

St. Thomas University

Harassment and Discrimination Policy

1. MISSION STATEMENT

“We are a University primarily concerned with people, ideas and values. We are an institution with a social conscience. We are united in the belief that women and men of divergent backgrounds and abilities should have an opportunity to learn and practice critical thought and to realize their intellectual potential in an academic setting.

We seek to provide a learning and working atmosphere that is free of discrimination, injustice and violence, and that is responsive, understanding, open and fair.”

2. PURPOSE OF POLICY

2.1 St. Thomas University and its Board of Governors are committed to creating and maintaining a respectful environment free of harassment and discrimination. The purposes of this Policy are therefore as follows:

2.1.1 To be educational, in that its existence will increase awareness of and sensitivity to the negative impact of harassment and discrimination;

2.1.2 To prevent harassment and discrimination by indicating the seriousness with which the University views this issue; and

2.1.3 To provide fair procedures for handling complaints when they do occur.

2.2 Allegations of harassment and discrimination reported to the University shall be dealt with by the University in conformity with this Policy.

2.3 Notwithstanding the existence of this Policy, every person continues to have the right to seek recourse through their collective agreements, the New Brunswick *Human Rights Act*, or through the courts.

3. SCOPE

3.1 The entirety of this Policy applies to all members of the St. Thomas University community, including students, employees (faculty, staff, and administration) (“University Community”). Matters pertaining exclusively to students (e.g., complaints by a student against another student) shall be exempt from the Policy.

- 3.2 Harassment and/or discrimination that occurs on-campus, off-campus at University-related social functions, in the course of work or academic assignments/placements off-campus, during work or University-related travel, by telephone and/or electronic communication, is covered under this Policy.

4. GUIDING PRINCIPLES

- 4.1 In establishing a Policy with procedures for dealing with allegations of harassment and discrimination, the University is guided by the following principles:
 - 4.1.1 The prevention of harassment and discrimination through a process of educating and informing the University community is necessary and important;
 - 4.1.2 All reasonable attempts should be made to resolve alleged cases of harassment and discrimination before laying a formal complaint and that in resolving the same, principles of fairness shall apply;
 - 4.1.3 The University is committed to academic freedom and to freedom of expression and association. Neither this Policy in general, nor its definitions in particular, is to be applied in such a way as to detract from the right of employees and students to engage in free inquiry and open discussion of potentially controversial matters;
 - 4.1.4 This Policy is not to be interpreted, administered, or applied in such a way as to detract from the right and obligation of those in supervisory roles to manage and correct employees and students in accordance with collective agreements or applicable University policies and procedures. Conversely, an obligation to manage or correct others is not an excuse for actions that may constitute harassment and/or discrimination;
 - 4.1.5 Lack of intent is no defense to a complaint of harassment and/or discrimination. It is the effect and characteristics of the behaviour that determine whether the behaviour constitutes harassment or discrimination; and
 - 4.1.6 While it is the University's responsibility to maintain and promote an environment that is free of harassment and discrimination, all members of the University community are required to cooperate in this endeavour.

5. DEFINITIONS – DISCRIMINATION AND HARASSMENT

5.1 Discrimination

5.1.1 Discrimination is defined as the act of treating a person or group unequally by imposing unequal burdens, obligations, disadvantages, or preferences on the basis of the person's race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity, or any other grounds covered by the New Brunswick *Human Rights Act*.

5.2 Harassment

5.2.1 Harassment, for the purposes of this Policy, means engaging in a course of comment or conduct that is known or ought reasonably to be known to be unwelcome. This includes any unwelcome comments, conduct or gestures that provoke, irritate, threaten, annoy, insult or demean, or result in some other form of discomfort, or words or actions that demean or cause humiliation, offense or embarrassment to another person and/or which adversely affects the employment or academic status of the individual.

5.2.2 There are three (3) forms of harassment covered by this Policy: 1) discriminatory harassment; 2) personal/psychological harassment; and 3) sexual harassment.

5.3 Discriminatory Harassment

5.3.1 Discriminatory harassment is harassment based on a protected ground under the New Brunswick *Human Rights Act*.

5.3.2 Some examples of discriminatory harassment include, but are not limited to, the following:

5.3.2.1 Unwelcome remarks, jokes, innuendoes or taunting about a person's age, race, sex, physical or mental disability, perceived disability, sexual orientation, religion, place of origin, national origin, ancestry, color, marital status, political beliefs or activity, or social condition; and/or

5.3.2.2 Displaying of sexual, racist or bigoted ethnic pictures or materials.

5.4 Personal/Psychological Harassment

5.4.1 Personal/psychological harassment is defined as any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an individual's dignity or psychological or

physical integrity and that results in a harmful work or learning environment for that individual.

