



Ms. Georgina Moore, Secretary of the Senate
University Secretariat
Room 153, Richardson Hall
Queen's University

RE: Response of the SEEC to Queen's University Human Rights Policy and Procedure: Harassment, Discrimination and Accommodation (draft VII)

December 14, 2010

Dear Ms. Georgina Moore:

On behalf of the Senate Educational Equity Committee (SEEC), I am pleased to provide the response to the referral of the University Student Appeal Board (USAB) Report.

In September 2010, the Senate referred the USAB Report to the SEEC to consider and decide whether any changes are required to University policies. The SEEC reviewed the current *Harassment/Discrimination Complaint Policy and Procedure* (approved by Senate on March 30, 2000), the *Queen's University Human Rights Policy and Procedure: Harassment, Discrimination and Accommodation* document (draft VII, dated March 25, 2010), and the report of Keith Norton entitled *Review of the Harassment/Discrimination Complaint Policy and Procedure of Queen's University at Kingston, Ontario* (dated November 30, 2007).

The Senate Educational Equity Committee requests that the attached Response be presented at the January 20, 2011 Senate meeting. The SEEC appreciates having an opportunity to participate in and provide input on the draft of the *Queen's University Human Rights Policy and Procedure: Harassment, Discrimination and Accommodation*.

If you have any questions or concerns, you can reach me by email at notash@me.queensu.ca or by phone at extension 36778.

Sincerely,

A handwritten signature in black ink that reads "Leila Notash".

Leila Notash, Ph.D., P.Eng.
Chair, Senate Educational Equity Committee

**Response of the Senate Educational Equity Committee to
Queen's University Human Rights Policy and Procedure: Harassment, Discrimination and
Accommodation (draft VII)**

December 14, 2010

Background

In May 2010, in accordance with Section 19(c) of the *Queen's University Senate Policy on Student Appeals, Rights and Discipline*, the University Student Appeal Board (USAB) directed that their Report, which involved a student appeal to USAB regarding allegations of discriminatory treatment that affected the instruction and evaluation of the student, be sent to Senate. It was suggested that there might be some gaps in the *Harassment/Discrimination Complaint Policy and Procedure*, especially when students allege discrimination or individual bias that affects their evaluation or academic standing in individual courses, which requires clear procedural guidance from the University. In September 2010, the Senate referred this Report to the Senate Educational Equity Committee (SEEC) to consider and decide whether any changes are required to University policies.

In 2007, in lieu of a periodic review of the Policy to ensure that it met the needs of the University's constituents, an external assessment of the Policy was conducted by Mr. Keith Norton, a Past President of the Federal Human Rights Tribunal and Chief Commissioner of the Ontario Human Rights Commission during 1996-2005 (also a Queen's law graduate and a member of the University Council). In November 2007, following his report entitled *Review of the Harassment/Discrimination Complaint Policy and Procedure of Queen's University at Kingston, Ontario*, the Senate appointed a Working Group to review the recommendations and to make changes to the existing policy and procedure. A revised draft of the *Queen's University Human Rights Policy and Procedure: Harassment, Discrimination and Accommodation* was submitted to the Senate in March 2010 and discussed at the April 2010 Senate meeting, during which the Working Group invited the University community to review and comment on the drafted revised Policy.

In view of the USAB referral, the SEEC reviewed the current *Harassment/Discrimination Complaint Policy and Procedure* (approved by Senate on March 30, 2000) and the *Queen's University Human Rights Policy and Procedure: Harassment, Discrimination and Accommodation* document. The revised Policy is planned to be brought to the Senate (and then to the Board of Trustees) early in 2011 for approval in order to replace the current Policy. Taking into consideration the timeline, the Committee agreed it would be more appropriate to concentrate on the revised Policy, and hence, would like to share the following with the Working Group and the Senate.

Observations, Recommendations, and Concerns

- Under the **Policy Statement** (emphasis added throughout the document to the quotes from the revised Policy):

“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.

