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Respectful Working and Learning Environment Policy PROCEDURES

AUTHORITY: University Administration

RESPONSIBILITY: President delegated to the Vice-President Human Resources, Audit & Sustainability.

Effective Date: June 1, 2013

Purpose: To implement the Respectful Working and Learning Environment Policy, the following specific actions will be taken to conform to the established policy. The University's Respectful Work and Learning Environment Policy was established to support a climate of mutual respect in the workplace and learning environment so that members of the University community are free from harassment and discrimination.

Responsibility: The Vice President, (Human Resources, Audit & Sustainability) on behalf of the Administration of the University, is responsible for the development, administration and review of these procedures.

Definitions

1. A **Complainant** is a person who discusses a concern and/or makes a formal or informal complaint (an allegation, whether oral or written, of harassment or discrimination under the Policy).
2. A **Respondent** is a person against whom a complaint has been made.
3. An **Administrator** is anyone who has sufficient authority to take or ensure the taking of remedial action including Deans, Directors, Supervisors, Department Chairs, Heads of administrative units, the Registrar, Provost, Deputy Provost, Vice-Presidents, Associate Vice-Presidents, and the President. In the case of a student, the Administrator shall be his/her Dean, the Registrar, Director or Department Chair.

Approved: January 22, 2013

Revised:

Cross Reference:

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4. A **Human Rights Officer** is an individual designated by the University to provide information about harassment and discrimination and the operation and interpretation of the Policy and Procedures, and to review and resolve informal complaints related to allegations of harassment and discrimination, under the Policy.
5. An **Investigator** is an individual designated by the University to investigate formal complaints pursuant to the Policy and Procedures.
6. The **Student Advocate** is a representative appointed by the University of Winnipeg Students Association to assist and support students, and at the student's request to assist in resolving informal complaints under this Policy, or support students through the formal complaint process as requested by the student.

Procedures:

Harassment and Discrimination Concerns

1. Creating a climate of respect and maintaining an environment free of discrimination and harassment is a shared responsibility. Members of the University have an obligation not to cause or participate in harassment or discriminatory behaviour. One of the most effective contributions an individual can make to the prevention and elimination of discrimination and harassment is to take prompt, positive and constructive action to address issues when they arise.
2. An employee or student who believes he or she has been subjected to harassment or discrimination in the course of University-related employment, study, training or activities should, if possible, make his/her concerns known to the offending person(s). He/she may also (and is encouraged to) consult with the Human Rights Officer.

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Revised:

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Role of the Human Rights Officer

Any member of the University community who has a concern arising from the Policy is encouraged to consult the Human Rights Officer. Consultations will typically include a discussion of the resolution options available pursuant to the Procedures.

The Human Rights Officer is impartial and is not an advocate for either party.

The Human Rights Officer will advise potential Complainants and Respondents of the following:

- the options available for resolving concerns arising under the Policy;
- the resources available to facilitate such resolution;
- the right of Complainants to file a written complaint;
- the right of Respondents to be informed about the complaint made against them and to be provided with a reasonable opportunity to respond to the allegations;
- the availability of counselling or other additional or alternative University services and resources, as appropriate and/or applicable;
- the right of both parties to be accompanied by a friend, colleague, union representative or student advocate (as appropriate) to provide support during interviews;
- the right of the Complainant, when an investigation has commenced, to withdraw from any further action in connection with the investigation (although the University may proceed with the investigation in its own right) or to suspend the complaint process pending Informal resolution efforts, or, conversely, to cease Informal Resolution efforts and file a complaint;
- the right of the Complainant to choose other avenues of recourse, including, but not limited to filing a grievance, criminal prosecution or civil lawsuit, filing a complaint with the Human Rights Commission and/or Workplace Safety and Health or any other option permitted by law.

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At the conclusion of the consultation the Human Rights Officer shall determine whether the allegations, if established, could constitute a breach of the Policy. If not, the matter shall not proceed as a formal complaint under the Policy. However, the Human Rights Officer may refer the parties to other resources. If so, the Complainant may elect to:

- (i) proceed with or without the assistance of the Human Rights Officer, to resolve the matter; or
- (ii) take no further action.

Resolution Options

Every situation is unique, not only in terms of the circumstances, but also with regard to the needs and interests of those involved, their preferred style of handling conflict, the desired outcome and a host of other factors. These Procedures provide options for addressing and resolving harassment and discrimination issues, or resolving conflict before it escalates to the level of harassment. Resolution options fall into two general categories:

- Informal Resolution Options and
- Formal Complaints.

