The UNIVERSITY *of* WESTERN ONTARIO
POLICIES *and* PROCEDURES

6.25 Non-Discrimination and Harassment Policy

Classification: PMA-Eligible Staff Effective Date: 01OCT06 Supersedes: (NEW)

Purpose

1. The Association and the Employer are committed to providing a working and learning environment that allows for full and free participation of all members of the institutional community. Discrimination and harassment of individuals, whether as members of any recognizable group or otherwise, undermine these objectives and violate the fundamental rights, personal dignity and integrity of individuals or groups of individuals.

Definitions

2. Harassment means engaging in a course of vexatious comment or conduct related to one or more of the prohibited grounds of discrimination under Clause 3 of this Policy. Sexual harassment means engaging in a course of vexatious comment or conduct of a sexual nature including sexual assault, verbal abuse or threats, unwelcome sexual invitations or requests, demands for sexual favours or unwelcome innuendo or taunting about a person's body, physical appearance or sexual orientation. Conduct and/or behaviour which creates an intimidating, bullying, demeaning or hostile working or academic environment also constitutes harassment, whether or not it is based on the prohibited grounds of Clause 3. Harassment and sexual harassment are serious offences that may be cause for disciplinary sanctions including, where appropriate, dismissal.

3. There shall be no discrimination, interference, restriction or coercion exercised against or by any PMA eligible staff regarding any term or condition of employment, including but not limited to salary, grade level, appointment, promotion, reappointment, dismissal, termination of employment, layoff, or leaves or benefits, by reason of grounds a) through h) listed below; nor shall any discrimination be exercised against or by PMA eligible staff in the course of carrying out their professional, managerial and/or academic responsibilities, by reason of:

   a) race, colour, ancestry, place of birth, ethnic or national origin, citizenship (except for new appointments as provided for by law); or
   b) creed, religious or political affiliation or belief or practice; or
   c) sex, sexual orientation, physical attributes, marital status or family relationship; or
   d) age (except for mandatory retirement according to law); or
   e) physical or mental illness or disability; or
   f) place of residence; or
   g) record of offences; or
   h) membership or participation in the Association.

   3.1 Clause 3 does not apply to any action or decision based on a bona fide occupational requirement or qualification.

   3.2 For the purposes of determining what limitations may reasonably be imposed in good faith to meet the objective requirements of employment, every employee is entitled to individual consideration.

   3.3 The Employer shall ensure that there shall be no systemic discrimination through policies that may lead to adverse job-related consequences.

4. This Policy shall not infringe upon the implementation of special programs designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity.

5. There shall be no harassment or sexual harassment exercised against or by any Member.

6. The Employer and all members of the University community share responsibility for ensuring that the work and study environment at The University of Western Ontario is free from discrimination and harassment. The Employer bears the responsibility to offer to Unit heads appropriate training in the recognition of behaviours and institutional cultures which may constitute discrimination and/or harassment, and in suitable procedures for removing them from the University's working and learning environment.

7. There shall be no reprisal or retaliation nor any threat of reprisal or retaliation against anyone for pursuing rights under this Policy or for participating in proceedings under this Policy or for assisting a person in pursuit of their rights under this Policy or pursuant to legislation protecting against harassment or discrimination. Any such alleged reprisal or retaliation or threat thereof shall be equivalent grounds for laying a complaint under this Policy.

Complaint Process

8. Members may seek the advice of the Human Rights Officer (see Clause 14 of this Policy) in order to discuss situations which may be encompassed by this Policy. All such discussions shall be confidential and accord with the policies and procedures of the Equity & Human Rights Services.

8.1 A complaint may be filed by (an) individual(s) with the Human Rights Officer up to six months from the incident, or latest episode in a series of incidents, of the alleged discrimination or harassment occurring.

Informal Resolution

8.1.1 The Employer and the Association emphasize their preference for prompt and informal resolution of all complaints. Informal resolution is a resolution to which the complainant consents, and to which the complainant and respondent consent where a decision or action affects the respondent, and is arrived at with the assistance of a Unit head or the Human Rights Officer but without the use of either mediation or investigation. The possible means of achieving informal resolution are numerous. Examples include advice to the complainant, such as referral for counseling or letter to the respondent; relocation of the complainant and/or the respondent or any other appropriate and just measures. Informal resolution can occur without the knowledge of anyone other than the complainant, the respondent and the Unit head or the Human Rights Officer, where assistance has been provided as above.

8.2 In any meeting or hearing held pursuant to the terms of this Policy, complainant(s) and respondent(s) may be accompanied by a representative of the Association or employee group to which they belong, or by another support or resource person of the individual's choosing.

