

MEMORANDUM

To: Senate Executive, Faculty Board and Senate
From: Julie Smith, Director of Human Rights, Equity & Accessibility
Date: April 30, 2012
Re: Discrimination & Harassment – Draft Policy & Procedures (v. 7.5)

The process for updating the current 1995 policy* began in 2005. A first consultation process took place in the 2008-09 academic year. A second consultation process was undertaken from February - April 2010. Consultations with the Trent University Faculty Association (TUFA) have been on-going since October 2009. Some delay resulted in 2010 and 2011 from other matters being prioritized and the vacancy in the Director of Human Rights, Equity & Accessibility position from Dec 2010 - May 2011.

*Found at <http://www.trentu.ca/ohrea/humanrights/overview.php>. The policy was added as an appendix to the TUFA Collective Agreement in 1997.

The latest draft policy and procedures (v. 7.5) result from detailed discussions with TUFA. Progress has been made to resolve several issues. At this point, further discussions will be held in the context of collective bargaining.

The Presidential Advisory Committee on Human Rights, Equity & Accessibility (PACHREA) has been reviewing drafts and receiving updates throughout the 2011-12 academic year. Reviews at OPSEU and CUPE joint committees have taken place in April.

The policy and procedures are provided to Faculty Board and Senate for information and review.

At a glance:

Policy on Discrimination & Harassment

- Recognizes the authority of the *Ontario Human Rights Code*
- Communicates Trent's commitment to eliminate discriminatory barriers; recognizes central role of environment free of discrimination and harassment
- Enumerates the prohibited grounds of discrimination and harassment
- Sets out scope
- Asserts fundamental importance of Academic Freedom; policy does not limit or amend collective agreements
- Definitions – including discrimination, harassment, sexual harassment
- No retaliation, reprisal for raising issue / complaint
- University's right not to proceed on frivolous or vexatious complaints
- Commitment to education and training, promulgation of policy
- Responsibility of all community members

Resolution Procedures

- Early communication between parties encouraged
- Role of Human Rights Advisor
- Confidentiality of process
- Timeline for filing a complaint – six month rule
- Representation
- Initiating complaint – to be made in writing
- Informal resolution procedure
- Formal investigation procedure – decision by Vice-President
- Limited Appeal
- No bar to file complaint under *Code* or grievance
- Remedies and Sanctions
- Records retention



DRAFT
Trent University - Policy on Discrimination & Harassment



Date: **March 1, 2012**

Version 7.5

PART I. DISCRIMINATION & HARASSMENT POLICY

TABLE OF CONTENTS

1. THE *ONTARIO HUMAN RIGHTS CODE* (“THE CODE”)
2. TRENT’S COMMITMENT
3. PROTECTED GROUNDS
4. COVERAGE
5. ACADEMIC FREEDOM
 - 5.1 No Limitation on Collective Agreement
6. DEFINITIONS
 - 6.1 Discrimination (General)
 - 6.2 Constructive Discrimination
 - 6.3 Systemic Discrimination
 - 6.4 Harassment (General)
 - 6.5 Sexual Harassment
7. REPRISAL
8. FRIVOLOUS OR VEXATIOUS COMPLAINTS
9. PREVENTION, EDUCATION AND AWARENESS
10. RESOLUTION PROCEDURES
11. ROLES AND RESPONSIBILITIES

1. THE *ONTARIO HUMAN RIGHTS CODE* (“THE CODE”)

Under the *Code*, every person has the right to freedom from discrimination and harassment based on specified protected grounds. Trent University prohibits any form of discrimination and harassment that constitutes a violation of a person’s rights under the terms of this Policy on Discrimination and Harassment (“the Policy”) and the *Code*. This Policy affirms Trent University’s commitment to compliance with the *Code*.

2. TRENT’S COMMITMENT

Trent University is firmly committed to ensuring awareness of rights and responsibilities under this Policy and to the goal of eliminating discriminatory barriers. Indispensable to an institution that values, supports and upholds the central role of equality, access and respect for its faculty, students and staff, is an environment that is free of discrimination and harassment. Trent University is fundamentally committed to the promotion of free inquiry and expression, and strives to provide a working, learning and an on-campus residential

environment that is supportive of study, scholarship, teaching and research.

