

**Policy Title:** Human Rights Policy

**Date Established:** June 12, 1997

**Office with Administrative Responsibility:** Office of Human Rights, Equity, and Accessibility

**Approver:** Board of Governors

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1. **PREAMBLE: COMMITMENTS AND STANDARDS**

- 1.1 The University of Windsor values dignity, respect and equality for all individuals and strives to foster an atmosphere where all individuals can contribute fully and have equal opportunities. The University is committed to maintaining a healthy and safe learning, living, social, recreational, and working environment. All forms of discrimination and harassment jeopardize the mental, physical, and emotional welfare of the members of the University community, as well as the safety of the campus community and the reputation of the University. Discrimination and harassment violate our institutional values and will not be tolerated, condoned or ignored.
- 1.2 Under the Ontario *Human Rights Code* (the “Code”), every person has the right to be free from discrimination and harassment in the provision of educational services and employment on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (in employment only), marital status, family status or disability. The *Code* also prohibits harassment in employment on the basis of sex, sexual orientation, gender identity and gender expression. Sexual misconduct will generally constitute harassment and/or discrimination under the *Code*. Ontario’s *Occupational Health and Safety Act* (“OHS”) prohibits harassment and violence in the workplace.
- 1.3 The University’s obligations with respect to sexual harassment and violence are set out in its *Policy on Sexual Misconduct, Workplace Harassment Prevention Policy, Workplace Violence Prevention Policy, and Human Rights Policy*.
- 1.4 The University is committed to a comprehensive strategy to address discrimination and harassment, including:
- Regularly monitoring organizational systems for barriers relating to *Code* grounds;
  - Establishing and following an effective and fair procedure for responding to incidents of discrimination or harassment;
  - Ensuring procedural fairness and/or due process to all affected parties in cases of alleged discrimination or harassment;
  - Ensuring referrals and services are available for individuals affected by an act of discrimination or harassment;
  - Taking any necessary disciplinary action, up to and including expulsion or dismissal;

- Providing training and education to ensure that all members of the University community are aware of their rights and responsibilities; and
- Engaging in public education and prevention activities.

## 2. SCOPE

- 2.1 This Policy applies to all members of the University community – including, but not limited to, students, staff, faculty, administration, and members of the Board of Governors – with regard to:
- (a) discrimination or harassment that occurs on the premises of the University or its federated and affiliated institutions; and
  - (b) discrimination or harassment that occurs off-campus, including online or on social media, when the person’s actions or behaviour have, or might reasonably be seen to have, a negative impact on the University or on the rights of a member of the University community to use and enjoy the University’s learning and working environments.
- 2.2 This Policy also applies to all visitors, volunteers, vendors, contractors, service providers, and researchers who are: on University property, conducting University business or business with the University, or acting on behalf of the University. However, the University’s ability to take disciplinary or corrective action against such individuals for an act of discrimination or harassment may be limited.
- 2.3 This Policy applies in conjunction with the University’s other policies and legal obligations. The University will make reasonable efforts to ensure that members of the University community are aware of what policies apply to them.

## 3. OBJECTIVES

- 3.1 The objectives of this Policy are to:
- Ensure that members of the University community, visitors, volunteers, vendors, contractors, service providers, and researchers are aware that discrimination and harassment are unacceptable practices and are incompatible with the values of the University and constitute a violation of the law; and
  - Set out the types of behaviour that are prohibited by this Policy.

## 4. DEFINITIONS

*For links to the relevant legislation, see section 11 of this Policy. In this Policy, the following definitions apply:*

### **Concepts:**

- 4.1 **Discrimination** means any form of unequal treatment based on a *Code* ground, whether imposing extra burdens or denying benefits. It may be intentional or unintentional. It may involve direct actions that are discriminatory on their face, or it may involve rules, practices or procedures that appear neutral, but disadvantage certain groups of people. Discrimination may take obvious forms, or it may happen in very subtle ways. Individuals may experience discrimination based on the intersection of multiple grounds of discrimination (intersectionality). Even if there are many factors affecting a decision or action, if discrimination is one factor, that is a violation of this Policy. This Policy prohibits discrimination or harassment based on the following grounds, and any combination of these grounds:
- Age
  - Ancestry, colour, race

- Citizenship
- Ethnic origin
- Place of origin
- Creed
- Disability
- Family status
- Marital status (including single status)
- Gender identity, gender expression
- Receipt of public assistance (in housing only)
- Record of offences (in employment only)
- Sex (including pregnancy and breastfeeding)
- Sexual orientation
- Association or relationship with a person identified by one of the above grounds.
- Perception that one of the above grounds applies.

4.2 **Harassment** means a course of comments or actions that are known, or ought reasonably to be known, to be unwelcome. It can involve words or actions that are known or should be known to be offensive, embarrassing, humiliating, demeaning or unwelcome, based on a ground of discrimination identified by this Policy.

Examples of harassment include:

- Epithets, remarks, jokes or innuendos related to a person’s race, gender identity, gender expression, sex, disability, sexual orientation, creed, age, or any other ground of discrimination identified by this Policy;
- Posting or circulating offensive pictures, graffiti or materials, whether in print form or via email or other electronic means, including via social media that are related to a ground of discrimination identified by this Policy;
- Singling out a person for humiliating or demeaning “teasing” or jokes because they are a member of a protected group based on a ground of discrimination identified by this Policy; and
- Comments ridiculing a person because of characteristics that are related to a ground of discrimination identified by this Policy. For example, this could include comments about a person’s dress, speech or other practices that may be related to their sex, race, gender identity or creed.