8.3 With respect to matters arising under the terms of this Policy, complainant(s) and respondent(s) may be represented by legal counsel at their own expense.

8.3.1 The Employer-approved costs of the External Investigator described in Clause 11 shall be borne by the Employer.

8.4 Members may seek assistance from the Ontario Human Rights Commission, in accordance with the OHRC six-month time limit, even when taking steps under this Policy.

8.4.1 If the circumstances giving rise to a complaint under this Policy independently give rise to proceedings before a Board of Inquiry under the Human Rights Code or to proceedings in the courts or to the laying of a criminal charge, then any action under this Policy shall be suspended until such proceedings are concluded.

Initiating the Complaint

9. The complainant(s) may elect to file a complaint which shall be in writing, signed and dated, setting out the circumstances of the alleged discrimination or harassment, according to Clauses 2 and/or 3 of this Policy, naming the respondent(s) and authorizing the Human Rights Officer to attempt informal resolution.

9.1 The Employer shall not apply the provisions of this Policy following receipt of anonymous complaints or complaints that cannot identify a complainant.

9.1.1 Notwithstanding Clause 9.1 of this Policy, the Employer shall not be restricted in fulfilling its responsibilities under the Human Rights Code, other applicable legislation, or where the safety of individuals is threatened or compromised.

10. Within five working days of receiving the written complaint, the Human Rights Officer shall provide the respondent(s) with a copy and invite the respondent(s) to reply in writing. The Human Rights Officer shall make a reasonable effort to deliver the copy in person to the respondent. The Human Rights Officer shall undertake to provide to the respondent, at a time convenient to the respondent, an opportunity for discussion of the procedures involved.

10.1 The respondent(s) shall have fifteen working days after receiving the Human Rights Officer's request to respond in writing to the Human Rights Officer.

10.1.1 Where the respondent(s) fail(s) to make a written response within the fifteen working days referred to in Clause 10.1, the respondent(s) shall be advised that they have a further five working days to make a response, after which time the processing of the complaint will continue without their input, only if the respondent fails to make the response after that additional 5 day period.

10.2 The Human Rights Officer shall provide a copy of any response to the complainant and attempt to discuss the complaint with both parties and may conduct informal mediation in an effort to resolve the complaint in a manner acceptable to both parties.

10.3 If a resolution consistent with the terms of the Human Rights Code is achieved, both parties may sign a statement of the terms of resolution which shall be filed with the Human Rights Officer. No further action may then be taken on the complaint unless one or both parties fail to comply with the terms of resolution.

10.4 If the terms of resolution entail action by the Employer, the Employer shall agree to undertake such action by signing the written resolution document. If the Employer refuses to undertake such action, it shall state in writing to the parties why it refuses to do so.

10.5 If a settlement is not reached within thirty working days of providing the respondent with a copy of the complaint, the Human Rights Officer will so inform the parties in writing and shall advise the parties:

a) that the complainant may elect to withdraw the complaint; or
b) that either the complainant or the respondent may elect to request that the complaint be referred to an Investigation (Clause 11).

10.5.1 If the complainant fails to make an election under Clause 10.5 within ten working days of the receipt of the letter from the Human Rights Officer, the complaint shall be deemed to be withdrawn by the complainant and no further action will be taken by the Human Rights Officer.

10.5.2 Any deadlines specified in this Policy may be extended in exceptional circumstances by mutual agreement of the Parties.

10.6 Complaint files maintained by the Human Rights Officer pursuant to this Policy shall be confidential and may not be introduced in subsequent investigations or proceedings except as provided in Clause 16 below, or unless compelled by law. The Human Rights Officer may not appear as a witness in any Arbitration arising from the application of this Policy or in any subsequent investigations or proceedings unless compelled by law.

Investigation

11. The Director of Equity & Human Rights Services shall retain an External Investigator to conduct an investigation of the complaint.

11.1 Within twenty working days of being retained, the External Investigator shall submit a written report to the Human Rights Officer, with copies to the complainant(s) and respondent(s). The report shall advise either that:

a) there is no prima facie case raised by the complaint, in which case it shall not go forward; or
b) there is a prima facie case appropriate for determination by a Panel of Inquiry.

11.2 Where a prima facie case is found to exist pursuant to Clause 11.1 b), the Human Rights Officer shall seek to meet with the complainant(s) and respondent(s) with a view to resolving the complaint on terms acceptable to both parties.