3. PROTECTED GROUNDS

Consistent with the *Code*, this Policy prohibits discrimination and harassment on the basis of the following grounds as defined by the *Code* and precedents established through jurisprudence:

- Age
- Ancestry
- Citizenship
- Place of Origin
- Race
- Colour
- Creed (religion)
- Disability
- Ethnic origin
- Family status
- Marital Status (married, single, widowed, divorced, separated or living in a conjugal relationship outside of marriage, whether in a same sex or opposite sex relationship)
- Receipt of public assistance (in housing only)
- Record of offences (in employment only)
- Sex (including sexual harassment, gender identity, pregnancy and breastfeeding)
- Sexual orientation

Discrimination is often multi-dimensional with cumulative impacts on the grounds of race, gender, disability, and other identities. A complaint of discrimination or harassment may be based on multiple grounds (e.g., age and disability), and/or overlapping grounds (e.g., race and ethnic origin). Members of the Trent University community are also protected against discrimination and harassment due to association or relationship with a person identified by one of the protected grounds, as well as due to the perception that a protected ground applies (for example, perception that a person has a mental disability).

4. COVERAGE

This Policy applies to all members of the Trent University community including:

- Employees (full-time, part-time, sessional, contract, temporary, casual and otherwise);
- Students (full-time and part-time);
- Members of the Board of Governors, and its advisory and *ad hoc* committees;
- Volunteers, coaches, interns and contractors who provide products, services or research, while on campus;
- Individuals who are located on campus while employed by another organization (e.g., employees of faculty/employee/student unions).

This Policy and its complaint procedures will apply to members of the Trent community in situations with a substantial connection to the University including those occurring:

- on University property;
- with the use of Trent's computer and telecommunications network, and in Trent or private vehicles being used for University business or for travelling between work and study locations;
- at a University sponsored event including but not limited to off-site delivery and field trips.

Incidents occurring off campus or through electronic means outside the University network which have no or little likelihood of impact on the University work, study or on-campus residential environment generally are outside the jurisdiction of this Policy and normally would be pursued through the Human Rights Tribunal of Ontario, police services, private legal action or other processes.

Students on placement are covered by this Policy and the *Code*. Employees of placement agencies are not covered by this Policy. If an incident occurs on placement (including those outside Ontario and Canada), University representatives will engage in discussions with the student(s) and placement agency to take reasonable steps to address complaints of discrimination and harassment.

All contractual relationships entered into by the University will be governed by a standard clause stating the contractors must comply with the *Code* and relevant University policies.

5. ACADEMIC FREEDOM

Academic freedom is a fundamental tenet of University life and is a condition of employment expressly extended to academic employee groups pursuant to the terms of their respective collective agreements. Academic freedom includes the right to question and challenge traditional norms, and the freedom to define research questions, to pursue answers to those questions by way of unrestricted but proper investigative techniques and to disseminate the knowledge gained to students, academic colleagues and society as a whole. Academic freedom does not require neutrality on the part of

the individual. Rather, academic freedom makes commitment possible. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge. The exercise of academic freedom may challenge and/or offend the ideas, sensibilities and beliefs of others. However, academic freedom cannot be cited as a defence for denying equality to one or more individuals or for engaging in harassment of one or more individuals on protected *Code* grounds and this Policy.

5.1 No Limitation on Collective Agreement

Nothing in this Policy shall limit or amend the provisions of collective agreements between Trent University and collective bargaining units including provisions related to academic freedom. This Policy will be reviewed from time to time to enhance its effectiveness and to ensure that it is consistent with collective agreements and the *Code* (which prevails over all university policies and collective agreements).

6. DEFINITIONS

6.1 Discrimination (General)

Any form of unequal treatment based on one or more prohibited grounds, whether imposing extra burdens or denying benefits. It may be intentional or unintentional. Discrimination may take obvious forms or it may occur in very subtle ways. Where there are many factors affecting a decision or action, if discrimination is one factor, it is a violation of the *Code* and, therefore, this Policy. It is not discrimination or a contravention of this Policy to plan, advertise, adopt or implement a program that has as its objective the amelioration of conditions of disadvantaged individuals or groups identified by the protected grounds.

6.2 Constructive Discrimination

Where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination except where the requirement, qualification or factor is reasonable and *bona fide* in the circumstances.

