

SUBJECT: HARASSMENT & DISCRIMINATION**1. Statement of Principles**

- 1.1 The University of Northern British Columbia is committed to providing a working and learning environment in which all students, staff and faculty are treated with respect and dignity. The University of Northern British Columbia acknowledges the right of all individuals in the University Community to work or learn without discrimination or harassment because of race, colour, ancestry, place of origin, religion, family status, marital status, physical disability, mental disability, sex, age, sexual orientation, political beliefs or criminal or summary conviction offence unrelated to their employment.
- 1.2 Neither this policy in general, nor its definitions in particular, are to be applied in such a way as to detract from the right of faculty, staff and students to engage in the frank discussion of potentially controversial matters, such as age, race, politics, religion, sex and sexual orientation.
- 1.3 Nothing in this policy is intended to infringe upon academic freedom as specified in Article 2 of the UNBC Faculty Association Collective Agreement. The protection afforded by this Policy is subject to exceptions under the Human Rights Code.
- 1.4 If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or group must not be considered to be contravening this Policy because it is granting a preference to members of the identifiable group or class of persons.
- 1.5 It is not discrimination or a contravention of this Policy to plan, advertise, adopt or implement an employment equity program that
 - (a) has as its objective the amelioration of conditions of disadvantaged individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, or sex, and
 - (b) achieves or is likely to achieve that objective.
- 1.6 This Policy applies to all University students, faculty, administrators, staff members and employees, as well as contractors, their employees and agents, and guests on campus. This includes those members of the University community who are involved in the University's extension and off-campus programs, such as co-operative education, internships, clinicals, practica and student teaching.
- 1.7 Given the very nature of harassment, it is not possible nor is it desirable to define harassment in such a way that the Policy determines, explicitly and without exception, exactly which acts constitute

harassment and which do not. Necessarily, questions of interpretation will arise in the application of this Policy. It is the intention of this Policy, therefore, to adopt a “reasonable persons” standard in matters of interpretation and in the judgement, in particular cases, of whether harassment has occurred. That is, whether or not a behaviour or pattern of behaviour constitutes harassment is to be determined according to whether or not a reasonable member of the University community, in roughly the same position as the complainant, would judge harassment to have occurred (given the Definitions, below).

2. Definitions

2.1 Complainant:

The party who brings forward an allegation of harassment or discrimination.

2.2 Respondent:

The party against whom an allegation of harassment or discrimination is made.

2.3 Complaint:

The complaint includes the initial or any subsequent complaint of harassment or discrimination and/or a complaint of retaliation.

2.4 Harassment and Discrimination Advisor:

The Harassment and Discrimination Advisor's role includes providing advice about harassment and discrimination issues; advising complainants and respondents about the University's Policy and Procedures for dealing with harassment and discrimination; initiating appropriate inquiries; attempting to diffuse and/or resolve complaints informally. Psychological counselling shall not be provided by the Harassment and Discrimination Advisor. The Harassment and Discrimination Advisor is an employee of the University and reports directly to the President or her/his designated person.

2.5 Harassment and Discrimination Policy Panel:

This is a committee composed of ten persons as defined in Section 6.5.2

2.6 Harassment and Discrimination Tribunal:

This is a committee composed of two persons from the Harassment and Discrimination Policy Panel as defined in Section 6.5.3, plus an off campus professional arbitrator as Chair.

2.7 President:

This is the President of UNBC.

2.8 Chair of the Board of Governors:

This is the Chair of UNBC's Board of Governors.

