



UNIVERSITY OF TORONTO

University of Toronto
Governing Council

Policy and Procedures: Sexual Harassment

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Policy and Procedures: Sexual Harassment

Preamble to the Policy

Sexual harassment in any situation is reprehensible. In particular, within the University community it fosters a hostile or unfair environment which counteracts the spirit of cooperation and education.

Responsibility shared

All members of the University community share responsibility for bringing about and maintaining an environment free of sexual harassment, but a particular burden is placed on those in positions of academic and administrative authority to attempt to ensure that allegations of sexual harassment which are brought to their attention are dealt with in the appropriate fashion as laid out in this Policy and Procedures.

Against whom complaints may be made

Complaints may be made against any member of the University community -- including, but not limited to, students, academic staff, librarians, administrative staff -- under this Policy and Procedures, except that where provisions for dealing with sexual harassment are contained in a collective agreement, the terms of that collective agreement shall be applicable.

Complaints may also be made against former members of the University about sexual harassment alleged to have been committed by the former member while the former member is or was on University premises or while the former member is or was in the pursuit of a University activity or business.

By whom complaints may be made

Complaints may be made about sexual harassment alleged to have been committed by a member of the University community while the complainant is or was on University premises, while the complainant is or was participating in a University activity or business, or while the member is or was in the pursuit of a University activity or business.

Adoption of Policy by federated institutions

Institutions federated or affiliated with the University, and affiliated employee and student associations with paid staff, may adopt this Policy and, if the President of the University so permits, have access to its Procedures. In granting such permission, the President may impose terms and conditions on such access.

Part A: Interpretation

1. In this Policy:

1(a) "Academic staff"

- (a) "academic staff" means, but is not limited to, persons holding a full-time, part-time, sessional or contractual paid, status-only or honorary academic or instructional appointment, visiting scholars, retired instructors, extra-mural readers, persons holding clinical or adjunct appointments, field and practicum supervisors, librarians, and undergraduate and graduate students when performing duties as teaching assistants;

1(b) "Administrative staff"

- (b) "administrative staff" means staff not referred to in 1(a) and includes, but is not limited to, full-time, part-time, sessional, contract, casual and temporary employees, both budget- and grant-funded, and research associates; and

1(c) "Complainant"

- (c) "complainant" means the person or persons who make a written complaint to the Officer.

1(d) "Days"

- (d) "days" means the days from Monday to Friday inclusive, but excluding University holidays.

1(e) "Record of resolution"

- (e) "record of resolution" means
- (i) in the case of informal resolution or mediation, the Resolution Report signed by both the complainant and the respondent which shall normally include a description of the complaint or incident(s), and details of any remedial action agreed upon by the parties; or
 - (ii) in the case of a Formal Hearing where the decision of the Hearing Board has not been appealed, the decision of the Hearing Board; or
 - (iii) in the case of an appeal, the decision of the Appeals Board.

1(f) "Sexual harassment"

- (f) "sexual harassment", which shall constitute an offence under this Policy, means:
- (i) making submission to an unsolicited sexual advance or solicitation, expressly or by implication, a term or condition of a person's right to employment or academic success, or continuation of employment or academic success, or advancement in employment or academic success; and/or
 - (ii) using, or threatening to make use of, rejection of an unsolicited sexual advance or solicitation as a basis for employment, academic or other decisions affecting the person or the person's progress; and/or
 - (iii) physical conduct, occurring either on University premises or in the pursuance of a University activity or business, that emphasizes the sex or sexual orientation of one or more individuals in a manner which the actor knows, or ought reasonably to know, creates for that individual, or those individuals, an intimidating, hostile or offensive working or learning environment; and/or
 - (iv) verbal conduct or other forms of communication, occurring either on University premises or in the pursuance of a University activity or business, that is directed at one or more specific individuals, and that emphasizes the sex or sexual orientation of that individual or those individuals in a manner which the actor knows or ought reasonably to know creates for that individual or those individuals an intimidating, hostile or, offensive working or learning environment, and that exceeds the bounds of freedom of expression or academic freedom as these are understood in University policies and accepted practices, including but not restricted to, those explicitly adopted.

1(g) "Student"

- (g) "student" means any person registered as a participant in any course or program of study offered by or through a college, faculty or school of the University, any person entitled to a valid student

card who is between sessions but is entitled because of student status to use University facilities, and post-doctoral fellows.

1(h) "Vice-President"

- (h) "Vice-President" means the Vice-President and Provost, unless the context otherwise requires; however, where the respondent is under the authority of a different Vice-President, the term shall refer to that Vice-President.

1(i) Words defined in the University of Toronto Act

- (i) except for words that are specifically defined in this Policy, all words defined in the *University of Toronto Act, 1971*, as amended from time to time, have the same meaning herein as in that Act.

1(j) Marginal notes and headings

- j) the marginal notes and headings in the body of this document form no part of the *Policy and Procedures: Sexual Harassment*, but shall be deemed to be inserted for convenience of reference only.

1(k) Notification

- (k) Any notification required under this Policy may be given orally or in writing, unless otherwise specified; notification shall be deemed to have been given five days after notification has been sent by registered letter to the most current address contained in the personnel or student file of the person being notified.