5.4.2 Some examples of personal/psychological harassment include, but are not limited to, the following:

5.4.2.1 Communication that is inappropriately harsh or condemning, abusive and offensive language, threatening gestures, yelling, bullying, ridiculing, using derogatory names, threatening in a manner that negatively impacts University work, studies, or participation in campus life;

5.4.2.2 Constant unreasonable criticism about work or academic performance, the allocation of humiliating or demeaning tasks, or the setting of impossible deadlines with unrealistic expectations of work;

5.4.2.3 Hazing (such as harmful or humiliating initiation rituals);

5.4.2.4 Serious and/or repeated rude, degrading, or offensive remarks, such as teasing about a person's physical characteristics or appearance, put-downs or insults;

5.4.2.5 Repeatedly singling out an employee for meaningless or dirty jobs that are not part of her/his normal duties; and/or

5.4.2.6 Threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours.

5.4.3 Some examples of what does not constitute personal/psychological harassment include, but are not limited to, the following:

5.4.3.1 Allocating work appropriate to the position;

5.4.3.2 Following-up on work absences;

5.4.3.3 Requiring performance to job standards; and/or

5.4.3.4 Taking appropriate disciplinary measures.

5.5 **Sexual Harassment**

5.5.1 Sexual Harassment refers to all types of unwanted sexual attention, including comments, conduct or gestures of a sexual nature, that might reasonably be expected to cause offence, humiliation, or intimidation or that

might reasonably be perceived as placing a condition of a sexual nature on employment or academic status.

5.5.2 Sexual harassment may occur between males and females, or between members of the same sex. It may occur when there is a difference of power status (faculty/student, supervisor/direct report) or between persons of the same status.

5.5.3 In any University-related context, sexual harassment may be expressed in a number of ways including, but not limited to:

5.5.3.1 Crude, offensive or sexually suggestive remarks, gender based insults and taunting, sexual gestures or leering, and humour based on stereotypes, directed at a person because of his/her gender or sexual orientation;

5.5.3.2 Unwanted and unsolicited sexual advances (e.g., innuendoes and suggestive remarks inviting intimacy and sexual contact) and physical contact (e.g., unwanted contact of a sexual nature such as patting, touching, pinching or brushing against, and sexual assault) which takes place in the context of academic, professional or work-related transactions;

5.5.3.3 Solicitation of sexual activity by expressed or implied promise of reward or threat of reprisal; and/or

5.5.3.4 Coerced sexual relations.

5.5.4 Sexual Harassment is not:

5.5.4.1 Consensual sexual interaction;

5.5.4.2 Physical affection between friends; and/or

5.5.4.3 Mutual flirtation, joking or teasing.

6. ESTABLISHMENT OF RESOURCES TO ADMINISTER THIS POLICY

6.1 The University shall ensure that a comprehensive set of resources is available to the University community for the purposes of responding to and dealing with complaints of discrimination and/or harassment under this Policy, including: 1) a Harassment and Discrimination Education Committee; 2) Complaint Officers; and 3) the Human Resources & Faculty Relations Department (HRD).

6.2 Appointment of the Harassment and Discrimination Education Committee

6.2.1 The President shall at his or her discretion appoint six (6) members to the Harassment and Discrimination Education Committee (the “Committee”). Normally, a meeting of the Committee shall be held once per semester. Each Committee member should serve for a three (3) year term with the understanding that terms for student representatives may be shorter due to graduation. The President shall appoint members of the Committee as follows:

6.2.1.1 Three (3) faculty representatives who may be nominated by FAUST;

6.2.1.2 Two (2) staff/administration representatives; and

6.2.1.3 One (1) representative from the student body who may be nominated by the Student Union.

6.2.1.4 The President shall not unreasonably reject a nomination of FAUST or Student Union.

6.3 The Role of the Committee

6.3.1 The primary role of the Committee shall be to coordinate an educational program for the University community that focuses on aspects of harassment and discrimination.

