

*Note: On approval of a revised policy by the Board of Governors, and following review by TUFA, the new policy will replace Appendix E of the Collective Agreement. See Version 5 attached.*

## APPENDIX E

### TRENT UNIVERSITY

#### POLICY ON DISCRIMINATION AND HARASSMENT

30 March 1995

#### 1. PREAMBLE TO THE POLICY

~~Trent University endeavours at all times to provide a working and learning environment that is supportive of study, scholarship, teaching and research, and the fair treatment of all members of the university community, and that is fundamentally committed to the promotion of free inquiry and expression. Harassment, as defined in section 3 of this policy, may interfere with the exercise of free inquiry and expression. In pursuit of the university's objectives, Trent University recognizes the dignity and worth of every person and aims to create a climate of understanding and mutual respect.~~

~~Trent University affirms that all members of the University community have the right to equal treatment under its rules and procedures with respect to employment, services, goods and facilities, without harassment and without discrimination because of race, ancestry, place of origin (birth place), colour, ethnic origin, citizenship, language (except where lack of language competence would clearly prevent carrying out the required duties), creed, clerical or lay status, sex, pregnancy, sexual orientation, age (except as required by statute), marital status, family status (parent/child relationship), number of dependents, disability (except where the disability would clearly prevent carrying out the required duties), political or religious affiliation or belief, membership in legal associations, or place of residence (except where distance would significantly restrict carrying out the required duties). (These categories are hereafter referred to as "prohibited grounds.")~~

~~Nothing in this policy shall limit or amend the provisions of the collective bargaining agreements between Trent University and trade unions, including the provisions of the academic freedom clause I.2.3 of the TUFA Collective Agreement.~~

#### 2. POLICY STATEMENT

~~Trent University prohibits any form of discrimination or harassment that constitutes a violation of a person's rights under the terms of this policy.~~

- This policy applies to all members of the University community: students, academic and non-academic staff, librarians, and administrative staff. The University will take reasonable steps to inform all members of its community about this policy and to advise them about their rights and responsibilities under this policy.
- The Human Rights Advisor, responsible to the President, is charged with providing information to the University community and to any member of that community on the University policy, procedures and related matters, and will maintain records and pertinent statistics on the disposition of complaints. The Human Rights Advisor and the Presidential Advisory Committee on Human Rights will collaborate in developing human rights education objectives and events for the University community, including information sessions for supervisory and administrative officers.
- Members of the university community are encouraged to resolve harassment and discrimination situations between/among themselves, as informal resolution is often the most effective option. The Human Rights Advisor is available as a resource person to assist this informal process, as are interested and experienced individuals throughout the university community. Matters involving violation of criminal law (including sexual assault, criminal stalking, criminal libel, criminal intimidation, and the like) fall outside the jurisdiction of this policy. Where there is a threat to the physical health, safety or security of a member or members of the university community, or to their ability to carry out their duties and responsibilities, the University may take immediate action.
- The aim of this policy is to resolve disputes involving allegations of discrimination and harassment, including sexual harassment, in a thorough, fair, prompt, and objective manner, and to protect the rights of both the complainant and respondent throughout the procedures outlined in the policy. Complaints will be handled and resolved as quickly as possible, normally within four months from the time of complaint, to ensure that the rights of all parties are not jeopardized or prejudiced.
- At any stage of these procedures, any member of the university community has the right to consult with any willing person of his or her choosing, and to be represented by any willing person. The Human Rights Advisor will upon request make available at any stage and to either party a list of experienced and interested people who are able to provide assistance. At the informal stage (section 5) any willing person can accompany, assist or represent individuals seeking informal resolution. At the formal stage (section 7) any willing person may scrutinize for the complainant or the respondent. Applications for assistance and/or complaints will be treated with appropriate confidentiality subject only to the will of the parties and the requirement to disclose information or to give evidence according to law such as formal grievance arbitration, Ontario human rights proceedings, or a legal court action.