2.9 Harassment and Discrimination:

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- 2.9.1 For the purposes of this Policy, discrimination means discrimination or harassment of a nature prohibited by the Human Rights Code of British Columbia as summarized in Section 1.1 of this Policy.
- 2.9.2 For the purposes of this Policy, harassment is an abuse of authority, or aggressive or threatening behaviour, where the abuse of authority or behaviour is directed at an individual because of one of the prohibited grounds summarized in Section 1.1 of this Policy.
- 2.9.3 Harassment may occur between people of the same and different status within the university community, and both women and men may be the subject of harassment by members of either sex.
- 2.9.4 Harassment may occur during one incident, or over a series of incidents which, in isolation, would not necessarily constitute harassment.
- 2.9.5 Discrimination may constitute a form of harassment and vice versa.
- 2.9.6 Behaviour covered by this Policy may occur:
- (a) at the University;
 - (b) at University-related social functions;
 - (c) in the course of work or study assignments outside the University;
 - (d) at work-related conferences or training sessions;
 - (e) during work or study related travel;
 - (f) over the telephone;
 - (g) over e-mail; or
 - (h) elsewhere if the person harassed is there as a result of work-related responsibilities or a work related relationship or if the behaviour has an adverse effect at the work-place.
- 2.9.7 Examples of behaviour which constitute harassment include but are not limited to:
- (i) creating an environment that is hostile, intimidating or offensive;
 - (ii) actions or written or verbal comments that could reasonably be interpreted as intending to humiliate, threaten, intimidate, blackmail, or coerce another person;
 - (iii) jeopardizing a person's job or undermining his or her work performance;
 - (iv) offering "perks" or threatening punishments to exert unwanted influence on another person;

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- (v) directing derogatory or degrading remarks towards another person;
 - (vi) exerting unwanted physical force over another person;
 - (vii) assaulting or stalking another person;
 - (viii) displaying offensive material of a discriminatory nature.

where the behaviour is directed at an individual because of that individual's race, colour, ancestry, place of origin, religion, family status, marital status, physical disability, mental disability, sex, age, sexual orientation, political belief, or criminal or summary conviction offence unrelated to employment.

2.10 Sexual Harassment:

For the purpose of this policy, "sexual harassment" is a specific type of harassment and is defined as one or a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature:

- (a) when such conduct might reasonably be expected to cause embarrassment, insecurity, discomfort, offence or humiliation to another person or group of persons;
- (b) when submission to such conduct is made either implicitly or explicitly a condition of employment or a condition of study;
- (c) when submission to or rejection of such conduct by an individual is used as the basis for employment, or for academic performance, status or accreditation decisions affecting such individual;
- (d) when such conduct has the purpose or the effect of interfering with a person's work or academic performance or creating an intimidating, hostile, threatening or offensive work or study environment;
- (e) examples of behaviour which constitute sexual harassment include, but are not limited to:
 - (i) sexist jokes causing embarrassment or offence, told or carried out after the joker has been advised that they are embarrassing or offensive, or that are by their nature clearly embarrassing or offensive;
 - (ii) leering;
 - (iii) the display of offensive material of a sexual nature;
 - (iv) sexually degrading words used to describe a person;
 - (v) derogatory or degrading remarks about a person's sex or sexual orientation;
 - (vi) sexually suggestive or obscene comments or gestures;

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- (vii) distribution or publication of written material which could reasonably be interpreted to be sexually threatening or intimidating;
 - (viii) unwelcome sexual flirtations, advances, or propositions;
 - (ix) unwelcome inquiries or comments about a person's sex life or spreading rumours about the same;
 - (x) persistent unwanted contact or attention after the end of a consensual relationship;
 - (xi) requests for sexual favours;
 - (xii) unwanted touching;
 - (xiii) verbal abuse or threats; and
 - (xiv) sexual assault.

2.11 Voluntary Consent:

- (a) Relationships between faculty and students or supervisors and subordinates are particularly susceptible to exploitation. The respect, trust and power accorded a supervisor or member of the faculty may make voluntary consent by a subordinate or student suspect.
- (b) This policy is not intended to inhibit normal social relationships. A person entering into or involved in a sexual relationship with a consenting adult who will be or who is subject to that individual for evaluation or supervision should decline or terminate the supervisory or evaluative role, and inform his/her superior (e.g. Chair, Dean, Director, Vice-President) who will make appropriate alternative arrangements for the supervision and/or evaluation of that person's work. In the case of a student, an alternative supervisor may need to be appointed from another university.

2.11 Reprisal:

No person will discharge, suspend, expel, intimidate, coerce, or otherwise retaliate against a person, because that person, whether as a witness, party or in any other role, participates in good faith in the procedures under this Policy. Any such reprisal will be considered harassment under this Policy, and any person who believes he or she has been subject to reprisal should immediately seek the assistance of the Harassment and Discrimination Advisor.

