



The University of British Columbia
Board of Governors

Policy No.:

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Approval Date:

January 1995

Last Revision:

December 2016

Responsible Executive:

Provost and Vice-President Academic
(UBC Vancouver)

Deputy Vice Chancellor and Principal
(UBC Okanagan)

Title:

Discrimination and Harassment

Background & Purposes:

The University of British Columbia has responsibility for and is committed to providing its students, staff and faculty with an environment dedicated to excellence, equity and mutual respect; one that is free of Discrimination and Harassment; and one in which the ability to freely work, live, examine, question, teach, learn, comment and criticize is protected. Academic Freedom and freedom of thought, belief, opinion and expression carries with it the expectation that all Members of the University Community will conduct themselves in a responsible manner so as not to cause, condone or participate in the Discrimination or Harassment of another person or group of persons. The University's commitment to maintaining and respecting human rights at every level of the institution is central to this Policy.

The fundamental objectives of this Policy are to prevent Discrimination and Harassment on grounds protected by the *B.C. Human Rights Code*, and to provide procedures for handling complaints, remedying situations, and imposing discipline when such Discrimination or Harassment does occur. Concerns regarding discrimination or harassment that do not involve any of the grounds prohibited by the *B.C. Human Rights Code* are not covered by this Policy. Such concerns may be addressed by other University policies or procedures, including the UBC Statement on Respectful Environment for Students, Faculty and Staff, collective agreements, employee handbooks, and student codes of conduct, and should be taken to the appropriate Administrative Head of Unit, student or employee association, union or human resources office.

1. General

- 1.1 The University and all Members of the University Community share responsibility for ensuring that the work and study environment at the University is free from Discrimination and Harassment. The University regards Discrimination and Harassment as serious offenses that are subject to a wide range of remedial or disciplinary measures, including dismissal or expulsion from the University.
- 1.2 Although concerns regarding Discrimination or Harassment can be brought to either Administrative Heads of Unit or to the University's Equity Office, Administrative Heads of Unit bear the primary responsibility for creating and maintaining a study and work environment free from Discrimination and Harassment. Administrative Heads of Unit have the authority and the responsibility to address concerns regarding Discrimination or Harassment, whether or not they are in receipt of specific complaints. When addressing a concern or complaint, Administrative Heads of Unit are encouraged to consult with the University's Equity Office.

- 1.3 The University's Equity Office is responsible for providing information, advice and assistance in a fair and impartial manner to anyone who has a concern about Discrimination or Harassment related to the University, including those who may have experienced Discrimination and Harassment and those alleged to have perpetrated it. The Equity Office is also responsible for providing education to Members of the University Community and other offices on the prevention and remediation of Discrimination and Harassment. The Equity Office is also responsible for addressing concerns or complaints of Discrimination or Harassment that have been made to it directly using the procedures set out under this Policy, and has the authority to initiate complaints itself under those procedures.
- 1.4 The University will not tolerate any retaliation, directly or indirectly, against anyone who, in good faith, complains, gives evidence or otherwise participates in a process under this Policy. The University considers retaliation to be a serious matter because it prevents potential complainants, witnesses, and administrators from acting on their concerns.
- 1.5 Academic Freedom is a fundamental tenet of the University. Academic Freedom ensures the right of all Members of the University Community to engage in frank discussion of potentially controversial matters and to make statements, assign readings or use instructional techniques that challenge and may even offend the sensibilities, ideas and beliefs of others, provided that they conduct themselves in a manner that is consistent with the *B.C. Human Rights Code*. All Members of the University Community, in exercising their Academic Freedom, shall respect the human rights of others and not engage in actions that would deny equality to, or harass, individuals or groups on grounds protected by the *B.C. Human Rights Code*.

