvious forms, or it may occur in very subtle ways. Where there are many factors affecting a decision or action, if discrimination is one among those factors, that would constitute a violation of this Policy.

7. Harassment

Harassment means a course of comments or actions that are known, or ought reasonably to be known, to be unwelcome. It can involve words or actions that are known or should be known to be offensive, embarrassing, humiliating, demeaning, or unwelcome, based on a ground of discrimination identified by this Policy. Harassment can occur on any one or combination of the grounds of discrimination.

Examples of harassment include:

- Comments or conduct of a sexual nature, including advances/solicitations and unwanted physical contact;
- Epithets, remarks, jokes or innuendos related to an individual's race, sex, disability, sexual orientation, creed, age or any other ground;
- Display or circulation of offensive pictures, posters, graffiti or materials, whether in print form or via e-mail or other electronic means;
- Singling out an individual for humiliating or demeaning "teasing" or jokes because they are a member of one of the enumerated groups;
- Comments ridiculing an individual because of characteristics, dress, accent etc. that are related to a ground of discrimination.

It should be noted that personal/workplace harassment which is not based on one of the prohibited grounds enumerated above is not covered under this Policy and Procedure.

8. Poisoned environment

A poisoned environment is created by comments or conduct, which create a discriminatory work, study or living environment such that it can be said that accepting such comment or conduct has become a term or condition of one's continued presence in the workplace, living space or study program. These include comments or conduct that are condoned or allowed to continue when brought to the attention of management or supervisors or other persons in positions of authority. The comments or conduct need not be directed at a specific individual, and may be from any individual, regardless of position or status. A single comment or action, if sufficiently serious, may create a poisoned environment.

9. Accommodation

- a) An accommodation is a series of steps taken to ensure full participation of community members while maintaining the essential requirements of jobs and programs. It is a fundamental part of the right to equal treatment.
- b) Universities, including their officers, managers, supervisors, and union representatives, have a shared obligation to design work, study and living spaces for inclusion of persons identified by the named grounds, as well as to remove existing barriers and provide accommodation. Failure to fully explore accommodation options in order to fulfill the duty to accommodate is a violation of this Policy.
- c) Accommodation may take one of two forms. It may involve meeting the needs of someone in a manner that also addresses the systemic needs of the group to which the person belongs (for example providing gender neutral bathrooms) . Alternatively, it may involve meeting the needs of a person assessed on a strictly individual basis (for example providing a specific software program for a staff member with a disability or providing flexible scheduling to accommodate a particular faith-based requirement).
- d) Accommodation may require the modification of the terms and conditions of employment or a program of study; or making adjustments to the environment.
- e) The manner in which an accommodation is provided and the methods by which it is implemented are subject to human rights standards. The principles of privacy, dignity, individualization, as well as inclusion and full participation apply both to the substance of an accommodation, and to the accommodation process.
- f) At the heart of the accommodation process is the responsibility, shared by all parties, to engage in meaningful dialogue about accommodation, and to work together respectfully towards accommodation solutions. Everyone involved should co-operatively engage in the process, share appropriate information, and avail themselves of potential accommodation solutions.

Guidelines and processes outlined by the department of Human Resources and student Disability Services should be accessed when engaging in such a process.

- g) When conditions of the workplace or the individual's needs change over time, accommodation plans will need to be reassessed.
- h) Collective agreements and other contractual arrangements cannot act as a barrier to providing accommodation.

General Principles

10. Grounds covered

Cases dealt with under this Procedure may involve one or more grounds of harassment or discrimination enumerated in the Policy.

11. Procedural Fairness

In the context of an investigation or a hearing, processes that are fair, which include the right to know the case against you and to have a meaningful opportunity to present your side of the case before an unbiased decision-maker.

12. Confidentiality

All complaints shall be handled with confidentiality. However, confidentiality may not apply in circumstances where disclosure is required by law or where the safety of the community may be at risk.

13. Roles and responsibilities of persons in positions of authority

- a) All community members at Queen's are expected to uphold and abide by this Policy, by refraining from any form of harassment or discrimination, and by cooperating fully in any processes under this document. Persons in positions of authority may include, but are not limited to, the following: AMS and SGPS officers, academic staff, medical and counseling personnel, campus security staff, residence staff, lab demonstrators, coaches, department heads and deans, supervisors.
- b) Those in positions of authority have the responsibility for creating and maintaining a harassment and discrimination-free environment; acting immediately if they observe or receive allegations of harassment or discrimination; looking into allegations of harassment and discrimination to determine whether there is a basis for the complaint, and remedying the situation where possible; and advising persons, who they believe may have been the subject of harassment/discrimination, of the assistance available through the Human Rights Office.
- c) Those in positions of authority also have the responsibility to respond to requests for accommodation based on human rights grounds in accordance with existing accommodation processes in a timely fashion.

14. Involvement of external agencies

Notwithstanding the provisions of this Policy, every person has the right to seek assistance from other bodies, such as his or her union and/or the police. An individual may also make a claim in the courts or file a complaint with and seek a remedy from the Ontario Human Rights Tribunal. Should a claim based on a human rights violation be filed in the courts or with the Ontario Human Rights Tribunal, any formal complaint process under this Policy relating to the same complaint will cease until the external case is brought to a conclusion or discontinued.

15. Reprisals

Any reprisal, or expressed or implied threat of reprisal, for making and pursuing a complaint under this Procedure, is itself considered a breach of this Policy and may result in increased sanctions or a new complaint. Reprisal is defined as an action taken by the respondent or others related to the complaint that has an adverse impact on the complainant.

16. Residences

When a concern involving a breach of the Policy is made in a residence setting, those in authority are responsible for advising the complainant of her or his entitlements under this Procedure and for ensuring a liaison between the Human Rights Office and the Residence system in the resolution of such a case. See Section 27 and Appendix B: Addressing Human Rights Issues in Residences.

17. Emergency action

This Procedure is without prejudice to the entitlement of the appropriate officers of the University to remove any student, staff or faculty member, where it is decided that the ongoing security of members of the community requires such action.

Seeking Assistance from the Human Rights Office

Parties to a complaint will be strongly encouraged to resolve all disputes through the informal processes outlined in this document, but where these options fail, or are not deemed appropriate by the complainant after serious consultation with a Human Rights Advisor, the complainant may request that a formal process be undertaken.

