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## PROCEDURES TO PREVENT AND ADDRESS DISCRIMINATION AND HARASSMENT BY OR AGAINST EMPLOYEES

### PURPOSE

1. The purpose of this procedure is to establish a dispute resolution framework for the prevention and handling of Employee-based Reports of Harassment, Discrimination and/or Reprisal; ensuring the University effectively addresses and responds to these Reports consistent with legislative obligations.

### DEFINITIONS

2. For the purposes of these Procedures the following definitions apply:

**“Administrative Fairness”** means that the procedures used in the investigation and decision-making processes adhere to the following elements:

- The Complainant, if any, is given a full and fair opportunity to raise allegations and provide relevant and material evidence in support of those allegations;
- The Respondent knows what the allegations are and receives enough information to provide a meaningful response;
- The Respondent is given a full and fair opportunity to defend against the allegations and provide relevant and material evidence rebutting those allegations;
- The parties receive adequate notice of the nature of the proceedings and of the issue to be decided.
- The parties have a right to an impartial decision maker and freedom from bias
- The decision maker is required to consider all of the relevant evidence and information pertaining to a specific case.
- The decision-making processes run in a timely fashion
- The parties have a right to a support person and/or representation during dispute resolution meeting; and
- The parties are provided the reasons for the decision.

**“Balance of Probabilities”** means an investigative standard that must be met to determine whether a violation of the policy has occurred based on a finding that “it was more likely than not” that the offence at issue was committed by the Respondent. This is a lower standard than beyond a reasonable doubt, but more than mere suspicion.

**“Complainant”** refers to an individual who is alleged to have experienced Discrimination, Harassment and/or Reprisal.

**"Discrimination"** is a distinction, without lawful justification, whether intentional or not, which has the effect of denying benefits to, or otherwise disadvantaging, an individual on the basis of a Protected Ground (defined below). Discrimination may involve direct actions that are discriminatory on their face, or it may involve rules, practices or procedures that appear neutral, but have the effect of disadvantaging one or more groups of people.

**"Discriminatory Harassment"** means engaging in a course of vexatious comment or conduct, against a University Member in the course of employment or receipt of service, based on any Protected Ground, that is known or ought reasonably to be known to be unwelcome. Discriminatory Harassment may include, for example, taunting or mocking someone’s race, ridiculing an individual’s disability or targeting others with sexual, gender-based or homophobic slurs.

**"Employee"** means job applicants and individuals performing services directly on the University’s behalf, including administrative staff members, Faculty, volunteers and contract employees. Students who are employed during the course of their studies, are “Employees” for the purposes of this Policy when they are engaged in employment activities, but not otherwise.

**“Extenuating Circumstances”** means circumstances outside of the investigator’s control that result in delays in the dispute resolution processes described in this procedure. Extenuating circumstances include, but are not limited to, having multiple witnesses, difficulty in scheduling interviews, availability of resource persons or materials, time of year, involvement of law enforcement or existence of a judicial hearing, or other circumstances that may arise through the course of the investigation.

**“Faculty”** includes a Faculty Member, or previous Faculty Member, at Ontario Tech University, and includes those with both limited term and indefinite term appointments, as well as those with paid, unpaid and honorific appointments. For greater certainty, “Faculty” also includes visiting scholars and emeritus professors.

**“Harassment”** Is the term used in this policy instrument to represent all forms of harassment: Discriminatory Harassment, Workplace Harassment and Sexual Harassment.

**“Interim Measures”** mean temporary measures designed to prevent additional acts of Harassment or Discrimination and/or to protect the safety of the Complainant or others. Interim Measures are instituted at any point following a Report and prior to a determination being made under this Policy. Interim Measures take into consideration the severity of the allegations and the varying risks associated with the potential for subsequent acts of Harassment or Discrimination. Examples of interim measures include, but are not limited to, transfer to a different work location, administrative leave, and no contact orders.