4.3 **Racial and ethnic-based harassment** is a course of vexatious comment or conduct based on race or ethnicity that is known or ought reasonably to be known to be unwelcome. The following is excerpted from the Ontario Human Rights Commission’s *Policy and guidelines on racism and racial discrimination*:

- Racism and racial discrimination continue to exist and to affect the lives of not only racialized persons, but also all persons in Canada. The reality of racism and racial discrimination must be acknowledged to take effective measures to combat them.
- Race is a socially constructed way of judging, categorizing and creating difference among people. Despite the fact that there are no biological “races,” the social construction of race is a powerful force with real consequences for individuals.
- Racism operates at several levels, including individual, systemic or institutional and societal.
- Racial discrimination can be impacted by related Code grounds such as colour, ethnic origin, place of origin, ancestry and creed. In addition, race can overlap or intersect with other grounds such as sex, disability, sexual orientation, age and family status to create unique or compounded experiences of discrimination.

- Racial discrimination can occur through stereotyping and overt prejudice or in more subconscious, subtle and subversive ways.
- Racial discrimination also occurs in significant measure on a systemic or institutional level. Policies, practices, decision-making processes and organizational culture can create or perpetuate a position of relative disadvantage for racialized persons.

4.4 **Sexual and gender-based harassment** is a course of vexatious comment or conduct of a sexual nature that is known or ought reasonably to be known to be unwelcome. Examples of sexual and gender-based harassment include:

- Gender-related comments about a person's physical characteristics or mannerisms;
- Paternalism based on gender which a person feels undermines their self-respect or position of responsibility;
- Unwelcome physical contact;
- Suggestive or offensive remarks or innuendos about members of a specific gender;
- Propositions of physical intimacy;
- Gender-related verbal abuse, threats or taunting;
- Leering or inappropriate staring;
- Bragging about sexual prowess or questions or discussions about sexual activities;
- Offensive jokes or comments of a sexual nature;
- Rough and vulgar humour or language related to gender;
- Display of sexually offensive pictures, graffiti or other materials, including through electronic means such as email and social media; and
- Demands for dates or sexual favours.

4.5 **Bullying** is a specific form of harassment that is also prohibited under the *OHS*A and the Workplace Harassment Prevention Policy and Program. For the purposes of this Policy, bullying is defined as vexatious behaviour in the form of repeated conduct, verbal comments, actions or gestures that are hostile or unwanted, that affect a person's dignity or psychological or physical integrity, that make the educational or work environment harmful, and that are based on a ground of discrimination identified by this Policy. Bullying is considered harassment under this Policy. Examples of behaviour that may constitute bullying, depending on the repetitiveness and severity of the behaviour, include:

- Excluding or isolating someone socially because of characteristics that are related to a ground of discrimination identified by this Policy;
- Intimidation based on a ground of discrimination;
- Undermining or deliberately impeding someone's work because of characteristics that are related to a ground of discrimination;
- Withholding necessary information or purposefully giving the wrong information because of characteristics that are related to a ground of discrimination;
- Intruding on privacy by pestering, spying or stalking because of characteristics that are related to a ground of discrimination;
- Criticizing someone persistently or constantly based on a ground of discrimination;

- Tampering with someone’s personal belongings or work equipment because of characteristics that are related to a ground of discrimination; or
- Cyber bullying\* based on a ground of discrimination.

*\*Cyber bullying is bullying through digital technologies, including hardware such as computers and smartphones and software such as social media, instant messaging, texts and websites. It can be overt or covert, and includes abusive or hurtful texts, emails, posts, images or videos. It also includes deliberately excluding others online, malicious gossip and/or rumours, or intimidating someone online.*

- 4.6 A **poisoned environment** is created by comments or conduct (including comments or conduct that are condoned or allowed to continue when brought to the attention of faculty or management) that create a discriminatory work environment. The comments or conduct need not be directed at a specific person, and may be from any person, regardless of position or status. A single comment or action, if sufficiently serious, may create a poisoned environment.
- 4.7 **Accommodation** in teaching and evaluation procedures, or in housing or employment contexts, is designed to meet the demonstrated needs of a member of the University community to the point of undue hardship, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.
- 4.8 A **Preliminary Assessment** is not a formal investigation; it is an expedient means of determining whether it is appropriate for a matter to proceed to a formal investigation. It is designed to be as short as is practical and should cease as soon as it becomes evident how best to handle the issue.

**Roles:**

- 4.9 **Complainant** is an individual who is alleging an act of discrimination or harassment.
- 4.10 **Respondent** is an individual who has been accused of committing an act of discrimination or harassment.
- 4.11 **Witness** is a person who has directly witnessed or heard the alleged incident of discrimination or harassment or has knowledge of the discrimination or harassment.
- 4.12 The **Office of Human Rights, Equity & Accessibility (“OHREA”)** is responsible for education, human rights inquiries and complaints including conducting investigations or managing external investigations, exercising discretionary authority to assess whether a complaint should proceed through formal procedures as outlined in this Policy, government reporting, policy development, and any other matters requiring accountability in these areas at the University. OHREA provides a confidential and safe space for concerns to be brought forward, discussed, support provided and, in some instances assist with resolution. The staff of OHREA act outside the official reporting lines and treat all contact with confidentiality. Exceptions may include where members of the University community are at serious risk, or where legally required to disclose the information. The Executive Director of Human Rights, Equity and Accessibility is the Director of OHREA, and is responsible for overseeing the functions of OHREA.
- 4.13 **Support Person** means a family member, friend, advisor, or member of the University Community. This person should not be a potential witness.
- 4.14 **Legal Counsel** means a licensed member of the Law Society of Ontario, including an individual working under the auspices of a lawyer such as a Community Legal Aid student.
- 4.15 **Union Representative** means a representative appointed by an individual’s bargaining unit.

