

University of Prince Edward Island Policy Manual		Policy Number:
Policy Title: Fair Treatment Policy		Page 1
Creation Date: August 2003	Version Date: April 2004	
Authority: Board of Governors	Responsibility: Fair Treatment Advocate (Harassment Officer)	
Reference: Charter of Rights and Freedoms, PEI Human Rights Code, UPEI Collective Agreements	Review Date: April 2005	

1. **Purpose**

To replace the current Sexual Harassment Policy with an update that includes other definitions of harassment and that enables full investigations within the University

2. **Scope**

Students, Staff, Faculty, Visitors, Contractors

3. **Responsibility**

The University President will appoint a Fair Treatment Advocate (Harassment Officer) to combine administration of this policy with preventative, educational programming

4. **Policy**

Begins on the next page

5. **Review**

As covered in 7.07 (page 22), a review every three years is called for.

FAIR TREATMENT POLICY

University of Prince Edward Island

PREAMBLE

The University of Prince Edward Island is committed to providing an environment that affirms and promotes the dignity of human beings of diverse backgrounds and needs. This Policy prohibits harassment and discrimination and affirms that all members of the University community – its students, faculty, staff, and visitors – have the right to participate in activities at the University without fear of discrimination or harassment.

Members of the University community are expected to uphold the integrity of the Harassment Policy and to invoke its provisions in a responsible manner. All persons within the University who are affected by the policy, particularly the parties to a complaint, are expected to preserve the degree of confidentiality necessary to ensure the integrity of the Policy, the process described in the Policy, and collegial relations among members of the University community.

The purposes of this policy are:

- (a) to be educational, in that its existence will increase awareness of and sensitivity to the negative impact of harassment;
- (b) to prevent harassment by indicating the seriousness with which the University views this issue; and
- (c) to provide fair procedures for handling complaints when they do occur.

Allegations of harassment reported to the University shall be dealt with by the University in conformity with this policy. The Policy is to be interpreted in a way that is consistent with these goals, with the principles of fairness, and with the responsible exercise of academic freedom.

1. FUNDAMENTAL PRINCIPLES

In establishing a policy with procedures for dealing with allegations of harassment, the University is guided by the following principles:

- 1.01 The prevention of harassment through a process of educating and informing the University community is necessary and important.

- 1.02 It is the University's belief that all reasonable attempts should be made to resolve alleged cases of harassment before laying a formal complaint and that in resolving the same, principles of fairness shall apply.
- 1.03 The University is committed to academic freedom and to freedom of expression and association. It will maintain an environment in which students and teaching and non-teaching staff can engage in free enquiry and open discussion of all issues. Neither this policy in general, nor its definitions in particular, are to be applied in such a way as to detract from the right of employees and students to engage in the frank discussion of potentially controversial matters, such as age, race, politics, religion, sex and sexual orientation. The Fair Treatment Advocate, like all other officers of the University, is obliged to uphold academic freedom, and freedom of expression and association. An academic and free community must also include freedom of movement and freedom of access to facilities and resources without fear of harassment, discrimination or violence.
- 1.04 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.
- 1.05 Contractors (including employers of co-op students), their employees and agents, and visitors to the University are also expected to conduct themselves in any University-related activity in a manner consistent with this policy. Contractors will be provided access to and knowledge of the policy prior to signing a contract. Members of the University community bear the responsibility of informing invited guests of the policy and to provide access to a copy of the policy. Allegations of discrimination, sexual harassment, or personal harassment against such persons will be dealt with by the University as potential breaches of contract, and may result in disciplinary action, up to and including suspension of University privileges, such as access to the campus.
- 1.06 When power differentials exist amongst or between faculty, staff, and students, those holding positions of authority shall not abuse the power with which they are entrusted. Such positions of power include, but are not limited to: an academic advisor, a coach, a counsellor, a director, an instructor/professor, a marker, a research head, a residence staff member, a thesis advisor, a tutor, and a department head.
- 1.07 All members of the University community shall be treated equitably under this policy.

