

Annual Report to Senate of the Co-ordinator Dispute Resolution Mechanisms 2009 - 2010

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The Annual Report of the Co-ordinator of Dispute Resolution Mechanisms (CDRM) for the period September 1, 2009 to August 31, 2010, 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>2008-09</u>	<u>2009-10</u>
Student cases	181	206
Inquiries by faculty and administration	53	14
Other inquiries from within the University	53	104
Inquiries by persons external to the University	26	28
Staff	10	14

STUDENT CASES: The CDRM handled 206 student academic cases for the period from September 1, 2009 to August 31, 2010, compared to 181 student cases a year earlier, and 201 during 2007-08. Most student cases involved at least one in-depth in-person interview in the form of office meetings, often about an hour in length. Frequently, the matter required contact with other individuals or offices. While most of these cases were dealt with through existing faculty, school, or Senate appeal procedures, several cases this year were more complex and required multiple meetings with the student involved and with related parties in an effort to avoid a more formal dispute resolution process. The majority of these cases occurred at the graduate level of study, often with the School of Graduate Studies participating in the resolution process.

Seventeen students were assisted by a Dispute Resolution Advisor during the reporting period, down from 30 the previous year.

The CDRM dealt with 14 inquiries from faculty and administration regarding specific cases compared with 53 queries in 2008-09. Another 104 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,). Twenty eight people external to the University contacted the CDRM for information.

STAFF CASES: The CDRM was involved in 14 staff cases providing information, advice, and assistance, an increase from the 10 cases 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. Queen's University Staff Association also is available to assist general staff. One case proceeded to a Step Two grievance heard by an appeal board as set out in the Human Resources Grievance Procedure available to all general staff at Queen's University.

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. An additional case was filed with the CDRM during the 2009-10 reporting period. These cases have required multiple individual meetings and all-party mediation meetings.

HARASSMENT/DISCRIMINATION COMPLAINT POLICY AND PROCEDURE

Working closely with the Human Rights Office during this reporting period, the CDRM was directly involved in providing assistance to individuals responding to human rights complaints during the informal process. The CDRM assisted four individuals and one group in responding to human rights complaints during this period. There were two separate cases in which the CDRM assisted respondents to prepare for investigations initiated by the University following the submission of a complaint. Fact-finding was conducted using an external investigator hired by the University. The CDRM accompanied the respondent at the meeting in each case.

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 re-appointed chair for a second two-year term beginning September 1, 2009. Professor Emeritus Ron Price (Faculty of Law) was an alternate chair during this time.

Ten cases were submitted to be heard by the USAB in the 2009-10 year, compared with six appeals the previous year. Three related cases were non-academic matters referred directly to the USAB under SARD s.17(c). In one of these cases, a lawyer for one of the students submitted that the case was appropriate for alternative dispute resolution (s.33(a)). The lawyer handling the cases for the University accepted this approach in order to expedite the matter and to avoid further hardship to the other students who would have attended as witnesses. Consequently, in all three cases mediation between the parties was conducted by the CDRM with agreement from the University and the respondents on the sanctions imposed.

Four cases were heard by the USAB and a decision rendered. One appeal was withdrawn by the student before a hearing occurred. Two appeals were filed within the reporting period but were not scheduled to be heard during that time.

The Chair of the Harassment/Discrimination Complaint Board (H/DCB) during this period was Professor David Freedman (Faculty of Law). Professor Freedman was appointed to a three year term. One formal complaint was submitted to the H/DCB but the case was not heard before the end of the reporting period.

Policy Development

Athletics and Recreation Non-Academic Judicial Policy

The CDRM assisted Leslie Dal Cin, Director, Athletics and Recreation and Roxy Denniston-Stewart, Associate Dean, Student Affairs in drafting a revised non-academic discipline policy for recreation and varsity programs. Once drafted, the *Athletics and Recreation Non-Academic Discipline Judicial Process* was reviewed and approved by the Senate Committee on Non-Academic Discipline. Final approval for the policy was granted by the Senate at the April 22, 2010 meeting.

Committee Work

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 draft policy was submitted in an interim report to the Senate on March 25, 2010 and can be found at http://www.queensu.ca/secretariat/senate/Mar25_10/plcydrft.pdf. An informal session was held at the April 22, 2010, Senate meeting to discuss the interim report of the Working Group.

A decision from the University Student Appeal Board, dated May 2010, was referred to the Senate Education Equity Committee (SEEC) for comment. The USAB decision recommended that the Senate refer this Report to SEEC to consider and decide whether any changes were required to University policies, given that the case may raise systemic issues. While this case occurred in a specific department, there was concern that similar issues might arise elsewhere at the University. The response provided by SEEC will be forwarded to the Working Group.

The CDRM serves as follows:

- an ex officio member to the Senate Committee on Non-Academic Discipline.
- a member of the Discipline Working Group, a sub-committee of the Senate Residence Committee.
- an observer at the *Principal's Ad Hoc Committee to Draft a Safe Disclosure Policy*, which met seven times between June, 2009 and February 2010.
- 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, seventeen 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.

Faculty members interested in participating as a University Dispute Resolution Advisor are encouraged to contact the CDRM. Advisors should have a reduction in administrative or other service responsibilities in their school or faculty. Additional Advisors would make referrals and scheduling easier, avoid delays in addressing academic issues, and provide alternatives when a conflict of interest prevents a particular advisor from becoming involved.

Staff Advisors

The CDRM also co-ordinates the activities of the Staff Advisors appointed by the Principal to assist Queen's non-unionized staff with questions related to grievances and discipline. However, there have been no Staff Advisors since the 2007-08 reporting period. During the 2009-10 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. As mentioned above, the CDRM heard from 14 staff members over the course of the year.

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. A vote of affected employees was held on March 31, 2010. Not all of the ballots were counted immediately following the vote because the application raised several issues requiring resolution, including the description of the bargaining unit. At the end of this reporting period no agreement had been reached between the University and the USW regarding the description of the bargaining unit.

Harassment/ Discrimination Complaint Policy Respondent Advisors

The CDRM co-ordinates the activities of the Respondent Advisors under the *Harassment/Discrimination Complaint Policy and Procedure*. Advisors are appointed by the Principal to assist Queen's faculty, students, and staff who are the subject of a complaint under that policy. As mentioned above, the CDRM worked closely with the Human Rights Office during this reporting period, providing assistance to individuals responding to human rights complaints during the informal process. Consequently, the CDRM did not make any referrals to the Respondent Advisors during 2009-2010.

Thank You

There are many people across the University who offer their time and experience to those in need of assistance. Much of this occurs informally. Many students are able to get the information they need simply by asking an approachable instructor or staff member in a faculty office who is willing to take the time to understand the issue. Helpful information at this initial stage often allows the student to assess options and decide on an appropriate and expedient course of action. Explicit statements of the rights and responsibilities of students and clear descriptions of formal procedures including channels of appeal are invaluable in allowing all parties to understand the procedure to be followed and then to focus on the appeal and its merit. Regular review, updating, and publishing of rules and regulations are essential to ensure consistency with the *Senate Policy on Student Appeals, Rights and Discipline* and other Senate policies.

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 has 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 Cheryl Pulling, School of Nursing

Unfortunately, Professor Pulling will not be continuing in the role of student advisor.

Thank you to faculty and student Senators who have given their time to sit as members of the University Student Appeal Board.

Thank you to those members of the University community who, as Advisors, 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 have 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.