## 5. MAINTAINING A RESPECTFUL EDUCATIONAL AND WORKING ENVIRONMENT

- 5.1 It is our collective responsibility, as members of the University community, to ensure that we build, promote and maintain a respectful, healthy and safe learning, living, social, recreational and working environment. All members of the University community, visitors, volunteers, vendors, contractors, service providers, and researchers are expected to uphold and abide by this Policy by refraining from any form of discrimination or harassment, and by cooperating fully in any process or investigation of a discrimination or harassment complaint.
- 5.2 Those in leadership positions are responsible for creating and maintaining a discrimination- and harassment-free environment, and should address potential problems before they become serious. They have the additional responsibility to act immediately on observations or allegations of discrimination or harassment.
- 5.3 All members of the University community, visitors, volunteers, vendors, contractors, service providers, and researchers should be aware that:
- (a) Discrimination and harassment can take place even when the respondent did not intend to offend a particular individual;
  - (b) The fact that a person does not explicitly object to discriminatory or harassing behaviour does not mean that the behaviour is condoned;
  - (c) Discrimination and harassment should not be confused with legitimate educational, academic or management practices or actions that are part of the normal educational or work function, including measures to correct performance deficiencies such as placing someone on a performance improvement plan, imposing discipline for academic or workplace infractions, or requesting medical documents in support of a request for accommodation or an absence from class or work; and
  - (d) Discrimination and harassment does not usually include normal workplace or academic disagreements that may occur between individuals, or differences of opinion.

## 6. RIGHTS

- 6.1 Individuals affected by discrimination or harassment will:
- Be treated with dignity and respect;
  - Be informed about on- and off-campus services and resources;
  - Be informed about disclosing, reporting and complaint options, the limits to confidentiality associated with each option, and the University's obligations to act in certain circumstances;
  - Be informed of the possibility of multiple processes which may require revisiting or retelling the details of the incident;
  - Be provided with appropriate academic and other accommodation based on demonstrated need;
  - Decide whether to file a complaint about an incident of discrimination or harassment through OHREA, campus police, or local police (which may trigger an investigation);
  - Decide whether to access available services and to choose those services they feel will be the most beneficial; and
  - Have reasonable and necessary actions taken to limit further contact with the respondent.
- 6.2 Individuals protected by the *Code* have a right to accommodation of their *Code*-based needs to the point of undue hardship.

## 7. CONFIDENTIALITY

7.1 Confidentiality is important to those who report discrimination or harassment and should be safeguarded throughout the process to the extent possible. Where an individual's situation warrants accommodation, staff will protect the confidentiality of all those involved to the degree possible. Where confidentiality cannot be maintained for reasons outlined in 7.2 below, information will only be shared on a need to know basis.

7.2 The following circumstances are examples of where confidentiality cannot be assured:

- There are reasonable grounds to believe that an individual is at imminent risk of self-harm;
- There are reasonable grounds to believe that one or more persons in the University and wider community may be at risk of harm;
- Reporting or disclosure is required by law (e.g., in the case of a minor);
- A complaint has been filed, triggering formal procedures including investigation;
- An individual has disclosed to, reported to or filed a complaint with a member of the Campus Community Police. This may result in the filing of a report with the Windsor Police Service. When Campus Community Police become aware of an alleged incident of sexual misconduct, they determine whether the incident must be investigated. If so, under their agreement with the Windsor Police Service, the incident must be reported;
- Evidence of discrimination or harassment is available in the public realm (e.g. video shared publicly on social media);
- The accommodation or support required limits the possibility of confidentiality; or
- An individual has filed a complaint with the Human Rights Tribunal of Ontario.

7.3 The University's ability to protect the privacy and confidentiality of an individual affected by discrimination or harassment is limited by the University's legal obligations. Where the University becomes aware of an allegation by a member of the University community against another member of the University community, the University may have an obligation under the *Code* and (if the complainant is an employee) under *OHS*, to take steps to ensure that the matter is dealt with as required by those statutes. Similarly, regardless of whether an individual who is affected by discrimination or harassment is a student, employee or visitor, the University may be required to take steps to address possible civil law, criminal law or disciplinary aspects of the situation.

7.4 Confidentiality requires the parties to not disclose that there is a Complaint, and not disclose the subject matter or content of the discussions. Information may be disclosed as determined by OHREA, on a needs-to-know basis, such as in order to advance the investigation, allow for participation, or for the purposes of resolution of a complaint. Potential witnesses are not to be contacted by either party, nor are the parties to contact each other regarding the complaint. Breaches of confidentiality may give rise to investigation under this policy and procedures and to disciplinary action.

## 8. COMPLAINTS AND CONCERNS

### 8.1 Personal Resolution Option

Individuals affected by discrimination or harassment are encouraged to explain to the person who is harassing or discriminating against them that the conduct is unwelcome but are not obliged to do so. If addressing the respondent could lead to an escalation of the discrimination or harassment, or to safety risks, individuals affected by discrimination or harassment should not be expected to have to directly interact with that person. If an individual feels they can safely make it known to the person responsible that the behaviour is unwelcome, this may resolve the matter. However, each case is different, and individuals affected by discrimination or harassment should never feel obliged to address the respondent against their better judgment. If the situation cannot be resolved by directly speaking to the respondent, a complaint may still be made.

