

HUMAN RIGHTS POLICY

The University of Windsor is committed to providing an equitable working and learning environment that promotes and supports academic achievement. To this end, the University will strive to ensure the applicability of the rules of natural justice to achieve fair treatment of all members of the University community and will endeavour to create an environment free of harassment and all forms of prohibited discrimination.

By this Policy, the University declares that all members of the University community are obligated to interact on the basis of mutual respect and that the University will not tolerate any form of harassment, sexual harassment or discrimination in any University-related activity involving a member of the University community.

Behaviour constituting a violation of this Policy and/or the Ontario Human Rights Code is considered by the University to be a serious offence and is subject to a range of disciplinary measures up to and including dismissal or expulsion by the University.

The Ontario Human Rights Code prohibits harassment and discrimination on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, handicap, age, marital status, family status, receipt of public assistance or record of offences. It is understood that a person may experience discrimination and/or harassment on multiple grounds and that discrimination can be overt or systemic.

In fulfilment of the aforementioned obligations and with a view to expressing and reflecting Canadian values reflected in the Canadian Charter of Rights and Freedoms and the Canadian Multiculturalism Act, the University has established a Human Rights Office and provided for the appointment of a Commissioner responsible for facilitating the creation of an equitable environment for combating harassment and discrimination. Among the responsibilities of the Office are:

- a) investigating complaints by any student, staff or faculty member of the University against the University, or under the authority of the University;
- b) increasing awareness of the University community of the effects of harassment and discrimination;
- c) providing educational programs to all segments of the community;
- d) providing support for individuals and groups who are the targets of harassment and discrimination; and
- e) administering the procedures established under this document.

This Policy assumes that a centralized procedure is necessary to ensure fairness and accessibility in dealing with complaints. The Policy places great emphasis and importance on protecting due process rights of all the parties involved in a dispute or complaint while at the same time recognizing that it is generally in the interests of all persons to attempt to resolve disputes informally. Parties to a dispute have an option to utilize a formal dispute resolution mechanism only when informal methods of dispute resolution were attempted in good faith and were unsuccessful or where such methods are clearly inappropriate in the circumstances.

All members of the University community, both academics and staff, have a duty/responsibility to create an environment free from harassment and discrimination for each other and for those persons they supervise or exercise responsibility over. For persons with supervisory responsibilities the ambit of this responsibility includes an awareness of what constitutes harassment and impermissible discrimination, knowledge of the procedures that are in place for dealing with such allegations and cooperation in the processing of complaints made under this Policy.

University administration and managers are also obliged to ensure that all matters/disputes are dealt with in accordance with the rules of natural justice, whereby all parties concerned are given adequate notice and an opportunity to respond, and that all decisions are made in an impartial and unbiased manner.

In order to facilitate the implementation of this policy, every University employee and student is obliged to cooperate with the Human Rights Office.

DEFINITIONS

Whereas the University reaffirms faith in fundamental human rights and in the dignity and worth of the human person;

The University of Windsor is committed to the creation of a discrimination and harassment-free campus.

Every individual at the University is entitled to work/study in an environment free of discrimination and harassment and in particular to work/study in an environment free of discrimination and harassment including but not limited to discrimination and harassment based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, handicap, age, marital status, family status, receipt of public assistance or record of offences.

I. DISCRIMINATION

Discrimination is defined as a distinction, whether intentional or not, based on grounds relating to personal characteristics of an individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.

II. GENERAL HARASSMENT

Harassment is defined as vexatious comment or conduct in relation to a person or group of persons which has the effect or purpose of creating a hostile or intimidating working or educational environment when:

such treatment has the effect or purpose of threatening or intimidating a person; or

such treatment abuses the power that one person holds over another or misuses authority; or

such treatment has the effect or purpose of offending or demeaning a person or group of persons on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, handicap, age, marital status, family status, receipt of public assistance, or record of offences.

Harassment may occur during one incident, or over a series of incidents including incidents which, in isolation, would not necessarily constitute harassment. Harassment prevents or impairs the full and equal enjoyment of employment and educational services, benefits and/or opportunities and may occur between people of the same or different status within the University community, regardless of age or sex. Harassment may also be directed at a group as well as at an individual. Harassment may be psychological, verbal or physical or may be all of these.

