

# Administrative Fairness

Compliance and other policies – a framework for  
University decision-making processes

# Request

- Academic Council approve a motion to recommend the Administrative Fairness Policy to the Board for Approval;
- Academic Council to provide feedback on the following:
  - Investigation of Allegations of Student Non-Academic Misconduct;
  - Student Judicial Committee Procedures
  - Student Judicial Committee Terms of Reference
  - Workplace Violence Policy and Procedures
  - Harassment and Discrimination Policy and Procedures

# Agenda

- Review of Administrative Framework and related Policy Instruments
- Overview of key policy elements
- Recap of Consultation and Approval Path

# Framework: Rationale

- Procedural Fairness is a legal requirement. Even without the Administrative Fairness policy decision-makers are required to follow it. We currently reflect this in our appeals policy where appeals are allowed on the basis of procedural irregularity.
- An Administrative Fairness Framework is intended to:
  - Ensure accountability and transparency in University Decision-Making processes by establishing defensible procedures that allow for procedural fairness and consistency in the investigation and resolution of complaints.
  - Support the University's ability to respond to complaints, and to address conduct that is unacceptable within the University community, in a way that is fair and consistent.
- A Framework will also help to shape the University's policy response to two key pieces of legislation:
  - Bill 8, the Public Sector and MPP Accountability and Transparency Act, 2014, that expanded the Ontario Ombudsman's jurisdiction to Universities and which came into force on January 1, 2016; and
  - Bill 132, the Sexual Violence and Harassment Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2015, that will come into force within the next 6 months.

# Framework: Policy Instruments

A framework for Administrative Fairness will include the need for new policy instruments, as well as the review and updating of existing policy instruments.