## 8.2 Consultations

Concerns regarding discrimination and harassment may be brought to OHREA for consultation. Consultations offer an opportunity for individuals, groups, or units to seek advice or opinions in a forum that is informal and confidential. The advice is non-binding and does not require a written submission. It should be noted that there may be extenuating circumstances where there are legal obligations for the University to follow up on a particular issue.

## 8.3 Complaint Resolution Process

A complaint may be filed with OHREA by any member(s) of the University community, including the Director of OHREA on behalf of another member of the University, with their consent. Although most complaints made under this Procedure will be made by persons who are the direct recipients of harassment or discrimination, persons who are not the direct recipient, but whose living, working or learning environment is adversely affected by the conduct may also make a complaint under this Procedure.

- 8.3.1 The complainant(s) and the respondent(s) may choose to be accompanied by a Union Representative at all stages of the complaint process. Non-unionized employees and students and other members of the University community may choose to be accompanied by a Support Person. Subject to the terms of any applicable collective agreement, Union Representatives and Support Persons do not speak on behalf of any of the parties. Except for extenuating circumstances, OHREA does not communicate with any of the parties through a third party. OHREA does not engage with legal counsel for complainants, respondents or witnesses involved in human rights complaints. However, this does not preclude any party from consulting with legal counsel at their own expense.
- 8.3.2 Complaints must be submitted in writing to OHREA and must include all relevant documentation and evidence in its original form, where possible. Complaints should include information such as the incident(s) that occurred, including dates, times, and locations of the incident(s), and should include a list of potential witnesses and witness contact information. Copies of the submitted materials should be kept by the complainant, as OHREA will not return submitted materials.
- 8.3.3 Complaints must be filed within 12 months of the incident(s). The deadline may be extended in extenuating circumstances where the Director of OHREA has determined that there is a reasonable explanation for the delay, and that the delay would not impede the respondent's ability to adequately respond to the complaint.
- 8.3.4 The procedures for filing a complaint are set out in Appendix A

## 8.4 Informal Resolution Process

- 8.4.1 If the complainant elects to proceed with a complaint, the complaint normally shall first proceed to the Informal Resolution Process. The objective of the Informal Resolution Process is to resolve matters to the satisfaction of the parties. There may be instances where OHREA determines that Informal Resolution is not the appropriate step to address the complaint. In those circumstances the complaint may proceed to the Preliminary Assessment to determine whether it should proceed to the Formal Resolution Process.
- 8.4.2 The procedure for the Informal Resolution Process is set out in Appendix A.



## 8.5 Preliminary Assessment

- 8.5.1 Where OHREA determines that a complaint is not suitable to proceed to the Informal Resolution Process or where that process is suitable but fails to resolve the complaint, OHREA may conduct a Preliminary Assessment. The Preliminary Assessment will determine whether there is sufficient evidence to warrant proceeding to the Formal Resolution Process.
- 8.5.2 The Complainant will be informed in writing of the outcome of any Preliminary Assessment. If a Complainant is not satisfied with the outcome of the Preliminary Assessment, they may request a reconsideration of the correctness of that decision before the Human Rights Panel.

## 8.6 Formal Resolution Process

Parties may only proceed with the Formal Resolution Process:

- (i) once the Informal Resolution Process has been exhausted and OHREA has completed a Preliminary Assessment that recommends proceeding to formal resolution; or
  - (ii) where OHREA has determined that the Informal Resolution Process is not suitable, and OHREA has completed a Preliminary Assessment that recommends proceeding to formal resolution; or
  - (iii) if OHREA has determined that the matter should proceed directly to the Formal Resolution Process.
- 8.6.1 The procedure for the Formal Resolution Process is set out in Appendix A.

## 8.7 Determining the Sanction(s) to Impose

- 8.7.1 The University of Windsor shall be guided by the principles of fairness in dealing with all complaints. As such, no sanction or disciplinary action will be taken against a respondent without the respondent's knowledge. Respondents will be given reasonable notice, with full details of the allegations. They will be provided with an opportunity to answer the allegations made against them as outlined in the policy.
- 8.7.2 Failure to comply with a resolution agreed upon or imposed as a result of the procedures pursuant to this policy may result in disciplinary action by the University.
- 8.7.3 Where the Human Rights Policy is found to have been violated by a student, the finding shall be forwarded to the appropriate area responsible for action, including the imposition of sanctions.
- 8.7.4 Where the Human Rights Policy is found to have been violated by an employee of the University, sanctions may be imposed in accordance with the applicable collective agreement. If a collective agreement is not applicable, sanctions (up to and including dismissal) may be imposed at the discretion of the President or their designate.
- 8.7.5 Where the Human Rights Policy is alleged to have been violated by a member of the Board of Governors or a Board Committee Member, such allegation(s) shall be addressed in accordance with the Board's Process for Breaches of a University Bylaw or Policy by a Board Member or Board Committee Member.
- 8.7.6 Where the Human Rights Policy is found to have been violated by a visitor, volunteer, vendor, contractor, service provider, or researcher who is on University property, conducting University business or business with the University, or acting on behalf of the University, sanctions shall be imposed at the discretion of the President or their designate.

## 8.8 Protection from Reprisals, Retaliation or Threats

- 8.8.1 It is contrary to this Policy for anyone to retaliate, engage in reprisals or threaten to retaliate against a complainant (individual who lodged the complaint) or other individual for:

- pursuing rights under this Policy or the *Human Rights Code*;
- participating or co-operating in an investigation under this Policy or the *Human Rights Code*; or
- being associated with someone who has pursued rights under this Policy or the *Human Rights Code*.