~~Nothing in this policy affects any person's right to pursue a complaint with the Ontario Human Rights Commission. Complainants are advised that the OHRC normally requires that complaints be filed within six months from the time of the most recent alleged act of discrimination or harassment. Should the complainant take formal steps to commence proceedings before the Ontario Human Rights Commission, or the courts, or under collective bargaining agreements, the complaint under this policy shall be terminated; should the respondent take such steps, the complaint under this policy shall be suspended pending the outcome of the proceedings.~~

### ~~3. DEFINITION OF HARASSMENT~~

~~(a) "Harassment" means engaging in a course of vexatious misconduct, which may include verbal misconduct, that is of a serious nature, that is experienced first hand, that is based on a prohibited ground of discrimination as defined in this policy, and that is known or ought reasonably to be known to be unwelcome. In recognition of the high value accorded to freedom of expression and inquiry and to academic freedom in a university community, the stipulation that a course of activity be vexatious misconduct in order to constitute harassment indicates that communication or expression — including the communication or expression of thought, opinion or belief — which is germane to any aspect of academic inquiry or public discourse falls outside this definition.~~

~~(b) In addition to harassment based on sex under 3(a), "sexual harassment" means:~~

~~(i) a course of sexual solicitations or advances, amounting to vexatious misconduct, made to another person or persons by a person in a position to confer, grant or deny a benefit or advancement to the person(s), where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome to the other person(s); or~~

~~(ii) any sexual solicitation or advance of a serious nature, made to another person by a person in a position to confer, grant or deny a benefit or advancement to that person, where submission to such solicitation or advance is made either explicitly or demonstrably a term or condition of the other person attaining the benefit or advancement; or~~

~~(iii) reprisal or threat of reprisal, of a serious nature, for the rejection of sexual solicitation or advance under 3(b)(i) or 3(b)(ii), where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the other person; or~~

- ~~————— (iv) ——— a course of vexatious misconduct, comprising sexual solicitations or advances, that is of a serious nature, that is experienced first hand, that interferes with an individual's work or academic performance, and that persists after a clear indication has been given that it is unwelcome; or~~
- ~~————— (v) ——— a sexual solicitation or advance by a student, amounting to vexatious misconduct, that is experienced first hand by another student, that demonstrably and significantly interferes with that student's work or academic performance, and that the student making the solicitation or advance ought reasonably to have known would have that effect.~~

#### ~~4. ——— RESOLVING ISSUES OF HARASSMENT WITHOUT A COMPLAINT~~

~~————— Informal resolution, including discussion, conciliation, and mediation, should be the principal means of settling disputes. Many questions and concerns regarding harassment may be handled informally with instructors, co-workers, academic advisors, department heads, fellow students and supervisors. Disputes can often be clarified and resolved by these means. Trent University encourages wherever appropriate the resolution of harassment conflicts by discussion within the departments, colleges or other offices of the University. It is the aim of this policy, and of those charged with carrying out its procedures at every stage, to assist individuals in reaching voluntary settlement of disputes through mutually agreeable remedies wherever possible, so that recourse to sanctions may remain a last resort.~~

~~————— As part of the informal process of resolving disputes, individuals may apply in confidence to the Human Rights Advisor for advice or assistance (see section 5). This application may result in informal resolution. Should the informal assistance stage not succeed in reaching a settlement, a dispute may be pursued to the next stage of a formal complaint at the level of Dean or Vice-President (see section 6).~~

#### ~~5. ——— APPLICATION FOR ADVICE OR ASSISTANCE~~

~~————— *Advice:*~~

~~————— The Human Rights Advisor stands ready to advise all individuals who feel that they may have a rights-related problem about their rights under this policy, and about possible options for resolution of the problem. Requests for advice may be made orally.~~

~~————— *Assistance:*~~

~~————— Any member(s) of the University wishing to pursue informal resolution of a dispute with the assistance of the Human Rights Advisor must apply for that assistance in writing. In some cases, applicants for assistance may be advised that their concerns can, should, or need to be brought to the attention~~

~~of some other official of the University for proper resolution. The Human Rights Advisor will make every reasonable effort to assist individuals who feel that they have been harassed in some way that falls under the jurisdiction of this policy to secure a reasonable settlement by mutual agreement within the spirit of this policy.~~

~~———~~ *Deadlines.*

~~———~~ Normally, applications for assistance are to be made within four weeks from the time of the most recent incident in a dispute. The Human Rights Advisor may, however, respond to any application for assistance under appropriate extenuating circumstances. The endeavour to resolve the dispute informally with the assistance of the Human Rights Advisor is to be completed within three weeks.

~~———~~ *Process.*

~~———~~ Upon agreeing to act on an application for assistance which the Human Rights Advisor deems on the face of it to be eligible under this policy, the Advisor will provide at least a written summary of the problem in dispute to the subject of the application, i.e., the other party in the dispute. Only with the agreement of the subject of the application can the Advisor act further on the application.