Prohibited behaviours include but are not limited to:

Verbal Behaviour

Using stereotypes to describe a particular group; name calling; insults; threats; slurs; degrading or unwelcoming remarks; jokes or innuendos about a person/persons in relation to the prohibited grounds in the Ontario Human Rights Code.

Written Materials

Displaying or distributing racist/sexist derogatory or otherwise offensive materials or graffiti; displaying or distributing derogatory pictures or cartoons.

Physical Behaviour

Making threatening or rude gestures; using physical intimidation or assault; leering; unwanted touching, kissing, patting, pinching; insulting actions or practical jokes based on the prohibited grounds in the Ontario Human Rights Code.

Non-Verbal Behaviour

Avoidance, exclusion and inaction: refusing to talk or work with another member of the University community because of personal, physical, racial or ethnic characteristics; condescension, paternalism or patronising behaviour; failure to provide accommodation for persons with disabilities or for persons engaged in religious observation unless the accommodation causes undue hardship.

III. SEXUAL HARASSMENT

Whereas the University recognizes that sexual harassment often occurs in situations of power differential and that sexual harassment attacks the dignity and self-respect of the victim;

The University of Windsor is committed to the creation of a campus free of sexual harassment.

"Sexual harassment" includes:

- a) any unwanted sexual attention or behaviour by a person who knows or ought reasonably to know that such conduct is unwanted; or
- b) any implied or expressed promise or reward for complying with a sexually oriented request; or
- c) any implied or expressed threat of reprisal, in the form either of actual reprisal or the denial of opportunity for the refusal to comply with a sexually oriented request; or
- d) any inappropriate verbal or physical conduct that has a focus on sexuality or sexual identity in what reasonably may be perceived as a hostile, intimidating or offensive manner; or
- e) the communication or display of material with a focus on sexuality or sexual identity which has the effect or purpose of creating a hostile or intimidating working or educational environment.

Examples of sexual harassment:

verbal abuse including but not limited to graphic commentaries on the victim's body and sexual remarks which demean a person and are known or ought to have been known to be unwanted;

using sexually degrading words to describe a person;

insulting and offensive gestures, innuendoes, language, joking and or taunting about another person's body which causes awkwardness and or embarrassment;

leering (suggestive staring) or other gestures;

asking inappropriate questions about the person's sexuality or any sexual relationships past, present or future;

unnecessary physical contact such as brushing up against a person's body, touching, patting, pinching and invasion of personal space for the purpose of sexually harassing a person;

demanding sexual favours accompanied by implied or overt threats concerning a person(s)' employment (economic livelihood) grades (academic failure hence loss of future livelihood), reputation and/or letters of recommendation;

sexual solicitation or advance made with implied reprisals if rejected;

backlash or the threat of backlash, or retaliation or the threat of retaliation, for the lodging of a complaint or participation in an investigation;

behaviour including but not limited to attention and/or conduct that is known or ought to be known to be unwanted after the end of a consensual relationship; and

inappropriate display of sexually offensive material and /or pornography such as pin up posters (of any size), magazines etc.

See page 7 for information regarding complaint procedures.

COMPLAINT/DISPUTE RESOLUTION PROCEDURES

I. INTRODUCTION

1. A person or persons who has/have reason to believe that a violation of the University's policy on harassment and discrimination has occurred should either contact his/her/their immediate supervisor or the Human Rights Office. Supervisors, managers, student leaders or heads of academic units who are informed about a problem or potential problem relating to the policy should resolve the issue and/or refer the matter to the Human Rights Office.

In the events that the actual case is not referred to the Commissioner, the individual informed of the problem shall adhere to the principles and the objectives contained in the University's policy.