1(l) Time limits

- (l) Although time limits are prescribed from time to time in this Policy, it is to be understood that such limits describe the maximum time generally allowed and that it is usually appropriate that procedures be completed as quickly as possible consistent with the principles of the Policy and the concerns of any party to a complaint.

Part B: Principles

In establishing a Policy and Procedures for dealing with allegations of sexual harassment, the University is guided by the following principles:

2. This Policy to assist the University to fulfill its obligation

- 2. The University does not tolerate any form of sexual harassment and is committed to a process of educating and informing the members of the community. The Procedures laid out herein are provided to deal with allegations of sexual harassment in a fair and appropriate way.

3. Fairness to each party

- 3. A spirit of fairness to each party must guide the proceedings. This includes not only the complainant's right to seek a remedy and the respondent's right to know both the allegations and the accuser, but also the rights of each party to a fair and impartial hearing.

4. The importance of confidentiality

4. The highest standards of confidentiality must be maintained in order to protect any party against unsubstantiated claims which might result in harm or malicious gossip.

5. Complainants and witnesses not to be anonymous

5. Confidentiality must be distinguished from anonymity. Any complainant who wishes to seek a remedy through these Procedures, or a witness in any complaint procedure of this Policy, must be prepared to be identified to the respondent. This Policy does not, however, prevent anyone from seeking counselling or advice on a confidential basis from the Sexual Harassment Officer.

6. Remedy without resort to formal disciplinary proceedings may be appropriate

6. It should be taken into account that a complainant may have suffered harm or injustice as a result of sexual harassment and may wish only to see that harm remedied or redressed and not pursue disciplinary action or seek sanctions against the respondent. Thus, provision is made for a complainant to seek a remedy without necessarily instituting a formal proceeding for disciplinary action.

7. But some cases warrant disciplinary action

7. On the other hand, in specific cases where sexual harassment has occurred, a mere remedy, without disciplinary action against the individual whose misconduct is at issue, may not be appropriate. It is also necessary to avoid situations in which a remedy implies some wrong doing on an individual's part, without allowing that individual due process. Overall, this Policy is structured to encourage solutions with the help of the Officer and/or mediator.

8. Duties of those having authority

8. It is the obligation of all those in academic or administrative authority to be aware of this Policy and, in particular, to know what constitutes sexual harassment and to encourage an environment which is free of sexual harassment. They should inform the staff they supervise about this Policy, and should refer any cases of sexual harassment to the Sexual Harassment Officer, treating such referrals in the strictest confidence.

9. Complainant not compelled to proceed

9. A complainant shall not be compelled to proceed with a complaint or disciplinary action, or be required to testify against her or his will.

10. Respondent entitled to specific disposition of case

10. If a complaint has reached the stage of a Formal Hearing, the respondent is entitled to a specific disposition of the issue; or, where the complaint is withdrawn once a Formal Hearing has begun, but before it is concluded, to a dismissal of the proceedings.

11. Matters not covered under the definitions contained in this Policy

11. A course of conduct that emphasizes sex or sexual orientation, but that does not constitute sexual harassment as defined in s. 1(f) of this Policy, may nevertheless be a matter of University concern to the extent that it affects the working or learning environment of members of the University or of members of the public in the course of their relations in or with the University. Any person

may refer such a matter to the person responsible for the appropriate academic, administrative or disciplinary procedure, who shall make appropriate inquiries, take appropriate action if warranted, and report on the disposition of the matter to the person who has referred the matter to her or him.

Part C: Sexual Harassment Officer

12. Appointment by President

12. The President, on advice of a broadly representative advisory committee, shall appoint an individual to act as Sexual Harassment Officer (the "Officer") for a specified and renewable term of office. The appointment shall be reported for information to the University Affairs Board of the Governing Council.

13. Responsibilities of Officer

13. The Officer shall be responsible to the President and shall:

13(a) Application of this Policy

- (a) be responsible for the application of this Policy and Procedures as provided herein;

13(b) Role as educator

- (b) act as educator and provide the University community with information about the issue of sexual harassment and about this Policy.

13(c) Counsellor and advisor

- (c) function as an impartial counsellor and advisor to any member of the University community who has questions regarding the issues raised in this Policy, providing referrals where appropriate;

13(d) Referral to advisors

- (d) ensure that both male and female advisors are available to provide assistance or advice to individuals requesting it;

13(e) Referral to Mediators

- (e) maintain a list of trained mediators;

13(f) Maintenance of records

- (f) maintain confidential case records and pertinent statistics on all matters of alleged sexual harassment referred to the Officer; and

13(g) Annual Report to University Affairs Board

- (g) report annually to the University community through the President to the University Affairs Board on matters relating to sexual harassment including, without names, the disposition of the cases before the Hearing and Appeals Boards.

Part D: Establishment of a University Hearing Panel

14. Establishment

14. A University Hearing Panel shall be established to hear formal complaints of sexual harassment under this Policy and such other complaints as may be referred to it by other University enactments.