A complainant who is currently a member of a bargaining unit should consult the grievance Procedures set out in a relevant collective agreement. See section 29.

18. Advisors

- a) Human Rights Advisors shall be University employees attached to Queen's Human Rights Office and reporting to its Director. One of the primary responsibilities of Human Rights Advisors is to assist community members to address complaints of discrimination and harassment using this prescribed Policy and Procedure.

- b) The Coordinator of Dispute Resolution Mechanisms (located at the University Secretariat) or a designate will be responsible for advising respondents concerning their rights and responsibilities under the Policy and Procedure, for assisting respondents in understanding the complaint, and supporting respondents through this process when requested to do so by a respondent.
- c) Consultations with Human Rights Advisors and the Coordinator of Dispute Resolution Mechanisms are considered confidential. Advisors will not act on information provided to them without express consent except where there is concern that the interests or safety of the individual, other members of the Queen's community, or members of the public may be endangered.

Informal Consultation with the Human Rights Office

A person who believes that s/he has been the target of harassment and/or discrimination may contact a Human Rights Advisor.

19. Information

The Advisor shall provide information about the University's Policy and Procedure to all individuals seeking advice and will ensure they have a copy of the Policy and Procedure and *Frequently Asked Questions* document.

20. Referrals

The Advisor will also provide information about other available internal and external community services and may provide assistance in a referral to such services. These include but are not limited to: Student Health, Counseling and Disability Services; Campus Security; Employee Assistance Program; CUPE, QUFA, QUSA or other relevant union or association; SGPS or AMS Judicial Affairs Office; Staff Advisors; the SGPS Student Advisors; Residence Life Coordinators; Town Gown Relations; Kingston Interval House; Kingston Police Services; Kingston Sexual Assault Centre.

21. Advice

An Advisor may also provide advice to individuals who wish to attempt to resolve their situation without an Advisor's direct assistance. For example, the Advisor may give suggestions on how to communicate concerns either by letter or electronic communication. A request for advice does not constitute a complaint of harassment/discrimination. No steps will be taken at this stage to ascertain whether harassment or discrimination as defined by the Policy has occurred. Documents held in the Advisor's files as a result of this interaction will contain only the individual's contact information and information to be used for statistical purposes. Documentation will not contain the names of parties other than the individual(s) seeking advice.

22. Facilitated Dialogue

In some situations, an opportunity for respectful, non-confrontational conversation among parties to a concern, in which people may clarify meanings, express sentiments, contextualize issues, etc., is all that is necessary to bring a matter to a close.

An individual who wishes to engage in facilitated discussion with other individuals with whom she or he has concerns may request the assistance of a Human Rights Advisor. An Advisor's assistance may come in the form of helping to organize/facilitate meetings, providing educational resources, enlisting the support of community leaders/elders, etc. The purpose of facilitated dialogue is to provide the parties with a non-adversarial forum in which they may discuss issues of mutual concern and develop a better understanding of each others' perspectives.

No steps will be taken at this stage to ascertain whether harassment or discrimination as defined by the Policy has occurred. The only personal information held in the Advisor's files as a result of this interaction will be the individual's name and contact information. Documentation will not contain the names of parties other than the individual(s) seeking advice.

Engaging in facilitated dialogue does not preclude an individual from bringing a complaint forward at a later time. In the event that a complaint is made, the content of facilitated discussions will be considered confidential and will not be used in the complaint process. In addition, the Advisor who participated in the facilitated dialogue will not be involved in the complaint going forward. The individual(s) seeking advice may be assisted by a different Advisor.

LODGING AN INFORMAL COMPLAINT WITH THE HUMAN RIGHTS OFFICE

The following is the procedure to be followed by individuals wishing to pursue a complaint of harassment/discrimination through the Human Rights Office. It does not preclude administrators /supervisors who have been made aware of possible breaches of this Policy within their area of responsibility from taking appropriate steps to resolve concerns (see Section 13); however, administrators/supervisors are expected to inform parties of the assistance available to them through the Human Rights Office, the Coordinator of Dispute Resolution Mechanisms, and/or unions and staff associations as appropriate.

23. Time frame for submitting a complaint

If an individual complainant wishes to pursue a complaint of harassment or discrimination, the complainant must do so within 12 months of the incident, or the most recent of a series of incidents. The complainant can initiate this process by submitting a signed, written description of the complaint to an Advisor.

24. Multiple complaints

If several complaints are received regarding the same individual or unit, and the complaints refer to the same incident or series of incidents, these will be processed together and each complainant will have the opportunity to make individual submissions.

25. Early Disposition

Before proceeding to resolution of a complaint, the Advisor will assess whether the complaint is within the time limits for making a complaint and would be considered a prima facie issue of harassment or discrimination. Should the Advisor make a determination that the complaint appears to be outside the jurisdiction of this procedure, the Advisor will advise the complainant of his/her entitlements under Section 36 to seek a ruling from the Chair of the Senate Harassment/Discrimination Complaint Board.

26. Informal Resolution

With the consent of the complainant, an Advisor may attempt to take appropriate steps to resolve the complaint, keeping in mind the principles of procedural fairness at all times.

27. Fact Finding

In certain instances, for example where matters intersect with a disciplinary process such as that of the Residences system, an Advisor may determine that it is necessary to involve an appropriate administrator/supervisor in a fact-finding process. The purpose of such fact-finding is to assist in the direction or resolution of informal discrimination and/or harassment complaints. The results of such fact-finding process may assist the University, or an appropriate administrator, in exercising responsibility in responding to the complaint, including the possibility of affecting a resolution.

The respondent to the complaint will be informed that a complaint has been made including the substance of the complaint. Both the complainant and the respondent will be provided the opportunity to present their views to the fact-finder and to respond to information from the other party.

The fact-finding process should occur in a manner that is consistent with the principles of procedural fairness and that is as transparent as possible having regard to all of the circumstances. Parties to the complaint may be accompanied to meetings with the fact-finder by a representative of their choosing.