2. The Human Rights Commissioner shall act as an impartial counsellor and advisor to any member of the University community and maintain a fair and unbiased attitude to all complaints, and to all parties to complaints, at all times.
3. Confidentiality shall be enjoined on the Commissioner and supervisory personnel working in concert with the Commissioner. This does not preclude the discreet disclosure of information in order to elicit the facts of the case or to implement and monitor properly the terms of any resolution.
4. Should the complainant, with respect to the subject matter of a complaint being dealt with under this policy, obtain the appointment of a Board of Inquiry under the Human Rights Code, proceedings under this policy will be permanently discontinued and any new proceedings under this policy in relation to the incident in question will be barred.
5. The complainant and the respondent may at any stage of any of the procedures outlined in this policy be represented and/or accompanied by another person of her/his choice.
6. If, during the informal stages of complaint resolution, the Human Rights Commissioner determines that the complaint is frivolous, vexatious or entirely without factual basis, the Commissioner will advise the complainant and the respondent (if previously informed of the complaint) of this fact, in writing, and will provide reasons for this conclusion. The Commissioner will advise the complainant that should a panel eventually hear the substantive issue and come to the same conclusion, the complainant could be subject to disciplinary actions under this policy.
7. Teaching, research and non-teaching staff who participate in the procedures outlined in this policy shall be given release time to consult with the Human Rights Commissioner and attend formal hearings pertaining to their case. Participation in any official activity relating to this policy will not in any way prejudice the participant. Students involved in formal hearings will be assisted in adjusting schedules as necessary to attend the hearings.
8. Should the Commissioner believe at any time that the physical safety of any member of the University community is at risk, the Commissioner may notify the Director of Campus Police. Such a situation, and such a situation only, supersedes the prohibition on informing a third party of a complaint prior to the respondent's being notified and having the opportunity to reply to the complaint.
9. No one shall be compelled to proceed with a complaint.

10. Failure to comply with a resolution agreed upon or imposed as a result of the procedures within this policy may result in disciplinary action by the University.
11. No person will discharge, suspend, expel, intimidate, coerce, or otherwise retaliate against a person because that person, in good faith, participates in these procedures. Any such reprisal will be considered harassment under these procedures.

II. INITIATING A COMPLAINT

1. A member or group of the University community with a complaint about behaviour by an individual(s) which the complainant considers to be a breach of this policy is encouraged (in appropriate circumstances) to request the individual(s) to cease the offending behaviour.
2. A complaint may be lodged at the Human Rights Office by any member(s) of the University community, including the Human Rights Commissioner on behalf of another member of the University.
3. In the absence of exceptional circumstances, which shall be determined by the Commissioner, a complaint must be made to the Commissioner within one year of the alleged harassment occurring.
4. Following the consultation with the Human Rights Commissioner and assuming that a prima facie case of a breach of this policy has been established, the complainant shall indicate if she/he elects to:
 - a) take no further action; or
 - b) have the Human Rights Commissioner proceed with an attempt to resolve the complaint informally; or
 - c) have the Human Rights Commissioner proceed to arrange informal resolution by a third party acceptable to all the parties.
5. If the complainant elects to proceed to have the Human Rights Commissioner or a third party resolve the complaint informally or by third party resolution, the complainant shall provide a signed statement of the circumstances of the alleged harassment and provide written authorization for the Human Rights Commissioner to proceed with an informal resolution or to arrange for third party resolution.
6. If a complaint is initiated by the Human Rights Commissioner, the matter should be referred to the Secretary and General Counsel. If in the opinion of the Secretary and General Counsel a prima facie case of a breach of this policy is established, the Human Rights Commissioner shall decide if he/she elects to:
 - a) proceed with an attempt to resolve the complaint informally; or
 - b) arrange informal resolution by a third party.

III. INFORMAL DISPUTE RESOLUTION

Informal procedures include those followed by the Human Rights Commissioner attempting to resolve complaints with the complainant alone or with only the complainant and the respondent. They are distinguished from formal procedures in which a Hearing Panel is involved. By adopting the term “informal” the University does not imply that the approach of the Human Rights Commissioner has any less support and sanction than the formal procedures.