6.4 Appointment of Complaint Officers

6.4.1 The President shall appoint two (2) Complaint Officers, one (1) representing the faculty and one (1) representing the staff/administration employee group. Complaint Officers shall be appointed for a three (3) year term.

6.5 Role of Complaint Officers

6.5.1 To receive all informal and formal complaints of harassment and/or discrimination under this Policy.

6.5.2 To provide guidance to employees and students on matters related to harassment and discrimination that fall under the Policy.

6.5.3 To implement early intervention measures to prevent a situation from escalating to a point where formal procedures are required.

- 6.5.4 To investigate and attempt to resolve cases of harassment and discrimination.
- 6.5.5 To determine whether the complaint requires the hiring of an external resource (e.g., mediator, investigator) and to partner with the HRD in the selection and hiring of any such external resource when necessary.
- 6.5.6 The Complaint Officer does not determine the appropriateness of discipline or sanctions.
- 6.5.7 To liaise with the victims of harassment and discrimination to ensure there are no occurrences of recrimination or retaliation.
- 6.5.8 To co-ordinate support services, in partnership with the HRD, for those who have experienced harassment or discrimination.
- 6.5.9 To maintain confidential records, in partnership with the Director of Human Resources & Faculty Relations, subject to disclosure required by law.
- 6.5.10 To monitor the effectiveness of this Policy and to make recommendations to the President for revisions.
- 6.5.11 To report to the President of the University once each year, subject to restraints of confidentiality.

6.6. The Role of the HRD

- 6.6.1 The primary role of the HRD is to be a resource to the Complaint Officers, the Committee, and the President as required. This shall take the form of assisting the Committee with harassment and discrimination education initiatives, maintaining a list of qualified external resources (e.g., mediators, harassment investigators), and partnering with the Complaint Officer to select and hire an external resource when necessary.
- 6.6.2 The Director of Human Resources & Faculty Relations shall maintain all confidential records related to the Policy, subject to disclosure required by law.

7. COMPLAINT REPORTING PROCEDURE

- 7.1 Any person alleging that an act of harassment or discrimination has been committed against him/her shall report the incident(s) to a Complaint Officer.
- 7.2 Any person who is in search of guidance as to whether an act, comment or gesture constitutes harassment and/or discrimination under this Policy, or who is

uncertain as to what resolution options exist may also seek the assistance of a Complaint Officer.

- 7.3 A third party may also initiate the application of this Policy where that person believes that he or she has observed harassment and/or discrimination by bringing the same to the attention of a Complaint Officer.
- 7.4 Complainants are encouraged to report their concerns as soon as possible after the alleged conduct. Only those complaints lodged within twelve (12) months of an event shall be investigated, except for extensions granted for extenuating circumstances at the sole discretion of the President. In the case of a series of events, the last event in a series will be used as the commencement of the aforementioned time limits.
- 7.5 Where the complaint does not appear to fall within the scope of the Policy, the Complaint Officer shall recommend to individuals that he or she seek alternate recourse.

8. COMPLAINT RESOLUTION PROCEDURES

- 8.1 Depending upon the particular situation, the following resolution options are available under this Policy for complaints of harassment and/or discrimination:

- 8.1.1 An informal resolution facilitated by a Complaint Officer;

- 8.1.2 Mediation; and

- 8.1.3 Formal complaint procedures.

- 8.2 Complaints of harassment and/or discrimination can be resolved by employing any or all of the following procedures. A reasonable effort to resolve complaints at the informal level will be made, while reserving the right to bypass informal procedures and proceed to a formal investigation, if, in the judgment of the Complaint Officer, a case is of sufficient severity.

8.3 Informal Resolution

- 8.3.1 An attempt at informal resolution requires agreement of both parties. While informal resolution measures are optional, they are encouraged. The purpose of dealing with a complaint informally is to stop the offending behaviour and to resolve the matter as quickly as possible. Every reasonable effort will be made to achieve an informal resolution within twenty (20) working days of the initiation of the complaint.

- 8.3.2 The Complainant has two (2) options to pursue, both of which involve a Complaint Officer. First, if the Complainant prefers to deal with the

problem personally, a Complaint Officer can provide options for resolution. Second, a Complaint Officer can act as a liaison in resolving the issue. Examples of informal resolutions may include a letter to the alleged offending party (the “Respondent”), clarification of University policy, or a facilitated information meeting between the Complainant and the Respondent with a Complaint Officer acting as facilitator.