HARASSMENT & DISCRIMINATION PROCEDURE

3. Choice of Procedure

- 3.1 Nothing in these procedures precludes any person from following any alternative complaint procedures under any Collective Agreement, Faculty Association Agreement, university policy, or the B.C. Human Rights Code, or from initiating any other proceedings in law.

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- 3.2 A complainant who believes that she/he has a complaint of discrimination or harassment may want to consider discussing the complaint with the respondent and to ask the respondent to stop the offensive behaviour or to correct the action which resulted in discrimination or harassment, before taking any steps under this Policy.
 - 3.3 If a complainant chooses not to follow the process set out in Section 3.2 or if that process does not achieve a satisfactory result, the complainant may consult with the Harassment and Discrimination Advisor.
 - 3.4 The Harassment and Discrimination Advisor will discuss with the complainant the complaint, this Policy and its procedures, and the courses of action open to the complainant.
 - 3.5 Informal complaints may be initiated by third parties, including the Harassment and Discrimination Advisor, but will not proceed through the informal or formal process without the consent of the person or persons alleged to have been harassed or sexually harassed.
 - 3.6 The Harassment and Discrimination Advisor will maintain confidentiality with respect to the informal process except where, in the opinion of the Harassment and Discrimination Advisor, disclosure of some or all of the particulars of a complaint to the President is required in order to protect the wellbeing and safety of members of the University community.

4. Complaint Options

After consultation with the Harassment and Discrimination Advisor, the complainant may choose any of the following options:

- 4.1
 - (a) take no further action under this policy; or
 - (b) ask the Harassment and Discrimination Advisor to speak informally with the respondent with a view toward reaching an informal resolution;
 - (c) file a written request for mediation;
 - (d) file a formal complaint.
- 4.2 If the complainant chooses to follow a procedure external to this policy, the Harassment and Discrimination Advisor will not commence an inquiry (nor continue an inquiry that has already commenced) while the external procedure is proceeding.
- 4.3 Where an informal agreement has been reached all parties will sign a statement of the terms of the resolution. The statement of the resolution will be kept by the Harassment and Discrimination Advisor. The statement of resolution will be without prejudice to any further action by all parties.

5. Formal Mediation

- 5.1 Either party may request mediation, but it will be arranged only with the consent of both parties. The mediator shall not have punitive power, but shall seek resolution of issues by mutual agreement of the complainant and respondent. The mediator shall be selected from a pool of suitably qualified candidates trained in alternative dispute resolution techniques that relate to the issues covered by this policy. Normally, the pool of candidates shall be from the Harassment and Discrimination Policy Panel as per 6.5.2. Any Panel member selected to act as a Mediator in some case will not participate as a Tribunal member in the same case.
- 5.2 Both the mediator and the format of the mediation process must be acceptable to the parties.

5.3 Each party may be accompanied in the mediation process by a support person. An advisor, not the Harassment and Discrimination Advisor, may act as a support person. A support person is present for emotional support and does not participate in the hearing. Each party may obtain legal counsel at his or her own expense.

5.4 Mediation will not be prerequisite to a formal hearing. Where it occurs, mediation will be conducted without prejudice to any further action by either party. If the complaint is resolved through mediation, the matter will go no further. If mediation fails to arrive at a mutually acceptable resolution, a complainant or a respondent may request a formal hearing through the Harassment and Discrimination Advisor, normally within two weeks of the cessation of mediation.

6. Formal Complaint

6.1 Either a complainant or a respondent may file a written formal complaint under this policy. This written complaint is made to the Harassment and Discrimination Advisor and must contain:

- (a) the name of the complainant;
- (b) the name of the respondent;
- (c) a full account of the incident;
- (d) where and when the incident occurred;
- (e) names of witnesses, if any;
- (f) the written complaint must be signed and dated.

6.2 Where the complaint involves the Harassment and Discrimination Advisor, the complainant may make the written complaint to the President.