8.8.2 Breaches of this section may give rise to investigation under this policy and procedures and to disciplinary action.

## 8.9 Vexatious Complaints

8.9.1 If an individual, in good faith, reports or files a discrimination or harassment complaint that is not supported by evidence gathered during an investigation, that complaint will be dismissed. It is a violation of this policy for any person to:

- make a frivolous, vexatious, malicious or bad faith allegation;
- initiate a procedure under this policy in bad faith; or
- influence or interfere with an ongoing procedure under this policy in bad faith.

8.9.2 Breaches of this section may give rise to investigation under this policy and procedures and to disciplinary action.

## 8.10 Multiple Proceedings

8.10.1 Where criminal, civil and/or administrative proceedings are commenced in respect of allegations of discrimination or harassment, the University reserves the right to conduct its own independent investigation into such allegations, or to defer its own investigation. The University will make its own determination in accordance with its policies and procedures. Where there is an ongoing criminal investigation, the University will cooperate with law enforcement agencies.

8.10.2 If the subject matter of the complaint has been addressed by another process or forum, OHREA may exercise its discretion on whether or not to proceed with the complaint.

## 8.11 Right to Withdraw a Complaint

8.11.1 An individual who has brought a complaint of discrimination or harassment has the right to withdraw a complaint at any stage of the process. However, the University may continue to act on the issue identified in the complaint in order to comply with its obligation under this policy and/or its legal obligations.

## 9. RESPONSIBILITIES

9.1 All parties have the responsibility to act in good faith, and to cooperate with the process. In the absence of a formal complaint, the University may have the obligation to act on information that suggests, for example:

- (a) an incident or a pattern of behaviours damaging to the climate and well-being of the campus community; or
- (b) behaviour which poses a clear and ongoing threat to others.

These actions may include investigation, institutionally imposed sanctions, educational interventions, and/or communication to external bodies.

9.2 The University will strive to provide training opportunities to members of the University community, led by individuals with expertise in dealing with discrimination and harassment under the Code.

9.3 Supervisors of employees have a legal duty to address discrimination or harassment that they witness or of which they have been informed. (See the *OHSA* and the *Code*). The University may have a duty to investigate complaints of discrimination or harassment to address its civil, criminal and human rights obligations.

## 10. EDUCATION AND PREVENTION

10.1 Members of the University community are encouraged to contribute to the prevention of, intervention in and effective response to discrimination and harassment in all its forms. All members of the University community may play a role in building a safe and just educational environment by:

- Learning about discrimination and harassment by participating in University-sponsored educational programs and campaigns;
- Modelling healthy and respectful behaviour in personal and professional relationships;
- Speaking out against behaviour that encourages discrimination and harassment, such as sexism, ableism, racism, homophobia and transphobia;
- Speaking out against behaviour that discourages reporting or the pursuit of a complaint, such as racism and sexism, the perpetuation of stereotypes, and joking about racism, disability, sexual misconduct, and gender inequality; and
- Intervening to prevent discrimination and harassment.

## 11. RELEVANT LEGISLATION

11.1 Relevant legislation includes, but is not limited to:

11.1.1 The Ontario *Human Rights Code*, Part I (as amended from time to time) (<http://www.ohrc.on.ca/en/ontario-human-rights-code>), which currently prohibits discrimination in the provision of educational services, in housing and in employment on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (in employment only), marital status, family status, disability, or the receipt of public assistance (in housing only). The *Code* also prohibits harassment in employment on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

11.1.2 The Ontario *Occupational Health and Safety Act* (“*OHSA*”), Part III.0., (as amended from time to time) (<https://www.ontario.ca/laws/statute/90o01>) prohibits violence and harassment in the workplace. This prohibition includes sexual harassment and sexual violence.

## 12. RELATED UNIVERSITY BYLAWS, POLICIES, PROCEDURES AND AGREEMENTS

12.1 Related University bylaws, policies, procedures, and agreements are set out in Appendix C.

## 13. POLICY REVIEW

13.1 The University will review this policy at least once every three years and amend it as appropriate.

## APPENDIX A Procedures

### 1. COMPLAINT INTAKE PROCESS AND REVIEW

- 1.1 Upon receiving a complaint OHREA will review the complaint (i) for completeness, (ii) to determine whether the complaint is frivolous or vexatious, (iii) to ensure the matter, if demonstrated to be accurate, would fall within the scope of this policy, (iv) to determine the complaint is within the timelines established in the policy.
- 1.2 The intake process and review of the complaint shall be concluded in an expeditious manner and normally conclude within 20 working days of OHREA having received the complaint.
- 1.3 If after reviewing the complaint, OHREA determines that the complaint is incomplete, OHREA may, in its discretion, request that the complainant provide further information.
- 1.4 If after reviewing the complaint, OHREA determines that the complaint is frivolous or vexatious, or that the complaint is outside of the scope or timelines of the policy, the complaint shall not proceed further.
- 1.5 If after reviewing the complaint, OHREA determines that the complaint is not frivolous or vexatious, and that a *prima facie* breach of the Human Rights Policy has been established, OHREA shall contact the complainant. The complainant shall elect whether to proceed with the informal resolution process or withdraw the complaint.
- 1.6 There may be instances where OHREA determines that Informal Resolution is not the appropriate step to address the complaint. In those circumstances, the complaint may proceed to the Preliminary Assessment to determine whether it should proceed to Formal Resolution Process.
- 1.7 If the complainant fails to respond to OHREA's attempts at contact throughout the processes outlined below, then after 60 calendar days, the complaint shall lapse, and the file shall be closed.