8.3.3 No record of the informal resolution will be entered into an employee or student file. A record of the informal resolution shall be filed on a confidential basis with the Director of Human Resources & Faculty Relations, kept for seven years and then destroyed.

8.3.4 If an attempt at informal resolution fails to arrive at a mutually acceptable solution, either party may request either mediation or initiation of the formal complaint procedure.

8.4 **Mediation**

8.4.1 Any time after a complaint has been received, the parties can attempt to resolve the complaint through a process of mediation, provided that both parties consent to such a process. Mediation is a process used to resolve conflict by having a professional neutral person help the disputing parties arrive at a mutually acceptable solution.

8.4.2 The Complaint Officer, in consultation with the President, selects a mediator. Mediation will begin within a reasonable time period, typically ten (10) working days, of the selection of the mediator(s). The mediated settlement must take into consideration and be implemented within the parameters of the policies of the University and/or the provisions of any relevant collective agreement.

8.4.3 A copy of any agreement reached during mediation is provided to each of the parties and the President, and remains confidential. No record of the mediation will be entered into an employee or student file. A record of the mediation agreement shall be filed on a confidential basis with the Director of Human Resources & Faculty Relations, kept for seven years and then destroyed.

8.4.4 If mediation fails to arrive at a mutually acceptable solution, either party may request initiation of the formal complaint procedure.

8.5 Formal Complaint Procedure

8.5.1 Process

- 8.5.1.1 If, at any time, the Complainant wishes to have the complaint investigated and decided, the Complainant has the right to file a written request with the Complaint Officer. The Complaint Officer shall file the written request on a confidential basis with the Director of Human Resources & Faculty Relations. Requests must include detailed accounts of the alleged conduct on the part of the Respondent that forms the basis of the complaint. If the Respondent makes the request for an investigation and decision, the request will explain why the Respondent seeks an investigation.
- 8.5.1.2 Typically, the Complaint Officer shall conduct investigations. When conditions warrant (e.g., an extremely serious or complex case), the Complaint Officer may recommend to the President that an external resource conduct an investigation on behalf of the University.
- 8.5.1.3 Once a formal complaint procedure has begun, each successive step should begin within a reasonable time period, typically ten (10) working days, of the conclusion of the previous step until the complaint is resolved.
- 8.5.1.4 Upon receiving a written request under the formal complaint procedure, the Complaint Officer will determine whether the alleged conduct falls within the scope of this Policy. If, in the opinion of the Complaint Officer, with or without consultation or preliminary investigation, the alleged conduct would not constitute a violation of this Policy, he/she may decide not to proceed and will inform the Complainant of this decision in writing. The Complaint Officer shall file the written notification on a confidential basis with the Director of Human Resources & Faculty Relations.
- 8.5.1.5 At any time, a Complainant may choose to withdraw from the formal complaint proceedings. However, the Complaint Officer may decide to proceed, taking into account the need for protection of the Complainant and witnesses against retaliation, the need for due process on the part of Respondent, and the best interest of the University community.

8.5.2 Investigation Procedures

- 8.5.2.1 The Complaint Officer shall either conduct an investigation, or recommend to the President that the services of an external resource be retained to conduct an investigation on behalf of the University.
- 8.5.2.2 The investigator will conduct the necessary investigation within the framework of “procedural fairness”. This includes each party’s right to know, understand, and respond to all allegations.
- 8.5.2.3 The investigator will provide an opportunity to both the Complainant and the Respondent to provide verbal and/or written information related to the alleged conduct.
- 8.5.2.4 The investigator will interview all potential witnesses. The Complainant and the Respondent will be provided an opportunity to respond to all relevant information provided by the witnesses.
- 8.5.2.5 Upon completion of the investigation, the investigator shall prepare a report in a timely fashion containing the following information:
 - 8.5.2.5.1 A summary statement about the background of the complaint;
 - 8.5.2.5.2 A summary description of the Complainant’s allegations and Respondent’s response;
 - 8.5.2.5.3 A summary of the process followed in the investigation;
 - 8.5.2.5.4 A summary of the statements provided by the witnesses;
 - 8.5.2.5.5 Copies of any pertinent documentation;
 - 8.5.2.5.6 An opinion as to whether or not the allegations have been proven based on a balance of probabilities; and
 - 8.5.2.5.7 If the allegations are supported, an opinion as to whether there were mitigating or aggravating circumstances affecting either party.
- 8.5.2.6 The investigation report will be forwarded to the Complainant, the Respondent and the President, and shall be filed on a

confidential basis with the Director of Human Resources & Faculty Relations.