6.3 Where the complaint involves the President of the University of Northern British Columbia, the complainant may make the written complaint to the Chair of the Board of Governors. If the complaint is made to the Harassment and Discrimination Advisor, the Harassment and Discrimination Advisor will inform the Chair of the Board of Governors. The Chair and the Advisor may work together to seek informal resolution.

6.4 After receipt of a formal complaint:

- (a) the Harassment and Discrimination Advisor will interview the complainant and obtain all information relevant to the complaint;
- (b) the Harassment and Discrimination Advisor will give the respondent a copy of the complaint filed under 6.1 within 5 working days;
- (c) the Harassment and Discrimination Advisor will interview the respondent and obtain all information relevant to the complaint;
- (d) the respondent has the right to respond to the complaint filed in 6.1 in writing, provided

such right is exercised within 15 working days from receipt of that complaint. The respondent may acknowledge or deny the validity of the complaint in whole or in part, provide new information, or propose a resolution of the complaint;

- (e) within 5 working days from receipt of the respondent's reply under 6.4 (d), the Harassment and Discrimination Advisor will deliver a copy of that reply to the complainant;
- (f) on receipt of the respondent's written reply filed under 6.4 (d), the complainant may accept the reply as full resolution of the complaint;
- (g) within 15 working days of the receipt of the respondent's reply under 6.4 (d), the complainant may submit her/his own response to that reply to the Harassment and Discrimination Advisor who will deliver a copy to the respondent for a reply;
- (h) if the complainant does not accept the reply filed under 6.4 (d) or (g) as full resolution of the complaint, the Harassment and Discrimination Advisor will request a hearing before a Harassment and Discrimination Tribunal.

6.5 Harassment and Discrimination Policy Panel and Procedures

- 6.5.1 The Harassment and Discrimination Policy Panel is an impartial forum which will provide for complete examination of complaints of harassment and discrimination where a formal hearing has been requested.
- 6.5.2 The Panel shall be composed of members elected by each campus constituency. Three students shall be elected, two by the Student Society and one by the Graduate Student Society. Four staff members shall be elected, two by CUPE, one by the Exempt Staff Group, and one by the Directors' Group. Three Faculty Association members shall be elected by the Faculty Association. Panel members will receive appropriate instruction in investigation and hearing procedures. Responsibility for ensuring that appropriate instruction is delivered will rest normally with the Harassment and Discrimination Advisor. Staff and Faculty appointments shall normally be for a three year term. Student appointments shall be for one year terms with the position being renewable for two further terms. Appointments may be staggered to establish a rotation of membership. The Panel shall elect its own Chair.
- 6.5.3 Upon receipt of a written request for a hearing, the Chair of the Harassment and Discrimination Policy Panel must appoint two members of the Panel, acceptable to the complainant and respondent, plus a professional arbitrator as Chair, to form the Harassment and Discrimination Tribunal to hear the complaint. Challenges to the panel membership must be made in writing to, and deemed reasonable by, the Chair of the Panel. The burden of proof is on the complainant. The standard of proof shall be the civil burden of proof on a balance of probabilities. The Harassment and Discrimination Tribunal's decision shall be by a simple majority vote.
- 6.5.4 Both parties must furnish the Chair of the Harassment and Discrimination Tribunal with the names of all witnesses they intend to bring forward along with copies of any relevant documentation which has a bearing on the case. This information must be given to the opposing party and to the Chair of the Harassment and Discrimination Tribunal at least ten working days prior to the hearing date.