### 2. INFORMAL RESOLUTION PROCESS

Informal procedures include those attempting to resolve complaints with the complainant alone or with only the complainant and the respondent. They may involve approaches such as examples in 1.3 below. The term "informal" does not imply that the approach has any less support and sanction than the formal procedures.

- 2.1 Once the intake process has been completed in accordance with s. 8.4 of the Human Rights Policy, and the complainant has elected to proceed under s. 8.4.4 of the Human Rights Policy, the respondent shall be provided with the particulars of the complaint and disclosure of documentation relevant to the complaint as expeditiously as possible or, where applicable, in a manner consistent with collective agreements. OHREA may grant extensions where circumstances warrant.
- 2.2 OHREA shall discuss the written complaint and any response with the complainant and with the respondent, or with both, with a view to reaching a solution acceptable to all parties.
- 2.3 OHREA may utilize any dispute resolution techniques it deems appropriate, including, but not limited to, clarification of the issues, fact-finding discussions, facilitated conversations, coaching, reconciliation, workplace restoration, settlement conferences, restoration processes, and mediation.

- 2.4 If a resolution is achieved through the Informal Resolution Process, where appropriate, a Resolution Report shall be prepared by OHREA. OHREA shall consult with and obtain the approval of the member of University administration responsible for ensuring that the remedy is imposed or enforced. In instances where there is a Resolution Report, the report shall then be agreed to in writing by the complainant and the respondent. All parties shall receive a copy of the report and be expected to maintain confidentiality surrounding the same. A copy shall also be retained in OHREA's confidential files.
- 2.5 Should the Director of OHREA determine that the possibility of reaching a resolution through the Informal Resolution Process has been exhausted, both the complainant and the respondent shall be informed in writing within 5 working days of that determination. At that point, a Preliminary Assessment may be undertaken by OHREA to determine whether the matter proceeds further.
- 2.6 Following notification that the Informal Resolution Process has been exhausted the complainant may then elect:
- (a) to take no further action;
  - (b) to request, in writing, that the parties proceed to the Formal Resolution Process; or
  - (c) to withdraw, in writing, the complaint.
- 2.7 If the complainant has not taken action to initiate further involvement or withdrawn the complaint in writing within 30 working days of being notified that the Informal Resolution Process has been exhausted, the complaint shall lapse and shall not proceed further.
- 2.8 If the complainant requests in writing that the parties proceed to the Formal Resolution Process, a Preliminary Assessment may be undertaken by OHREA to determine whether the matter proceeds further.

### 3. **FORMAL RESOLUTION PROCESS**

- 3.1 Formal procedures include the possibility of a Formal Investigation and for a Formal Review by the Human Rights Panel.

### 4. **FORMAL INVESTIGATION**

- 4.1 OHREA will appoint an internal investigator who is specially trained in dealing with cases of discrimination and harassment under the Code. OHREA reserves the right to appoint an external investigator at its discretion. Circumstances in which an external investigator may be appointed include, but are not limited to, circumstances in which the complainant or respondent is a member of senior management (e.g., President, Vice-President), circumstances in which the complainant or respondent is a professional staff member of OHREA, and circumstances in which OHREA determines that the scope or complexity of the allegations warrant the appointment of an external investigator. The external investigator must be specially trained in dealing with cases of discrimination and harassment under the Code.
- 4.2 The investigator will prepare a written Investigation Report, which is an internal document to OHREA, and will not be provided to the parties. The Report will include consideration of the interviews and materials collected in the investigation. The facts and findings will form the basis upon which the investigator will provide an opinion as to whether there has been a violation of the policy. The investigator's findings will be made on the basis of a balance of probabilities (that is, it is more reasonable and probable than not that a violation occurred). The Investigation Report may include recommendations, if applicable and will include a Summary of Findings Report.
- 4.3 The Summary of Findings Report will be provided to the parties and to others as appropriate (e.g., a party's supervisor, if involved in the process). If there is more than one complainant or respondent, the individuals will receive a summary of the portions of the Summary of Findings Report that are pertinent to them.

- 4.4 If there is a finding that the policy has been violated, the Executive Director or their designate may refer the complaint to the appropriate office to determine if any discipline, sanction, or corrective action is warranted. Alternatively, the Executive Director may make a recommendation that non-disciplinary measures be implemented to promote a safe and inclusive environment.
- 4.5 Investigations should normally be completed within 120 working days from the date that the complainant has finalized the written complaint and has subsequently been notified that an investigation will proceed. Parties will be advised in writing prior to the end of the 120 working day period if a delay is anticipated. Completion of investigations must not exceed 120 working days unless there are extenuating circumstances. Any additional delays must be communicated in writing to the parties.