6.3 Systemic Discrimination

Where patterns of behaviour, policies or practices which are part of an organization's structure unintentionally create or perpetuate disadvantage for a group of persons who are identified by a prohibited ground of discrimination.

6.4 Harassment (General)

A course of vexatious comment or conduct that is based on a protected ground that is known, or ought to be known, to be unwelcome. A single egregious incident may constitute harassment.

6.5 Sexual Harassment

A form of harassment involving comment or conduct of a sexual nature that is known, or ought to be known, to be unwelcome where:

- submission to such comment / conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic status, or academic accreditation; or
- submission to or rejection of such conduct by an individual is used as the basis for employment, or for academic performance, status or accreditation decisions affecting such individual; or
- such conduct interferes with an individual's work or academic performance; or
- such conduct creates an intimidating, hostile or offensive working or academic environment.

Sexual harassment can include but is not limited to: sexual assault or threats of a sexual nature; unwelcome sexual advances, invitations or requests; demands for sexual favours; innuendos, taunting or degrading words about a person's body, appearance or gender/sexual orientation; leering; sexually derogatory or offensive remarks about an individual; inquiries or comments about a person's sex life; and displays of degrading or offensive sexual material including sexual jokes.

7. REPRISAL

Every individual has the right to raise an issue or complaint of discrimination or harassment, and to participate or cooperate in any role under the Policy and/or procedures, without fear of retaliation or reprisal. Retaliation or reprisals will be treated as harassment and/or discrimination.

8. FRIVOLOUS OR VEXATIOUS COMPLAINTS

The University retains the right not to proceed where there is significant evidence that a complaint is frivolous or vexatious, and, in such cases, may impose sanctions and remedies that it deems appropriate.

9. PREVENTION, EDUCATION AND AWARENESS

Trent University is committed to an education and training strategy to promote widespread understanding about what constitutes harassment and discrimination and why in their many forms they can be harmful to individuals and the Trent community. This Policy provides the conceptual framework for related educational initiatives in areas such as:

- employment equity;
- disability accommodation;
- community engagement;
- diversity management; and

- other areas that could assist in building a culture of respect.

Trent University will promote awareness of this Policy by:

- making the policy available to existing and new members of the University;
- offering training to persons with management, supervision, leadership and collegial decision-making responsibilities; and
- conducting on-going awareness campaigns.

10. RESOLUTION PROCEDURES

Trent University shall provide both informal and formal mechanisms to address issues that fall within the jurisdiction of this Policy. These mechanisms are outlined in the *Resolution Procedures* ("Procedures") to this Policy.

11. ROLES AND RESPONSIBILITIES

All members of the Trent University community are expected to refrain from any form of harassment and discrimination, and co-operate in any resolution procedure if necessary. Persons in positions of authority have the additional responsibility to respond to allegations of discrimination or harassment in an appropriate and timely manner, consistent with this Policy.



DRAFT
Trent University - Policy on Discrimination & Harassment
Resolution Procedures



Date: **March 8, 2012**

Version 7.5

PART II. RESOLUTION PROCEDURES

TABLE OF CONTENTS

1. COMPLAINTS AND RESOLUTIONS PROCESS
 - 1.1 General Procedures
 - 1.2 Relevant Parties to a Complaint
 - 1.3 Early Communication Encouraged
 - 1.4 Exceptions
 - 1.5 Resolution Options
2. OFFICE OF HUMAN RIGHTS
 - 2.1 Role in the Complaints Process
 - 2.2 Confidentiality
3. TIME FOR FILING A COMPLAINT
 - 3.1 Six (6) Month Rule
 - 3.2 Exception
4. REPRESENTATION
 - 4.1 Supportive Persons
 - HOLD: POSSIBLE ADDITIONAL LANGUAGE**
 - 4.3 Use of Independent Legal Counsel
5. OTHER ISSUES IN THE COMPLAINTS PROCESS
 - 5.1 Multiple Complaints
 - 5.2 Interim Measures
 - 5.3 Reprisal (General)
 - 5.4 Frivolous or Vexatious Complaints
 - 5.5 Alternative Proceedings
 - 5.6 Withdrawal
 - 5.7 Due Diligence
 - 5.8 Constructive/Systemic Discrimination/Issues of Public Interest
6. INITIATING A COMPLAINT
 - 6.1 Responsibilities of the Parties
 - 6.2 Complaint to be made in Writing
7. INFORMAL RESOLUTION
 - 7.1 Request for Informal Resolution
 - 7.2 Assessment by the Office of Human Rights
 - 7.3 Appointment of an Independent Mediator
 - 7.4 Withdrawal from Informal Resolution
 - 7.5 Three Weeks to Conclude Informal Resolution
 - 7.6 Extension of Time
 - 7.7 Confidentiality of Informal Resolution Process

