

Discrimination and Harassment Procedure

Associated Policy: Discrimination and Harassment Policy

Policy Sponsor: Human Resources

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Part II. Resolution Procedures

Table of Contents

1. Complaints and Resolutions Process
 - 1.1 General Procedures
 - 1.2 Relevant Parties to a Complaint
 - 1.3 Early Communication Encouraged
 - 1.4 Exceptions
 - 1.5 Resolution Options
2. Centre for Human Rights, Equity and Accessibility
 - 2.1 Role in the Complaints Process
 - 2.2 Confidentiality
3. Timing for Filing a complaint
 - 3.1 Deadline to file a complaint
 - 3.2 Exception
4. Representation
 - 4.1 Supportive Persons
 - 4.2 Bargaining Agent Notification and Representation
 - 4.3 Use of Independent Legal Counsel
5. Other Issues in the Complaints Process
 - 5.1 Multiple Complaints
 - 5.2 Interim Measures
 - 5.3 Reprisal (General)
 - 5.4 Frivolous or Vexatious Complaints
 - 5.5 Alternative Proceedings
 - 5.6 Withdrawal
 - 5.7 Due Diligence

- 5.8 Constructive/Systemic Discrimination/Issues of Public Interest
- 6. Initiating a Complaint
 - 6.1 Responsibilities of the Parties
 - 6.2 Complaint to be Made in Writing
- 7. Complaint Process
 - 7.1 Assessment by the Centre for Human Rights, Equity and Accessibility
 - 7.2 Notification to Respondent
- 8. Informal Resolution
 - 8.1 Request for Informal Resolution
 - 8.2 Willingness to Participate
 - 8.3 Facilitating Agreement
 - 8.4 Appointment of an Independent Mediator
 - 8.5 Withdrawal from Informal Resolution
 - 8.6 Three Weeks to Conclude Informal Resolution
 - 8.7 Extension of Time
 - 8.8 Confidentiality of Informal Resolution Process
 - 8.9 Informal Process and Investigation
- 9. Formal Investigation
 - 9.1 Referral by Centre for Human Rights, Equity and Accessibility
 - 9.2 Situations Involving Multiple Respondents
 - 9.3 Investigation Procedure
 - 9.4 Submissions to the Investigator
 - 9.5 Centre for Human Rights, Equity and Accessibility Availability
 - 9.6 Extent of Investigator's Scope
 - 9.7 Time for Completion of Investigation
 - 9.8 Investigator's Report
 - 9.9 Investigator's Notes Maintained in Centre for Human Rights, Equity and Accessibility
 - 9.10 Vice-President's Review and Decision
 - 9.11 Extension of Timelines
- 10.0 Limited appeal of Outcome of Investigation
 - 10.1 Appeal on Grounds of Procedural Error or New Evidence
 - 10.2 Review of Appeal
 - 10.3 Extension of Timelines
- 11. Human Rights Code/Grievances

- 11.1 No Bar to Exercise of Rights Outside the Policy
- 11.2 Cessation of Policy Resolution Process
- 12. Remedies and Sanctions
 - 12.1 Remedies
 - 12.2 Sanctions
 - 12.3 Criteria Considered
- 13. Records
 - 13.1 Time for Retaining Records
 - 13.2 Use of Non-identifiable Statistical Information

1. Complaints and Resolutions Process

1.1 General Procedures

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

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

1.2 Relevant Parties to a Complaint

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

1.3 Early Communication Encouraged

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

1.4 Exceptions

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

1.5 Resolution Options

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

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

2. Centre for Human Rights, Equity and Accessibility

2.1 Role in the Complaints Process

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

- Helping the parties understand and access the Policy and Procedures.
- Reviewing complaints or potential complaints under the Policy to determine if they properly fall within the scope of the Policy.
- Working with the party(ies), if so requested, to explore early resolution options through voluntary informal resolution either directly and/or in securing an independent mediator (internal or external).
- Acting as an investigator in a complaint under the Procedures.

2.2 Confidentiality

Any and all oral and/or written communications with the Centre for Human Rights, Equity and Accessibility are confidential and cannot be shared with any other party(ies) without written consent from both the complainant(s) and respondent(s). The University and all parties to a complaint will treat all information as confidential, subject to the following exceptions: where disclosure is required to investigate and/or resolve a complaint consistent with the Policy and Procedure; or where disclosure is to the complainant's or respondent's union; or where otherwise required by law or under Trent's Campus Violence & Harassment Policy.