**“Investigation”** means a part of the Dispute Resolution Process in which the University conducts a systematic inquiry into allegations.

**“Investigator”** means an individual who has the required training and experience to conduct a fair and objective Investigation.

**“Mediation”** is a structured process in which parties in dispute are assisted by a third-party to discuss a dispute and attempt to arrive at a mutually agreeable resolution. Mediation is a voluntary process and can only proceed if all parties involved agree to participate. Depending on the circumstances, mediation may result in a signed agreement summarizing the agreed upon terms of settlement.

**"JHSC"** means the Joint Health & Safety Committee(s) at Ontario Tech University.

**"Person(s) of Authority"** include, for the purposes of this policy and related procedures, any person who has charge of a workplace, authority over another Employee or authority in the administration of education, including supervisors, managers, senior management and Faculty leadership (e.g. Deans, Associates Deans, etc.).

**"Protected Ground(s)"** are the Grounds contained in the Ontario Human Rights Code under which individuals are protected against discrimination and harassment. All University Members are protected under the following Grounds: “race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status and disability.,” Employees are additionally protected under the ground “record of offences.” **"Report"** refers to a complaint of Harassment, Discrimination and/or Reprisal made by or against a University Employee.

**“Reprisal”** includes retaliation, coercion, dismissal, threats or intimidation of anyone who in good faith: raises complaints or concerns, exercises their rights or participates in a remedial process under the Respectful Campus Policy.

**“Respondent”** refers to anyone who is alleged to have engaged in Harassment, Discrimination or Reprisal in a Report.

**"Sexual Harassment"** means,

1. engaging in a course of vexatious comment or conduct because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
2. making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

Sexual Harassment includes but is not limited to, sexually suggestive or obscene remarks or gestures, negative stereotypical comments based on gender, sex or sexual orientation, gender identity and gender expression, and showing or sending pornography. For the purposes of this Procedure the term “Sexual Harassment” includes incidents of [Student Sexual Violence](#) involving an Employee.

**“Student”** includes any student who is registered, or was previously registered, at Ontario Tech University.

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

- is employed by the University or holds an appointment with the University, including paid, unpaid and/or honorific appointments (“**Employee**”);
- is registered as a student, in accordance with the academic regulations of the University (“**Student**”); and/or
- Is 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.

**"Workplace"** means any place where Employees engage in any facet of employment activity (e.g. recruitment, training, evaluation and development), including employment activities online, outside the normal place of work, and employment activities that occur outside of normal working hours.

**"Workplace Harassment"** means,

1. engaging in a course of vexatious comment or conduct against an Employee in a Workplace that is known or ought reasonably to be known to be unwelcome, and/or
2. Workplace Sexual Harassment (defined as Sexual Harassment against an Employee in the workplace).

#### **SCOPE AND AUTHORITY**

3. The University Secretary and General Counsel is the Policy Owner. The Policy Owner is responsible for overseeing the implementation, administration, interpretation and application of these Procedures.
4. The Policy Owner will ensure the Procedures are reviewed as often as is necessary, and in any event, at least annually, in consultation with all appropriate departments and the JHSC(s), and in accordance with the University’s Policy Framework and relevant Collective Agreements.
5. This Procedure applies to Reports made by or against Employees in the Workplace. This procedure necessarily overlaps with other University procedures that are concerned with preventing and addressing incidents of Harassment, Discrimination and Reprisal. Ontario Tech University will administer the overlap according to the following principles:
  - 5.1. This procedure will be applied to all incidents in which an Employee has allegedly experienced Harassment, Discrimination or Reprisal to ensure the University satisfies its commitment to, and its obligations under, legislation and collective agreements.
  - 5.2. Where it is alleged that a Student has, in their capacity as a Student, engaged in Harassment against an Employee, then the matter will be addressed in conjunction with the relevant Student procedures [hyperlink].
  - 5.3. Allegations involving a Student who is also an Employee of the University, and who allegedly engaged in Harassment, Discrimination or Reprisal in the course of their employment, will be handled under this Policy instrument.
  - 5.4. Where an individual, other than a University Member, is alleged to have engaged in Harassment or Discrimination against an Employee, Human Resources and/or the Office of Campus Safety will consult with Members at risk, and other Members if

necessary, to determine and implement reasonable measures to protect the health and safety of its Employees. Because the University does not have the jurisdiction to compel statements from members of the general public, or to impose sanctions upon them, it will not normally conduct a formal Investigation in such cases.