8. FORMAL INVESTIGATION

- 8.1 Written Request for Formal Investigation
- 8.2 Referral by Office of Human Rights
- 8.3 Situations Involving Multiple Respondents
- 8.4 Formal Investigation Procedure
- 8.5 Submissions to the Investigator
- 8.6 Office of Human Rights Availability
- 8.7 Extent of Investigator's Scope
- 8.8 Time for Completion of Investigation
- 8.9 Investigator's Report
- 8.10 Amendments to Investigator's Report
- 8.11 Investigator's Notes to Office of Human Rights
- 8.12 Vice-President's Review and Decision
- 8.13 Extension of Timelines

9. LIMITED APPEAL OF FORMAL INVESTIGATION

- 9.1 Appeal on Grounds of Procedural Error or New Evidence
- 9.2 Review of Appeal
- 9.3 Extension of Timelines

10. HUMAN RIGHTS CODE/GRIEVANCES

- 10.1 No Bar to Exercise of Rights Outside the Policy
- 10.2 Cessation of Policy Resolution Process

11. REMEDIES AND SANCTIONS

- 11.1 Remedies
- 11.2 Sanctions
- 11.3 Criteria Considered

12. RECORDS

- 12.1 Time for Retaining Records
- 12.2 Use in Non-identifiable Statistical Information

1. COMPLAINTS AND RESOLUTIONS PROCESS

1.1 General Procedures

It is the University's intention that complaints related to protected grounds will be resolved in a respectful and timely manner. However, where a situation cannot be resolved by speaking with the relevant party(ies), the objective of resolution procedures is to provide a mechanism to allow human rights issues to be brought to the attention of the University and addressed. The following resolution processes are available to members of the University community who initiate human rights complaint(s):

- informal resolution;
- formal investigation;
- grievance procedures (unionized employees);
- Human Rights Tribunal of Ontario (“HRTO”).

1.2 Relevant Parties to a Complaint

The relevant parties to a complaint under this policy are the complainant(s) and the respondent(s). The complainant(s) is the party(ies) initiating the complaint and who is seeking redress for a perceived injury or wrong. The respondent(s) is the party(ies) named by the complainant(s) as having committed the perceived injury or wrong and who is required to answer to the complaint.

1.3 Early Communication Encouraged

Any person who feels that they have been harassed or discriminated against is encouraged to initiate discussion(s) with the person(s) whose action gave rise to the issue. This allows an opportunity for the complainant(s) to inform the respondent(s) of the nature of the distress experienced and the remedy being sought, and an opportunity for response and resolution of the issue(s) in question. Individuals are strongly encouraged to explain to the offending party(ies) what they believe to be the negative impact of a decision, policy, behaviour, or unwelcome conduct but are not obliged to do so. Each situation should be assessed and considered based on its unique facts and circumstances.

1.4 Exceptions

If an individual believes that addressing the offending party(ies) could lead to escalation of discrimination and/or harassment, or create safety risks, or where a power differential limits an individual’s ability to express concerns, the individual may choose to not interact directly.

1.5 Resolution Options

In the event that a complaint situation cannot be resolved by communication between parties directly, a request may be made to the Human Rights Advisor for information about making a complaint under these Procedures.

Where alternative mechanisms are available and their application is mandated by legislation or another University policy (e.g.: complaint process under Trent’s Annual Access Plan for persons with disabilities; Ontario Teachers’ Federation guidelines regarding harassment complaints that arise during practicum placements for students in programs in the School of Education), individuals should pursue resolution through those measures, prior to accessing these Procedures. Nothing in these Procedures or the Policy on Discrimination and Harassment prohibits an employee represented by a bargaining agent from pursuing his or her rights under the applicable collective agreement or otherwise in accordance with the law.