1. Informal Resolution Options

1.1 Addressing Concerns Directly

In many situations, the affected person simply wants the objectionable conduct to stop. Wherever possible, employees and students are encouraged to communicate directly with the other person firmly and respectfully, letting him or her know that their behaviour has caused offence, is unwelcome and should not be repeated. Individuals may not be aware of the impact of their behaviour and a private conversation may be all it takes to stop it.

The Human Rights Officer can provide coaching, information, guidance and resources to assist anyone who wants to take the direct approach.

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A person who **observes** discrimination or harassment may be able to provide immediate, direct assistance by speaking up. Where that is not reasonable or appropriate, a witness can still be supportive and helpful by letting the target of the offensive behaviour know what he or she saw and/or heard and offering direct or indirect support to help address the offending behaviour.

A witness may also bring the incident to the attention of the Human Rights Officer; however, a witness cannot lodge a complaint on behalf of the affected employee or student without his or her consent. Where such consent is obtained, it is the employee or student, not the witness, who is the Complainant.

Even if no other action is taken, a person who believes he or she has experienced or witnessed harassment or discrimination is advised to make a detailed personal record of the incident as soon as possible after the incident occurs.

1.2 Addressing Concerns with Assistance

If an individual is unable to bring his or her concerns directly to the attention of the person responsible, or it is not reasonable, practical or safe to do so, or where the direct approach has been attempted and fails to produce a satisfactory result, he or she should consider seeking advice and assistance with a view to resolving the situation informally. University employees may choose to consult with his or her Manager or from a designated Human Resources Department representative and students may choose to consult with the Registrar. If the concern is with an Administrator, advice and assistance may be sought from a designated Human Resources Department representative.

Prior to taking action or rendering assistance to resolve situations that may involve harassment or discrimination, the individual seeking assistance and/or the person being asked to assist should contact the Human Rights Officer to discuss the proposed course of action.

If it is determined the parties require additional assistance to achieve resolution, in consultation with the Human Rights Officer or Human Resources representative, resources such as a trained mediator or facilitator may be provided.

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Duty of an Administrator

If a complaint or concern pursuant to the Policy is brought to an Administrator, he/she shall contact the Human Rights Officer to receive advice and assistance with respect to the handling of the matter. The Complainant will be advised of this contact.

The Administrator shall keep a written record of the date, time and nature of any incident that is brought to his/ her attention, along with the names of any witnesses and the steps taken to deal with the matter.

Resolution of Concerns

If a resolution acceptable to both parties is reached through an informal resolution option, the Human Rights Officer will:

- a) send a letter to both parties, setting out the understanding and/or agreement (receipt of which must be acknowledged by both parties);
- b) assist in bringing about any administrative or other action necessary to implement the resolution;
- c) ensure that Human Resources has a copy of the letter to both parties, which shall be maintained by that department in a separate, confidential and secure manner; and
- d) if applicable, ensure that the respective Department manager and Union staff representative is provided with a confidential copy of this agreement for their records.

No record of the resolution shall be kept in either the Complainant's or Respondent's student or personnel file.

Formal Complaint

1. If the matter is not resolved informally, or if the behaviour continues or reoccurs, or if the Complainant has reasonable grounds to believe that the matter cannot be

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resolved informally, the Complainant may file a formal complaint with the Human Rights Officer.

2. All formal complaints must be made within one year from the date of the most recent alleged incident unless, in the discretion of the Human Rights Officer, extenuating circumstances warrant an extension of time.
3. The formal complaint shall:
 - a) be in writing;
 - b) set out the particulars of the allegations including, where possible, the identity of the Respondent(s), the dates, times and nature of the allegations, the names of any witnesses and the Complainant's desired outcome; and
 - c) be signed and dated by the Complainant.

Jurisdiction

Upon receipt of a formal complaint, the Human Rights Officer will review the allegation(s) to determine whether:

- (a) the complaint is timely or whether an extension of time for the complaint is warranted;
- (b) the matter is within the jurisdiction of the University (i.e., involving employees and/or students and/or members of the University community);
- (c) the allegations are within the scope of the Policy, (i.e., alleging discrimination or harassment as defined); and
- (d) the complaint establishes a *prima facie* case of discrimination or harassment under the Policy.

If the foregoing criteria are not met, the Human Rights Officer will advise the Complainant that the matter will not proceed and the reasons therefor. The Human Rights Officer may recommend other problem-solving options or refer the Complainant to other University services or resources.

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If the Human Rights Officer determines that the criteria have been met, he/ she will recommend to the Vice-President, Human Resources, Sustainability and Audit that the complaint be investigated.