- 1.08 This policy shall apply where there exists a negative work or study environment, or potential adverse impact on individuals' work or study performance, or on their work or study environment. Incidents occurring off-campus which have no or little likelihood of any impact on the work/study environment at the institution should be pursued through other external procedures. Harassment 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 included. This policy, therefore, applies to all members of the University community, faculty, staff, and students alike, except that, where collective agreements contain provisions for dealing with harassment, those provisions will prevail.
- 1.09 The University reserves the right, at any time, to conduct an investigation into alleged harassment. This reservation includes matters that may be before courts or other investigative units, or that may have occurred in the past.
- 1.10 The fact that someone did not intend to harass or discriminate is no defense to a complaint. Regardless of intent, it is the effect and characteristics of the behaviour that determine whether the behaviour constitutes discrimination, sexual harassment or personal harassment.
- 1.11 All judgments required by the policy are subject to the test of a reasonable person. The reasonable person test provides that a reasonable person in roughly the same position as the complainant would judge harassment or discrimination to have occurred as a result of a behaviour or pattern of behaviour.
- 1.12 Malicious complaints or inappropriate breaches of confidentiality will be considered violations of the Policy. Any individual or group that makes a frivolous, vexatious, false or bad faith complaint pursuant to this Policy for the purpose of harming another individual or group, breaches the Policy and may be disciplined.
- 1.13 While the establishment of a Fair Treatment Office and effective investigative procedures are requisites of the University's response to harassment, the Officer cannot be expected to monitor or police the campus for harassment issues. All employees and students of the University are responsible for maintaining and promoting an environment that is free of discrimination and harassment and for promptly reporting any incidents that they believe to be acts of discrimination or harassment. University Administrators have an obligation to be pro-active and will be expected to play an integral role in the abolition of harassment on campus.

2. DEFINITIONS

Harassment: The University defines "harassment" within any University-related context as an incident or series of vexatious or disrespectful comments, displays or behaviours that demean, belittle, humiliate, embarrass, degrade or attempt to exclude; that is known or ought reasonably to be known to be unwelcome and/or offensive; and which adversely affects the employment or academic status of the individual.

Harassment can take many forms. The University recognizes the following three sub-types of harassment, while reserving the right to identify other forms. These definitions will be interpreted and applied consistently with the accepted standards of mature behavior, academic freedom and freedom of expression.

- 2.01 **Sexual Harassment** refers to all types of unwanted sexual attention which adversely affects the working or learning environment. It may occur between males and females, or between members of the same sex. It may occur when there is a difference of status (faculty/student, supervisor/employee) or between persons of the same status (faculty/faculty, student/student), and may include but not be limited to:
- (a) any conduct, comment, gesture or contact of a sexual nature that is likely to cause offence or humiliation to any member of the University community to whom such conduct, comment, gesture or contact is directed; or
 - (b) any conduct, comment, gesture or contact of a sexual nature that might, on reasonable grounds, be perceived by a member of the University community, to whom it is directed, as placing a condition of a sexual nature on employment, or any opportunity for training, promotion, advancement or other reward; or for refusal to comply with a sexually-oriented request; or
 - (c) sexually-oriented behaviour and remarks when such conduct has the purpose or effect of creating an intimidating, hostile or offensive environment in any University related context.

In any University related context, sexual harassment may be expressed in a number of ways including:

- (a) 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; or
- (b) unwanted and unsolicited sexual advances (including but not limited to innuendoes and suggestive remarks inviting intimacy and sexual contact) and physical contact (including 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; or

- (c) solicitation of sexual activity by expressed or implied promise of reward or threat of reprisal; or
- (d) coerced sexual relations.

Sexual Harassment **is not**:

- (a) consensual sexual interaction; or
- (b) physical affection between friends; or
- (c) mutual flirtation, joking or teasing; or
- (d) general statements of opinion or belief.

2.02 **Personal Harassment** is behaviour directed towards a specific person or persons that would be considered by a reasonable person to create an intimidating, humiliating, or hostile work or learning environment.