***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 it is to assist under represented persons or groups to achieve equal opportunity*

The Committee would like to emphasize the importance of awareness of individuals (students, staff, faculty) about the human rights policies and the grounds of discrimination. No matter how well-documented the Policy will be, the “awareness” of the university community regarding these issues will prescribe the success of the Policy. SEEC recommends that a statement in line with “Every member of Queen’s has a responsibility to be aware of the University human rights policies and the grounds of discrimination.”, which is in the current Policy (under the “Responsibilities of Supervisory Personnel”) with somewhat different wording, be included in the Policy Statement section of the revised Policy.

The Committee is considering how to enrich the awareness of students, staff, faculty, units and university community about the Human Rights Office (HRO) of the University, its role and resources, as well as the grounds of discrimination. The student societies, specifically the Society of Graduate and Professional Students (SGPS) have initiated a couple of projects, including the mandated anti-oppression training offered by the HRO for the staff and executive members of SGPS; a campaign aiming to create in Queen's an environment where any communication barriers involving a difference in spoken English can be dealt with effectively and in a manner respectful to all parties involved; and cooperation with the HRO for revising the definitions of sexual violence.

The senior administration of the University has a leadership role to play in order to ensure opportunities and to promote awareness about human rights issues and grounds of discrimination.

- Under **Reason for this Procedure of the Policy Statement**

*“**prevention:** ... 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.”*

Considering this entry of the Policy Statement and to ensure that the procedure is “intimidation free”, the Committee highly recommends that the collegiality, non-adversarial, non-threatening and informal setting be encouraged and followed by the Board under the revised Policy when convening the hearing, deciding on the procedure and setting of the hearing and so forth, unless a formal, adversarial procedure is desired by both the complainant and the respondent. The Committee believes that an adversarial procedure may be viewed as intimidating and may lead the complainant

to drop the proceedings because she/he feels intimidated. As well, the adversarial process will divorce the Human Rights Office Advisors from the “formal process”. It is recommended practices of the Board reflect a non-adversarial approach. For example, the hearing should be conducted in a room that accommodates a (preferably round) table rather than a venue such as the “Moot Court room” of the Faculty of Law in the Macdonald Hall.

- The Committee recommends including “systemic discrimination” in the paragraph of **Section 6 Discrimination**. Systemic discrimination is defined and referred to in Appendix A but there is no reference to this form of discrimination in the main body of the Policy.
- **Section 9 Accommodation, part (c)** could be broadened to include and address “cultural accommodation” in more than an ad hoc approach, in addition to “*providing flexible scheduling to accommodate a particular faith-based requirement*”. At present, students’ exams may be rescheduled upon request for some faith-related holidays. The same accommodations, however, are not currently made for some cultures’/nations’ “national” holidays/celebrations even though these may be more important than the faith-related celebrations.
- **Section 13 Roles and responsibilities of persons in positions of authority, part (b):** “*Those in positions of authority have the additional 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.*”

The Policy should outline the consequences of persons in positions of authority who do not actively act on this responsibility. This should be considered a breach of this Policy, and result in some form of sanctions.

- In **Section 18 Advisors**, it is specified that the Advisors from the Human Rights Office will assist community members (students, staff and faculty) to address complaints of discrimination and harassment, while the Coordinator of Dispute Resolution Mechanisms (DRM) or a designate will be responsible for advising respondents concerning their rights and responsibilities. The Committee praises the idea of “Advisors” and their roles for both the complainant (HRO Advisors) and the respondent (the Coordinator of DRM or a designate) under the revised Policy and Procedure. The Committee believes this is a significant innovation because a respondent should not be compelled to hire a lawyer in order to receive the necessary advice, and appreciates that this system is established to provide an appropriate level of comfort for the respondent without replicating an office for respondents in light of social imbalance that exists considering human rights issues. The Committee recommends ensuring that there will be no conflict between DRM, who has the coordination role, and the role of Advisor for the respondent.

SEEC notes that university members (students, staff, faculty) may be at a significant disadvantage when a harassment/discrimination allegation is raised against an instructor/head/dean or a unit where the University provides external counsel to the respondent in a situation where a complainant wishes to resolve the dispute in an informal, collegial setting through a ruling of the Board and without retaining lawyer.