15. President to invite nominations and comment on the nominations

15. The President of the University shall invite the Association of Part-time Undergraduate Students, the Graduate Students' Union, the Students' Administrative Council, the University of Toronto Faculty Association and the University of Toronto Staff Association as well as the University community at large to nominate members for the University Hearing Panel on the basis of their general good judgement and fairness. The President shall circulate all the names of those so nominated to the representatives of the various constituencies for their comment.

16. Selection of Hearing Panel

16. The Hearing Panel shall consist of thirty (30) members, chosen by the President from the nominations received. The Hearing Panel shall be composed as follows:
- (a) twelve (12) undergraduate students, eight (8) of whom are full-time and four (4) of whom are part-time;
 - (b) six (6) graduate students;
 - (c) six (6) academic staff, including librarians; and
 - (d) six (6) administrative staff.

17. Term and eligibility for membership in Hearing Panel

7. Members of the Hearing Panel shall be appointed for two-year terms, which may be renewed twice. No member may remain on the Panel if that member is:
- (a) no longer a part of the constituency from which that person was nominated; or
 - (b) a complainant or respondent in a case of sexual harassment being dealt with under this Policy.

18. Appointment of Chair of Panel

18. A Chair shall be appointed by the President for a two-year, renewable term, from among the Panel members.

Part E: Establishment of a University Appeals Board

19. Establishment

19. A University Appeals Board shall be established to hear appeals from decisions of a University Hearing Board.

20. President to invite nominations

20. The President of the University shall invite each of the constituencies named in s. 15 to nominate members for the University Appeals Board.

21. Selection of Appeals Board

21. The President shall appoint five (5) members to the Appeals Board as follows:
 - (a) one (1) undergraduate student, one (1) graduate student, one (1) member of the academic staff and one (1) member of the administrative staff, chosen from among the nominations received from each constituency; and
 - (b) one (1) additional member, who shall be:
 - (i) the Chair of the Appeals Board, and
 - (ii) a lawyer.

22. Term of office and conditions of continuing eligibility

22. Members of the Appeals Board shall be appointed for two-year terms. No member other than the Chair may remain on the Appeals Board if that member is:
 - (a) no longer a part of the constituency from which that person was nominated; or
 - (b) no longer a member of the University community nor serves on any board or committee of the Governing Council.

Part F: Initiation of a Complaint

23. Complaint made to the Officer

23. A complaint may be made to the Officer by an individual or individuals who claim to have been directly affected by sexual harassment.

24. Report made on behalf of another

24. (1) Any member of the University community may report an incident of alleged sexual harassment to the Officer on behalf of another or others.
- (2) Where such a report is made on behalf of another, a complaint shall not proceed in any manner unless the Officer receives a written complaint from an individual on whose behalf the report was made.

25. Options of the complainant

25. Following consultation with the Officer, a person or persons may:
 - (a) take no further action; or
 - (b) make a written complaint which shall contain a written statement giving details of the alleged sexual harassment, and authorization for the Officer to proceed with the complaint.

26. Complainant's decision not to proceed

26. If the complainant decides to take no further action, the Officer shall not proceed with the complaint.

27. Officer to determine if complaint falls under these procedures

27. The complaint shall be accepted by the Officer unless the Officer determines that the complaint does not fall within the definition of sexual harassment in this Policy, or that the Policy is superseded by a collective agreement, or that the respondent is not a person governed by this Policy.

28. Complaints falling within coverage of a collective agreement

28. If the Officer determines that the complaint falls within the coverage of a collective agreement which includes a procedure for dealing with sexual harassment, the Officer shall inform the complainant how to proceed; in such cases, the Officer shall remain available to counsel and advise impartially both the complainant and the respondent.

29. Two procedures available

29. If the complainant requests the Officer to attempt a resolution of the complaint, the complainant must elect, in writing, to proceed with the complaint by one of two procedures:
 - (a) Informal Resolution and Mediation only, as set out in ss. 37 to 49, without access to a Formal Hearing; or
 - (b) Informal Resolution, Mediation and, if necessary, a Formal Hearing as set out below.

30(1) Waiving of right to Formal Hearing

30. (1) The Officer shall advise the complainant that, should the complainant elect to proceed by the procedure described in s. 29 (a), that is, by waiving in advance the right of access to a Formal Hearing with respect to the subject matter of the complaint, the complainant may not later proceed to a Formal Hearing with respect to the subject matter of that complaint, except as provided in s. 30(2).

30(2) Substance of such a complaint may later be included as evidence in certain cases

- (2) Notwithstanding the foregoing, where it is alleged that there is a continuation of the behaviour that has been complained of or new behaviour by the same person that may constitute sexual harassment, the complainant may make a new complaint and may elect to proceed with the complaint by either of the two procedures described in s. 29. In such a case, the substance of the earlier complaint shall not be excluded as evidence in a Formal Hearing by reason only of the fact that the right to a Formal Hearing was waived by the complainant with respect to the substance of the earlier complaint.

31(1) Time limit for filing complaint

31. (1) The Officer may accept a written complaint only within six (6) months from the date of the alleged incident, except for such additional period as provided in s. 31(3).