2. OFFICE OF HUMAN RIGHTS

2.1 Role in the Complaints Process

The Human Rights Advisor is available to any member of the Trent University community to assist and provide individuals and groups with information about the Policy, Procedures and other human rights matters. The Human Rights Advisor’s role is not to act as an advocate for either the complainant(s) or the respondent(s) nor to provide legal advice. The Human Rights Advisor is charged with:

- Helping the parties understand and access the Policy and Procedures.
- Reviewing complaints or potential complaints under the Policy to determine if they properly fall within the scope of the Policy and assessing for frivolous or vexatious complaints.
- Working with the party(ies), if so requested, to explore early resolution options through voluntary informal resolution.
- Acting as a formal investigator in a formal complaint under the Procedures.

2.2 Confidentiality

Any and all oral and/or written communications with the Office of Human Rights are confidential and cannot be shared with any other party(ies) without written consent from both the complainant(s) and respondent(s), subject to the following. The University and all parties to a complaint will treat all information as confidential except where disclosure is required to investigate and/or resolve a complaint consistent with the Policy and Procedure or otherwise is required by law or under Trent’s *Campus Violence & Harassment Policy*. Where either the complainant(s) or the respondent(s) are members of a collective bargaining unit, they shall each be advised of their respective right to notify their bargaining unit and to seek assistance and counsel respecting their rights under their respective collective agreement(s).

3. TIME FOR FILING A COMPLAINT

3.1 Six (6) Month Rule

Deadline to file a complaint: Complainants are expected to file their complaint as soon as possible after the incident(s) giving rise to the complaint has occurred. Subject to 3.2, a complaint that is filed more than six (6) months after the last incident giving rise to the complaint will not be processed.

3.2 Exception

A complaint may be initiated beyond six (6) months in extenuating circumstances where the delay was incurred in good faith and no substantial prejudice exists such that proceeding with the complaint would deprive the respondent(s) of a fair opportunity to respond to the complaint.

4. REPRESENTATION

4.1 Supportive Persons

Complainants and respondents may bring a “supportive person” (e.g., colleague, union member/steward, student representative, parent/guardian, University counselor) to any meetings through the proceedings. Supportive persons are required to uphold confidentiality and are not permitted to intervene and/or disrupt the process.

HOLD: POSSIBLE ADDITIONAL LANGUAGE

4.3 Use of Independent Legal Counsel

A complainant or respondent may choose to seek independent counsel or advice at their own expense. Legal counsel (for non-unionized employees) may attend meetings as supportive persons but cannot act as legal representatives.

5. OTHER ISSUES IN THE COMPLAINTS PROCESS

5.1 Multiple Complaints

Two or more complaints alleging a violation of the Policy by the same respondent, or having facts in common, may be dealt with in the same proceeding, at the discretion of the decision-maker.

5.2 Interim Measures

In instances where, in the opinion of the decision-maker, there is clear and convincing evidence of a threat to personal health and safety, or to the ability to carry out duties and responsibilities, the University will separate the complainant(s) and respondent(s) in order to stabilize the situation before a resolution procedure is initiated and/or concluded. Where such measures are taken, a timeframe for review of the interim measures will be established and communicated to the complainant(s) and respondent(s) and, in such cases, where either the respondent(s) or the complainant(s) is a member of a bargaining unit, their respective bargaining agent shall be advised of the action taken. Any interim measure taken shall be in accordance with the applicable collective agreements.

5.3 Reprisal (General)

Every individual has the right to file a complaint of discrimination or harassment, and to participate in any role under the Policy and Procedures, without fear of retaliation or reprisal. Retaliation or reprisals will be treated as a form of harassment and/or discrimination.

5.4 Frivolous or Vexatious Complaints

The University retains the right not to proceed where there is significant evidence that a complaint is frivolous or vexatious. Such a finding is made by the relevant Vice-President (see 8.2) further to assessment conducted by the Human Rights

Advisor. Where a finding is made that a complaint is frivolous or vexatious, the University may impose sanctions and remedies that it deems appropriate provided that where the complainant is represented by a bargaining agent, such discipline shall be imposed in a manner which is in accordance with the provisions of the applicable collective agreement.

5.5 Alternative Proceedings

The University encourages the internal resolution of complaints, and therefore encourages complainants to make use of the Policy and Procedures whenever it is possible to do so. However, the Policy and Procedures in no way preclude any complainant(s) or respondent(s) from utilizing alternative options (e.g., Human Rights Tribunal of Ontario, civil lawsuit, grievance), subject to 10.2. For further clarity, nothing in this Policy or Procedures shall limit the rights of any party under any collective agreement.