- The Committee praises maintaining the defined timelines in the revised Policy, which are key factors “to preserve the safety, emotional and physical well-being of the complainant or respondent” while the complaint is resolved, such as the ones in **Sections 32(c) and 37(d)**, e.g., “The respondent will have **10 working days** from the receipt of the complainant’s statement/documentation within which to submit to the Chair of the Board a written statement of response”. It is noted that delays in the process could significantly affect the health of the university members (students, staff, faculty), as well as their academic/employment progress and duties. SEEC recommends that excessive and unreasonable delays in the process, e.g., because of the vacation of the respondent or complainant, should not be allowed.
- Considering **Section 38 Makeup of Complaint Board**

*“b) **Appointees to the Harassment and Discrimination Board will be selected from the Senate.** Specific care will be taken to ensure gender balance and diverse representation on the Board. 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.”*

The Committee notes that the Senate includes ex officio and elected members. The ex officio members consist of the Principal, Provost and VP Academic, VP Research and Deans, which form the administration; the University Librarian; the President of the Faculty Association QUFA; and the Presidents of the student societies AMS and SGPS. Unlike the USAB Board for which only the elected members of the Senate, except for the students from the School of Law, are qualified (Section 22 of the *Senate Policy on Student Appeals, Rights and Discipline*); both the ex officio and elected members of the Senate are considered eligible for the Complaint Board. The Committee highly recommends that a statement be added to the Policy regarding the potential conflict, e.g., when a harassment/discrimination allegation is raised against a head/dean or a unit, the ex officio members of the Senate representing the administration should not be empaneled for the Complaint Board.

- Considering **Section 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. **Where there is a challenge to the participation of the Chair, s/he will decide voluntarily whether to recuse herself or himself.**”*

The procedure for the challenges to the participation of the Board Chair is very different compared to the one in the current Policy. It is the understanding of the SEEC, after consultation with the Chair of the Working Group, that the proposed procedure is consistent with what is taking place in “administrative tribunals”. The Committee recognizes that the harassment/discrimination complaint Policy and Procedure is for an educational institution, and the hearing and the Board Chair are not “identical” to a “court” and “court judge”. To adhere to the rules of natural justice, the Committee

strongly proposes to have a body identified as the ultimate decision maker if the Chair of the Board does not recuse himself/herself after a challenge to his/her participation is made and the Chair's response is not satisfactory to one or both parties.

The Committee advises that a panel recommend the Chair of the Complaint Board to the Principal, to be ratified by the Senate. It is also recommended that a similar panel, e.g., formed by the Chair and Vice-Chair of the USAB and perhaps the Vice-Chair of the Complaint Board, decide whether the Chair should withdraw when a challenge is made and the Chair does not recuse himself/herself. As well, a timeline should be included for the panel to make a judgment.

- **Section 43 Processing of Complaint by the Board, parts (b) and (d)**

*“Either party, or their representative, may cross examine the other party in order to seek clarification of matters relevant to the determination of the dispute”, and “Throughout the proceedings before the Board, the complainant and the respondent **may be represented** by her or his Advisor or by a lawyer or other representative of his or her choosing.”*

and **Section 44 Additional parties, part (b)**

*“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”.*

The Committee recommends that the Policy explicitly states that the complainant and the respondent are allowed to have Advisors/lawyers accompanying them to the hearing. It is noted that the Advisors (HRO Advisors and/or Advisor designated by the DRM) might not be qualified to “represent” either and/or both parties.

- **Section 45 Disposition of complaint by the Board, part (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 have been a respondent at the formal hearing but, 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 either orally or in writing as seems appropriate.”

The Committee recommends that a statement be added instructing the Board to notify both parties should the situation arise where the Principal is informed about the recommendations and invited to provide response. As well, a timeline should be included in this section for the University to respond.

- The Committee recommends that human rights considerations be included in all appeal (and complaint) policies and processes of academic units, as well as all Senate related policies of the University, including the *Queen's University Senate Policy on Student Appeals, Rights and Discipline Policy* (dated February 26, 2004) when these are considered for regular review. The Committee would like to highlight the contributions of the present Chair and Vice-Chair of USAB, who are highly respected in the University community, to the well-being of the students and the University.

It is suggested that the Coordinator of the DRM advocate that all unit level appeal policies incorporate human rights issues such that these are consistent with judicial interpretation of the requirements of administrative decision makers.