31(2) Respondent informed

- (2) After accepting the written complaint, the Officer shall forthwith inform the respondent of the allegation(s) and provide the respondent with a copy of the written complaint.

31(3) Officer's discretion to vary time limit

- (3) In circumstances where the complainant and the respondent are related as student and instructor or as staff member and supervisor, the Officer may accept the complaint and/or delay informing the respondent that a complaint has been made until reasonable opportunity has been afforded for the complainant to complete immediate academic work in progress or apply for alternative work. This additional period may extend up to two months after the deadline for submitting academic work involving the complainant and respondent as student and instructor or supervisor but in no case shall the total period during which a complaint may be accepted exceed twelve months from the date of the alleged incident.

31(4) Arrangements for evaluation of academic work by another

- (4) Where the complainant is, at the time of the making of the complaint, either a student or instructor of the respondent, the University, through the Officer, may, after the respondent has been informed that a complaint has been made, and at the request of the complainant or the respondent, make arrangements through the appropriate administrator for the work and examinations, if any, of the student to be evaluated by a disinterested party. The Officer shall inform the respondent and the complainant that such arrangements are being made.

31(5) Arrangements for alternative work assessment or temporary reassignment for member of administrative staff

- (5) Where the complainant is an administrative staff member or librarian whose performance is normally evaluated by the respondent, the University shall assure fair employment treatment of the complainant, and protection from adverse employment-related consequences of the complainant-respondent reporting relationship during the complaint resolution procedure of this Policy. To that end, the University, through the Officer, may, in consultation with the complainant:
 - (a) have the complainant's performance assessed by another administrator, where practicable; or
 - (b) temporarily reassign the complainant to other, but equivalent, duties until the complaint is resolved; or
 - (c) delay the complainant's performance appraisal and awarding of merit pay until the complaint is resolved, in which case subsequent payment for merit shall be retroactive to the date it would normally have been received and the University banker's prime rate of interest shall be paid on the amount owed.

31(6) Limit on information conveyed to administrator

- (6) In any action under ss. 31(4) or 31(5), the Officer shall reveal in confidence to the appropriate administrator only that a complaint has been made and shall not in any manner reveal the alleged facts.

32. Complainant's right to withdraw complaint

32. The complainant has the right to withdraw, in writing, the complaint at any time prior to the decision of the Vice-President on whether to undertake prosecution of the case.

33. Such withdrawal to bring matter to an end

33. The decision to withdraw the complaint by the complainant shall bring the matter to an end under this Policy.

34. Officer's discretion to dismiss cases that are frivolous, vexatious or unfounded in fact, or when confidentiality breached by complainant

34. An attempt to resolve the matter by informal means and by mediation shall occur unless it is the opinion of the Officer that the complaint is frivolous, vexatious or unfounded in fact, or that the complainant has not maintained the required standard of confidentiality. In any such case the Officer shall provide written reasons for this determination to the complainant and the respondent. Such determination by the Officer may also be made during the course, or at the end, of informal resolution or mediation. In every such case proceedings shall cease and the complaint shall be dismissed.

35. Complainants not to be penalized for making complaint

35. No supervisor or other person acting on behalf of the University shall:
 - (a) dismiss or threaten to dismiss a member of the academic staff or administrative staff;
 - (b) discipline or suspend, or threaten to discipline or suspend a student, or a member of the academic staff or administrative staff;
 - (c) impose any penalty upon a student, or a member of the academic staff or administrative staff; and/or
 - (d) intimidate or coerce a student or member of the academic staff or administrative staff

because that person, acting *bona fide*, has filed an allegation of sexual harassment pursuant to this Policy or has sought the enforcement of this Policy or has been a witness in any hearing or appeal under the procedures of this Policy.

36. Other Administrative Action

36. (1) Although this Policy contemplates that the procedures outlined in ss. 23 to 35 will be the ordinary procedures for dealing with allegations of sexual harassment, if there is good reason to believe that risk of serious physical harm exists for any person arising from the conduct of any member of the University community unless administrative action is taken, any person may bring the matter to the attention of an appropriate Vice-President, even though the alleged conduct appears to be sexual harassment as defined in this Policy, and notwithstanding ss. 23 to 35.
- (2) When such a matter is referred to a Vice-President, or where the Vice-President has knowledge of fact which requires the University to fulfill obligations relating to sexual harassment but no complaint has been made under the procedures of this Policy, the Vice-President shall ascertain whether or not administrative action is appropriate in the circumstances.
- (3) Where the Vice-President decides that administrative action is necessary and the conduct appears to be sexual harassment, the Vice-President shall forthwith:
 - (a) refer any person who appears to have been sexually harassed to the Officer; and
 - (b) inform, in writing, the person against whom the complaint has been made of the administrative action being taken, setting out the nature of the complaint in sufficient detail to allow the person to identify the circumstances that led to the administrative action.

Any member of the academic staff or administrative staff against whom such administrative action has been taken may grieve that action in accordance with the established procedures applying to that person.

Part G: Informal Resolution

37. Informal resolution and mediation fundamental

37. Informal resolution and mediation are the fundamental tools for achieving both the educational and the remedial goals of this Policy. The objective of informal resolution and mediation is to secure a reasonable settlement which, in the opinion of the Officer, is consistent with the spirit of this Policy and its fundamental principles.