28. Contacting the respondent

- a) When a written complaint has been filed with an Advisor as per Section 23, the respondent will be contacted by phone or email within 5 working days if possible and informed that a complaint has been filed and of the substance of the complaint. The Advisor, or appropriate supervisor/administrator who has been contacted as per Section 27, shall also inform the respondent of the availability of assistance from the Coordinator of Dispute Resolution Mechanisms or a designate, and provide contact information for these individuals.

- b) If a respondent does not respond to the information sent by phone or email, the Advisor, or appropriate supervisor/administrator, will, if possible, send the information to the respondent in a form that provides proof of receipt. This notification will indicate that a respondent's decision not to respond will not stop the process and may lead to the initiation of a formal process.

29. Advice to members of bargaining units

- a) If an Advisor receives a complaint that involves a member of a bargaining unit either as a complainant or a respondent, the Advisor shall inform the complainant or the respondent that s/he should contact the appropriate union representative for advice and provide contact information as appropriate.
- b) In the case of a complainant who is a member of a union, the Advisor will not act on the complaint unless the union agrees or unless the member can demonstrate that the union is not the appropriate venue, or is unable or unwilling to address the complaint.
- c) An Advisor may meet with a complainant or respondent and their union representative to offer any expertise that can assist in resolving the complaint.
- d) In the case of a complaint by a non-union member against a member of a union, the complaint shall proceed ensuring the respondent is aware of the assistance their union is able to provide.

30. Interim relief

- a) At any time in the process, the University may take immediate measures to preserve the safety, emotional and physical well-being of the complainant or respondent while a situation is being resolved.
- b) Any decision or action taken by the University as interim relief shall be without prejudice to the rights of either the complainant or the respondent, and shall not in any way be deemed to be an indication of a determination on behalf of the University toward either complainant or respondent under any process governed by this Policy; such action shall not be considered as evidence by any decision-maker or dispute resolution facilitator in the processing of the complaint.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

The parties may choose to engage in an alternative dispute resolution process as outlined below and may revert to ADR even after a formal process has been initiated, but only if both parties agree.

The informal ADR process is an attempt to provide individuals with a process of reaching a mutually agreeable resolution. Both parties may bring another person of their choice to support them through the process.

31. The role of the Advisor as ADR facilitator

- a) If both the complainant and the respondent consent, the Advisor may assist the parties in resolving the complaint through an Alternative Dispute Resolution process.
- b) In consultation with the complainant, and with the consent of the respondent, the Advisor may speak to the respondent on behalf of the complainant; may conduct shuttle mediation, may facilitate a meeting between the parties or their representative; may propose another course of action deemed appropriate to the circumstances.
- c) If a resolution is achieved, the Advisor will record it. The parties will sign the resolution, which will remain on file until an agreed upon time. After the agreed upon time, all written documentation will be destroyed and only an anonymous account of the complaint will remain on file for statistical purposes.
- d) If a resolution is not achieved, all records and notes relating to what took place during the meetings associated with the process shall be destroyed, and no person shall introduce such documents during any subsequent proceedings at the University which would disclose what took place during meetings aimed at resolving the issue informally.

32. External dispute resolution

- a) If it is deemed by the Advisor that the issue cannot be resolved through an internal ADR process, the Advisor may suggest the use of an external facilitator or mediator. The Advisor will contact the other party and s/he will indicate within 5 working days whether s/he is willing to consider ADR. If the matter proceeds to an external process, the Advisor will help the parties identify a mutually acceptable ADR facilitator or mediator. The facilitator or mediator must be identified within 10 days and s/he shall then contact the parties within 5 working days of her/his appointment unless a different time has been agreed to by all parties. Both parties must agree to the choice of the facilitator or mediator or who may be any other member of the community upon whom the parties can agree, and who agrees to serve.
- b) The external facilitator or mediator will set the process to be used with the parties. Within four weeks from the date of the agreement on a particular facilitator, the process will be concluded. If a resolution is achieved, the agreed upon resolution shall be signed by the complainant, the respondent and the facilitator or mediator and shall be presented to each of the parties, their Advisors and senior administrators as appropriate (in the event that such a senior administrator has been informed respecting the issue by virtue of Section 27 otherwise). The Advisor copy will be kept on file for as long as the parties are at Queen's, or 2 years (whichever is the longest.) At the end of that period, if there has been no breach of the agreement, the agreed upon resolution and all written records associated with the case shall be destroyed and the Advisor(s) shall keep only what is necessary for statistical purposes.

- c) If a resolution is not achieved, all records and notes relating to the facilitation or mediation shall be destroyed and no person shall give evidence or introduce documents during subsequent proceedings at the University which would disclose what took place during the facilitation or mediation. The facilitator or mediator will notify the Advisor(s) in writing that the process has failed within 5 working days of the final meeting.

33. Breach of settlement/order

- a) Should the respondent breach the terms of an informal agreement or of an ADR settlement, the complainant may revive the complaint by giving notice to the Human Rights Advisor. The complaint may then continue informally, or proceed to a formal hearing.
- b) Should the respondent contest the occurrence of the breach, the issue can be determined as a preliminary matter by the Harassment/Discrimination Complaint Board. If the Board finds that there is no breach, the complaint shall be dismissed. If there are actions on the part of the complainant that contributed to a breach, these will be taken into consideration in the preliminary hearing.
- c) If the Board determines that there has been a breach, the complaint will then be heard in its entirety. A copy of the settlement agreement and the circumstances of the breach will be taken into consideration in the assessment of the remedy.

34. Failure of ADR/Proceeding to a Formal Board Hearing

In the case of a failure to agree on a Facilitator/Mediator; or upon the failure of an internal ADR process, the complainant has 10 working days from the date the Advisor deems the internal ADR process to have failed to request a formal Board process. In the case of an external ADR process, the complainant will have 10 working days from the date the Advisor receives written notice of the ADR failure to request a formal Board process. The complainant must do so in writing as outlined below. If the complainant does not request a formal Board process, the complaint will be deemed to have lapsed and the Advisor shall retain a copy of the original complaint in a confidential file for 12 months from the date of the original complaint. If the complainant does not have any further complaints against the same respondent, the Advisor shall destroy the file and its contents and keep only the information necessary for statistical purposes.