- The Committee recommends having a section on the impact of harassment and discrimination on individuals, institution and society in the revised Policy.

Clarifications and Information

- **Policy Statement, Appointment of Human Rights Advisors**

*“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.”*

This entry could be expanded to include a few other examples of discrimination, particularly the ones reported at Queen's such as race and gender related harassment and discrimination.

- **Section 11 Natural Justice and Section 26 Informal Resolution (and Section 27 Fact Finding)**: we suggest the document include a brief explanation/clarification on the “**Rules of natural justice**” and “**Principal of procedural fairness**” in the glossary section (Appendix A).
- We suggest that the document provide a list of sources of information and resources for assistance with the Policy, such as the HRO, DRM, student societies (AMS, SGPS), faculty/staff unions/associations (QUFA, QUSA, CUPE) under a pertinent heading.
- **Section 19 Information**: we suggest ensuring that a copy of the “*Frequently Asked Questions* document”, referred to in the revised Policy, be attached to the document in order to provide “a simplified outline of the essential elements of the Policy” (and perhaps a flowchart) as recommended in the Report of Keith Norton.
- **Alternative Dispute Resolution (ADR) - included after Section 30**: The Committee recommends that the Policy emphasize that the alternative dispute resolution mechanisms, such as informal process or mediation, should not deviate from the Process as it could cause delays which in turn would affect “*the safety, emotional and physical well-being of the complainant or respondent*”.

- We suggest clarifying which “Advisor” is referred to in the following sections; i.e., “Advisor for complainant (HRO Advisors)”, “Advisor for respondent (Coordinator of DRM or a designate)”, both Advisors, or ...?
 - **Section 22, Facilitated Dialogue:** *“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. Such a complaint will also proceed with an Advisor other than the Advisor who assisted with facilitated dialogue.”*
 - **Section 31 The role of the Advisor as ADR facilitator, part (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.”*
 - **Section 45 Disposition of complaint by the Board, part (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.”*

Typographical Errors

- **Prohibited grounds of 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.”* Please remove the extra comma and spaces between “status” and “family” and after “family status”.
- **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 it is to assist under represented persons or groups to achieve equal opportunity”,* please rephrase the second part of the sentence or remove “it” and replace “under represented” with “underrepresented”.
- **Policy Statement, Discrimination Free Environment:** *“All supervisors, both academic and staff, shall strive to create an environment free of harassment and discrimination, and that responds to the need for accommodation in their area of responsibility.”* could be rephrased.
- **Section 30 Interim relief (part b):** *“Any decision or action taken by the University taken as interim relief shall be without prejudice to the rights of either the complainant or the respondent”* includes repeated occurrences of verb “taken”.
- **Section 36 Establishing jurisdiction (part a):** *“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”,* please correct the location of period, it should be after the closing parenthesis.

- Considering **Section 38 Makeup of Complaint Board**: *“The members of each Board, excluding the Chair or Vice Chair, shall be ...”*, please remove the extra space before comma.
- **Section 47 Time limits**: *“... 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 ...”*. The comma in between “extension” and “or” should be deleted.
- We recommend replacing “s/he” with “she/he” throughout the document.
- **Appendix A, Accessibility requirements**: *“when those needs are occur because of one of ...”* should be rephrased (“are” appears to be redundant).

The Senate Educational Equity Committee entrusts that the Working Group will appropriately incorporate these comments in the final draft of the Policy and appreciates their commitment to advancing equity at Queen’s.

SEEC Members (2010-2011)

- I. Bujara, Human Rights Office
- D. Dávila Quije, AMS Representative
- N. Deshpande, School of Rehabilitation Therapy
- A. Foo, NCIC Clinical Trials Group
- A. Girgrah, Office of the AVP and Dean of Student Affairs
- A. Grondin, SGPS Representative
- C. Hoessler, Grad Representative
- A. Husain, Provost and VP Office
- C. Morrison, Faculty of Education
- L. Notash, Mechanical and Materials Engineering (Chair)
- C. Pilgrim, Undergrad Representation
- M. Singh, Physics
- M. Zulkernine, School of Computing and Electrical and Computer Engineering

Secretary: J.I Christie