5.6 Withdrawal

The complainant(s) retains the right to withdraw a complaint at any time during the process up to and including the conclusion of the formal appeal process. Upon written notification of withdrawal or alternative proceedings, a resolution procedure under the Policy and Procedures shall cease, subject to the University’s responsibility for due diligence.

5.7 Due Diligence

On being made aware of potential infractions under the Policy, a person in a position of authority is required to take any and all appropriate and timely action in order to address the situation consistent with the Policy and Procedures. Information disclosed to University counselors, doctors or any position covered by the *Personal Health Information Protection Act* (“the *PHIPA*”) is privileged and will not be disclosed except as required or permitted by the *PHIPA*.

5.8 Constructive/Systemic Discrimination/Issues of Public Interest

In the event that a University policy, procedure or practice is the subject of a complaint of constructive or systemic discrimination, the complaint will be brought to the attention, in writing, of the University administrator who is responsible for that policy, procedure or practice. The University administrator will engage in discussion, research, an informal process or formal investigation, as appropriate, following the principles of and considering the timelines in the Procedures. It is recognized that any policy and procedural changes will require extended time for consultation and approval.

6. INITIATING A COMPLAINT

6.1 Responsibilities of the Parties

Each party to a complaint is advised to keep written notes about the events at issue, as well as maintain any relevant documentation. Parties are responsible for knowing and understanding the Policy and Procedures.

6.2 Complaint to be Made in Writing

A complaint shall be made in writing and must include all of the following details:

- What happened – a description of the events or situation
- When it happened – dates and times of the events or incidents
- Where it happened
- Names of witnesses, if any
- Remedy(ies) sought

In addition to making a written complaint, the complainant will be expected to attend meetings with the Human Rights Advisor and/or external consultant or University representative(s) who are responsible for informal resolution, or fact-finding/investigative processes, and to provide any required additional information.

7. INFORMAL RESOLUTION

7.1 Request for Informal Resolution

Any member of the University community may request assistance from the Human Rights Advisor to reach an informal resolution of a complaint by initiating a *Request for Informal Resolution*. Informal Resolution is a voluntary option that is intended to help parties settle disputes on mutually agreeable terms. In some cases, complainants 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 and full resolution.

7.2 Assessment by the Office of Human Rights

Upon assessment by the Human Rights Advisor that the complaint underlying the *Request for Informal Resolution* appears, on the face of it, to be within the scope of the Policy and is not a frivolous or vexatious complaint, the Human Rights Advisor will:

- Contact the other party(ies) to determine willingness to participate;
- Provide a copy of the written complaint to the other party(ies);
- Make a good faith effort, through the use of any viable technique (e.g., discussion, consultation, conciliation, mediation), to facilitate a mutually acceptable agreement.

7.3 Appointment of an Independent Mediator

In some cases and with the consent of all parties, informal resolution may involve the retention of an independent mediator. The Human Rights Advisor may also recommend the appointment of an independent mediator in instances where the Advisor has identified a possible conflict of interest.

7.4 Withdrawal from Informal Resolution

Because the informal resolution process is voluntary, any party may withdraw at any time from the process by providing written notice to the Human Rights Advisor.

7.5 Three Weeks to Conclude Informal Resolution

Resolving the complaint through informal resolution shall normally be completed within three (3) weeks of all parties' agreement to participate.

7.6 Extension of Time

The timeframe may be extended in exceptional and compelling circumstances and/or at the discretion of the Human Rights Advisor where to do so is likely to result in an agreement. If the Human Rights Advisor determines there is no reasonable prospect to reach agreement, the Advisor will notify the parties in writing to conclude the process.

7.7 Confidentiality of Informal Resolution Process

Any and all information that is created and maintained by the Human Rights Advisor / Independent Mediator during the informal resolution process is to remain confidential in order to support the chances of successful resolution, except where disclosure is required by law or under *Trent's Campus Violence & Harassment Policy*. However, the Human Rights Advisor shall ensure that parties are aware at the start of an informal resolution process that the s/he may subsequently act as a formal investigator should formal investigation proceed.