Personal harassment may include but not be limited to:

- (a) physical assault, including pushing, slapping; or
- (b) 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; or
- (c) inappropriate comments about personal appearance; or
- (d) 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; or
- (e) hazing (such as harmful or humiliating initiation rituals); or
- (f) behaviour, whether deliberate or negligent, which denies individuals their dignity and respect, is offensive, embarrassing or humiliating to the individual, isolates an individual or group and adversely affects the working or learning environment. In most cases this behaviour will have manifested itself through a number of incidents. This does not preclude the consideration of a single incident as constituting harassment.

The following table illustrates what is, what may be, and what is not personal harassment:

<p>What generally constitutes harassment</p>	<p>What may constitute harassment</p>	<p>What does not generally constitute harassment</p>
<ul style="list-style-type: none"> • Serious or repeated rude, degrading, or offensive remarks, such as teasing about a person's physical characteristics or appearance, put-downs or insults. • Displaying sexist, racist or other offensive pictures, posters, or sending e-mails related to one of the eleven grounds prohibited under the Canadian Human Rights Act. 	<ul style="list-style-type: none"> • Criticizing an employee in public. 	<ul style="list-style-type: none"> • Allocating work. • Following-up on work absences. • Requiring performance to job standards. • Taking disciplinary measures. • A single or isolated incident such as an inappropriate remark or abrupt manner.
<ul style="list-style-type: none"> • Repeatedly singling out an employee for meaningless or dirty jobs that are not part of her/his normal duties. 	<ul style="list-style-type: none"> • Exclusion from group activities or assignments. 	<ul style="list-style-type: none"> • Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.
<ul style="list-style-type: none"> • Threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours. 	<ul style="list-style-type: none"> • Statements damaging to a person's reputation. 	<ul style="list-style-type: none"> • Measures taken against someone who is careless in his or her work, such as in the handling of secret documents.

2.03 **Discrimination.** The University expressly adopts the definition of discrimination articulated by the Supreme Court of Canada, i.e. intentional or unintentional differential treatment for which there is no bona fide and reasonable justification. Such discrimination imposes burdens, obligations, or disadvantages on specific individuals or groups as defined by the *Human Rights Code* and the *Prince Edward Island Human Rights Act*. Currently, “the grounds of discrimination” prohibited by the *Human Rights Code* and the *Prince Edward Island Human Rights Act* are age, race, colour, creed, ancestry, ethnic or national origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, and, in the case of employment, unrelated criminal convictions. It is the University’s intent to include these grounds in this policy, and to add to them gender identity, which is to be understood to include transphobia and heterosexism. Any grounds of discrimination added in future to the *Human Rights Code* or the *P.E.I. Human Rights Act* are understood to be included in this definition.

It is not considered an infringement of this policy when a program or policy is designed to ameliorate the conditions of disadvantaged individuals or groups, including those that are disadvantaged because of age, race, colour, creed, ancestry, ethnic or national origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, sexual identity, and, in the case of employment, unrelated criminal convictions.

Systemic Discrimination is a form of discrimination that occurs when policies, practices, or procedures which appear neutral, have a discriminatory effect on a person or class of persons who are identified by a prohibited ground. In many cases, these may appear to be fairly and equally applied to all job applicants, employees, and/or students. However, they are discriminatory if they have an adverse impact on one group and are not clearly related to ability to perform a job or actual job requirements.

Systemic discrimination does not exist when a policy, practice, or procedure is reasonable and bona fide in the circumstance or when a statutory exemption has been granted.

Differential Treatment occurs when a person or class of persons who is identified by a prohibited ground is subject to treatment that has the purpose or effect of imposing burdens, obligations, disadvantages, or preferences on that person or class of persons which are not imposed on others.

Examples of differential treatment include, but are not limited to:

- (a) women not being asked to work overtime because it is assumed that they have family obligations; or
- (b) persons with disabilities not being asked to do public presentations or answer questions in class because it is assumed that this might embarrass them or cause others to feel uncomfortable.
- (c) men being preferentially offered overtime work because it is assumed that they are the primary income earner.