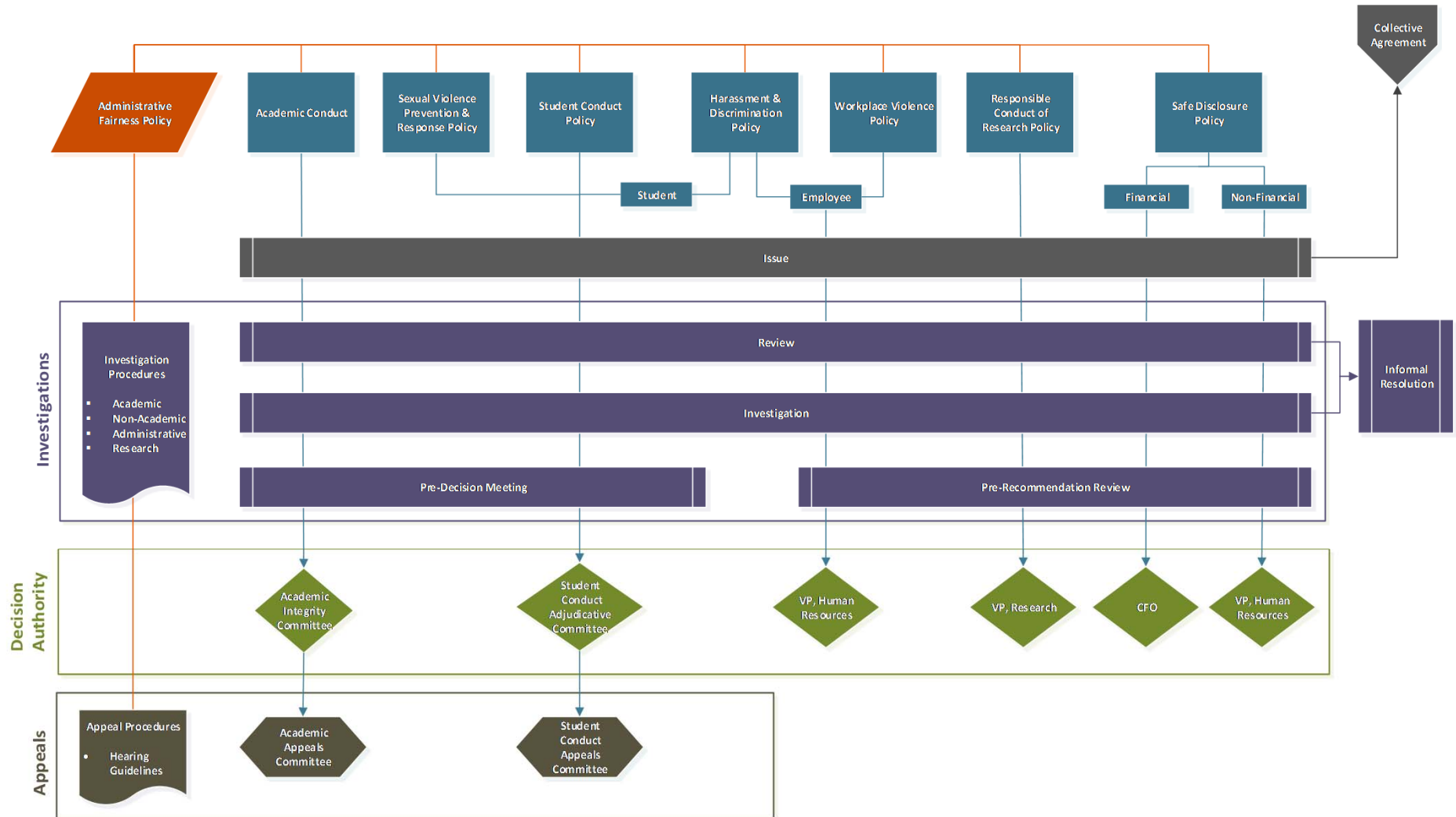
## New Policy Instruments

- Administrative Fairness Policy
  - Investigation Procedures
    - Academic
    - Non-Academic
    - Administrative
  - Student Judicial Committee Procedures & Terms of Reference
- Sexual Violence Prevention and Response Policy

## Existing Policy Instruments

- Academic Conduct (Undergraduate and Graduate Academic Calendar Regulations)
- Student Conduct Policy
- Harassment & Discrimination Policy & Procedures
- Workplace Violence Policy & Procedures
- Responsible Conduct of Research Policy & Procedures
- Safe Disclosure (Whistleblower) Policy & Procedures

# Framework: How the pieces work together



# Key Elements: Administrative Fairness Policy

The Administrative Fairness Policy is intended to overarch the University's decision-making processes in order to ensure the consistency and integrity across all processes. It sets out the following for any decision-making process that is part of an approved University policy instrument:

- Establishes the authority for decision-making processes, including the responsibility to launch investigations and make decisions regarding issues.
- Affirms the University's commitment to Administrative Fairness in Decision-Making Processes by requiring consideration of the following principles
  - Notice and information;
  - Timeliness;
  - The right to support and representation;
  - Consistency with University policy.
- Requires that decision-making processes are run in accordance with the applicable University policy instruments;
- Encourages and supports the pursuit of informal resolution of issues wherever possible; and
- Identifies the path for appeal or reconsideration of decisions where there is a failure of process resulting in lack of Administrative Fairness;

# Key Elements: Investigation Procedures

While allowing for important distinctions based on the type of issue or conduct being addressed, where a policy instrument contemplates an investigation as part of a decision-making process, the following key elements must be considered in the applicable procedures:

- How complaints are received (identifies a University Recipient);
- Review of complaints to determine whether an investigation will be initiated;
- Allowance for interim measures or temporary sanctions;
- Initiation of investigations:
  - Investigations may be initiated following review of a complaint by a University member or by the University in the absence of a formal complaint where there is a reasonable belief misconduct has occurred.
  - Appointment of investigators by a Delegated Decision-maker.
- Conduct of investigations including notification, meeting with parties, and reasonable timelines;
- Outcomes and process for reporting of findings;
- Resolutions
  - Informal versus formal, based on the outcome of the investigation and the nature of the issue.
- Cooperation and involvement of law enforcement and/or other agencies (as applicable).