The Vice-President, Human Resources, Sustainability and Audit will ensure that the following steps are taken:

- a) designate an Investigator to conduct the investigation;
- b) provide the Investigator with all relevant documents;
- c) notify the Complainant and the Respondent of the investigation and their obligations of confidentiality under the Procedures;
- d) provide the Respondent with a copy of the formal complaint and a copy of the Policy and Procedures;
- e) notify the Respondent's Administrator and, if applicable, the Respondent's union that an investigation is being undertaken;
- f) inform the Respondent of the date by which his/ her written response to the formal complaint must be provided to the Investigator (normally within two weeks of notification of the formal complaint); and
- g) advise the Respondent of his/ her right to consult with counsel, a union representative or a personal representative.

If the matter complained of is also under investigation by the police or another external agency (e.g., Manitoba Human Rights Commission), the University, at its discretion, may continue, stay or terminate the investigation or any other proceedings related to the matter.

Where the Respondent is a member of the Senior Executive group reporting directly to the President, the duties of Vice-President, Human Resources, Sustainability and Audit in the investigation will be assumed by the President, or if the President is the Respondent, by the Chair of the Board of Regents.

Duties of the Investigator

The Investigator shall investigate the complaint, including interviewing the Complainant, the Respondent and any other person(s) he/she deems relevant to the investigation.

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The Investigator is solely responsible for determining the scope of the investigation, including which witnesses, if any, are to be interviewed.

The Complainant and Respondent shall cooperate fully with the Investigator and provide any information required by the Investigator upon request. The Complainant or Respondent may be accompanied during interviews by counsel, a union representative or a personal representative.

The Investigator shall conclude the investigation as expeditiously as possible. If the Investigator foresees significant and unexpected delays in the completion of the process, he/she shall notify the Complainant, the Respondent and the Vice-President, Human Resources of the reasons for the delay and provide an estimate of the time required to complete the investigation.

At any time during the course of the investigation, the Investigator may recommend that the Complainant and Respondent seek resolution through mediation, and where both parties consent to do so, the Investigator may suspend the investigation for such period(s) of time as he/she considers reasonable to facilitate such resolution. Any such resolution may provide for withdrawal of the formal complaint or a portion thereof.

At the conclusion of the investigation, the Investigator shall prepare a written report (the "Investigation Report") for the Vice-President, Human Resources setting out the allegation(s), a summary of the investigation and an opinion as to whether, on a balance of probabilities, the Policy has been breached.

Investigation Report

Upon receipt of an Investigation Report, the Vice-President, Human Resources shall consult with the appropriate Administrator (and/or the Registrar if the Respondent is a student, and/or the appropriate Vice-President, if the Respondent is an employee), and shall determine whether the Policy has been breached. If so, the Vice-President, Human Resources shall provide a copy to the Registrar or to the appropriate Vice-President or equivalent as applicable.

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The Vice-President, Human Resources shall provide a copy of the Investigation Report to the Complainant, Respondent (who may share the report with their union representative or legal counsel if they wish) and to the Respondent's Administrator.

All parties receiving copies of the Investigation Report shall be explicitly reminded of the confidential nature of the report, and cautioned to ensure that confidentiality continues to be maintained.

If it is determined that the Policy has not been breached, no further action will be taken. No record of the complaint will be placed on the University's official employment file or student file for the Respondent and no record of the complaint shall be kept in the Complainant's personnel file or student record unless it is determined that the complaint was frivolous or vexatious. The University may take disciplinary action against a Complainant in cases where frivolous or vexatious complaints are submitted.

If it is determined that the Policy has been breached, the Vice-President, Human Resources in consultation with the appropriate Administrator and/or the Registrar if the Respondent is a student, or the appropriate Administrator and the appropriate Vice-President, or, as necessary, the President if the Respondent is an employee, will determine the disposition of the matter.

A report and information with respect to the disposition of the matter will be provided to the President.

Notice of the disposition will be provided to the Respondent, Administrator and the Investigator. The Administrator will ensure the disposition is implemented and file a copy of the disposition in the University's official employment file for the Respondent, in the case of an employee or in the University's official student file for the student, in the case of a student.

The Complainant has the right to know that corrective action has been taken as a result of the report, but not the specifics of any disciplinary action. Corrective action may include disciplinary action, as well as preventative, educational and remedial measures.

All other information pertaining to the investigation shall be retained in a secure file in the office of the Human Rights Officer. The Administrator and/or Human Resources will

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facilitate any request or requirement for counselling/education/training on behalf of either the Complainant or the Respondent.

University-Instituted Investigation

The Vice-President, Human Resources in consultation with another Vice-President and where appropriate the President, may initiate an investigation in the absence of a formal complaint and in circumstances where he/she deems it is appropriate to do so. The University shall utilize the same methods of investigation as outlined above, adapted as necessary to meet the circumstances. Based on the results of this investigation, disciplinary action may be taken.