3. THE FAIR TREATMENT ADVOCATE

3.01 The University shall have a Fair Treatment Advocate (Officer) to deal with alleged cases of harassment and/or discrimination. Furthermore, the University shall constitute an Harassment Advisory Committee (the "Committee") composed of six persons with a mandate to offer advice to the Harassment Officer on the administration of the Harassment Policy. Normally, the Harassment Officer will convene a meeting with the Committee once per semester. Each Committee member should serve for a three-year term, and membership shall be as follows:

- (a) academic staff - two;
- (b) support staff - two;
- (c) student body - two (1 graduate, 1 undergraduate);

4. TERMS OF REFERENCE FOR THE FAIR TREATMENT ADVOCATE

- 4.01 To communicate to all members of the University community, the University's policy on harassment and discrimination.
- 4.02 To establish an educational program within the University to educate the University community on all aspects of harassment and discrimination.
- 4.03 To establish and carry out training sessions for supervisory and managerial personnel within the University community so that these individuals may be educated in the significance and consequences of harassment and discrimination.
- 4.04 To establish a liaison with the victims of harassment and/or discrimination to ensure there are no occurrences of re-accusation.
- 4.05 To maintain confidential records, subject to certain powers of production, search and seizure vested in various legal authorities and the courts.
- 4.06 To report to the President of the University once each year, subject to restraints of confidentiality.
- 4.07 To co-ordinate support services for those who have experienced harassment and/or discrimination, drawing on all available resources both external to and within the University.

- 4.08 To decide, in formal investigations, if one or two investigators should conduct the investigations.
- 4.09 To make recommendations to the President for the revision of this Policy, including the recommendations to sanction.
- 4.10 To monitor the effectiveness of this Policy.
- 4.11 To investigate and attempt to resolve cases of harassment (as described in section 6 below) or to select an alternative person in cases of conflict -of-interest or when the officer cannot expeditiously perform the tasks.
- 4.12 To maintain a list of qualified, available and willing mediators (as described in section 6.03), and investigators (as described in 6.04).

5. REPORTING HARASSMENT AND/OR DISCRIMINATION

- 5.01 An employee or student who believes she or he is being harassed or discriminated against is encouraged to take personal responsibility by making a direct request to the person who is engaging in the behaviour to cease the offensive actions. If the request is unsuccessful, or does not result in a positive change is sufficient magnitude, or if making the request is not feasible, she or he may seek help under the provisions of this policy.
- 5.02 Any person alleging that an act of discrimination, sexual harassment, or personal harassment has been committed against him/her in relation to University work, studies, or participation in campus life, may report the incident/incidents to:
 - (a) his/her supervisor;
 - (b) his/her department head;
 - (c) Human Resources or Student Services;
 - (d) the Fair Treatment Advocate.
- 5.03 If a person chooses to make a complaint to his/her supervisor or to his/her department head, the supervisor or department head shall report the incident/incidents to the Advocate. This shall not preclude the supervisor or department head dealing with minor complaints.
- 5.04 A complaint may be lodged even when there has been apparent consent by the complainant to the conduct or comment in question.
- 5.05 Where appropriate, the Advocate shall direct individuals to seek recourse through their collective agreements.
- 5.06 A friend or advisor or colleague may accompany someone lodging a complaint.

- **Complaint Resolution Procedures**

- 6.01 **General Provisions**

- (a) Anyone may seek, anonymously, the advice and assistance of the Advocate. Only those complaints in which the complainant's identity is disclosed to the respondent may be taken through the mediation and formal complaint procedures.
 - (b) Complainants are encouraged to report their concerns as soon as possible after the alleged conduct. Only those complaints lodged by non-students within six (6) months of an event, or in the case of a series of events, the last event in a series will be processed. Students have up to six (6) months after leaving the University to lodge a complaint regarding any alleged conduct that occurred during their time as a student at the University. The Advocate in exceptional circumstances can waive any procedural time limits imposed by this policy.
 - (c) Senior Administrative Officers, Department Heads, and Supervisors may also lodge complaints with the Advocate to resolve allegations of personal harassment, sexual harassment, and/or discrimination. When a Senior Administrative Officer, Department Head, or Supervisor becomes a complainant or respondent, s/he surrenders any rights or responsibilities assigned to administrators regarding these procedures.
 - (d) Either party to a complaint may object to the participation of a person in the administration of this policy on grounds of conflict of interest or reasonable apprehension of bias. Such objection should be submitted in writing to the Advocate whose decision will be final. Where the objection relates to the participation of the Advocate, the Advocate will abstain from involvement in the complaint procedure and provide a list of qualified investigators, one of which all parties will agree on. The appropriate Senior Administrative Officer will appoint the investigator. Objections over who conducts an investigation or mediation must be legitimate and not used as a tactic to slow or stall an investigative process. If three proposed investigators or mediators are rejected or objected to by any single participant, the Advocate or the University President will render a binding decision.
 - (e) A third party can initiate the procedures in this policy if the conduct of others in the learning or work environment has the purpose or effect of substantially interfering with the third party's welfare, academic, or work performance.
 - (f) Complaints of discrimination, sexual harassment, or personal harassment can be resolved by employing any or all of the following procedures: (1) informal resolution, (2) mediation, and (3) formal investigative procedures. The Advocate