6. This procedure is a mechanism for alternative dispute resolution. It does not preclude complainants from pursuing resolution through external resources and processes, including those offered through grievance arbitration, or by the Human Rights Legal Support Centre, the Human Rights Tribunal of Ontario and the Ontario Labour Relations Board. However, The Human Rights Office may not accept a complaint or may halt dispute resolution processes under this procedure if a complainant decides to pursue external processes or grievance mechanisms on the same or similar matter unless an Investigation is legislatively required.

## PROCEDURE

7. **Confidentiality:** Information collected under this procedure will be used only for the purposes of administering related policy instruments and may be disclosed only on a need-to-know basis to the extent required to fulfill the University's legal obligations. Personal Information collected, used and disclosed under this procedure will otherwise be kept confidential. To this end:
  - 7.1. All individuals involved in this procedure will be advised of their duty to maintain the confidentiality of all information disclosed to them in this procedure, including any Personal Information disclosed to them.
  - 7.2. Personal Information obtained during the Reporting Process will not be disclosed except to the extent that disclosure is necessary for the purposes of investigating Reports, taking corrective action, protecting the health and safety of members of the University community, or as otherwise required by law. For example, information may be shared with the Office of Campus Safety if this is necessary to protect an individual.
  - 7.3. Complainants and Respondents who are Employees will be advised of the outcome of an Investigation and the corrective actions taken, if any.
  - 7.4. All records will be maintained in a confidential file, including all related communications, memoranda, reports, statements and evidence. Reasonable steps will be taken to protect against unauthorized access to such documents. These records will be retained, and disposed of, in accordance with the Freedom of Information and Protection of Privacy Act and Ontario Tech University's Records Management Policy.
8. **Reprisal.** Any Reprisal, or expressed or implied threat of Reprisal, for making and pursuing a Report under this procedure is itself considered a breach of the corresponding Policy. Any individual experiencing Reprisal may file a Report, and that Report will be processed under this procedure.
9. **Right to a Support Person(s).** Individuals who attend an interview in an Investigation under this procedure may be accompanied by a support person. The role of a support person is to provide moral support. Individuals who choose to attend an interview with a support person must choose a support person who is not otherwise connected to the matter under Investigation (e.g. a witness or fellow Complainant) and will notify the investigator of their support person's name at least 24 hours prior to the interview. In the case of an Employee who is a member of a

bargaining unit, the support person may be a union representative. During the interview, a support person will not be permitted to make legal submissions or arguments on behalf of the individual, or to disrupt the interview. In any event, individuals who are being interviewed must answer the interview questions themselves.

10. **Safety is Paramount:** Ontario Tech University has an overriding obligation to protect the safety of all University Members. When a University Member is at risk of imminent harm, we reserve the right to investigate and respond appropriately, independent of a Complainant's and/or Respondent's course of action under this procedure.
11. **Support Services:** The Employee Family Assistance Program has appropriate support services for Employees who experience Harassment, Discrimination and/or Reprisal or to assist Employees who are involved in dispute resolution processes described in this Procedure.