LODGING A FORMAL COMPLAINT

A formal complaint under this policy is submitted to the University Secretariat. The University Secretariat is responsible for the administration of the formal complaint process.

35. Initiating a formal complaint

If a complainant wishes to make a formal complaint, it shall be initiated by filing with the University Secretariat, written details of the alleged harassment including dates, times, places, names of individuals involved as well as an indication of any specific remedy being sought. Where necessary, the Advisor shall assist the complainant in the preparation of this document and, in particular, shall ensure that the complainant has identified the appropriate respondent or respondents. In the case of complaints against the University, the respondent will be the Principal as representative of the University, while in complaints against one of the University's operating units or any group or society, it will be the Dean, Head, Director, Chair or President as the case may be, as representative of the operating unit, group or society. The University Secretariat will ensure that the complainant has a copy of this Procedure and will respond to requests for information about the process including the possibility of ADR. Complainants should also, simultaneously, seek advice from their professional associations or certified unions.

36. Establishing jurisdiction

- a) If a complaint is not considered to involve harassment or discrimination covered by this Procedure, is beyond the time limits set by the Procedure to lodge a complaint, or involves an individual not covered by the Policy, the Advisor will inform the complainant of this determination and its reasons in writing. That communication will also advise the complainant of the right to seek a ruling on the matter from the Chair of the Senate Harassment/Discrimination Complaint Board (as detailed below). It will also outline any alternative University Grievance routes.
- b) In these situations, the time for initiating a complaint in any alternative forum will run from the date on which the complainant is notified by the Advisor and/or the Board that the complaint is not considered to be one of harassment and/or discrimination covered by this Procedure.
- c) Any request for a ruling by the Chair of the Harassment/Discrimination Complaint Board, on whether a matter involves harassment or discrimination covered by this Procedure, must be made within 10 working days of receiving the opinion of the Advisor under section 25 or 36(a) above. The Chair will make a ruling within 10 working days of such a request being received. A copy of the ruling will be provided to the complainant and to the Human Rights Office. The running of time limits for further steps under this Procedure will be suspended until the issuance of a ruling by the Chair.

37. Initiation of a board hearing and submission of written statements

- a) The complainant may initiate a hearing before the Harassment/Discrimination Board by a written request delivered to the Secretary of the University that includes the written formal complaint. The written formal complaint will set forth all the facts relied upon and will identify all respondents and all persons who, in the knowledge of the complainant, may support or verify

these facts. It will be accompanied by all relevant documentation in the possession of the complainant.

- b) Such a request must be made within 10 working days of the receipt of the written complaint by the Advisor, unless the complainant wishes to consider alternative dispute resolution.
- c) Upon receipt of a written request for a hearing, the Secretary of the University will send copies of the request and the complaint to the Chair of the Board, and to the respondent(s). The Secretary of the University will advise the respondent of sections d) and e) below.
- d) The respondent will have 10 working days from receipt of the complainant's statement/documentation within which to submit to the Chair of the Board a written statement of response. This statement should set forth all the facts relied upon and identify all persons who in the knowledge of the respondent may support or verify these facts. The response should be accompanied by copies of all relevant documentation in the possession or control of the respondent.
- e) On receipt of the response and any accompanying documentation, the Chair of the Board will immediately send copies to the complainant.
- f) If the respondent fails to file a statement of response as required in section d) above, the Board may proceed with the hearing of the complaint without further notice.

38. Make-up of Complaint Board

- a) The Principal will nominate a Chair and Vice-Chair of the Harassment/Discrimination Complaint Board and Senate will ratify these nominations. The appointed Chair (who shall usually be a member of the Faculty of Law) and the Vice-Chair (who shall not usually be from the same Faculty as the Chair) will have experience sufficient to advise the Harassment and Discrimination Complaint Board on matters of human rights law and Procedure. The term of office for the Chair and Vice-Chair will ordinarily be three years. The appointments may be renewed.
- b) Appointees to the Harassment and Discrimination Board will be selected from the elected members of the Senate. The member groups from which members of the Board may be chosen will be staff, student, and faculty. The members of each Board, excluding the Chair or Vice Chair, shall be empanelled anew for each complaint, having regard to the availability of individuals to serve on the Board and the desirability of sharing amongst senators the responsibility to serve on the Board.

39. Striking the Board

- a) The hearing will be before a three member Board. The Chair of the Board or the Vice-Chair will preside. The two other members will come from the member groups listed in section 38 b)

above. The complainant and the respondent will each designate a group from which a Board member is to be appointed.

- b) The complainant must indicate in writing to the Secretary of the University at the time of filing a request for a hearing, under section 37 a) from which group a Board member is to be appointed.
- c) The respondent must indicate in writing to the Secretary of the University within 10 working days of the receipt of the copy of the request for a hearing, from which group a Board member is to be appointed.
- d) Should a party fail to designate a group from which a member is to be appointed or, in the case of multiple complainants or respondents, should there be an absence of agreement among either the complainants or the respondents regarding the relevant group, the Chair shall make a designation on the basis of what appears to be the most appropriate group.
- e) In the event that all members of a designated group are either unavailable or disqualified, the party or parties affected will be provided with a further opportunity to select an alternative member who has been nominated by Senate to a Senate committee or as an incoming Senator.
- f) Once the membership of the Board has been established, the Chair will immediately inform the parties of the names of the members of the Board.
- g) The Chair shall in all cases inform the Human Rights Office, the complainant's Advisor, the respondent's Advisor, and any appropriate senior administrator who has been informed previously under sections 27 or 30 above.

40. Challenges to the composition of the Board

- a) There is a presumption that a tribunal member will act fairly and impartially. The Chair of the Board may, both before and after receiving representations from the complainant or the respondent, require any member to withdraw from sitting on the Board where the member has an actual or potential conflict of interest, or has a bias or may reasonably be perceived by the complainant or respondent to have a bias. However, the onus of proving bias falls to the person who alleges it. The Chair should be informed of the allegations at the earliest opportunity so the allegations may be evaluated and a decision may be made. When a member of the Board has been required to withdraw, that member will be replaced by another member of the designated group.
- b) Where there is a challenge to the participation of the Chair, she or he will decide whether to recuse herself or himself. In the event that the Chair decides to continue to preside over the hearing, a party to the complaint may appeal that decision, within ten days of its release, to the Dean, Faculty of Law. The Dean, Faculty of Law, will render a decision within fourteen days or within a reasonable period of time as demanded by the complexity of the case.