will make reasonable effort to resolve minor complaints at the informal level, while reserving the right to by-pass informal procedures and proceed to a formal investigation if a case is of sufficient severity.

- (g) Employees who participate in the procedures outlined in this policy shall be given release time to consult with the Advocate and attend formal hearings pertaining to cases. Students will be assisted in adjusting schedules as necessary to attend their formal hearings.

6.02 **Informal Resolution** Informal resolutions are optional. The complainant, respondent or Advocate can choose to bypass them, discontinue them, or initiate a formal complaint procedure. 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 seek informal resolution within twenty (20) working days of the initiation of the complaint, or in the case of students, before the end of the term if less than one month away.

1. The complainant has two options to pursue. If the complainant prefers to deal with the problem personally the Advocate can offer advice on different ways to handle the situation. Secondly, the Advocate and/or the Department Head can assist the complainant in clarifying the allegations and exploring possible informal resolutions of the complaint. Examples of informal resolutions may include a letter to the respondent, clarification of university policy, or an information meeting between the Advocate, the complainant, and the respondent.
2. Informal resolution can occur without the knowledge of anyone other than the complainant and the Advocate. However, no informal resolution of a complaint that adversely affects the academic, employment, professional, or other interests of the respondent shall proceed without the written consent of the respondent. No record of the informal resolution will be entered into an employee or student file. A record of the informal resolution will be kept in the Fair Treatment Office for seven years and then destroyed.

6.03 **Mediation**

- (a) 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.
- (b) The Advocate in consultation with the respondent and the complainant

selects a mediator. Mediation will begin within two (2) weeks of the selection of the mediator(s). Appointed mediators and the format of the mediation process must be acceptable to both the complainant and the respondent.

- (c) A copy of any agreement reached during mediation is provided to each of the parties and to the Advocate, and remains confidential. No record of the mediation will be entered into an employee or student file. A record of the mediation agreement will be kept in the Fair Treatment Office for seven years and then destroyed.
- (d) If mediation fails to arrive at a mutually acceptable solution, either party or the Advocate may decide to pursue a formal complaint procedure.

6.04 **Formal Complaint Procedure**

- (a) If at any time after the complaint has been made the complainant wishes to have the complaint investigated and decided, the complainant has the right to file a written request with the Harassment Officer. Requests 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.
- (b) The respondent will be notified of the case against her/him and will be given a reasonable opportunity of presenting her/his case. The Advocate or appointed Investigative Officer(s) will listen fairly to both sides and reach a decision untainted by bias.
- (c) Once a formal complaint procedure has begun, each successive step should be carried out within ten (10) working days of the previous step until the complaint is resolved.
- (d) Upon receiving a written request under the formal complaint procedures, the Advocate will determine whether the alleged conduct on which the complaint is based would fall within the definition of personal harassment, sexual harassment, and/or discrimination as defined in this policy. If, in the opinion of the Advocate, the alleged conduct would not constitute a violation of this policy, the Advocate may decide not to proceed and will inform the complainant of this decision in writing.
- (e) At any time, complainants may choose to withdraw from these complaint

proceedings. Nevertheless, the University's responsibility to provide an environment free from personal harassment, sexual harassment, and discrimination may obligate the University to proceed in the absence of such complaint from the person(s) directly affected. In such cases, the President and the Advocate will decide whether to proceed, taking into account the need for protection of the complainant and witnesses against retaliation and the need for due process on the part of respondent.