~~———~~ The Human Rights Advisor will then consult with both parties on options for informal resolution, and will make a good faith effort within the available time frame to bring about a mutually agreed resolution and to produce a report that can be signed by both parties. The Advisor may make use of any viable technique (e.g., consultation, conciliation, or mediation), but with only minimal interviewing of third parties, and only such interviewing as is specifically agreed by both parties. At the request of either party, and with the consent of both parties, mediation may involve the assistance of a voluntary, independent mediator. Either party may stop the process at any time by written notice to the Advisor. If informal resolution fails, the completion of the informal assistance process is indicated by the Advisor to both parties in writing.

~~———~~ *Privileged Information.*

~~———~~ Any and all information that is brought into informal dispute resolution under the jurisdiction of the Human Rights Advisor is to remain strictly privileged, in order to support the chances of successful informal resolution. Privileged information may not be disclosed or brought in evidence at any later stage of procedures under this policy or in procedures outside the University. The Advisor shall not be involved either as fact finder or as witness in any formal complaint process that may follow an inconclusive application for assistance.

6. FILING A COMPLAINT

— Normally, members of the University would apply to the Human Rights Advisor for advice or assistance (section 5), before filing a formal complaint. Nevertheless, all members of the University community who allege that they are or have been the direct targets of harassment as defined in this policy (section 3) have a right to file a complaint about that harassment, whether or not they have sought advice or assistance from the Human Rights Advisor (section 5). Members of the University community have a right to participate in complaint proceedings without facing reprisals or threat of reprisals, as long as their participation is not vexatious, malicious, or in bad faith, which may in turn be considered harassing misconduct even if it is not related to the prohibited grounds.

— A formal complaint is filed with the Dean of Arts and Science (if either of the two parties, complainant or respondent, is a member of the academic staff or a librarian), or with the Vice President (Administration) in all other cases. However, a complaint against the Dean is filed with the Vice President (Administration) and a complaint against the Vice President (Administration) is filed with the Dean; a complaint against the President is filed with the Dean and Vice President (Administration) jointly, and they shall consult with the Chair of the Board of Governors. The complaint must be in writing, must be signed, and must include an account of the alleged misconduct and its circumstances. This complaint will be provided to the respondent, along with all supporting documentation.

— Where it appears to the Dean or Vice President that the complaint is more appropriately handled under another University policy, or that the complaint is not within the jurisdiction of the policy, or that the complaint is trivial, frivolous, vexatious, or made in bad faith, or that the facts upon which the complaint is based occurred more than nine weeks before the complaint was filed, the Dean or Vice President will normally not deal with the complaint and will advise the complainant in writing of the decision and the reasons for the decision. An appeal for reconsideration may be made to the President within a week, and will be decided by the President within a week.

— The intention of the complaint process is to reach a settlement of the dispute, with an appropriate remedy, but it is understood that if voluntary or mediated settlement proves unattainable within the eight week time frame for completing the complaint process, the Dean or Vice President will make a decision about the nature of the complaint and the appropriate remedy, which latter may take the form of disciplinary sanctions.

— *Deadlines:*

— A complaint must be filed within *two weeks* of the unsuccessful completion of the informal resolution (section 5). If the process of informal resolution assisted by the Human Rights Advisor has been bypassed by preference of either party, a complaint must be filed within *nine weeks* of the most recent

~~alleged incident. In exceptional cases only, the Dean or Vice President may extend these or any other deadlines, provided that he or she is satisfied that the delay is in good faith and that no substantial prejudice will result to any person affected by the delay. In such cases, when in exceptional circumstances a student complainant makes convincing argument to the Dean that the student's status, accreditation, or access to essential services would be substantially prejudiced by engagement of the complaint resolution process prior to the completion of a course and the submission of grades, the complaint process may be suspended and the deadline for notifying the respondent and continuing the complaint process may be delayed until one month following submission of grades.~~

## ~~7. THE COMPLAINT RESOLUTION PROCESS~~

### ~~—— *Process.*~~

~~—— After a complaint is initiated, it is immediately communicated to the respondent, along with supporting documentation. The respondent will reply in writing within two weeks, and a copy of the reply, along with supporting documentation, is communicated immediately to the complainant.~~

~~—— Within the next six weeks, the Dean or Vice President, or a delegate, will make a reasonable effort to reach a final disposition of the complaint and to ensure that the University's responsibility to administer this policy is satisfactorily discharged. This effort will include consultation with the two parties, and may include appropriate fact finding and investigation, including formal interviews with both parties and pertinent third parties.~~