41. Withdrawing of complaint

If the complainant withdraws a complaint after initiating a hearing, the Board shall formally dismiss the complaint and give notice of that in writing to the respondent, the Advisor(s), and to the appropriate senior administrator if previously informed of the proceedings under sections 27 and/or 30.

42. Convening the Board

Where a complainant requests that a matter involving a breach of the Policy which has occurred in a residence setting be dealt with formally in accordance with this Procedure, the Chair of the Board, or a Board after it has been struck, will make every effort to adhere to the formal Procedure timelines defined in this document, taking into consideration any accommodation required.

43. Processing of Complaint by the Board

- a) The Chair of the Board will convene the Board within three weeks after the filing of the complainant's statement or as soon thereafter as is possible and invite the parties to address the Board if they wish. The time allowed each party will be determined by the Board taking into consideration the nature of the complaint. The meeting of the Board will be closed to the public.
- b) A party to a proceeding or their representative may at the hearing call and examine witnesses and present evidence and submissions; and conduct cross-examination of witnesses reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding. The Chair may reasonably limit examination or cross-examination of a witness when satisfied that the examination has been sufficient to disclose fully and fairly all matters relevant to the appeal, or that the questioning is irrelevant or abusive. Members of the Board also may question the parties to seek clarification.
- c) In exceptional circumstance, and where it is considered critical to the determination of the case, the Chair, in consultation with the panel, may allow persons to be present at the hearing who may provide information relevant to the complaint.
- d) If, during the course of any meeting of the Board, it becomes apparent that additional information is required in order to resolve the dispute, the Chair may adjourn the meeting to permit the parties to produce such additional information or facts or to permit the Board to obtain such additional information.
- e) Throughout the proceedings before the Board, the complainant and the respondent may, as of right, be accompanied by her or his Advisor, a person of her or his choice, and by a lawyer or other representative of her or his choosing.

44. Additional parties

If at any time after the initiation of a hearing under section 35 it becomes apparent to the Chair or a Board, after it has been struck, that there are interests of the University at issue in the dispute which might not be addressed by the parties, the Chair or a Board, if it has been struck, shall notify the Principal with a request that the University instruct either its lawyers or in-house counsel to represent those interests in the process. In such a case, the University is entitled to all the protection afforded by these rules to parties and all other rules will be modified accordingly.

45. Disposition of complaint by the Board

- a) After hearing the parties, the Board shall, normally within 5 working days, decide whether there has been harassment and/or discrimination and shall inform the parties, the Advisor(s), the person(s) given notice under sections 27 and 30 and, where appropriate, the Principal in writing.
- b) Normally within a further 5 working days, the Board will produce a written statement of its findings including the reasons therefore and supply a copy of the statement to the parties and the Principal.
- c) Where the Board has found the respondent responsible for any harassment and/or discrimination as defined under this Procedure, it will reconvene within 10 working days, or as soon thereafter as is possible to enable the complainant, the respondent, their respective Advisors, as well as counsel to the University to make oral or written submissions as to remedial action or sanction if they so wish. In the case where a breach of a facilitated/negotiated settlement has occurred, the Board may take this into consideration when deciding appropriate remedial action or sanction.
- d) Following the reconvened hearing, the Board will normally within seven days decide on the appropriate sanction or remedial action and provide the parties with written notice of that sanction/remedy and the reasons therefore. In circumstances where a sanction decided upon is considered a disciplinary measure, the Board will provide the appropriate body (i.e. the Principal's Office or Senate) with a written recommendation that such a sanction be imposed. Sanctions may include reprimand, notation on personnel records, a public report of the findings and sanctions imposed (including, in appropriate cases, the name of the respondent), loss of salary, suspension, dismissal, or expulsion from the University as well as mandated submission by units of the University to educational, monitoring, and reporting programs. Disciplinary sanctions will only be imposed within the parameters of relevant union-University collective agreements. The Board may also decide that the complainant is entitled to adjustment of grade, salary adjustment, reinstatement, or promotion where appropriate. In determining an appropriate sanction, the Board is not limited by any remedy designated by the complainant under sections 35 or 45 c). The Board may give directions that steps be taken to prevent future violations of this Policy including appropriate accommodation.

- e) The Board has no authority to direct that a party receive compensation for any costs or expenses, including legal costs, incurred in the course of the proceedings.
- f) Whether or not anyone or any unit of the University has been found responsible for harassment and/or discrimination, the Board may make recommendations to the administrative officers of the University or, if appropriate, the Senate and the Board of Trustees for purposes such as preventing incidents or reoccurrences of certain types of harassing or discriminatory behaviour. Such directions may be given whether or not the University or any of its units or officials has been a respondent at the formal hearing. In such cases, before issuing such a direction or making such a recommendation, the Board shall inform the Principal of the fact that it is contemplating such a step and provide the University with an opportunity to respond. The parties to the complaint also will be informed that the Board is contemplating such a step and invited to respond. The Principal and the parties to the complaint shall respond within a specified number of days either orally or in writing as deemed appropriate.
- g) If a person or a unit of the University is found responsible for harassment and/or discrimination, the issue of whether a recommendation to an administrative officer (as set out in section f) is appropriate should be determined, if possible, at the same time as the sanctions hearing. However, the Board shall deal with such issues separately where it is unreasonable to require a response to a request for submissions within the time limits established for the sanctions hearing or in cases where there has been no finding of responsibility for harassment.
- h) In cases where any unit of the University has been found responsible for harassment and/or discrimination and a sanction is imposed, the Board will as soon as is reasonably possible send a copy of its decision on sanction(s) and the reasons therefore to the Principal and to the Advisor as well as the person to whom notice has been given under sections 27 and 30, for implementation.
- i) A record of all proceedings before the Board, including any written documents filed by the parties, any interim orders made by the Board, and the decision of the Board and the reasons therefore, shall be retained according to the University's Records Retention Schedule.

46. Procedural rulings

If during the course of a formal proceeding any procedural issue arises, the Chair of the Board or a Board, once a Board has been struck, is empowered to resolve that issue by making a ruling.