3. Timing for Filing a complaint

3.1 Deadline to file a complaint

Complainants are expected to file their complaint as soon as possible after the incident(s) giving rise to the complaint has occurred. Subject to 3.2, a complaint that is filed more than five (5) months after the last incident giving rise to the complaint will not be processed.

3.2 Exception

A complaint may be initiated beyond five (5) months in circumstances where the delay was incurred in good faith and no substantial prejudice exists such that proceeding with the complaint would deprive the respondent(s) of a fair opportunity to respond to the complaint.

4. Representation

4.1 Supportive Persons

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

4.2 Bargaining Agent Notification and Representation

A complainant or respondent who is a member of a collective bargaining unit is encouraged to consult with his/her bargaining agent about a complaint. If an investigation has not yet been initiated, the bargaining agent shall accompany the member in any meetings or related proceedings under this policy unless the member requests otherwise. If an investigation has been initiated, the bargaining agent shall accompany the member in any meetings or related proceedings under this policy.

Where a respondent is a member of a bargaining unit, the union shall be notified that a complaint has been filed against the member. The notice shall not contain any details other than the date of the complaint, and the respondent’s identity. The respondent will be advised of their right to have all information related to the complaint shared with their union and to seek assistance and counsel respecting their rights under their respective collective agreement(s).

Where a respondent is a member of a bargaining unit, the Human Rights Advisor shall provide the bargaining agent with notice when a complaint is filed, and shall provide the bargaining agent with a copy of the investigation report when it is distributed.

4.3 Use of Independent Legal Counsel

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

5. Other Issues in the Complaints Process

5.1 Multiple Complaints

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

5.2 Interim Measures

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

5.3 Reprisal (General)

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

5.4 Frivolous or Vexatious Complaints

The University retains the right not to proceed where there is sufficient evidence that a complaint is frivolous or vexatious. Such a finding is made by the relevant Vice-President further to a concern being raised by a respondent or the Human Rights Advisor or by a person serving as a mediator or investigator. Where a finding is made that a complaint is frivolous or vexatious, the University may impose sanctions and remedies that it deems appropriate provided that where the complainant is represented by a bargaining agent, such discipline shall be imposed in a manner which is in accordance with the provisions of the applicable collective agreement.

5.5 Alternative Proceedings

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

5.6 Withdrawal

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

5.7 Due Diligence

On receiving a complaint of discrimination or harassment, a person in a position of authority is required to take appropriate and timely action in order to address the situation consistent with the Policy and Procedures. Information disclosed to University counselors, doctors or any position covered by the Personal Health Information Protection Act ("the PHIPA") is privileged and will not be disclosed except as required or permitted by the PHIPA.

5.8 Constructive/Systemic Discrimination/Issues of Public Interest

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

6. Initiating a Complaint

6.1 Responsibilities of the Parties

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

6.2 Complaint to be Made in Writing

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

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

In addition to making a written complaint, the complainant will be expected to attend meetings with the Human Rights Advisor and/or external consultant or University representative(s) who are responsible for informal resolution, or fact-finding/investigative processes, and to provide any required additional information. This is not a requirement for students reporting sexual violence.

7. Complaint Process

7.1 Assessment by the Centre for Human Rights, Equity and Accessibility

Upon receipt of a written complaint, the Human Rights Advisor shall determine whether the complaint appears, on the face of it, to be within the scope of the Policy.

7.2 Notification to Respondent

Having determined that a complaint appears to be within the scope of the Policy, the Human Rights Advisor will provide a copy of the written complaint to the respondent and where applicable, to their union.

8. Informal Resolution

8.1 Request for Informal Resolution

Any member of the University community may request assistance from the Human Rights Advisor to reach an informal resolution of a complaint. Informal Resolution is a voluntary option that is intended to help parties settle disputes on mutually agreeable terms. In some cases, complainants may be advised that their concerns can, should or need to be brought to the attention of some other official of the University for proper and full resolution.

8.2 Willingness to Participate

Where the Human Rights Advisor believes there is a possibility of reaching an informal resolution, of a complaint or where at least one of the parties requests that such efforts be made, the Human Rights Advisor shall contact the other party(ies) to determine their willingness to participate in a voluntary process to help the parties settle the dispute on mutually agreeable terms.

8.3 Facilitating Agreement

Where an informal resolution process has been initiated, the Human Rights Advisor shall make a good faith effort, through the use of any viable technique (e.g., discussion, consultation, conciliation,

mediation) directly and/or in securing an independent mediator, to facilitate a mutually acceptable agreement.