38. Attendance required

38. The complainant and the respondent must attend as requested at informal resolution and mediation meetings.

39. Officer's role in informal resolution

39. Under informal resolution, the Officer shall discuss the written complaint with both the complainant and the respondent with a view to reaching a mutually agreed-upon resolution.

40. Statements and disclosures without prejudice

40. During attempts at informal resolution and mediation, all statements and disclosures made, information furnished and documents and things provided or presented to the Officer and mediator, if any, are without prejudice and may not be introduced in a Formal Hearing to the prejudice of the maker or presenter without her or his consent.

41. Resolution Report of informal resolution

41. If a resolution acceptable to both parties is achieved through informal means, a Resolution Report shall be signed by the complainant and the respondent, and the matter will proceed no further, except that the Officer may assist in bringing about whatever administrative or other action is reasonably needed to implement the resolution.

42. Time limit for informal resolution

42. (1) The Officer shall conduct the discussion required under Informal Resolution of the written complaint within ten (10) days of the respondent's receiving notification that a written complaint has been made, unless both the complainant and respondent agree to an extension of the time limit. The informal resolution shall be concluded within a further ten (10) days, unless both the complainant and respondent agree to an extension of the time limit.
- (2) Notwithstanding sub-section (1), where it appears to the Officer that a delay is reasonable owing to the particular circumstances of either the respondent or the complainant, the Officer may extend the time limit without the agreement of both the complainant and the respondent.

43. Officer to determine informal resolution failed or inappropriate

43. If the Officer determines that possibilities for informal resolution have been exhausted or that informal resolution is not appropriate in the specific case or that the respondent has not maintained the required standard of confidentiality, both the complainant and the respondent shall be so informed in writing and the complainant may:
- (a) request, in writing, that the Officer initiate mediation; or
 - (b) withdraw, in writing, the individual complaint.

44. Time limit for initiating mediation

44. Within twenty (20) days of being notified in writing that informal resolution has failed, if the complainant has not asked the Officer, in writing, to initiate mediation, the complaint shall be deemed to be withdrawn.

Part H: Mediation**45. Selection of mediator**

45. (1) If a complainant proceeds to mediation, the Officer, after informal consultation with the complainant and the respondent, shall select a mediator, who may be from within the University community. The mediator shall be chosen and the mediation process shall begin within ten (10) days from the time of the request to initiate mediation, unless both the complainant and respondent agree to an extension of the time limit.
- (2) Notwithstanding sub-section (1), where it appears to the Officer that a delay is reasonable owing to the particular circumstances of either the respondent or the complainant, the Officer may extend the time limit without the agreement of both the complainant and the respondent.

46. Officer's role in informing mediators and approving training

46. The Officer shall make all mediators aware of this Policy and Procedures and the basic nature and principles of sexual harassment conflict and resolution through training approved by the Officer.

47. Time limit on mediation

47. (1) The mediation process shall be concluded within ten (10) days, unless both the complainant and respondent agree to an extension of the time limit.
- (2) Notwithstanding sub-section (1), where it appears to the Officer that a delay is reasonable owing to the particular circumstances of either the respondent or the complainant, the Officer may extend the time limit without the agreement of both the complainant and the respondent.

48. Resolution Report of mediation

48. If a resolution is achieved as a result of mediation, a Resolution Report shall be signed by the complainant and the respondent, and the matter will proceed no further, except that the Officer may assist in bringing about whatever administrative or other action is needed to implement the resolution.

49. Officer to determine mediation failed or inappropriate

49. If the Officer determines that mediation is not appropriate in the specific case or that the respondent has not maintained the required standard of confidentiality or, after consultation with the mediator, determines that possibilities for resolution through mediation have been exhausted, or if the respondent substantively or vexatiously fails to comply with any provision of a Resolution Report, the Officer shall inform both the complainant and respondent in writing and the complainant shall:
- (a) withdraw the complaint, in writing; or
 - (b) request, in writing, that the Officer proceed to a Formal Hearing.

50. Time limit for initiating formal complaint

50. Within twenty (20) days of being notified in writing that mediation has failed, if the complainant has not asked the Officer, in writing, to proceed to a Formal Hearing, the complaint shall be deemed to be withdrawn.

51. Final position of respondent during mediation

51. Where the complainant requests a formal hearing, the mediator may, with the consent of the respondent, forward to the Vice-President the final resolution offered by the respondent during mediation; however, the final resolution offered by the respondent in mediation may not be used in evidence at a Formal Hearing.

Part I: Formal Hearing**52. Initiation of request to Vice-President**

52. (1) A Formal Hearing may not be initiated unless (a) the complainant requests that a Formal Hearing be held and (b) the University agrees to prosecute the complaint.
- (2) The complainant's request for a Formal Hearing shall be in writing and shall be made to the Officer.
- (3) The Officer shall notify the Vice-President and the respondent of the complainant's request.