Appeals

- (a) The Respondent may appeal any discipline imposed in accordance with the grievance process defined by the applicable collective agreement, policy or Board Bylaw.
- (b) Upon the request of the Respondent, the imposition of the discipline may be suspended pending the outcome of an appeal by the Respondent, with the understanding that such delay has no bearing on the seriousness with which the matter is viewed, and that such delay shall have no bearing or impact during any grievance or arbitration process.

Liability

No one charged with responsibility under the Procedures who carries out their duties in good faith and conscience shall be personally liable for any action or claim arising out of their good faith execution of those duties.

Interference and Retaliation

No person participating in good faith in an investigation will be subject to any consequences deemed to be retaliatory in nature to either their working or learning environment.

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Interference with the conduct of an investigation or threatened or actual retaliation against any of the parties or witnesses, whether the complaint was substantiated or unsubstantiated, may itself result in disciplinary action.

Any person whose action or inaction obstructs the application of these Procedures or who breaks an undertaking of agreement may be subject to discipline.

Threats/Safety Concerns

Threats or other safety concerns associated with involvement in a concern or complaint of harassment or discrimination should be reported immediately to the Human Rights Officer, the Vice- President Human Resources, Dean, Director or Manager and, where appropriate, Campus Security. If necessary, interim preventative, remedial and/or disciplinary measures may be taken.

Interim preventative and remedial measures are precautionary, not disciplinary. In the context of the allegations in the complaint, interim measures are not to be viewed as an assessment of the credibility of anyone involved in the complaint or as an indication as to the ultimate disposition of the complaint.

Confidentiality

Addressing allegations of discrimination and harassment requires the collection of sensitive personal information; use and disclosure of such information is limited to those who “need to know”.

In addition to legislation that requires the protection of personal information, confidentiality is required so that employees and students who believe they have experienced harassment or discrimination are willing to come forward, secure in the knowledge that their privacy will be respected and the confidentiality of their issue will be protected as far as possible.

Confidentiality is also required to protect the reputations and interests of the person accused of harassment or discrimination and to maintain the health and effective functioning of the units of which they are part.

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Accordingly, all members of the University community who are involved in a complaint procedure and those in whom they confide are expected to maintain confidentiality, particularly within the work, study or living area and in shared professional and social circles. Any person breaching confidentiality may be subject to disciplinary or other appropriate action.

Subject to any exceptions provided in these Procedures and to the extent required by law, all written and oral information that is created, gathered, received or compiled pursuant to these procedures is to be treated as strictly confidential by the Respondent and Complainant, their representatives, witnesses and University officials. It may be used only for the purpose of resolving the issues raised and only by those persons who are necessarily involved in the resolution of those issues.

Confidentiality does not necessarily mean anonymity. The rules of natural justice and procedural fairness include the fundamental principle that at the earliest opportunity in the complaint process, the Respondent must be fully informed of the allegations and the identity of the Complainant and provided with the opportunity to provide full answer and defence.

Where a serious and immediate threat to safety exists, the University has a legal duty to warn any community members at risk. This duty may require these Procedures, including confidentiality, to be modified in order to comply with the law and protect members of the University community from a serious threat.

Information concerning a complaint may be provided to appropriate University officials on a need- to-know basis. This may include situations where there are security or safety issues or cases involving repeat complaints or a pattern of related behaviour. Any person so informed shall also be informed of the disposition of the complaint and is bound by confidentiality requirements.

Either party may discuss his or her case in confidence with his or her supervisor, legal counsel, support person(s), student advocate and/or union representative. The Human Rights Officer and his/her designates may discuss specific cases and their dispositions for educational purposes provided that no identifying information is disclosed.

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All records and reports of inquiries, consultations, complaints and investigations made to or undertaken by the Human Rights Officer and/or the Investigator (“the information”) are confidential and will be treated as “supplied in confidence”;

The information is subject to the Manitoba *Freedom of Information and Protection of Privacy Act*, CCSM c F175.

The office of record shall be the Office of the Human Rights Officer and the information shall be kept in a secure location with restricted access.

Intentional or unnecessary breaches of confidentiality by any person may result in discipline.

Review:

These procedures shall be reviewed in conjunction with the Policy review at least once every five years or as may be required by changes to applicable legislation.

These Procedures may be revised or rescinded if the Vice-President, Human Resources, Audit and Sustainability or the President deems it necessary.

Effect on Previous Statements

These Procedures supersede:

- (a) all previous procedures and resolutions on the subject matter herein;

Effect on Collective Agreements

These Procedures do not limit or amend the provisions of any University collective agreement, or restrict or discourage individuals from exercising their rights as a member of a collective bargaining unit.

Any disciplinary action taken on an employee who is a union member may be appealed through the grievance-arbitration procedures of the applicable collective agreement.

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