1. If the complainant elects to proceed by way of informal resolution with a written complaint, the Commissioner shall provide the respondent with a copy of the complaint, disclosure of all material facts relevant to the complaint and an opportunity to respond in writing to the written complaint.
2. The Commissioner or third party [see II. 4. (c)] shall discuss the written complaint and any response with the complainant and with the respondent, or with both, with a view to reaching a solution acceptable to all parties.
3. The Human Rights Commissioner or third party may utilize any appropriate dispute resolution techniques

including mediation.

4. If a resolution is achieved through Informal Procedures, where appropriate a Resolution Report prepared by the Commissioner shall be signed by the complainant and the respondent. Should the resolution include an action or remedy by the University, the Resolution Report must also be signed by the member of University administration responsible for ensuring that the remedy is imposed or enforced. All parties shall receive a copy of the report and a copy shall be retained in the Commissioner's confidential files.
5. Should the Human Rights Commissioner determine that the possibility of reaching a resolution through Informal Procedures has been exhausted, both the complainant and the respondent shall be informed in writing within 5 working days of that determination. The Commissioner shall prepare a complete report of the events which transpired during attempts to resolve the complaint informally. Only the parties shall receive a copy of the report.
6. Following notification that Informal Procedures have been exhausted, the complainant shall then be advised of the following options available to her/him:
 - a) to take no further action;
 - b) to request, in writing, a formal hearing; or
 - c) to withdraw, in writing, the complaint.

Should the complainant request a formal hearing, this request will be forwarded to the Secretary and General Counsel to the University. Attached to the request will be a copy of the original written complaint and any written response from the respondent.

7. If the complainant has neither written to the Human Rights Commissioner to initiate a formal hearing nor written to withdraw the complaint within 30 working days of being notified in writing that informal resolution has failed, the complaint shall lapse.
8. The request for a formal hearing may be challenged by any member of the University community including the Human Rights Commissioner on the grounds that such a request is frivolous, vexatious or otherwise inappropriate. Within 10 working days of receiving a written and signed challenge, an independent panel, in consultation with the Secretary and General Counsel to the University, shall determine if the request for the formal hearing should be granted.
9. The Panel, whose membership is drawn from the Hearing List [see IV, 1-3], shall consist of one student, one faculty/librarian, one support staff member and the Chair [see IV, 5-6].
10. A denial of a request for a formal hearing must be made in writing and it must include the reasons for the denial thereof. All parties to the dispute are entitled to receive a copy of the Panel's decision. The complainant is entitled to appeal a denial to the President and to receive a response within 10 working days from the date of the appeal.

IV. FORMAL DISPUTE RESOLUTION

Hearing List

1. The Human Rights Commissioner will be responsible for the creation and maintenance of a Hearing List. The list will comprise five students, five faculty/librarians and five support staff members, all of whom will be selected by their respective constituencies. The fifteen members shall select a Chair from among themselves who will hold office for five years.
2. Members will be appointed to the Hearing List for staggered times to provide for continuity of experience. Student members shall serve two-year terms and teaching and non-teaching staff members shall serve three-year terms. Shorter terms may be required occasionally to provide for staggering and to fill vacancies. No members shall serve for more than two consecutive terms. Former members will be eligible for reappointment after a lapse of two years.
3. Members of the Hearing List will receive training by the Human Rights Commissioner or a designate thereof in the particular sensitivities which surround discrimination and harassment issues in Universities (together with the principles of academic freedom), in procedures which effect fair resolutions, and in penalties and sanctions which are appropriate to the various offences and which act as a deterrent to further offences. This training will not deal with specific cases currently before the Panel established under this policy and is in no way meant to fetter the independence of any Panel member.

Panel

4. Formal hearings will be conducted before a Panel whose membership is drawn from the Hearing List and consists of one student, one faculty/librarian, one support staff member and the Chair.
5. All Panel hearings shall be chaired by the Chair of the Hearing List. If the Chair is unable to participate in the hearings for a particular complaint, the members of the Hearing List shall select an alternative Chair for those hearings from among themselves.
6. Unless exceptional circumstances prevail, the Chair of a Panel will retain responsibility for chairing all hearing sessions related to a complaint.