# Bill 8: Key Amendments

## Amends the Ombudsman Act:

- Expands the jurisdiction of the Ontario Ombudsman to include Universities.
- The Ombudsman will:
  - Be able to investigate complaints about the administrative conduct of universities that have not been resolved by a university ombudsman or other complaint or appeal mechanism.
  - accept complaints from students, faculty and other interested persons.
- Complaints may include concerns about student services, program requirements, student accommodations, admissions, policies, or student financial aid, among other things.
- The Ombudsman must consider the principles of academic freedom within universities when investigating a complaint.

## Policy Impact:

- Requires the University to expressly consider administrative fairness principles in its decision-making processes (Administrative Fairness Policy)
- Requires the University to review its dispute resolution processes with the goal of:
  - Ensuring decision-making processes adhere to the principles of administrative fairness;
  - Establishing a consistent set of procedures to guide investigations, appeals and hearings.
- Supports expansion of the Whistleblower Policy to Safe Disclosure in order to close decision-making process and dispute resolution policy gaps.

# Bill 132: Key Amendments

## Amends the MTCU Act:

- Requires the University to have a stand-alone policy that “specifically and solely” addresses sexual violence involving students, including how the University will respond to and address incidents and complaints;
  - University’s must review their policies at least every 3 years;
  - Student input must be considered in the development and review.
- Requires reporting to MTCU on:
  - number of incidents and complaints;
  - number of times supports and services are requested and accessed;
  - University education and awareness initiatives and programs.

## Policy Impact

- The legislation will require:
  - Development of a specific policy to address Sexual Violence Prevention and Response.
  - Establishment of procedures that are consistent with other University decision-making processes that will guide investigations, appeals and hearings to address misconduct.

# Bill 132: Key Amendments

## Amends the OHSA:

Amends the initial changes to the Act that were made under Bill 168 in 2009, including:

- Expands the definition of workplace harassment to include workplace sexual harassment;
- Expands upon existing employer requirements for policies and programs that address workplace harassment by specifying the need to:
  - Provide workers with appropriate information and instruction regarding workplace harassment policies and programs;
  - Investigate incidents and complaints of workplace harassment, as well as setting out how such reports will be dealt with;
  - Inform both the complainant and respondent of the results and any corrective action taken.
  - Review the program annually to ensure it adequately enforces the University's policies.

## Policy Impact

- The changes to the legislation will require the review and amendment of the following policies:
  - Workplace Violence Policy and Procedures;
  - Harassment and Discrimination Policy and Procedures

# Consultation and Approval Path

## Policy instruments

### Group A

- Administrative Fairness Policy (New)
- Sexual Violence Prevention & Response Policy (New)
- Safe Disclosure Policy & Procedures

### Group B

- Investigation Procedures (New)
- Student Judicial Committee Procedures & Terms of Reference
- Workplace Violence Policy & Procedures (Amended)
- Harassment & Discrimination Policy & Procedures (Amended)

## Proposed Dates

### Group A

- Consultation
  - Academic Council (March 15; April 19)
  - Policy Advisory Committee (March 17; April 21)
  - Student Association (April)
  - GNHR (May 11)

### Group B

- Consultation
  - Joint Health & Safety Committee (March, May)
  - Student Association (April)
  - Academic Council (April 19; May 17)
  - Policy Advisory Committee (April 21; May 19)
  - GNHR (May 11)

## All Policy Instruments

- Deliberation
  - GNHR (June 1)
- Approval
  - Board (June 30)

# Request

- Academic Council approve a motion to recommend the Administrative Fairness Policy to the Board for Approval;
- Academic Council to provide feedback on the following:
  - Investigation of Allegations of Student Non-Academic Misconduct;
  - Student Judicial Committee Procedures
  - Student Judicial Committee Terms of Reference
  - Workplace Violence Policy and Procedures
  - Harassment and Discrimination Policy and Procedures