53. Referral of complaint to University Discipline Counsel

53. The Vice-President shall forthwith request the University Discipline Counsel to evaluate the evidence arising from the complaint and to recommend, in confidence, whether or not the complaint should proceed to a Formal Hearing, having regard to whether the complaint is frivolous or vexatious, whether the matter complained of falls under the Policy, whether there is a *prima facie* case that sexual harassment has been committed and any other relevant consideration.

54. Discretion of Vice-President to undertake prosecution of the complaint

54. The Vice-President, after receiving the confidential recommendation of the University Discipline Counsel, shall decide whether the University will prosecute the complaint.

55. Time limit for notification of decision

55. Within thirty (30) days of the complainant's written request for a Formal Hearing, the Vice-President shall notify both the complainant and respondent of the decision. Where the University

declines to prosecute the complaint, the letter notifying the complainant and respondent of the decision must also contain the reasons for the decision.

56. Vice-President to give notice

56. If the University agrees to prosecute the complaint, the Vice-President shall request the Chair of the Hearing Panel to initiate the procedures to strike the Hearing Board to adjudicate the complaint.

57. "The parties"

57. The two parties to a Formal Hearing are the University and the respondent.

58. Vice-President to have carriage of University's case

58. On behalf of the University, the Vice-President, who may designate another University officer to act on her or his behalf, shall instruct counsel, if any, throughout the proceedings, and may consult with the complainant.

59. The Hearing Board

59. The complaint shall be heard by a five-member Hearing Board.

60. Duties of Chair of Hearing Panel in striking a Hearing Board

60. The Chair of the Hearing Panel shall strike a Hearing Board comprising four (4) voting members and a non-voting Chair, proceeding as follows. He or she shall:
 - (1) ask the respondent
 - (a) to specify the constituency from which one member of the Hearing Board shall be drawn; for this purpose, the constituencies are:
 - (i) undergraduate students;
 - (ii) graduate students;
 - (iii) academic staff, including librarians; and
 - (iv) administrative staff; and
 - (b) to specify, if the respondent so desires, the sex of the member; and
 - (2) appoint two (2) members from the Panel to serve on the Hearing Board as follows:
 - (a) one member from the constituency specified and of the sex specified by the respondent under ss. 60(1)(a) and (b); and
 - (b) where the respondent declines or fails to specify a constituency, one member from the respondent's constituency; and
 - (c) one member from the complainant's constituency;
 - (3) appoint two (2) other members from the Panel to serve on the Board;
 - (4) arrange with the Senior Chair of the University Tribunal for the University Tribunal Senior Chair or a Co-Chair to preside over the Formal Hearing as a non-voting member;
 - (5) inform each party, in writing, of the composition of the Hearing Board; and
 - (6) set a date, time and place for the Formal Hearing, in consultation with the parties.

61. Right to challenge members of Hearing Board

61. Either party may object to any Board member within five (5) days of receiving notification of the composition of the Board. The grounds for the objection shall be submitted to the Chair of the Hearing Panel in writing. The Chair of the Hearing Panel shall make a ruling within five (5) days thereafter.

62. Release time for members of Hearing Boards

62. Administrative staff and librarians who are members of the Hearing Board, or who are called to provide evidence before it, shall be given release time to participate in the Formal Hearing.

63. Conduct of Hearings

63. The Hearing Board shall conduct a hearing in accordance with the Statutory Powers Procedure Act.

64. Right to attend sessions

64. Subject to s. 65, the parties, the complainant, and counsel for each, the Officer, and the Chair of the Hearing Panel are entitled to attend all Formal Hearing sessions, including any *in camera* portions thereof.

65. Attendance by others and exclusion of witnesses

65. Attendance at the Formal Hearing of any persons other than those specified in s. 64 and the witnesses called by a party to the Formal Hearing for the purpose of giving relevant evidence, is at the discretion of the Chair of the Hearing Board. The Chair may also direct that a witness be excluded from the Formal Hearing until her or his testimony is to be given.

66. Time limit for Hearings

66. The Formal Hearing shall be concluded as expeditiously as possible, not to exceed sixty (60) days from the first day of hearing, unless both the parties agree to an extension of the time period.

67. Standard of proof

67. The standard of proof that the sexual harassment complained of has been committed by the respondent shall be that of proof on clear and convincing evidence.

68. Limitation on questions posed to complainant

68. The complainant may not be questioned on previous behaviour or character for purposes other than that of establishing credibility as a witness.

69. Secretary of Governing Council responsible for administration of Formal Hearing

69. The Secretary of the Governing Council, or a person designated by the Secretary, shall be responsible for the administration of any Formal Hearing or appeal.

70. Record of Proceedings

70. A record of the proceedings before the Hearing Board shall be made by tape recording or other suitable means.

71. Decision of Hearing Board

71. Within twenty (20) days of the conclusion of the Formal Hearing, the Hearing Board shall submit a written decision to the parties regarding whether the alleged sexual harassment occurred or its determination on any matter related to its jurisdiction to hear the case.

72. Votes required for finding for complainant

72. The decision of the Hearing Board need not be unanimous but at least three (3) votes shall be required to sustain the complaint; unless there are at least three (3) such affirmative votes, the complaint shall be dismissed.