11.3 If the complaint is not resolved within ten working days of the attempted meeting(s) between the Human Rights Officer, the complainant(s) and the respondent(s), the complaint shall be submitted for hearing by a Panel of Inquiry. Before submitting the complaint to the Panel of Inquiry, the Human Rights Officer shall attempt to meet with the complainant(s) and respondent(s) to reach an agreed statement of facts to be submitted to the Panel of Inquiry.

Formal Determination

Panel of Inquiry

12. The Panel of Inquiry shall be composed of one person chosen by the Association, one person chosen by the Employer, and a third person chosen from a list of names maintained in Equity & Human Rights Services. The list will be reviewed by the Association on an annual basis. The persons placed on this list shall be external to the University and the person chosen from the list shall chair the Panel of Inquiry.

12.1 In the event the complainant and respondent are members of different associations, unions or employee groups, the Panel of Inquiry shall be composed of one person chosen by the complainant's association, union or employee group, one person chosen by the respondent's association, union or employee group and a third person chosen from a list of names maintained in Equity & Human Rights Services.

12.2 In the event that there are multiple complainants and/or respondents who are members of different associations, unions or employee groups, the composition of the Panel of Inquiry will be determined jointly by the relevant employee groups and the Employer.

12.3 The purpose of the Panel of Inquiry shall be to determine the facts pertaining directly to the complaint. The Panel shall determine its own process and procedure and shall submit a written report based on the facts and evidence presented directly related to the complaint. The parties involved shall have the right to present evidence, to call witnesses and to present argument to the Panel of Inquiry.

12.4 Within ten working days of concluding the hearing, the Panel of Inquiry shall submit the written report to the Employer and to the parties.

12.5 This report shall include a copy of the complaint, the respondent's written response (if any) and the Panel of Inquiry's findings.

12.6 The Panel of Inquiry at its sole discretion may request a copy of the External Investigator's report but in no case shall the Panel of Inquiry make a finding solely on the basis of this report. The Panel of Inquiry's report shall be based on all of the facts and evidence presented.

Employer Determination

13. The Employer shall issue a written determination within ten working days of receiving the Panel of Inquiry's report. Copies of the Employer's determination shall be sent to the parties and to the Association.

13.1 The determination shall contain:
a) a finding, with reasons, that the complaint is or is not upheld;
b) a statement of any remedy(ies), other action(s), sanction(s) or disciplinary measure(s) to be taken or required by the Employer;
c) a statement of exoneration where appropriate.

13.2 If the determination is that the complaint is not upheld or the Employer shall ensure that all documentation concerning the allegation is secured by the Equity & Human Rights Services according to Clause 16 below.

13.3 The Employer agrees that it shall take disciplinary action against those who make allegations of harassment which are reckless, malicious or not in good faith.

Human Rights Officer

14. The Employer shall ensure at least one Human Rights Officer is appointed in addition to the Director of Equity Services to the University's Equity & Human Rights Services. The Association shall be advised of the procedures leading to such (an) appointment(s). The Human Rights Officer shall be responsible to give advice and receive complaints according to Clauses 8, 9 and 10.

14.1 The Human Rights Officer shall have appropriate training in dealing with discrimination and harassment cases, including training in mediation and investigation of such cases.

14.2 By June 1 each year, the Human Rights Officer shall make an annual report to the President with a copy to the Association. This Report shall provide a statistical record of complaints, informal resolutions and determinations, and may include any observations and recommendations the Human Rights Officer may have with respect to the implementation of this Policy.

Conflict of Interest

15. A person involved in the application of any of the provisions or procedures under this Policy shall, on the grounds of conflict of interest or reasonable apprehension of bias, immediately declare any such conflict of interest or bias to the parties to the complaint, to the Vice-President (Resources and Operations) or designate and to the Association. The Vice-President (Resources and Operations) or designate or the Association or, as appropriate, both jointly, shall forthwith provide a replacement for the person who has made the declaration.

15.1 A party to a complaint who objects to the participation of a person in the application of the provisions or procedures under this Policy on the grounds of conflict of interest or reasonable apprehension of bias may inform the Vice-President (Resources and Operations) or designate that he or she wishes that person to be replaced, stating his or her reasons. The Vice-President (Resources and Operations) or designate shall immediately inform the Association of any such declaration. The Vice-President (Resources and Operations) or designate shall also immediately inform the person named in the declaration, and he or she shall be given a reasonable opportunity to respond to it. The Vice-President (Resources and Operations) or designate and the Association shall then decide jointly with regard to a replacement, should one be appropriate.

Retention of Files

16. All documents related to a complaint will be retained in confidence for ten years in the office of Equity & Human Rights Services. Such files in the Equity & Human Rights Services office can only be accessed where the Human Rights Officer has reason to believe that there is a pattern of harassment.