8. FORMAL INVESTIGATION

8.1 Written Request for Formal Investigation

Where informal resolution is not successful or suitable, or where a party does not wish to participate in an informal resolution process, a complainant may submit a *Request for Formal Investigation* to the Human Rights Advisor.

8.2 Referral by Office of Human Rights

Upon assessment by the Human Rights Advisor that the complaint underlying the *Request for Formal Investigation* appears, on the face of it, to be within the scope of the Policy, and is not a frivolous or vexatious complaint, the Human Rights Advisor will refer the Request to:

- the Vice-President of the respondent's division if the respondent is an employee;
- the Vice-President Academic if the respondent is a student.

A complaint against a Vice-President will be filed with the President. A complaint against the President or a Governor will be filed with the Chair of the Board of Governors. A complaint against the Chair of the Board of Governors will be filed with the Vice-Chair. In such cases, subsequent references to “Vice-President” will be substituted accordingly.

8.3 Situations Involving Multiple Respondents

In situations involving multiple respondents, the Vice-Presidents will determine who will oversee the formal investigation process based on the substance of the complaint. This responsibility may be delegated, in which case references to “Vice-President” in this section will refer to the delegate.

8.4 Formal Investigation Procedure

A formal fact-finding investigation will proceed as follows:

1. The relevant Vice-President and Human Rights Advisor will meet with the respondent(s) (and supportive person chosen by the respondent(s)) to review the process and provide a copy of the written complaint if it has not already been provided.
2. The respondent will have ten (10) working days to provide a written response, a copy of which will be provided to the complainant.
3. The Human Rights Advisor may be responsible for the conduct of the investigation. Where the Human Rights Advisor is not available or the Advisor has identified a possible conflict of interest, the relevant Vice-President, in consultation with the University Secretary, will appoint an investigator, who may be external to the Trent community, who possesses expertise in the following areas:
 - human rights issues and principles;
 - the requirements of the *Ontario Human Rights Code*;
 - methods for conducting effective human rights investigations.

8.5 Submissions to the Investigator

The investigator will be provided with a copy of the complaint, written response, and the Policy and Procedures.

8.6 Office of Human Rights Availability

The Human Rights Advisor will be available to any external investigator, the relevant Vice-President, complainant(s) and respondent(s) to advise on the Policy and Procedures as necessary.

8.7 Extent of Investigator’s Scope

The investigation will be limited to the jurisdiction of the Policy and normally to the complaint that has been filed. The

investigator will meet with the complainant(s) and respondent(s) separately to obtain information relevant to the investigation. The respondent(s) will be given a full and fair opportunity to respond to the complaint. The investigator will determine whether and which witnesses will be interviewed, and may request the production of documents that may be relevant to the investigation. Both the complainant(s) and the respondent(s) have the right and responsibility to provide information as accurately and promptly as possible. The investigator may refer the complaint back to informal resolution with the agreement of the parties if it appears that informal resolution is possible.

8.8 Time for Completion of Investigation

The investigator will make every effort to complete the fact-finding investigation within thirty (30) working days of being in receipt of the complaint and written response but failure to do so shall not invalidate the process.

8.9 Investigator’s Report

At the conclusion of the investigation, the investigator will write a draft report outlining the findings of fact which may also include an overview of human rights principles. The investigator will provide a copy of the draft report, on a confidential basis, to the complainant(s) and the respondent(s) who will have five (5) working days to notify the investigator, in writing, of any errors or omissions in the report.

8.10 Amendments to Investigator’s Report

The investigator will consider any response from the parties and make any further enquiries or amendments as deemed appropriate by the investigator prior to preparing the final report. The final report will be completed within five (5) working days after the deadline for response, and will be submitted confidentially to the complainant(s), respondent(s), the relevant Vice-President and the Human Rights Advisor (if applicable).

8.11 Investigator’s Notes Maintained in Office of Human Rights

The investigator’s notes and transcripts (if applicable) will be maintained in the Office of Human Rights in a secure and confidential file in accordance with the requirements of these Procedures.

8.12 Vice-President’s Review and Decision

The relevant Vice-President will review the report and decide on the complaint. If the complaint is found to be substantiated, or was found to be frivolous or vexatious, the Vice-President will determine appropriate remedies/sanctions, if applicable. For unionized employees, any disciplinary action will be undertaken in accordance with the applicable collective agreement provisions and will be imposed in accordance with the procedural requirements of the collective agreement.