73(a) Information to be provided in determining penalty or remedy

73. If a finding of guilt has been made:
 - (a) the Hearing Board shall request that the Officer place before them any records of resolution concerning the respondent that remain on file with the Officer as described in s. 99; and

73(b) Arguments as to penalty or remedy

- (b) within ten (10) days, the Hearing Board shall reconvene to hear evidence and arguments concerning the penalty to be imposed and/or remedy to be offered, including arguments regarding the impact of penalties or remedies which might be levied.

74. Penalties for members of staff

74. The Hearing Board may impose the following penalties upon any respondent who is a member of the academic staff or administrative staff in any case where it finds that sexual harassment has occurred:
 - (a) oral and written reprimand by the Hearing Board; and
 - (b) inclusion of the decision of the Hearing Board in a specified personnel file(s) of the respondent, for a specified time; and/or
 - (c) 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 a penalty is appropriate to the offence and where the penalty does not prevent the respondent from carrying out her or his duties; and/or
 - (d) an order that the respondent receive no merit increase or a reduced merit increase for that year, or an order that any recommendation that the respondent receive a merit increase have an effective date of up to one year less a day after the usual effective date; and/or
 - (e) a recommendation that dismissal proceedings be commenced.

75. Penalties for students

75. The Hearing Board may impose the following penalties upon any respondent who is a student in any case where it finds that sexual harassment has occurred:
 - (a) oral and written reprimand by the Hearing Board; and

- (b) inclusion of the decision of the Hearing Board in specified student file(s) or the recording of a specific statement on a student's academic record, for a specified period of time; and/or
- (c) 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 a penalty is appropriate to the offence and where the penalty does not prevent the respondent from pursuing her or his studies; and/or
- (d) an order that the respondent be suspended from attendance in a course(s), a program, a teaching division or unit, or the University for a period of not more than one (1) year; and/or
- (e) a recommendation that expulsion proceedings be commenced.

76. Order for educational counseling

- 76. In any case where sexual harassment is found to have occurred, the Hearing Board may, in addition to any penalty imposed, order that the respondent meet with the Officer for educational counselling regarding sexual harassment.

77. Recommendations for dismissal or expulsion

- 77. Dismissal and/or expulsion may only be recommended. Such recommendations shall be dealt with in accordance with established policies and procedures and by the terms of existing contracts of employment or collective agreements.

78. Remedies

- 78. The Hearing Board may also order remedies which it deems appropriate to redress any harm or injustice suffered by either party.

79. Award of costs

- 79. The Hearing Board may award costs.

80. Written decision of Hearing Board

- 80. Within ten (10) days of the conclusion of the hearing for penalty, the Hearing Board shall submit a written decision regarding the penalty and any remedy to the parties.

81. Publication of decision

- 81. The Secretary of the Governing Council, or a person designated by the Secretary, shall publish a notice of the Hearing Board's decision, including the nature of the offence and any penalty assessed, but without identifying the complainant or respondent by name, in the appropriate campus media.

82. Responsibility for enforcing any penalty or remedy

- 82. The Vice-President shall be responsible for enforcing any penalty or remedy.

83. Reimbursement of University by federated institutions

83. Where an institution federated or affiliated with the University has adopted this Policy, and where that institution, or a member of its staff, is a party to a Formal Hearing or appeal under this Policy, it shall reimburse the University for staff time, any fees of the University Discipline Counsel, and incidental expenses associated with the Formal Hearing or appeal.

84. Power to vary procedural time limits

84. The procedural time limits expressed in this Policy are intended to assure that proceedings are conducted, and resolution is achieved, expeditiously for both parties. In circumstances which a Hearing Board or Appeals Board considers to be exceptional, it may enlarge any of the times provided in s. 55, s. 66, s. 71, and s. 73 of this Policy.

85. Stay of penalty pending appeal

85. Any penalty or remedy shall be stayed pending the outcome of any appeal initiated under s. 86, unless otherwise determined by the Appeals Board hearing the appeal.

Part J: Appeals to the University Appeals Board

86. Right of appeal

86. Within twenty (20) days of the publication of the decision of the Hearing Board, either the Vice-President or the respondent may request an appeal of the decision of a Hearing Board as to guilt or innocence or the Board's decision as to penalty or redress, except for a finding which is one of fact alone, by giving notice of such request in writing to the Secretary of the Governing Council.

87. Appeal not a trial *de novo*

87. An appeal shall not be a trial *de novo*, but in circumstances which it considers to be exceptional, the Appeals Board may allow the introduction of further evidence on appeal which was not available or was not adduced at the Formal Hearing, in such manner and upon such terms as the Appeals Board may direct.

88. Access to record of proceedings

88. If a party wishes to refer in the argument of an appeal to the transcript of oral proceedings recorded at the Formal Hearing, five copies of such transcript certified by the reporter or recorder thereof shall be ordered by and normally at the expense of that party. A transcript of the entire proceedings shall be produced unless the parties can agree to dispense with certain portions.

89. Decisions available to the Appeals Board

89. The Appeals Board may:
 - (a) sustain the decision of the Hearing Board in its entirety and dismiss the appeal; or
 - (b) sustain a finding of guilt but substitute a different penalty, redress or restitution; or
 - (c) order a new Formal Hearing.