# Next Steps

- Board Approval of Safe Disclosure Policy (April 20)
- Continuing consultation with key stakeholders on other Administrative Fairness policy drafts (April & May).
- Deliberation and Approval of new and amended policy instruments (June)



Classification	
Framework Category	Legal, Compliance and Governance
Approving Authority	Board of Governors
Policy Owner	University Secretary
Approval Date	DRAFT
Review Date	
Supersedes	Not applicable

## ADMINISTRATIVE FAIRNESS POLICY

### PURPOSE

1. In respect of matters affecting the rights and obligations of members of the University community, the University has established Policy Instruments through which it has delegated power to individuals or bodies to make Decisions. The integrity of the University's Decision-Making Processes is important to the good governance of the University. This Administrative Fairness Policy confirms the University's commitment to Administrative Fairness in all University Decision-Making Processes and provides a path for the reconsiderations of Decisions made with insufficient Administrative Fairness.

### DEFINITIONS

2. For the purposes of this Policy the following definitions apply:
  - “**Administrative Fairness**” means that University Decision-Making Processes result in Decisions that are arrived at fairly.
  - “**Balance of Probability**” means a standard of proof that applies to all Decisions. This standard requires a Delegated Decision-Maker to, after considering and weighing the evidence, believe a fact, event or allegation is more likely to have occurred than not when arriving at a Decision.
  - “**Complainant**” means a University member or other individual who brings an Issue to the attention of a University Recipient.
  - “**Decision**” means a judgement made by a Delegated Decision-Maker pursuant to a Decision-Making Process and does not include a decision not to commence a Decision-Making Process.
  - “**Decision-Making Process**” means a formal process to make a Decision established and described by an approved Policy Instrument.
  - “**Delegated Decision-Maker**” means an individual (including a Process Manager) or group of individuals who are University Members and who are given authority to launch Investigations and to make Decisions under an approved Policy Instrument.
  - “**Hearing**” means a part of the Decision-Making Process in which there is an opportunity for a Party to be heard by a Delegated Decision-Maker and/or to defend, refute or challenge the allegations in respect of an Issue.
  - “**Human Resources Determination(s)**” means any decision or decisions in respect of or arising out of the hiring, discipline or termination of the employment of a University Member.

**“Informal Resolution”** means a process by which an Issue is resolved without completion of the Decision-Making Process.

**“Investigation”** means a part of the Decision-Making Process in which the University conducts a systematic inquiry into an Issue pursuant to **Investigation Procedures**.

**“Investigator”** means an individual appointed by a Delegated Decision-Maker to conduct an Investigation.

**“Issue”** is a concern, problem or complaint raised by a University Member under an approved Policy Instrument.

**“Party”** means anyone other than a Delegated Decision-Maker or an Investigator, participating in the resolution of an Issue and includes but is not limited to a person raising an Issue, Complainants, Respondents, and any persons who are asked to support the resolution processes as Witnesses.

**“Policy Instrument”** means the different tools and documents that are utilized to provide direction in the governance and administration of the University.

**“Process Manager”** is a Delegated Decision-Maker delegated with responsibility to manage all or part of a process as described under an approved Policy Instrument and to make Decisions.

**“Respondent(s)”** means a University Member or Members who is/are implicated in an Issue.

**“Review”** is an informal process undertaken to assess whether a Decision-Making Process will be commenced.

**“University Member”** means any individual who is:

- Employed by the University (“Employee”);
- Registered as a student, in accordance with the academic regulations of the University;
- Holding an appointment with the University, including paid, unpaid and/or honorific appointments; and/or
- Otherwise subject to University policies by virtue of the requirements of a specific policy (e.g. Booking and Use of University Space) and/or the terms of an agreement or contract.

**“University Recipient”** means the University Member or members designated in a Policy Instrument to receive a Complaint and/or to whom Issues are reported.