47. Time limits

Where any time limits are established by this Procedure with respect to the formal hearing of a complaint, the Chair of the Board, or a Board if it has been struck, may extend those time limits if the failure to comply is beyond the control of the person seeking the extension, or the members of the Board, or whether it is otherwise necessary having regard to the interest of the parties.

48. Service of documents

For the purposes of this Procedure, a document is deemed to have been received when it has been delivered personally to the person concerned or within five working days of it being mailed to the residential address of that person as designated in the University's records. In the case of any person with two or more such addresses, any such document will be sent to each address. Documents sent will be clearly marked "To be Opened by Addressee Only."

49. Legal advice and assistance to the Board

At any time after receipt of the request for a hearing, the Chair of the Board may seek legal advice.

50. Privileged communications

All discussions and other forms of communication forming part of any facilitation/negotiation under this Procedure, other than the terms of any resolution, are privileged for the purposes of this Procedure and shall not be relevant or admissible evidence in the hearing of a complaint by the Harassment/Discrimination Complaint Board. Further, all discussions and other forms of communication between an Advisor and a complainant or respondent and communications as part of an attempt to resolve a matter informally through ADR as contemplated by this Procedure shall similarly become privileged and protected from subsequent use.

Appendix A

DEFINITIONS

Accessibility requirements

The positive obligation (of employers, service providers and those who provide living accommodation) to identify aspects of the operation that need to be altered in order to ensure that the needs of individuals are met (when those needs occur because of one of the personal characteristic enumerated in the Policy.)

Inclusive design

Adopting “universal” policy and planning practices designed to consider the needs of all employees or clients can help make an organization accessible to members of the groups listed in the Policy. Policies and procedures should be carefully reviewed to ensure that they do not have unintended adverse effects on particular groups. Design of buildings, collective agreements, work or exam scheduling policies should be designed to take into account a broad range of needs.

Analogous ground

A ground that serves as the basis for stereotypical assumptions arising out of a personal characteristic that is “immutable or changeable only at unacceptable costs to personal identity” and may be actually immutable, like race, or “constructively” immutable, like religion. (Corbiere v. Canada (Minister of Indian and Northern Affairs), [1999] 2 S.C.R. 203 as stated in Lesiuk v. Canada, Employment Insurance Appeal, Roger Salhany, Umpire, Lancaster House, Women/Pay Equity Employment Law News, May/June, 2001, p.5)

Duty to Accommodate

Refers to the obligation of an employer, service or living accommodation provider, or union to take appropriate steps to eliminate disadvantage to employees, prospective employees or clients resulting from a rule, practice, or physical or attitudinal barrier that has or may have an adverse impact on individuals or groups protected under human rights legislation. The duty to accommodate recognizes that substantive equality means respect for people’s different needs. Needs that must be accommodated may result from factors such as disability, sex, age, family status, ethnic or cultural origin and religious/faith beliefs.

Accommodation is often identified with the removal of physical barriers or the provision of assistive technical devices. However, accommodation is more than removing physical barriers. Changes to policy and procedures can also constitute accommodation. Seemingly neutral policies, procedures, or requirements, by not providing for diverse needs, can effectively disadvantage some individuals or groups. A requirement that all employees work on Saturdays, could, for instance, disadvantage employees who maintain that day as their Sabbath. An alteration of the “neutral” rule to ensure that it does not have an unintended adverse effect on some employees would comprise accommodation. (The duty to accommodate, an interpretive commentary, OHRC 1997)

Undue hardship

When accommodating the needs of an individual or a protected group would alter the essential nature of the enterprise, substantially affect the economic viability of the enterprise, or produce a substantial health and safety risk that outweighs the benefit of accommodating that group or individual. The employer, service provider, or provider of living accommodation has the burden of proving that accommodating an individual would cause undue hardship for the enterprise.

Alternative Dispute Resolution (ADR)

Processes used in place of or as a supplement to litigation (such as mediation, negotiation, arbitration and conciliation) in order to facilitate discussion and settle disputes. (Promoting Equality: A new vision, Report of the Canadian Human Rights Act Review Panel, LaForest, 2000)

Complainant

A person, group or institution who brings a claim forward against another.

Discrimination

See definitions section.

Constructive discrimination

Occurs when a seemingly neutral requirement has an adverse impact on a group protected under human rights laws. For instance, a rule requiring all employees to be available to work seven days a week will disallow those employees whose religious belief requires that they abstain from work on particular holy days.

Direct discrimination

Practices or attitudes that expressly discriminate against members of a group. Refers to an act of discrimination which is overt, that is, practices, policies or attitudes that expressly discriminate against members of a group. A refusal to provide service to someone based upon his or her membership in one of the protected groups would be direct discrimination.

Systemic discrimination

Refers to barriers in employment, service provision and the provision of living accommodation, that result from intentional or unintentional discriminatory practices, policies, attitudes and values. These can include any of the following: direct discrimination, harassment or constructive discrimination. For example, height and weight requirements for specific jobs in police and fire departments discriminated against women and certain racialized groups whose norms for height and weight are less than those of the dominant male groups on which the requirements are based.

Disability

The sense of the term “disability” in the context of human rights legislation encompasses both perceived limitations and actual, i.e. functional, ones. (2000 S.C.C.)

Conduct that is based on actual or perceived possibility that an individual may develop a disability in the future constitutes discrimination on the basis of disability. (2000 S.C.C.)

...in assessing whether an individual has a physical or mental disability within the meaning of ...the Code, the Tribunal must consider the individual's physical or mental impairment, if any; the functional limitations, if any, which result from that impairment; and the social, legislative or other response to that impairment and/or limitations. The focus is on this third aspect, which is to be assessed in light of the concepts of human dignity, respect and the right to equality. Proof of impairment and/or limitation, while relevant, will not be required in all cases. (2003 B.C. H.R. Tribunal)

..normally, disability is proven in one of two ways: (1) by establishing that the complainant has some physical or mental impairment and functional limitation, matters which, absent exceptional circumstances, would be known to the complainant but may not be known by the employer; or (2) by proving that the employer believes, albeit wrongly, that the employee has a physical or mental impairment and has or will have in the future a functional limitation. (2003 N.L.C.A.)