Scheduling

7. An attempt shall be made to schedule the Hearing(s) at a time and place convenient for the Panel and for the parties to the Hearing. However, any party whose reasons for absence are not considered sufficiently significant to warrant the necessary delay in the proceedings by the Chair of the Panel or whose absence may cause unreasonable delay, shall be notified that the Panel will proceed in that party's absence.

Notice

8. The Hearing(s) shall be commenced as soon as possible following the appointment of the Panel. Each party to the Hearing shall be sent a Notice of Hearing stipulating the time and place of the Hearing, and the parties to the Hearing, and identifying the subject matter of the Hearing.
9. Prior to the Hearing, members of the Panel shall be provided with:
 - (a) the complainant's request for a formal hearing;

- (b) the complainant's original written complaint; and
- (c) the respondent's written response to the original complaint, if any.

Record

10. The Secretary and General Counsel to the University will prepare a Hearing Record consisting of documents which the parties wish to submit and on which they intend to rely at the Hearing. Excluded from the record are any 'without prejudice' communications made with a view to informally resolving the complaints as well as the report of the Human Rights Commissioner, or other University official, on the events which transpired to resolve the complaint informally. Prior to making the record available to members of the Panel, the parties to the hearing are to have an opportunity to review the content of the record and may bring a preliminary motion to the Panel seeking exclusion of part or all of the record on grounds of relevance or other appropriate grounds. The record is to be made available to Panel members for the purpose of expediting the hearing. The documents contained in the record are not admissible as evidence at the hearing except on consent of all the parties to the hearing or upon being proven as evidence through witnesses at the hearing.

Duties of the Panel Chair

11. The Chair's duties include, but are not limited to:
- (a) maintaining order during hearings;
 - (b) answering procedural questions;
 - (c) granting or denying adjournments;
 - (d) arranging for a permanent audiotape-recording of the proceedings, which shall constitute the official record of those proceedings; and
 - (e) reporting decisions of the Panel to the President.

The above duties shall be undertaken in consultation with Panel members, if appropriate.

Counsel

12. (a) Both the complainant and the respondent have the right to be accompanied by an adviser or to be represented by counsel.
- (b) All parties will bear their own costs related to the proceedings. The Panel will not order or recommend the payment of costs, including any legal costs, of the proceedings to any party.

Closed Hearings

13. The Order of Proceedings will be as set out below.
- (a) The Chair's opening statement which shall identify the parties, introduce members of the Panel and other participants in the Hearing, identify the nature of the case, and confirm that all parties have had an opportunity to see the record and list any evidence which the parties have agreed can be admitted on consent.
 - (b) The complainant's opening statement, which shall contain a description of her/his case, including what she/he believes is the offence.

- (c) The complainant's witnesses, each to be examined as follows:
 - examination-in-chief by the complainant;
 - cross-examination by the respondent;
 - questions from the Panel for the purpose of clarification and dealing with omissions;
 - re-examination by the complainant, limited to points of clarification and to new issues arising out of the cross-examination by the respondent and questions from the Panel, which issues could not reasonably have been anticipated during the examination-in-chief.
- (d) The respondent's opening statement, which shall contain a reply to the complainant's case, outlining the main points of her/his defence.
- (e) The respondent's witnesses, each to be examined as above [sub-section (c)] beginning with examination-in-chief by the respondent, and so on.
- (f) Complainant's reply witnesses, limited to matters which could not reasonably have been considered pertinent at the time that the complainant put in her/his case. Witnesses called in reply will be examined as above, beginning with the examination-in-chief by the complainant, etc.
- (g) Closing arguments to be made first by the respondent and then by the complainant. Closing arguments should address both the substance of the complaint and the appropriate penalty in the event that the complaint is found to be valid by the Panel.

Witnesses

14. The following rules govern witnesses:
- (a) Only parties to the hearing have the right to present evidence in support of their case to the Panel and to see any written evidence presented to the Panel.
 - (b) The Panel has the power to require production of written or documentary evidence by the parties or by other sources.
 - (c) A person appearing before the Panel may be required to give evidence under affirmation or oath.
 - (d) The Human Rights Commissioner shall not normally testify.
 - (e) Complainant(s) may be questioned on behaviour related to the incident(s) in question. Apart from this, no complainant is to be questioned on previous behaviour or character for purposes other than those of establishing credibility as a witness.