## PREVENTATIVE MEASURES

12. **Training:** Human Resources will ensure information and instruction is provided to Employees regarding Harassment, Discrimination and Reprisal. Training programs are available on the Health and Safety Website (<http://healthandsafety.ontariotechu.ca/>).
13. **Range of Dispute Resolution Options:** Several options to resolve Harassment and Discrimination concerns are available for Complainants. Informal approaches can foster prompt resolution and prevent escalation; particularly when concerns are raised expeditiously. These are opportunities for parties to resolve a dispute, ensure the Workplace is free from Harassment and Discrimination and address broader issues that caused or contributed to the dispute.
14. **Talk to the person about their behaviour:** Where appropriate, Complainants are expected to make good faith efforts to attempt to resolve matters themselves before filing a complaint. If a person feels they are experiencing Harassment or Discrimination, they should immediately make known to the person responsible that the conduct is unwelcome or offensive. It is important that this message be clear and unambiguous. When presented with a legitimate concern, University Members are expected to make reasonable adjustments to their behaviour to resolve the matter. If addressing the person responsible could lead to safety risks, or is not appropriate, Complainants may pursue other resolution options outlined in these procedures.
15. **Consultation:** Employees may benefit from having expert information and advice before deciding how to proceed with a concern related to this procedure. Complainants can consult a Person of Authority or may make an appointment with the Human Rights Office. Consultations are confidential and can provide advice, assistance, coaching, and referrals to assist Complainants.

## REPORTING

### 16. The Reporting Process

Incidents of Harassment, Discrimination and/or Reprisal should be promptly reported to a Person of Authority and/or the Human Rights Office, and no later than one (1) year after the last incident of alleged harassment, discrimination or reprisal. If the Report is related to an Employee in the Human Rights Office, the report should be directed to the University's General Counsel, in which case the General Counsel will have the responsibilities assigned to the Human Rights Office below.

### **Step 1 – Submitting a Report**

- 16.1.** A “Report”, and the corresponding “Reporting Process”, is initiated when an individual completes the Report form (website here; Appendix X) that is available from the Human Rights Office.
- 16.2.** Person(s) of Authority who witness or are made aware of incidents of Harassment, Discrimination and/or Reprisal must initiate a Report to the Human Rights Office.
- 16.3.** The Human Rights Office will, on its own initiative, initiate a Report when it receives information regarding an incident of Harassment, Discrimination and/or Reprisal in the Workplace, unless such a Report has already been submitted by an individual.

### **Step 2 – Interim Measures**

- 16.4.** Upon receiving a Report, the University will immediately determine whether Interim Measures are necessary, considering the severity of the allegations, and the potential risks to University Members.
- 16.5.** Further Interim Measures will be implemented where reasonable and appropriate in the circumstances. Person(s) of Authority, the Complainant, Respondent, the Office of Campus Safety or any other relevant stakeholder, may be consulted on a confidential basis, to determine appropriate Interim Measures.

### **Step 3 – Assessment**

- 16.6.** The Human Rights Office will review the Report and determine if the conduct alleged in the Report would amount to Discrimination, Harassment and/or Reprisal. This determination will be based on an assumption that all of the alleged facts were true. If the allegations set out in the Report would not, if true, amount to Discrimination, Harassment and/or Reprisal, the Human Rights Office will respond to the individual submitting the Report in writing, usually within 30 days, advising that the Report has been reviewed, and that the information provided does not support an allegation of Discrimination, Harassment and/or Reprisal under the Respectful Campus Policy. The individual submitting the Report will also be advised that the Human Rights Office may reconsider the Report if additional and significant information is provided. If there is another process or resource at the University that would be more appropriate for the subject matter of the Report, the individual will be advised of this alternative process.
- 16.7.** If, on the other hand, the information provided would, assuming the alleged facts were true, support a finding that Discrimination, Harassment and/or Reprisal had occurred, dispute Resolution options will be considered.

### **Step 4 – Informal Resolution**

- 16.8.** Where appropriate, an informal resolution process, such as Mediation, can be pursued if the Complainant and Respondent consent to an informal resolution

processes being pursued and to its format (Note: informal resolution options are not available related to allegations of Workplace Harassment, which require an investigation).

- 16.9.** Where those involved in the informal resolution process reach an agreed resolution, that resolution will become binding.
- 16.10.** Once an informal resolution process has commenced, the Investigation may be delayed for a maximum period of 30 calendar days, after which, unless a resolution has been reached, the Investigation will be re-commenced.