Discrimination because of disability does not have to be tied to a person's performance. In many cases it is, but it need not be. A person could have extreme blisters due to eczema and be performing exceptionally well in the workplace, yet the employer may not feel comfortable with the person's presence. The board notes that even if a person is able to do his/her job, there still may be a prejudice or perception of disability if an employer holds the view or acts in a way which suggests that the employer does not want an employee around who 'seems sick' or 'looks disabled'." 2002 Ont. Board of Inquiry.

When determining if there has been discrimination because of a disability, the focus is on the effects of the preference, exclusion, or other type of differential treatment experienced by the person and not on proof of physical limitations or the presence of an ailment. Courts have stated that "by placing the emphasis on human dignity, respect, and the right to equality rather than a simple biomedical condition, this approach recognizes that the attitudes of society and its members often contribute to the idea or perception of a "handicap". In fact, a person may have no limitations in everyday activities other than those created by prejudice and stereotype." (Guidelines on Accessible Education, OHRC, 2004)

Ethnicity

Like race, ethnicity is a social and political construct used by individuals and communities to define themselves and others. Ethnicity is also a process which is changed over time both by social conditions and individuals. Ethnicity tends to be based on common culture, language or nationhood.

Gender Identity

Refers to those characteristics that are linked to an individual's intrinsic sense of self that is based on attributes reflected in the person's psychological, behavioural and/or cognitive state. Gender identity may also refer to one's intrinsic sense of manhood or womanhood. It is different from, and does not determine, one's sexual orientation.

Harassment

Any vexatious (annoying or provoking) or inappropriate conduct, comment, or series of behaviours or comments by employers, service providers, those who provide living accommodations, their employees

or their agents (including people performing a contracted service) and that is known or reasonably ought to be known to be unwelcome or objectionable, and likely to cause offense or humiliation. When related to one of the protected grounds in the Policy it is considered discrimination.

When not related to a protected ground under the Policy, it may be known as “personal,” “workplace,” “psychological” or “non-code” harassment. Forms of harassment include: name-calling, jokes or slurs, graffiti, insults, threats, discourteous treatment, and written or physical abuse. While not covered by the Queen’s Harassment/Discrimination Policy and Procedure, personal harassment may be covered under documents such as Ontario’s Occupational Health and Safety legislation, various collective agreements, and the Queen’s staff Prevention and Resolution of Harassment in the Workplace Policy.

Sexual Harassment

Occurs when a person receives unwelcome sexual attention from another person, whose comments or conduct are known or should reasonably be known to be offensive, inappropriate, intimidating, hostile, or unwelcome. Sexual harassment includes situations where a person in a position of authority (a supervisor or teacher, for example) shows unwelcome sexual attention to an employee or student, and where reprisals occurs or is threatened if the sexual attention is rejected. It also includes situations where a hostile or poisoned work environment exists, in which offensive sexual attention or behaviour prevails in the work, study or living space, creating a negative psychological and emotional work environment for those to whom the offensive behaviour is directed – or those around them.

Thus, sexual harassment can be both physical and psychological; and in order to constitute sexual harassment it is not necessary that a respondent had made sexual overtures to a complainant in the form of a quid pro quo exchange - sexual harassment can consist of both sexual coercion and sexual annoyance. Sexual harassment has been widely accepted as an abuse of power.

Hate propaganda

Communicating false statements which incite or willfully promote hatred against an identifiable group.

Hate/Bias Motivated Act

Any action committed against persons or property which is motivated in whole, or in part, by the offender’s hate or bias based on any prohibited ground.

Heterosexism

Is a system of beliefs and practices that devalues and discriminates against those who are not (or perceived not to be) heterosexual. Heterosexism posits heterosexuality as the only “normal” sexual orientation; and assumes that everyone is heterosexual, unless there is clear evidence to the contrary. The term is typically used to describe systemic forms of discrimination.

Homophobia

Irrational fear and negative attitudes, feelings and beliefs about homosexuality. Homophobia can range from hatred and extreme fear of gay men or lesbians to feelings of disquiet or discomfort.

Intake

The first stage of bringing a complaint to the Human Rights Office; involves a first examination of the facts in order to determine whether there are possible grounds for discrimination and whether the HRO has the authority to deal with the complaint.

Jurisdiction

The area over which the HRO has the mandate to advise.

Marginalization

Exists when the voices of a community are separated and contained apart from the problem-solving and central decision-making of an institution or a society.

Procedural Fairness

In the context of an investigation or a hearing, processes that are fair, which include the right to know the case against you and to have a meaningful opportunity to present your side of the case before an unbiased decision-maker.

Prohibited grounds

Those characteristics enumerated in human rights legislation or policy such as race and age, for which discrimination is forbidden.

Racism

Racism is a system of implicit or explicit beliefs, assumptions and actions that may be based upon an ideology of inherent superiority of one racial or ethnic group over another, and by which individuals or groups of people exercise power that abuses or disadvantages others on the basis of skin colour and racial or ethnic heritage. Systemic racism is embedded within organizational and institutional structures and programs as well as within individual thought or behaviour patterns.

Racial discrimination

A prejudicial act such as denying an individual employment, housing, accommodation or other services in the public or private sectors because of the person's race. Actions may be overt or constructive, individual or systemic, intentional or unintentional.

Racial slur

An insulting or disparaging statement directed at a particular racialized group.

Remedy

In the context of a human rights claim, the agreement to compensate a claimant and prevent future breaches.

Respondent

The party (an individual, group or institutional unit) that responds to a claim of discrimination or harassment.

Stereotype

A false or generalized conception of a group of people which results in the unconscious or conscious categorization of each member of that group, without regard for individual differences. Stereotyping may relate to race or age; ethnic, linguistic, religious, geographical or national groups; social, marital or family status; physical, developmental or mental attributes; and/or sexual or gender identity.

Same sex partnership status

The status of living with a person of the same sex in a conjugal relationship.

Special programs

Initiatives (in employment, services or accommodation) designed to relieve hardship or economic disadvantage, to assist members of disadvantaged groups to achieve equal opportunity and to eliminate discrimination under the Policy. An example of a special program would be a landlord choosing to rent apartments only to seniors. Special programs are allowed under Charter and Human Rights Code.