2. **Scope**

- 2.1 This policy addresses Discrimination and Harassment on grounds protected by the *B.C. Human Rights Code*. The grounds currently are (actual or perceived) age, ancestry, colour, family status, marital status, physical or mental disability, place of origin, political belief, race, religion, sex, sexual orientation, gender identity or expression, and criminal conviction unrelated to employment.
- 2.2 The grounds under this Policy will be interpreted in the same manner as they are interpreted by the B.C. Human Rights Tribunal. For example, the ground of "sex" has been interpreted to include sexual harassment, sexual assault and the actuality or possibility of pregnancy, breastfeeding and childbirth, and will be so interpreted under this Policy.
- 2.3 Concerns regarding discrimination or harassment that do not involve any of the grounds prohibited by the *B.C. Human Rights Code* are not covered by this Policy. Such concerns may be addressed by other University policies or procedures, including the UBC Statement on Respectful Environment for Students, Faculty and Staff, collective agreements, employee handbooks, and student codes of conduct, and should be taken to the appropriate Administrative Head of Unit, student or employee association, union or human resources office.
- 2.4 Addressing systemic issues of discrimination and harassment is a shared responsibility across the institution and may include addressing complaints that fall outside of the grounds prohibited by the *B.C. Human Rights Code*. Offices such as the Equity Office and Human Resources at UBC Vancouver and UBC Okanagan, Access & Diversity and The Office of the Ombudsperson for Students at UBC Vancouver, and the Disability Resource Centre and the AVP Students at UBC Okanagan, are positioned to provide leadership in identifying and addressing these issues.

- 2.5 Discrimination or Harassment can involve individuals or groups; can occur during one serious incident or over a series of incidents including single incidents, which, in isolation, would not necessarily constitute Discrimination or Harassment; and can occur on campus or off-campus in a University-related context, during working hours or not.
- 2.6 It is the impact of behaviour on the complainant, subject to the reasonable person test, and not the intent of the respondent that defines the comment or conduct as Discrimination or Harassment. The reasonable person test refers to an assessment of responsibility that takes into account not only what the complainant and respondent actually experienced, knew, or understood about one another or the situation, but also what a reasonable person in each of their circumstances would or ought to have experienced, known, or understood.
- 2.7 Neither this Policy in general, nor its definitions in particular, are to be applied in such a way as to detract from the right and obligation of those in supervisory roles to manage and discipline employees and students.
- 2.8 The fact that a complaint is being pursued under this Policy does not preclude the complainant from pursuing a process outside of the University, such as filing a complaint with the B.C. Human Rights Tribunal. If a complaint is being pursued outside of the University, the party conducting the University process (the Administrative Head of Unit or the Equity Office) may elect to continue with the University process or may elect to suspend the University process until the outcome of the process outside of the University is determined.

3. Definitions

- 3.1 **Academic Freedom** is defined in the UBC Vancouver and UBC Okanagan calendars.
- 3.2 **Administrative Head of Unit** is any of the following: Director of a service unit; Head of an academic department; Director of a centre, institute or school; Principal of a college; Dean; Associate Vice President; University Librarian; Registrar; Vice President; Deputy Vice Chancellor & Principal; or President.
- 3.3 **Discrimination** is intentional or unintentional treatment, which can be individual or systemic, that imposes burdens, obligations, or disadvantages on or limits access to opportunities, benefits and advantages to specific individuals or groups as defined by the *B.C. Human Rights Code* and for which there is no *bona fide* and reasonable justification.
- 3.4 **Harassment** is comment or conduct that one knows or ought reasonably to know is unwelcome, that creates a negative impact for the recipient, and that is related to one or more of the prohibited grounds of discrimination as set out in the *B.C. Human Rights Code*.
- 3.5 **Member of the University Community** is a student, a member of faculty, or a member of staff.
- 3.6 **Systemic Discrimination** is any pattern of behaviour, policies or practices that are part of the structures of an organization, and that create or perpetuate disadvantage related to one or more of the prohibited grounds of discrimination as set out in the *B.C. Human Rights Code*.

PROCEDURES

Approved: January 1995

Revised: August 2013

Pursuant to Policy #1: Administration of Policies, "Procedures may be amended by the President, provided the new procedures conform to the approved policy. Such amendments are reported at the next meeting of the Board of Governors." Note: the most recent procedures may be reviewed at <http://universitycounsel.ubc.ca/policies/index/>.