### ~~—— *Role of Representatives.*~~

~~—— All the information that forms the evidence on which a settlement or a decision may be based, including both documentary and oral information, will be scrutinized by one representative named by each of the parties at the beginning of the complaint process. In the acquisition of oral information, the representatives will act as observers and not as direct participants. The presence and role of the two representatives throughout the process is to improve the quality of evidence and attention to evidence, and to assist in reaching a settlement between the parties where possible.~~

### ~~—— *Complaint Mediation.*~~

~~—— At any point in the complaint resolution proceedings, from the point of receipt of the respondent's reply to the point of the final administrative decision about the complaint, at the initiative of the responsible administrative official or delegate, or upon request from either of the parties, but only with the agreement of both parties, a process of mediation which may involve the assistance of a voluntary, independent mediator may be attempted to reach a reasonable resolution by mutual agreement. Mediation will not rely on additional fact finding, and all information exchanged under~~

the process of mediation will remain privileged and not part of the formal facts.

— *Decision by Dean or Vice President.*

— If consultation or mediation fail to reach resolution, and therefore a resolution is decided by the Dean, Vice President, or delegate, the decision must be based on evidence and argument which are clear and convincing.

— *Resolution.*

— The complaint process is completed when a resolution through consultation or mediation is successful and a resolution report prepared by the responsible official is signed by both complainant and respondent, or when the responsible official reports in writing his or her decision about the complaint and the appropriate remedy (or sanction) to both complainant and respondent. The process is to be completed within eight weeks of the complaint. All sanctions that result from the disposition of complaints must be consistent with the disciplinary and grievance procedures established under the University's regulations, collective agreements, employment agreements, or personnel policies which govern the respondent's relationship to the University.

## 8. APPEAL OF A DECISION

— *Faculty, Librarian, and Staff Appeals.*

— Any complainant or respondent who is a bargaining unit member adversely affected by the decision may pursue his or her rights, if any, under the applicable collective bargaining agreement.

— *Non-union Group Employee Appeals.*

— Any complainant or respondent who is a non-union group employee adversely affected by the decision may appeal the decision directly to the President within two weeks. The grounds of the available appeal are that there has been a violation, misinterpretation, improper application, or faulty administration of this policy, or, in the case of respondent appeals only, that the sanctions imposed are excessive. Within two weeks of receiving the written appeal, the President will render a final, written decision.

— *Student Appeals.*

— Any complainant or respondent who is a student adversely affected by the decision may appeal the decision directly to the President within two weeks. The grounds of the available appeal are that there has been a violation, misinterpretation, improper application, or faulty administration of this policy, or, in the case of respondent appeals only, that the sanctions imposed are excessive. In the case of an appeal against sanctions, the President will consult with the Standing Appeals Committee before reaching a final decision. The Standing Appeals Committee consists of the Chair of the

~~Special Appeals Committee, a college head named annually by the President and a student named annually by the Trent central student government. Within two weeks of receiving the written appeal, the President will render a final, written decision.~~

~~9. OVERALL TIME FRAME~~

<del>1.</del>	<del>0 week</del>	<del>Week 0</del>	<del>Most recent alleged incident</del>
<del>2.</del>	<del>4 weeks</del>	<del>Week 4</del>	<del>Deadline to apply for HRA assistance</del>
<del>3.</del>	<del>3 weeks</del>	<del>Week 7</del>	<del>Completion of informal resolution effort</del>
<del>4.</del>	<del>2 weeks</del>	<del>Week 9</del>	<del>Deadline for filing formal complaint</del>
<del>5.</del>	<del>2 weeks</del>	<del>Week 11</del>	<del>Respondent must reply</del>
<del>6.</del>	<del>6 weeks</del>	<del>Week 17</del>	<del>Dean/V P's complaint process and report</del>
<del>7.</del>	<del>2 weeks</del>	<del>Week 19</del>	<del>Deadline to appeal to President</del>
<del>8.</del>	<del>2 weeks</del>	<del>Week 21</del>	<del>President's final decision</del>

~~Note: The process may be completed more quickly at any stage than the indicated maximum time frames. Conversely, two additional weeks may be added at item 4 for appeal if the complaint is disallowed by the Dean or Vice President. In exceptional and compelling circumstances, the Human Rights Advisor (at the informal stage) and the Dean or Vice President (at the formal stage) have the authority to extend the time frames as described under sections 5 and 7. For bargaining unit employees, grievance would normally be available from item 6, but is also available at earlier decision points; exceptional delays, in particular, are subject to grievance or appeal. The overall process is designed to permit complainants access to the Ontario Human Rights Commission within its normal deadline of six months after the most recent alleged incident.~~