The Vice-President's decision will be communicated in separate letters to the complainant(s) and respondent(s) and, where one of the parties is a union member and sanctions will be imposed on that union member, to the party's union.

8.13 Extension of Timelines

Timelines may be extended in good faith by the relevant Vice-President, and such extension will be communicated in writing to the complainant(s), respondent(s), investigator, and the Human Rights Advisor.

9. LIMITED APPEAL OF FORMAL INVESTIGATION

9.1 Appeal on Grounds of Procedural Error or New Evidence

Either the complainant(s) or respondent(s) may appeal the outcome of a formal investigation on the grounds of procedural error or that significant new evidence has become known after the final report but before the expiry of the appeal period. Appeals must be submitted in writing, within ten (10) working days of receiving the decision, to the Human Rights Advisor. The Human Rights Advisor will refer the appeal to another Vice-President (i.e. not the decision-maker) on the basis of availability. Where the respondent was a Vice-President or President, the appeal will be referred to the Chair or Vice-Chair of the Board of Governors which is substituted accordingly.

9.2 Review of Appeal

The Vice-President receiving the referral will review the appeal submission, the investigation report and the decision, and will issue a decision on the appeal within fifteen (15) working days of receipt.

9.3 Extension of Timelines

Timelines under this appeal procedure may be extended in good faith by the Vice-President receiving the referral, and such extension will be communicated in writing to the appellant(s), and the Office of Human Rights.

10. HUMAN RIGHTS CODE/GRIEVANCES

10.1 No Bar to Exercise of Rights Outside the Policy

The University encourages the internal resolution of complaints, and therefore encourages complainants to make use of the complaint procedure whenever it is possible to do so. However, the provisions of this Policy and Procedures in no way affect the right of any person to exercise rights under the *Code*, or grievance procedures for unionized employees within the time limits specified by each.

10.2 Cessation of Policy Resolution Process

Upon written notification of a grievance or HRTO proceedings, a resolution procedure under this Policy will stop subject to the University's responsibility for due diligence,

having regard for its responsibility to respond appropriately to allegations of discrimination and harassment, police involvement (if any) and any other considerations applicable to the circumstances, unless the grievor has filed a formal request to hold the grievance in abeyance consistent with the relevant collective agreement.

11. REMEDIES AND SANCTIONS

11.1 Remedies

Remedies are intended to restore individuals to the position they would have experienced had the discrimination or harassment not occurred. Examples include but are not limited to an apology, reinstatement, compensation for actual losses, provision of services, and adjustment of fees. The intention of the Policy is restorative and educative.

11.2 Sanctions

Where necessary, sanctions are intended to ensure it is understood that violations of the Policy and the *Ontario Human Rights Code* are taken seriously. Examples include but are not limited to verbal or written warning, loss of privileges, suspension, demotion, and expulsion (students) or dismissal (employees).

For unionized employees, any disciplinary action will be consistent with collective agreement provisions and will be imposed in accordance with procedural requirements of the collective agreement and all rights thereunder shall be preserved.

11.3 Criteria Considered

The following criteria will be considered to determine the appropriate level of remedy or sanction:

- seriousness/severity of the incident(s);
- reliability of the evidence;
- remedies sought by the complainant;
- any documented history of substantiated and related history on the part of the respondent(s), or on the part of the complainant(s) in the case of frivolous or vexatious complaints.

12. RECORDS

12.1 Time for Retaining Records

All records shall remain secure and confidential files are to be maintained for:

- two (2) years beyond April 30 for confidential advice that concludes between May 1 and April 30 each year, after which time the contents will be destroyed;
- seven (7) years beyond April 30 for formal investigation proceedings that conclude between May 1 and April 30 each year, after which time the contents will be destroyed.

Where a complaint has not been substantiated no reference will be placed in any personnel or student file.

Where a formal investigation results in sanctions for an employee or student beyond a verbal warning/reprimand, documentation will be placed in the personnel or student file. In the case of unionized employees, all information shall be kept in a manner and for a time period which is in accordance with the provisions of the collective agreement.

12.2 Use in Non-identifiable Statistical Information

Non-identifiable statistical information on the number, nature and type of complaints will be reported annually by the Office of Human Rights to the Presidential Advisory Committee on Human Rights, Equity & Accessibility (PACHREA), the Board of Governors and the University community at large.