1. General

- 1.1 These Procedures apply to concerns relating to matters of Discrimination or Harassment that are brought to the attention of the Equity and Inclusion Office, Access & Diversity, or the Director, Equity Complaint Management. Concerns brought to the attention of the Administrative Heads of Unit will be dealt with in accordance with the usual practices and procedures of the University.
- 1.2 The Equity and Inclusion Office, Access & Diversity, and the Director, Equity Complaint Management will exercise their authority and discretion under these Procedures in conformity with the principles of procedural fairness in the university context.
- 1.3 The complainant and the respondent may have a representative or support person present at any time during the process outlined under these Procedures. Members of unions and employee associations have all rights to representation that their collective agreements confer.
- 1.4 If the Director, Equity Complaint Management, the AVP, Equity and Inclusion, or a member of the Equity and Inclusion Office or of Access & Diversity acting under these Procedures, has a conflict of interest in a particular matter, or there is a reasonable apprehension of bias, then that person will not participate in the process any further. If an Administrative Head of Unit has a conflict of interest, or there is a reasonable apprehension of bias, then the person to whom that Administrative Head of Unit reports will act as the Administrative Head of Unit under these Procedures.
- 1.5 The Equity and Inclusion Office, Access & Diversity, and the Director, Equity Complaint Management respect the sensitive nature of the information that individuals may provide. Such information will only be accessible by those within the University who need such information to properly deal with the matters raised under these Procedures, or if required to do so by external agencies such as the B.C. Human Rights Tribunal who are dealing with the matters raised by that individual. All records are maintained by the University in accordance with the *B.C. Freedom of Information and Protection of Privacy Act* and other applicable laws and orders of the Courts, and other bodies having jurisdiction over such matters.
- 1.6 Members of the University Community involved in a case are expected to maintain confidentiality, particularly within the work or study area in question and in shared professional or social circles.

2. Consultations

- 2.1 Faculty or staff, or others with concerns relating to a Member of the University Community or to a University sanctioned program, event or activity, may consult with the Equity and Inclusion Office for information, advice, support and referrals relating to matters of Discrimination or Harassment. Students with concerns relating to a Member of the University Community or to a University sanctioned program, event or activity may consult with Access & Diversity for information, advice, support and referrals relating to matters of Discrimination or Harassment.

2.2 Such individuals may consult with these offices anonymously. However, any information provided to these offices anonymously or in a consultation-only capacity will not be independently substantiated, further investigated, or acted upon by these offices unless the AVP, Equity and Inclusion determines that it would be appropriate to do so and initiates a complaint under section 3.4 below.

3. Complaints

- 3.1 Those with concerns relating to matters of Discrimination or Harassment are strongly encouraged to consult with the appropriate office as set out in section 2.1 above prior to taking any other action under these Procedures. However, if the person with the concern believes that it was not satisfactorily addressed through consultation, or believes that consultation is not appropriate in the circumstances, that person may initiate a complaint with the Director, Equity Complaint Management, with a copy to the AVP, Equity and Inclusion.
- 3.2 Complaints made to the Director, Equity Complaint Management relating to matters of Discrimination or Harassment pertaining to University work, studies or participation in life on campus may be lodged by any Member of the University Community against other Members of the University Community and/or the University.
- 3.3 Non-Members of the University Community who are directly affected by the conduct or comment that forms the basis of the complaint may lodge a complaint against any Member of the University Community and/or the University, at the discretion of the Director, Equity Complaint Management.
- 3.4 Complaint proceedings may also be initiated by the AVP, Equity and Inclusion based on information that has been given to the Equity and Inclusion Office or to Access & Diversity, or that the Equity and Inclusion Office becomes aware of, if the AVP, Equity and Inclusion determines that it is appropriate to do so in the circumstances. In such cases, the AVP, Equity and Inclusion will act as the complainant.
- 3.5 Complaints must be made within one calendar year of the date that the conduct or comment that forms the basis of the complaint occurred or, in the case of a series of events, within one calendar year of the date that the last event in the series occurred. The Director, Equity Complaint Management has the discretion in exceptional circumstances to extend this one-year time limit.
- 3.6 Complaints must be made in writing, although the Director, Equity Complaint Management has the discretion in exceptional circumstances to waive or defer this requirement.
- 3.7 An Administrative Head of Unit who initiates a complaint will act as the complainant. In such cases, the person directly affected by the conduct or comment that forms the basis of the complaint, and/or the person who is the subject of the complaint, may be called upon as witnesses in any subsequent proceedings.
- 3.8 Complainants may withdraw from the complaint proceedings at any time. However, the University's responsibility to provide an environment free from Discrimination and Harassment may obligate the University to proceed regardless of the complainant's withdrawal.
- 3.9 At any time, the Director, Equity Complaint Management may take any action deemed appropriate in the circumstances, including staying or terminating the proceedings, or taking interim measures to preserve safety or efficiency while a complaint is being investigated or resolved.