**“Witness”** means a University Member or other individual who is requested to provide information to assist in responding to an Issue.

### SCOPE AND AUTHORITY

3. This Policy applies to all Decision-Making Processes at the University.
4. This Policy does not apply to:
  - a) Decision-making processes described in and/or governed by any University collective agreement;
  - b) Human Resources Determinations.



- c) Decisions that are made in the day-to-day administration and management of University processes or in the normal course of University business.
- 5. The General Counsel, or successor thereof, is the Policy Owner and is responsible for overseeing the implementation, administration and interpretation of this Policy.

## **POLICY**

- 6. The University is committed to Administrative Fairness in all aspects of its Decision-Making Processes concerning University Members. Administrative Fairness is a relative standard to be judged against the importance or significance of the interests at stake and Policy Instruments will identify whether and the degree to which any or all of the following elements of Administrative Fairness are applicable in a given Decision-Making Process:
  - a) A Respondent knows what the Issue is and receives enough information to provide a response;
  - b) Parties receive adequate notice;
  - c) Decision-Making Processes run in a timely fashion;
  - d) Decision-Making Processes are managed in accordance with University Policy Instruments;
  - e) A Respondent is supported or, where appropriate, has a right to representation;
  - f) A Respondent understands the reasons for a Decision.
- 7. Delegated Decision-Makers play an important role in ensuring Administrative Fairness in all aspects of a Decision-Making Process. The University requires Delegated Decision-Makers to ensure that Decision-Making Processes are run in accordance with the applicable Policy Instrument.
- 8. The failure of a Delegated Decision-Maker to make a Decision with sufficient Administrative Fairness will give rise to a valid ground of appeal or reconsideration in respect of the Decision. Appeals or reconsiderations will be made according to the process specified in the Policy Instrument guiding the original Decision-Making Process. Procedural errors that do not result in a lack of Administrative Fairness will not constitute a valid ground of appeal or reconsideration.
- 9. The University authorizes and encourages Delegated Decision-Makers to facilitate and support Informal Resolution of an Issue at any stage in a Decision-Making Process. If an Issue is not resolved at the Review stage and moves into a Decision-Making Process, a Delegated Decision-Maker must approve any Informal Resolution. Only Informal Resolutions approved by a Delegated Decision-Maker in writing will be binding upon the University.
- 10. The onus of establishing that improper conduct occurred shall be on the University.
- 11. Decisions will be made by a Delegated Decision-Maker on the basis of a Balance of Probability.
- 12. Hearings may be held in writing or orally and must be held in accordance with approved Policy Instruments.
- 13. A Delegated Decision-Maker has the authority to suspend or discontinue a Decision-Making process where circumstances warrant such suspension or discontinuance.

**MONITORING AND REVIEW**

14. This Policy will be reviewed as necessary and at least every three years. The General Counsel, or successor thereof, is responsible to monitor and review this Policy.

**RELEVANT LEGISLATION**

15. University of Ontario Institute of Technology Act, 2002, S.O. 2002, Chapter 8, Schedule O  
By-Law Number 1 of the University of Ontario Institute of Technology, as amended.  
Freedom of Information and Protection of Privacy Act, R.S.O. 1990, Chapter F. 31

**RELATED POLICIES, PROCEDURES & DOCUMENTS**

16. Student Conduct Policy  
Sexual Violence Prevention and Response Policy  
General Academic Regulations, Section 5, Undergraduate Academic Calendar  
Policies and Procedures for Graduate Studies, Section 3, Graduate Academic Calendar  
Harassment and Discrimination Policy and Procedures  
Workplace Violence Prevention and Response Policy and Procedures  
Responsible Conduct of Research Policy and Procedures  
Safe Disclosure Policy and Procedures  
Investigation Procedures for Allegations of Student Non-Academic Misconduct  
Student Judicial Committee Procedures  
Student Judicial Committee Terms of Reference  
UOIT Policy Framework