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- 6.5.5 The Harassment and Discrimination Tribunal will receive the documentation, hold a confidential hearing involving all relevant parties and their advocates to determine the facts and prepare a written report (the Tribunal Report) for the President (or the Chair of the Board of Governors) regarding the disposition of the complaint. Normally, the documentation to go to the Tribunal will contain information from Article 6.1, 6.4(d) and 6.4(g).
- 6.5.6 The Harassment and Discrimination Tribunal has the authority to call witnesses on its own behalf and on behalf of the parties. The Harassment and Discrimination Tribunal will determine its own procedure and the Chair will decide any questions of procedure which may arise during the course of the hearing. Among its responsibilities, the Harassment and Discrimination Tribunal:
- (a) may request the production of any documents, witnesses, or any other evidence it considers relevant for the purposes of the hearing;
 - (b) may receive submissions, question the parties and witnesses, and examine the evidence;
 - (c) will maintain in confidence the evidence and the identity of the parties and witnesses.
- 6.5.7 The parties have the right to a fair hearing, including the right to appear and be present during the hearing, make representations, and have an advocate, legal counsel, or other support person present. The Tribunal may also have legal counsel present during hearings.
- 6.5.8 If the complainant or respondent fails to appear before the Harassment and Discrimination Tribunal at the appointed time, the Tribunal may, without further notice, proceed in such absence or dismiss the complaint. If there are medical or compassionate reasons for nonappearance, the Chair of the Harassment and Discrimination Tribunal must be notified immediately. She/he will determine immediately the acceptability of such reasons and whether the hearing should be adjourned.
- 6.5.9 All parties may be present throughout the hearing, but witnesses shall be included only when presenting their evidence.
- 6.5.10 Evidence will be presented at the hearing by a party or his/her witness in the presence of the other party and that party's advocate shall be able to question the party or witness regarding that evidence.
- 6.5.11 When the complainant and respondent are in agreement as to the facts, the Harassment and Discrimination Tribunal may proceed directly to considering its Report.
- 6.5.12 The proceedings of the Harassment and Discrimination Tribunal shall be held In-Camera. Its decision shall be based on the evidence before it and on the submissions of the parties.
- 6.5.13 The Harassment and Discrimination Tribunal will normally have one month in which to complete the hearing and prepare the Tribunal Report for the President (or the Chair of the Board of Governors) regarding the disposition of the complaint. The Tribunal shall

decide whether the Policy applies, whether, on the balance of probabilities, there has been a violation of the Policy, and whether discipline or remedies are appropriate. The three members of the Tribunal shall deliberate in private.

6.5.14 The Harassment and Discrimination Tribunal's written Report shall be delivered to the complainant, respondent, and the President (or the Chair of the Board of Governors).

6.5.15 Within 10 days of receipt of a written Report from the Harassment and Discrimination Tribunal, the President (or the Chair of the Board of Governors) shall consider the Report, and provide a written decision to the complainant(s) and respondent(s) with a copy to the Harassment and Discrimination Advisor.

7. Discipline and Remedies

7.1 The President (or the Chair of the Board of Governors), acting upon the Report of the Harassment and Discrimination Tribunal may impose an appropriate sanction for the harassment or discrimination, may provide a remedy for the complainant, or may exonerate the respondent. Considerations affecting administrative action should include:

- (a) the severity of the harassment or discrimination;
- (b) whether the harassment or discrimination was intentional or unintentional;
- (c) whether the offence is an isolated incident or involves repeated acts of harassment or discrimination;
- (d) any mitigating or aggravating circumstances.

7.2 The President (or the Chair of the Board of Governors) may order any remedy and/or sanction deemed just and appropriate. The range of sanctions may include but is not limited to: dismissal, expulsion, suspension or public or private reprimand. The range of remedies include, but is not limited to:

- (a) back pay;
- (b) restoration of benefits (e.g., salary, increments, promotions, fringe benefits, sick leave, shift changes);
- (c) compensation for humiliation (psychological and emotional stress, loss of self-respect and dignity);
- (d) an apology (from the employer and/or the harasser);
- (e) transfer;
- (f) punish the harasser (discipline, discharge or expulsion, or a note on the academic record);
- (g) counselling services for the complainant;
- (h) counselling and education services for the respondent; or
- (i) costs and reassessment of academic work.

7.3 Allegations of discrimination and harassment, including sexual harassment, against contractors, their employees and agents, and guests on campus will be dealt with by the University as potential breaches of contract, and/or may result in suspension of University privileges, such as access to the campus.

8. Vexatious Complaints

8.1 The Harassment and Discrimination Advisor will review the complaint and may decide not to proceed with either an informal or a formal resolution of the complaint where it appears that the complaint:

- (a) is trivial, frivolous, vexatious, or made in bad faith;
- (b) has been delayed to such an extent as to be seen as vexatious; or
- (c) has been fairly and satisfactorily addressed by some other legal process.