## 5. **THE HUMAN RIGHTS PANEL**

- 5.1 The complainant or respondent may request a formal review by the Human Rights Panel, within 10 working days of receiving the Summary of Findings Report or the Preliminary Assessment, on one of the following grounds:
- (a) In cases where the Executive Director or their designate has made a determination regarding a violation of the Human Rights Policy, and the complainant or the respondent demonstrates that there was serious procedural error in the processing of the complaint which was prejudicial to the complainant or respondent; or
  - (b) In cases where the Complainant is not satisfied with the outcome of the Preliminary Assessment.
- 5.2 The request, submitted through the University Secretariat, shall set out in reasonable detail the grounds, consistent with 5.1, for requesting the review.
- 5.3 OHREA shall then deliver the Summary of Findings Report or the Preliminary Assessment to the University Secretariat for submission to the Human Rights Panel within 10 working days of the notification from the University Secretariat that a request for formal review has been filed. The Panel may request that other relevant documents/information be submitted. OHREA is responsible for ensuring the University Secretariat has the relevant documents from the complaint and/or investigation for the Panel.
- 5.4 If the Human Rights Panel decides to grant a request for a formal review, the Panel will go on to consider whether or not the original decision should be upheld, varied, or revoked.
- 5.5 In the case of a review of the Executive Director's determination referenced in 5.1(a), the review normally shall be completed, and a decision rendered no later than 60 working days from the date of the granting of the review.
- 5.6 In the case of a Preliminary Assessment referenced in 5.1(b), the review normally shall be completed and a decision rendered no later than 30 working days from the date of the granting of the review. If the Panel's decision is that the Preliminary Assessment should be revoked, the matter may proceed to investigation. If the Panel's decision is that the Preliminary Assessment should be upheld, the matter is closed.
- 5.7 If the Human Rights Panel decides not to grant a request for a formal review, the Panel's decision is final and binding and normally shall be issued no later than 30 working days following the receipt of the request by complainant or respondent under 5.3.
- 5.8 **Composition of the Human Rights Panel**
- 5.8.1 The Human Rights Panel shall be comprised of members drawn from a pool of members comprised of: (1) two staff members (current or retired); (2) two faculty members/librarian/sessional lecturer/AAS Learning Specialist with tenure/permanence or on tenure/permanence-track or retired/emeriti; and (3) two students (the "Pool of Members").

- 5.8.2 The individuals comprising the Pool of Members, including possible Chairs, shall be selected by the Board Governance Committee. In selecting the Pool of Members, the Board of Governors shall consider: (1) gender and racial diversity; and (2) experience and training in human rights. Individuals comprising the Pool of Members shall serve for a two-year term, which may be renewed. No individual comprising the Pool of Members shall serve more than two consecutive terms. The Human Rights Panel requires gender and racial diversity.
- 5.8.3 The members that are drawn from the Pool of Members to preside over a review shall be representative of two of the three different constituencies (staff members, faculty members and students). One of the members shall be from the same constituency as the complainant and the respondent.
- 5.8.4 In the event of a conflict or where an individual comprising the Pool of Members is unable to serve, a designate shall be appointed by the President. OHREA will provide, annually, a list of individuals available to serve as alternates to the University Secretariat.
- 5.8.5 The Director of OHREA shall ensure that all members of the Human Rights Panel receive training on human rights and the Human Rights Policy on an annual basis. The University Secretariat shall ensure that all members of the Human Rights Panel receive the necessary training regarding procedures.
- 5.9 **Procedure in a Formal Review**
- 5.10 Formal review hearings may proceed by written submissions or oral hearing at the discretion of the Human Rights Panel.
- 5.11 Where there is new evidence or information provided in the submissions, the matter should be referred back to OHREA by the Human Rights Panel.
- 5.12 In the case of oral proceedings, the Parties will be notified at least 10 working days before the hearing, of the date, time, and place of the hearing. This notice period may be waived by the Parties in writing.
- 5.13 Formal review procedures, whether written or oral submissions, are closed and confidential.
- 5.14 The Human Rights Panel may request the submission of additional information and may ask any questions and seek clarification of the Executive Director (or designate), the Parties, witnesses, or any other individual deemed appropriate.
- 5.15 The Human Rights Panel may limit the number of submissions where further evidence is repetitive or irrelevant.
- 5.16 The Human Rights Panel may determine how to proceed if a Party is unresponsive or absent without a satisfactory explanation. Actions may include rescheduling or extending deadlines, proceeding in a party's absence, or deeming the review to be abandoned and that no further action is warranted. If the review is deemed to be abandoned, the matter will be dismissed, and the original decision will be upheld.
- 5.17 The Human Rights Panel is not bound by the rules of evidence applicable to judicial proceedings but will be guided by the principles of fairness and natural justice.
- 5.18 The Human Rights Panel will have control over its own procedures and may set additional procedures as necessary provided they are not inconsistent with these procedures and provided they are in accordance with the principles of fairness and natural justice. The Human Rights Panel will have the power to waive or modify deadlines when the interests of justice warrant or where no substantial prejudice would result.
- 5.19 The finding of the Human Rights Panel shall be based on the review of the evidence (oral or written) and arguments presented. The standard of proof will be on a balance of probabilities.

- 5.20 The Parties will bear their own costs of the proceedings. No orders as to costs will be made.
- 5.21 A quorum of the Human Rights Panel shall be its full membership. Decisions will be reached by a majority of the Human Rights Panel.