Definitions adapted from the following references:

Teaching human rights in Ontario, Ontario Human Rights Commission

Andrews v. Law Society of B.C. [1989] 1 S.C.R. 143

Anti-racism guide, Anti-racism Secretariat, no date.

Guidelines on Accessible Education, OHRC, 2004.

The duty to accommodate, an interpretive commentary, OHRC, 1997.

Corbiere v. Canada (Minister of Indian and Northern Affairs), [1999] 2 S.C.R. 203 as stated in *Lesiuk v. Canada, Employment Insurance Appeal*, Roger Salhany, Umpire, Lancaster House, Women/Pay Equity Employment Law News, May/June, 2001, p.5.

Promoting Equality: A new vision, Report of the Canadian Human Rights Act Review Panel, LaForest, 2000.

Janzen, S.C.C.

APPENDIX B

Addressing human rights issues in Residence

The following represents the third draft of a best practice document for addressing human rights issues in residences developed in consultation with the Chair of USAB, the Chair of the Harassment/Discrimination Complaint Board, the Human Rights Office and the Director of Residence Life in December 2006.

The referral of human rights issues from Residences to the Human Rights Office will occur in the manner stipulated in the Harassment/Discrimination Policy and Procedure. The HRO Advisor seeing the complainant will discuss both the substance of the complaint and the processes which the complainant might utilize in order to pursue a resolution.

Initial Disposition of Complaint and Referral to the Director of Residence Life (as per the Residence Non-Academic Discipline Process)

If the complaint appears to involve a fairly low level resolution (e.g. a request for no contact), the complaint can likely be addressed informally with just the assistance of the HRO Advisor. However, if the elements in the complaint are such that behavioural contracts, relocation, or any sanctions related to students or undergraduate student staff is contemplated within the Residence system as a possible resolution to a complaint, the advisor will refer the complaint to the Director of Residence Life.

Complainants referred to the Director of Residence Life (as per the Residence Non-Academic Discipline Process), will be advised of their entitlement to pursue a complaint through the HRO and the Harassment/Discrimination Policy and Procedure should they feel the outcome of the Residences process has not been satisfactory i.e. that the human rights elements in the complaint have not been adequately considered in the Residence process.

Assistance from the Human Rights Office Advisors/Meetings with the Director of Residence Life and Complainant(s)

The HRO advisor will assist the complainant in documenting her/his complaint, discuss and provide any necessary referrals (e.g. Health, Counselling and Disability Services, Campus Security, etc.) The complaint will then be directed to the Director of Residence Life with the assistance of the Human Rights Advisor. The Human Rights Advisor can, at the request of the complainant, attend a meeting with, or on behalf of, the complainant and the Director of

Residence Life/designate, in order to assist in outlining the complaint and possible options for resolution.

Fact Finding in Residences

The Director of Residence Life will then engage in a fact-finding process keeping in mind the principles of procedural fairness at all times. Such a process will include but is not limited to: meeting with the respondent to discuss the details of the complaint, interviewing witnesses to the alleged behaviour to ascertain the merits of the complaint, etc., with the goal of effecting an appropriate resolution.

Emergency Action

In the event that the allegations involve sexual or other forms of assault, The Director of Residence Life reserves the right to take immediate action to ensure the safety, security and well-being of all residents. The Director of Residence Life retains her/his right to relocate the respondent immediately pending the outcome of further investigation.

Assistance from Respondent Advisors

A Respondent advisor will always be made available to the respondent(s) if the complaint involves any type of human rights allegations.

Role of Complainant and Respondent Advisors in Residence Cases

All decisions pertaining to the disposition of Residence cases will be made exclusively by Residence authorities, and neither the Complainant advisor nor the Respondent advisor, will be involved in any decisions regarding the sanction(s).

Meetings with the Director of Residence Life and Respondent(s)

Whenever a complaint involves Human Rights Advisors, it will necessarily include human rights elements, but it is recognized that the complaint may also include other behavioural issues (e.g. noise violations, underage drinking). The Director of Residence Life will address the entire range of issues with the respondent as a “resident”, through the Residence discipline system. Thus, any suitable sanctions in accordance with Residence protocols may be explored.

In the initial contact with the respondent(s) to set up a meeting to discuss the complaint, the respondent will be informed that there is a human rights issue that the Director needs to discuss with them. The respondent(s) will be given general information about the nature of allegations

against them, and be informed of the availability of respondent advisors to assist them throughout the process. The respondent(s) will be sent a letter further confirming a meeting time with the Director, along with the recommendation that the respondent avail him or herself of the assistance of a respondent advisor, (including the name and contact information of a respondent advisor). A meeting will take place as quickly as possible, the purpose of which will be to outline the complaint, provide a written summary of the allegations, and to discuss the complaint process with the respondent(s). Included in this meeting will be a discussion of the shortened time frame the respondent(s) has to in which to process the information included in the complaint summary, a recommendation to discuss any pertinent issues with his/her advisor and to secure whatever additional support s/he needs, prior to a second meeting (if necessary) with the Director of Residence Life, in which the respondent is given the opportunity to respond fully to the allegations, provided they have not already done so.

A decision about the next steps that need to be taken in the process (further investigation or decisions about the possible sanctions) will then be made by the Director of Residence Life while cautioning the respondent(s) about making reprisals against the complainant(s). The respondent(s) will be informed that any such reprisals will be considered further harassment and details therein added to the original complaint.

Appeals of Decisions of the Director of Residence Life

In the event that the decision reached by the Director of Residence Life is that the respondent is to be denied access to a building or asked to relocate etc., as a result of the Director's fact-finding process, the respondent may choose to appeal the sanction(s) to U.S.A.B. In such circumstances the appeal is limited to procedural matters or petition that the decision reached was "unreasonable". If the outcome of the U.S.A.B. hearing does not meet the needs as identified by the complainant, she/he retains the right to return to the Human Rights Office as described above.

Relocation of Complainant

In any event, the Director of Residence Life, or appropriate Residences administrator, may still, at their discretion and at the complainant's request, take steps to relocate the complainant, in order to ensure her/his comfort and feeling of safety in Residence.