8.5.3 Decision, Discipline and/or Remedial Action

8.5.3.1 The final disposition of the complaint will be determined by the President, in consultation with the Complaint Officer and the HRD.

8.5.3.2 If a person is a member of a bargaining unit, any formal recommendation for remedial or disciplinary action shall be made in accordance with the relevant provisions of the collective agreement.

8.5.3.3 Where there is no collective agreement, the President shall send the recommendation for remedial or disciplinary action to the appropriate supervisor.

8.5.3.4 Discipline and/or remedial action will be appropriate to the offense and relevant circumstances of the case, including, but not limited to, coaching, verbal or written warnings, final warnings/suspension, termination, required withdrawal from University studies, etc.

8.5.3.5 In the case where the decision has involved discipline and/or remedial action, documentation of those actions will be placed on the student, employee and/or appropriate department file.

9. GENERAL POLICY PROVISIONS

9.1 General Provisions

9.1.1 When a senior administrative officer, department chair, or supervisor becomes a Complainant or Respondent, she or he surrenders any rights or responsibilities assigned to the respective position which effect the implementation of this Policy.

9.1.2 Either party to a complaint may object to the participation of a person in the investigation or mediation of this Policy on grounds of a conflict of interest or reasonable apprehension of bias. Such objection should be submitted in writing to the President whose decision will be final. Objections must be legitimate and not used as a tactic to slow or stall an investigative process. In such a case, the President will appoint a qualified investigator or mediator.

- 9.1.3 Employees and students participating in a procedure under this Policy shall be given release time and/or assistance in adjusting schedules.
- 9.1.4 At all times during any stage of the procedures, the Complainant and the Respondent are entitled to have a support person present. The Complaint Officer will not act as a support person for either party but will remain a neutral third party. Additionally, unionized faculty members have all rights to representation that their collective agreements confer.

9.2 **False Complaints and Retaliation**

- 9.2.1 Malicious complaints will be considered violations of this Policy. Any individual or group that makes a frivolous, vexatious, false or bad faith complaint pursuant to this Policy breaches the Policy and may be disciplined.
- 9.2.2 Retaliation is also strictly forbidden against anyone who, in good faith, reports harassment or discrimination. Retaliation itself may result in a harassment investigation and decision process under this Policy.
- 9.2.3 All persons involved in the application of this Policy shall report threats and other safety concerns immediately to the Complaint Officer.
- 9.2.4 Examples of retaliation include, but are not limited to, the following:
 - 9.2.4.1 Unfair grading, evaluation or assignments;
 - 9.2.4.2 Purposely withholding information or making it difficult for an individual to obtain information in a timely manner such as class information, recommendations, grades, important events, etc.;
 - 9.2.4.3 Ridicule or name calling in private and/or public;
 - 9.2.4.4 Oral or written threats or bribes;
 - 9.2.4.5 Refusal to meet with the Complainant or Respondent even though she or he has a right to a meeting; and/or
 - 9.2.4.6 Further harassment of any nature.

9.3 **Confidentiality**

- 9.3.1 All persons involved in proceedings under this Policy are expected to maintain the highest level of confidentiality. Breaches of confidentiality are considered a breach of this Policy and may therefore attract discipline and/or remedial action.

9.3.2 For the purposes of this Policy, confidentiality is not the same as anonymity. For a complaint to go forward to mediation or investigation and decision, the identity of the Complainant and the details of the complaint must be released to the HRD (and in cases involving students, Student Services), the Respondent, the President, and those involved in the application of these procedures (e.g., external resources).

9.4 Consensual Relationships

9.4.1 In complaints of sexual harassment that involve an alleged romantic or sexual relationship, where the Respondent has control over the employment or educational status of the Complainant, the burden of proof that the relationship was consensual rests with the Respondent.

Transition – The new St. Thomas Harassment and Discrimination Policy will be placed on the internal website so that it is accessible for all employees. The roll out of the Policy will include information sessions and the University anticipates employee comments and questions. Employee feedback shall be directed to the HRD for the twelve (12) months following the introduction of the new Policy, and the Director of Human Resources & Faculty Relations shall forward a report to the President outlining possible areas for revision at the conclusion of this time period.

Approved by: Board of Governors

Creation Date: May 9, 2009

Revision Date: N/A