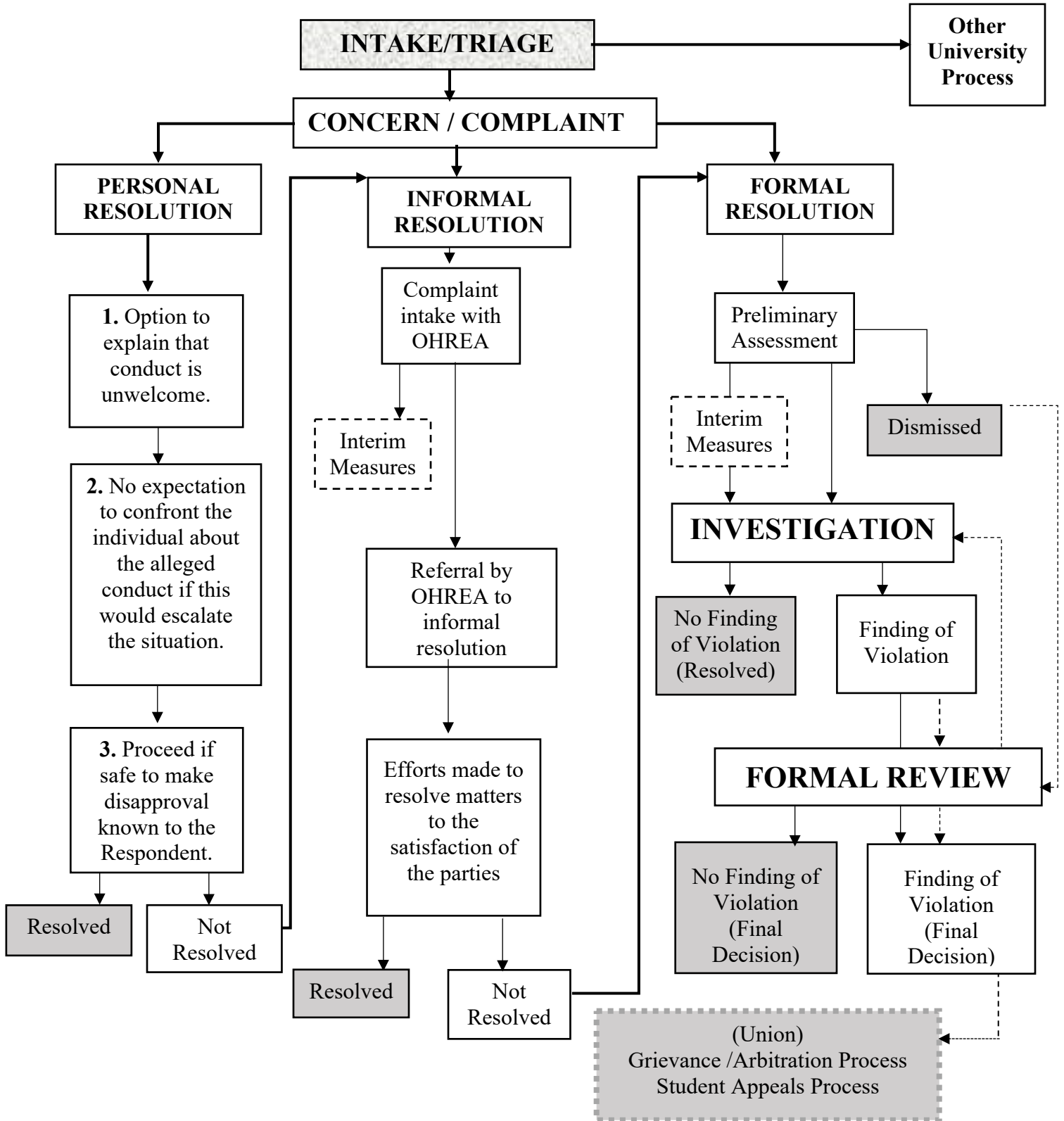
6. **APPEAL PROCEDURES**

- 6.1 If, through Informal and Formal procedures, the matter is not resolved to the satisfaction of the complainant or the respondent, either of them may appeal the outcome through the grievance or appeal process for their constituency, as follows:
- (a) The grievance procedure for faculty under the Collective Agreement between University and the Faculty Association,
  - (b) The grievance procedures for unionized staff under their collective agreements,
  - (c) Non-unionized employees may consult with OHREA or Human Resources to consider an appropriate process relevant to the situation, and
  - (d) The appeal procedures set out in the various codes of conduct for students.
- 6.2 These appeal procedures also apply for decisions of the OHREA in the administration of these procedures.



APPENDIX B

HUMAN RIGHTS PROCEDURES: FLOWCHART



## APPENDIX C

### Related External Resources and University Bylaws, Policies, Procedures and Agreements

Related University bylaws, policies, procedures, and agreements include but are not limited to:

- a. [Accessibility for Ontarian with Disabilities Act, 2005 \(AODA\)](#)
- b. [Canadian Charter of Rights and Freedoms](#)
- c. [Ontario Human Rights Code](#)
- d. [Ontario Human Rights Commission Policies and Guidelines](#)
- e. [University of Windsor – Accessibility Policy](#)
- f. [University of Windsor – Collective Agreements](#)
- g. [University of Windsor – Employment and Educational Equity Policy](#)
- h. [University of Windsor – Policy on Freedom of Expression](#)
- i. [University of Windsor – Policy on Intimate Personal Relations](#)
- j. [University of Windsor – Presence of Service Animals on Campus](#)
- k. [University of Windsor – Procedures for Addressing Student Non-Academic Misconduct](#)
- l. [University of Windsor – Workplace Harassment Prevention Policy](#)
- m. [University of Windsor – Workplace Violence Prevention Policy](#)
- n. [University of Windsor Policy on Sexual Misconduct](#)
- o. [University of Windsor Senate By-Law 32 – Procedural Irregularities and Discrimination Regarding Academic Instruction, Academic Evaluation and Academic Grade Appeals](#)
- p. [University of Windsor Senate By-Law 33 – Student Rights and Freedoms](#)
- q. [University of Windsor Senate Policy on Academic Accommodation for Students with Disabilities](#)
- r. [University of Windsor – Student Code of Conduct](#)
- s. [University of Windsor – Information Technology Service Acceptable Use Policy](#)