If the Harassment and Discrimination Advisor decides not to proceed with the complaint, the reason should be explained to the complainant.

8.2 Where the complaint is found by the Harassment and Discrimination Tribunal to be vexatious, or made in bad faith, the President (or the Chair of the Board of Governors) may provide a remedy for the respondent and/or may impose a sanction on the complainant.

9. Appeals

Appeals involving findings that result in disciplinary action against students, staff, and faculty will be carried out as follows:

9.1 In the event that disciplinary action is recommended for a student, the student has the right to appeal the action through the Senate Committee on Academic Appeals, according to its regulations.

9.2 In the event that disciplinary action is taken against a faculty member, the University will follow the discipline procedure outlined in Article 45.1 and 42.2.5 of the UNBC/UNBCFA Agreement, and the faculty member has the right to grieve that disciplinary action under Article 44. A harassment and discrimination appeal will follow the same procedure as an Individual Grievance (Articles 44.7.1 and 44.7.2).

9.3 In the event that disciplinary action is taken against a staff member who is a member of the Canadian Union of Public Employees, the staff member has the right to appeal the action. Such appeal shall be subject to the Collective Agreement between CUPE and UNBC.

9.4 In the event that disciplinary action is taken against a staff member who is not a member of the Canadian Union of Public Employees, the staff member has the right to appeal the action. Such appeals shall be subject to the Redress Procedure in the Handbook for Exempt Employees.

10. Confidentiality

At all times, complainants, respondents, and persons involved in resolving complaints under this Policy have the responsibility to maintain confidentiality. Nonetheless, concerns for an individual's health, safety, and security may compel the University to disclose information about complaints. As well, other measures, such as arbitrations, court proceedings or procedures under

the *Freedom of Information and Protection of Privacy Act* may require the University to release information about complaints. All participants to Harassment and Discrimination proceedings should be aware that unwarranted breaches of confidence, especially those related to vexatious complaints, may be subject to charges of slander and libel.

11. Time Limits

- 11.1 The Harassment and Discrimination Advisor shall arrange to interview all parties to the complaint as soon as possible, giving reasonable consideration to their schedules and the time needed to prepare responses. While strict time limits may be impractical, delays in dealing with the matter must be avoided in the interest of fairness.
- 11.2 A written complaint and request for either mediation or formal inquiry should be submitted within three months of the date of the last alleged incident of harassment. If the complainant submits evidence that there is reasonable cause for an extension beyond the three months limit, the matter must be referred directly to the President (or the Chair of the Board of Governors). The President (or the Chair of the Board of Governors) may exercise discretion in waiving the limitation period. However, the onus is on the complainant to establish a reasonable and bona fide cause for the delay, and to show that waiver of the time limitation is in the best interests of justice. The respondent shall be given an opportunity to challenge the case for such a waiver.

12. Education

The University, in co-operation with the Harassment and Discrimination Advisor, will continue to provide education and training for all members of the University community addressing harassment and discrimination.

13. Emergency Situation

Notwithstanding any part of this policy, the President (or the Chair of the Board of Governors) may make a preliminary determination that a group or individual constitutes an immediate threat to the physical safety of a member or members of the University community. The President may order campus security to bar that group or person from the campus.

14. Annual Report of Harassment and Discrimination Advisor

In April, the Harassment and Discrimination Advisor will submit an annual report to the President. The report will include, but not be limited to, information regarding:

- a) the number of complaints received;
- b) a break-down as to type of complaint;
- c) a break-down as to resolution;
- d) a break-down as to current status as active or inactive.

The report must contain no information that could be used to identify either complainant(s) or respondent(s). The report will also include the names of the Harassment and Discrimination Panel members and their appointment dates. If needed the report may contain recommendations for review of the Harassment and Discrimination Policy.

15. Review of Policy

The Harassment and Discrimination Committee shall review the operation of this Policy and Procedure and periodically make recommendations for any necessary changes to the policy or procedures.