Deliberations by the Panel

15. (a) Following the formal hearing, the Panel shall deliberate in closed session.

The Panel will decide, by a majority of the members excluding the Chair, the merits of the complaint on the basis of evidence and arguments presented at the hearing. Where the complaint is found to be valid, the Panel will recommend an appropriate penalty.

- (b) The Chair shall prepare and submit to the President of the University a written report which shall

include the Panel's decision and the reasons for the decision, together with any recommendation for penalty. If there is a dissenting position, it should be noted in the report.

- (c) Copies of the Panel's report to the President shall be sent to the complainant, the respondent and the Human Rights Commissioner. Similarly, the President will inform all parties, in writing, within twenty-one days of receiving the Panel's report, of the final disposition of the case and course of action to be taken, if any.
- (d) The President shall ensure that any penalties recommended are enforced by the authority responsible for implementing or imposing the penalty. If the recommended penalty is suspension or dismissal, the President shall initiate the appropriate procedure.
- (e) If the Panel decides by a preponderance of reliable evidence that a complaint has been fraudulent, malicious, frivolous or vexatious or is entirely without factual basis, the Panel will find that the complainant, as a result of the complaint, is in breach of this policy and will recommend to the President such sanction or remedy against the complainant as it feels is appropriate. Prior to finding that a complaint has been fraudulent, malicious, frivolous or vexatious or is entirely without factual basis, the Panel will advise the parties that it is considering making such a ruling and specifically invite submissions on this point.
- (f) A Panel decision against a staff or faculty member of the University shall be included in the personnel file of the member for a period no longer than seven years. A Panel decision against a student shall be included in the student's file for a period no longer than seven years.
- (g) Decisions of the Panel are binding and cannot be appealed within the University.
- (h) The Panel shall make any other recommendations or comments, as appropriate to the President, in a document separate from the report containing the Panel's decision and recommended penalty.
- (i) All records pertaining to Panel procedures, decisions and recommendations shall be retained by the Secretary and General Counsel to the University.

Sanctions and Remedies

16. The following penalties, singly or in combination, may be imposed upon any respondent who is a member of the **teaching, research or non-teaching staff** in any case where discrimination or harassment is found to have occurred:
- (a) oral or written reprimand;
 - (b) exclusion of the respondent from a designated portion(s) of the University's buildings or grounds, or from one or more designated University activities, where such penalty is appropriate to the offence and where the penalty does not prevent the respondent from carrying out her/his professional duties;
 - (c) imposition of conditions, with or without a deposit not exceeding \$200, returnable at a specific date, such deposit to be forfeited should any conditions be violated;
 - (d) the imposition of a fine;
 - (e) recommendation for suspension of the respondent without pay;

- (f) recommendation that dismissal proceedings be commenced; and/or
 - (g) other, as deemed appropriate.
17. The following penalties, singly or in combination, may be imposed upon a **student** respondent in any case where discrimination or harassment is found to have occurred:
- (a) oral or written reprimand;
 - (b) exclusion of the respondent from a designated portion(s) of the University's buildings or grounds, or from one or more designated University activities, where such penalty is appropriate to the offence and where the penalty does not prevent the respondent from pursuing her/his studies;
 - (c) imposition of conditions, with or without a deposit not exceeding \$200, returnable at a specific date, such deposit to be forfeited should any conditions be violated;
 - (d) prohibition of the respondent from attendance in a course(s), a programme, or a teaching division or unit, for a period of not more than 1 year; and/or
 - (e) other, as deemed appropriate.
18. The Panel must recommend any appropriate sanction or remedies it deems necessary to guarantee that the behaviour is not repeated. The Panel may also make a recommendation to the President that the complainant be accommodated for injury.
19. Suspension or dismissal may only be recommended, and such recommendations shall be dealt with in accordance with the established policies and procedures and by the terms or existing contracts of employment or collective agreements.

REVIEW

20. **The Human Rights Commissioner in conjunction with the Human Rights Advisory Committee will review this policy two years after its adoption and no later than five years thereafter.**