90. Variation of penalty or remedy

90. Where the Appeals Board substitutes a different penalty or remedy, the penalty or remedy must be one that the Hearing Board was empowered to make.

91. Majority required

91. Decisions of the Appeals Board shall be the vote of the majority of the members.

92. Decision final

92. The decision of the Appeals Board shall be final except where dismissal or expulsion is recommended, in which case the policies and procedures referred to in s. 77 shall be followed.

Part K: Confidentiality**93(1) Confidentiality enjoined**

93. (1) The Officer, the mediator, the Vice-President, the Vice-President's representative, if any, the complainant, and the respondent are enjoined to maintain strict confidentiality, except as provided in s. 31, s. 93(2) and s. 94 and excepting what disclosure may be required to gather discreetly evidence to prove or disprove a complaint, or to implement and monitor the terms of any resolution properly.

93(2) Confidential material to be provided to those who are to take action

- (2) Except as provided in this Policy, confidentiality must be maintained until the complainant initiates proceedings for a Formal Hearing. After the proceedings for a Formal Hearing have been initiated, the Officer may communicate the information that has been provided by the complainant to those who need to take appropriate action.

93(3) Officer and mediator not to be witnesses

- (3) The Officer and mediator, if any, shall not be witnesses in Formal Hearings or appeals, except to produce and identify any record of resolution or, in circumstances which the Board considers to be exceptional, other documents of record in the Sexual Harassment Office.

94. No confidentiality where risk of serious physical harm

94. If, in the course of receiving a complaint or discharging any other function of her or his office, the Officer receives information that causes the Officer to believe that risk of serious physical harm exists for any person arising from the conduct of any member of the University community unless administrative action is taken, the Officer shall bring the matter to the attention of an appropriate Vice-President as set out in s. 36.

95. Breach of confidentiality may be taken into account

95. In coming to its decision on penalties or remedial measures, a Hearing Board or the Appeals Board may hear evidence on, and having heard such evidence, may take into account any breach of confidentiality by the complainant or respondent.

96. Breaches of confidentiality by Officer or mediator

96. As the Officer and the mediator are agents of the University, breaches of confidentiality on their part are subject to administrative discipline.

PART L: Records

97. Confidentiality of records

97. All records shall be kept in confidence with the following exceptions:
- (a) any decision of the Hearing Board or the Appeals Board;
 - (b) any records that have been agreed to be released by the parties as part of a resolution at either the informal or mediation stages;
 - (c) files or parts of files that are requested by the Ombudsperson in writing that are required by the Ombudsperson in the conduct of an investigation undertaken under the terms of reference of the Office of the Ombudsperson.

98. Records to be kept

98. The Officer shall keep a record of:
- (a) all informal complaints and incident reports which do not proceed to a formal complaint stage;
 - (b) withdrawn complaints; and
 - (c) documents and all other materials relating to formal complaints.

99. Time limits on the keeping of records

99. All records shall remain on file for seven years plus one day and while any proceedings are pending in the University or any external Court or tribunal and until after all rights of appeal have been exhausted and times for appeal have expired, and for such longer period during which it may be reasonable to expect that the University may be under any liability or responsibility at law in connection with the matters recorded. Following that time, the records shall forthwith be destroyed and anonymous data shall continue to be recorded by the Officer for statistical purposes only.

Part M: Right to Counsel

100. Right to counsel

100. The complainant and the respondent may at any stage of any of the procedures outlined in this Policy be accompanied by another person of her or his choice, who may be a solicitor.

Part N: Other Matters

101. Suspension of proceedings if complaint lodged elsewhere

101. Should the complainant make a complaint to or commence proceedings before the Ontario Human Rights Commission or commence or take steps that lead to proceedings in the courts or in any other tribunal with respect to the subject matter of a complaint being dealt with under this Policy

or should the same matter be in progress of being dealt with in accordance with another established University policy or procedure including the procedures under s. 36 of this Policy, proceedings under this Policy, except any contemplated by s. 36 of this Policy, shall be suspended until the other proceedings are discontinued or brought to a conclusion.

Where the subject matter of a complaint under this Policy has been dealt with on its own merits under another policy or proceeding and where the Vice-President is satisfied that the University has no additional or further interest in the matter, proceedings under this Policy shall be stayed.

Where the respondent in a complaint under this Policy is subject to regulation under the jurisdiction of another institution in respect to the subject matter of the complaint, and where that other institution has taken carriage of the complaint, the Officer may decline to accept or to proceed with the complaint under this Policy.

102. Code of Behaviour on Academic Matters to have precedence

102. Where the subject matter of a complaint is such that proceedings could be brought under this *Policy or the Code of Behaviour on Academic Matters*:

- (a) no proceedings shall be initiated under this Policy if proceedings have been initiated under the *Code of Behaviour on Academic Matters*; and
- (b) if proceedings have been initiated under this Policy, such proceedings shall forever cease if proceedings are initiated under the *Code of Behaviour on Academic Matters*.

S. 101 amended by the University Affairs Board, November 25, 1997 (addition of second and third paragraphs)