- 3.10 When a written complaint is received by the Director, Equity Complaint Management and it is determined that the Policy applies, the Director, Equity Complaint Management will review the written complaint and may do any one or more of the following:
- 3.10.1 refer all or part of the complaint to the unit involved for internal investigation and resolution, including a referral to the appropriate Administrative Head of Unit;
 - 3.10.2 address the complaint under section 4 below; or
 - 3.10.3 dismiss or decline to proceed with the complaint.
- 3.11 If it is determined that the Policy does not apply, the complaint will not be accepted by the Director, Equity Complaint Management and no further action will be taken under these Procedures.

4. Complaint Management

- 4.1 If the Director, Equity Complaint Management decides to address the complaint, the relevant Administrative Head of Unit will be notified and a copy of the complaint will be provided to the respondent, who will be invited to respond to the allegations contained in the complaint.
- 4.2 The Director, Equity Complaint Management may manage the complaint using any means deemed appropriate in the circumstances, subject to the principles of procedural fairness in the university context. Such means may include, but are not limited to, the following:
- 4.2.1 interviewing or requesting written submissions from the complainant and/or the respondent and/or any other parties with information that may be useful;
 - 4.2.2 consulting with other University offices or employees;
 - 4.2.3 gathering documents relevant to the complaint; and/or
 - 4.2.4 referring the matter for internal or external investigation, or mediation.
- 4.3 Both the complainant and the respondent are expected to participate in the complaint management process outlined above in a timely manner. In cases where the complainant and/or the respondent fails to participate within a reasonable time without appropriate justification, the process may proceed without their participation and an adverse inference may be drawn as a result of their failure to participate.

5. Resolution

- 5.1 After addressing the complaint under section 4 above, the Director, Equity Complaint Management may resolve the complaint and/or make recommendations as deemed appropriate in the circumstances. Such resolutions or recommendations may include, but are not limited to, the following:
- 5.1.1 resolving the complaint by consent of the complainant and the respondent, through mediation or any other means;

- 5.1.2 recommending such measures as may be appropriate to remedy the effects of discriminatory conduct and restore the complainant's and/or respondent's unit to effective functioning
 - 5.1.3 recommending such measures as may be appropriate to remove systemic barriers and/or prevent discriminatory conduct;
 - 5.1.4 recommending to the appropriate Administrative Head of Unit the imposition of discipline on the respondent or, in cases where the Director, Equity Complaint Management determines that the complaint was made in bad faith or was frivolous, vexatious or malicious, on the complainant;
 - 5.1.5 recommending other remedies to the appropriate Administrative Head of Unit; and/or
 - 5.1.6 dismissing the complaint.
- 5.2 The Director, Equity Complaint Management will communicate in writing any resolution and/or recommendations made under these Procedures to the appropriate Administrative Head of Unit and to the AVP, Equity and Inclusion. Where appropriate, the communication will include a finding whether on the balance of probabilities there has been a violation of the Policy, and reasons. In addition and as appropriate, the Director, Equity Complaint Management may communicate any resolution and/or recommendations with others whom the Director, Equity Complaint Management determines ought to know under the circumstances.
- 5.3 The Administrative Head of Unit receiving the communication has the authority to determine the appropriate disciplinary and/or remedial measures needed to resolve or address the complaint, if any. The Administrative Head of Unit will provide a written report of the decision made and any measures taken to the Director, Equity Complaint Management, the appropriate Dean and/or Head, and the complainant and the respondent.
- 5.4 No resolution of a complaint that may adversely affect the academic, employment, professional, or other interests of a party shall proceed without giving that party the opportunity to fully respond to the complaint.

6. Appeals

- 6.1 Students may appeal any discipline that is imposed under these Procedures through the UBC Vancouver Senate Student Appeals on Academic Discipline Committee or the UBC Okanagan Senate Appeals of Standing and Discipline Committee.
- 6.2 Staff or faculty may appeal any decision or discipline that is made or imposed under these Procedures through the provisions of their collective agreements or their terms and conditions of employment.
- 6.3 The complainant and/or the respondent may also have recourse to processes outside of the University, such as filing a complaint with the B.C. Human Rights Tribunal.