#### **Step 5 – Investigation**

- 16.11.** An Investigation will be conducted if informal resolution options are not appropriate in the circumstances or were not successful in resolving the dispute. The purpose of an Investigation is to: gather evidence and witness statements; weigh the evidence; make findings of fact based on the evidence; and, produce an Investigative report. In an investigation under this Procedure, the Investigator must make a determination having weighed the evidence on a Balance of Probabilities that either: (1) a policy breach occurred; or (2) a policy breach did not occur.
- 16.12.** The Human Rights Office will ensure an Investigation process that is appropriate in the circumstances and that complies with Administrative Fairness requirements. At this stage, consideration will be given to whether the investigation will be conducted internally or externally. The Human Rights Office will review the collective agreement(s) of any individuals involved in the Report, and will ensure the procedural rights granted to those individuals under their respective collective agreements are maintained.
- 16.13.** The Human Rights Office will ensure the complainant and respondents involved in an Investigation, and their respective bargaining agent(s), where applicable, are informed of the investigation process that will be adopted in each particular case.

#### **Step 6 – Determination & Corrective Action**

- 16.14.** The Human Rights Office will ensure that the results of the investigation are brought to the attention of, and reviewed by, the appropriate Person(s) of Authority.
- 16.15.** In the event that the Investigation found a breach of policy, the investigator will make recommendations to adequately resolve the inappropriate behavior and restore the Workplace. Human Resources will advise the Person(s) of Authority with respect to appropriate corrective measures, if any, to be taken, including measures aimed at preventing Reprisal.
- 16.16.** Where an Employee is found to have engaged in acts of Harassment, Discrimination and/or Reprisal, corrective measures may include non-disciplinary actions (e.g. education) or disciplinary measures (e.g. a written reprimand, a suspension or termination). Human Resources will ensure such reasonable steps are taken to prevent a recurrence.



- 16.17.** Employees that are members of a bargaining unit shall have any corrective measure(s) imposed in accordance with applicable collective agreement requirements.
- 16.18.** Information about investigation outcomes or corrective actions will be provided in accordance with the procedural requirements of any relevant collective agreement and any applicable laws. At the conclusion of an investigation, The Human Rights Office will ensure that any Complainant and any Respondent are informed, in writing, of the outcome of the investigation. Human Resources will ensure that any corrective actions taken or that will be taken are communicated to the Complainant (Employee) and Respondent (Employee) in writing.
- 16.19.** The Relevant Person(s) of Authority will be responsible for implementing recommendations (including corrective action) in consultation and with the support of Human Resources.

### **MONITORING AND REVIEW**

- 17.** This Procedure will be reviewed as necessary and at least every year. The University Secretary and General Counsel, or successor thereof, is responsible to monitor and review this Policy.

### **RELEVANT LEGISLATION**

- 18.** Human Rights Code, R.S.O. 1990, c. H.19  
Occupational Health and Safety Act, R.S.O. 1990, c O.1, as amended  
Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c F. 31

### **RELATED POLICIES, PROCEDURES & DOCUMENTS**

- 19.** [NTD: Policy Superseded]Academic Accommodation for Students with Disabilities [[Procedures](#)]  
Academic Staff Employment Policies  
Access to Information and Protection of Privacy Policy  
Emergency Management Plan and Procedures  
Fair Processes Policy  
Non-Academic Staff Policies  
Policy Against Violence, Harassment and Discrimination in the Workplace  
Policy to Prevent and Respond to Sexual Violence for Students  
Procedures for Responding to Incidents of Sexual Violence  
Records Management Policy  
Joint Health and Safety Committee Terms of Reference  
Occupational Health and Safety Management System

Student Conduct Policy

Ontario Tech-Durham College Threat Assessment Procedures

Work Refusal Procedures

Workplace Violence Incident Report