8.4 Appointment of an Independent Mediator

In some cases, including where a party so requests, informal resolution may involve the retention of another person trained in mediation internal or external to the University. The Human Rights Advisor may recommend the appointment of an independent mediator in instances where the Advisor has identified a possible conflict of interest.

8.5 Withdrawal from Informal Resolution

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

8.6 Three Weeks to Conclude Informal Resolution

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

8.7 Extension of Time

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

8.8 Confidentiality of Informal Resolution Process

In order to support the chances of successful resolution, except where disclosure is required by law, any and all information that is created and maintained by the Human Rights Advisor / Independent Mediator during the informal resolution process is to remain confidential to the mediation process and may not be introduced in the formal process. Sanctions may not be implemented other than through the formal resolution process unless the sanctions form part of a mutually agreeable, voluntary settlement.

8.9 Informal Process and Investigation

No person having conducted the informal mediation process shall be appointed as the investigator of the complaint in question.

9. Formal Investigation

9.1 Referral by Centre for Human Rights, Equity and Accessibility

Where informal resolution is not successful or suitable, or where a party does not wish to participate in an informal resolution process, the Human Rights Advisor will refer the complaint to:

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

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

9.2 Situations Involving Multiple Respondents

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

9.3 Investigation Procedure

An investigation will proceed as follows:

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

9.4 Submissions to the Investigator

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

9.5 Centre for Human Rights, Equity and Accessibility Availability

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

9.6 Extent of Investigator’s Scope

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

9.7 Time for Completion of Investigation

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

9.8 Investigator's Report

At the conclusion of the investigation, the investigator will write a report outlining the findings which may also include an overview of human rights principles. The investigator will provide a copy of the report, on a confidential basis, to the complainant(s) and the respondent(s), and the respondent(s)'s bargaining agent (if applicable), the relevant Vice-President and the Human Rights Advisor (if applicable).

9.9 Investigator's Notes Maintained in Centre for Human Rights, Equity and Accessibility

The investigator's notes and transcripts (if applicable) will be maintained in the Centre for Human Rights, Equity and Accessibility in a secure and confidential file in accordance with the requirements of these Procedures.

9.10 Vice-President's Review and Decision

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

The Vice-President's decision will be communicated in separate letters to the complainant(s) and respondent(s) and, where the respondent is a union member, to the party's union. In cases of sexual violence, where the complainant is a Trent University employee, the Vice-President will also inform the complainant of any corrective action that has been, or will be, taken as a result of the investigation.

9.11 Extension of Timelines

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

10.0 Limited appeal of Outcome of Investigation

10.1 Appeal on Grounds of Procedural Error or New Evidence

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

10.2 Review of Appeal

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

10.3 Extension of Timelines

Timelines under this appeal procedure may be extended in good faith by the Vice-President receiving the referral, and such extension will be communicated in writing to the appellant(s), all other parties to the complaint, and the Centre for Human Rights, Equity and Accessibility.

11. Human Rights Code/Grievances

11.1 No Bar to Exercise of Rights Outside the Policy

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

11.2 Cessation of Policy Resolution Process

Upon written notification of a grievance or HRTO proceedings, a resolution procedure under this Policy will stop subject to the University's responsibility for due diligence, having regard for its responsibility to respond appropriately to allegations of discrimination and harassment, police involvement (if any) and any other considerations applicable to the circumstances, unless the relevant bargaining agent has filed a formal request to hold the grievance in abeyance consistent with the relevant collective agreement.

12. Remedies and Sanctions

12.1 Remedies

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

12.2 Sanctions

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

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

12.3 Criteria Considered

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

- seriousness/severity of the incident(s);
- reliability of the evidence;
- remedies sought by the complainant;
- any documented history of substantiated and related history on the part of the respondent(s), or on the part of the complainant(s) in the case of frivolous or vexatious complaints, provided such documentation has been maintained in accordance with relevant collective agreements.

13. Records

13.1 Time for Retaining Records

All records shall remain secure and confidential files are to be maintained in the Centre for Human Rights, Equity and Accessibility for:

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

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

Where a formal investigation results in sanctions for an employee or student beyond a verbal warning/reprimand, documentation will be placed in the personnel or student file.

In the case of unionized employees, all records shall be kept in a manner and for a time period which is in accordance with the provisions of the collective agreement.

13.2 Use of Non-Identifiable Statistical Information

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

Date for Next Review:

December 2, 2019

Related Policies, Procedures and Guidelines:

- Discrimination and Harassment Policy
- Sexual Violence Prevention and Response Policy
- Workplace Violence and Harassment Policy