- (f) If the Advocate finds sufficient grounds to proceed under the policy, the Advocate will deliver a copy of the complainant's account of the alleged conduct to the respondent.
- (g) The Advocate will notify the appropriate Department Head and Senior Administrative Officer for the complainant and the respondent of the request for a formal complaint resolution.
- (h) The respondent has the right to respond to the complaint in writing to the Advocate, within a reasonable amount of time but no later than ten (10) working days from the date of the receipt of the written complaint. The respondent may (1) acknowledge or deny the validity of the complaint in whole or in part, (2) provide new information, (3) propose a resolution of the complaint, or (4) choose not to respond to the complaint. If the respondent does not submit a response, the investigation and decision process will still proceed.
The Advocate shall deliver a copy of that reply to the complainant. On receipt of the respondent's written reply, the complainant may (1) accept the reply as full resolution of the complaint, (2) propose a counter-resolution to be presented back to the respondent, or (3) choose to proceed with investigation and decision. The Advocate will put into effect the appropriate procedures.

6.05 **Investigation Procedures**

- (a) The Investigator(s) will apply appropriate procedures and practices to investigate and conduct interviews properly and confidentially, within the framework of "procedural fairness". This includes each party's right to know, understand, and respond to all allegations.
- (b) The Investigator(s) will provide an opportunity to both the complainant and the respondent to provide verbal and/or written information related to the alleged conduct. Interviewing of witnesses may be requested by complainant and respondent.

- (c) 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.
- (d) The Advocate will conduct the investigation of complaints unless there is a conflict of interest, as defined in Section 6.01 (d) or the Advocate elects to utilize another investigator. The Advocate may also decide that two investigators would be preferable.
- (e) A copy of the Investigator's final report, via the Advocate, will be submitted to the President, the relevant Deans and Department Heads, the complainant and the respondent within forty (40) working days of the start of the investigation. At the discretion of the President, the Investigator's final report will become part of the staff, faculty, or student's file.
- (f) The Investigator's final report of the investigation will contain the following:
 - 1. A summary statement about the background of the case;
 - 2. A summary description of the complainant's allegations and respondent's response;
 - 3. A summary of the statements provided by the witnesses and the respondent;
 - 4. Any pertinent documentation;
 - 5. A discussion of the allegations as related to the evidence gathered;
 - 6. A determination as to whether or not the allegations have been proven based on the balance of probabilities;
 - 7. If the allegations are supported, a determination as to whether there were mitigating or aggravating circumstances affecting either party and;
 - 8. Recommendations for remedial action or sanctions.

6.06 **Decision**

- (a) The final disposition of the complaint will be determined by the President, or his/her delegate (Dean, Vice-President, Director of Human Resources) who will take appropriate disciplinary and/or remedial measures.
- (b) The President shall distribute a written report of measures taken with supporting reasons to the Advocate, the complainant, the respondent, and the relevant Deans and Department Heads, within ten (10) working days of

receiving the Investigator's final report. The written report of the President will become part of the staff, faculty, or student's file.

- (c) Depending on the outcome of the case, the complainant or the respondent may request measures to be taken to correct damage done to her or his career development, academic record, physical or emotional health, reputation, or finances. Arrangements are to be negotiated with the President.

6.07 **Sanctions/Remedial Action**

- (a) The President will impose the appropriate sanctions and/or remedial action respecting any agreements between the Board of Governors and students, staff and faculty of the University of Prince Edward Island. The purpose of the action(s) will be to end the personal harassment, sexual harassment, and/or discrimination, to educate the respondent, and/or prevent reoccurrence of the behaviour.
- (b) Discipline will be appropriate to the offense and relevant circumstances of the case, and will be applied after an admission, or investigation and decision.
- (c) Considerations in determining recommendations for action may include, but are not limited to, work history, academic history, previous discipline, past formal decisions, respondent's acknowledgment of wrong, relationship of parties, degree of aggression and physical contact, number of events, impact on complainant, cultural differences, and intent of the respondent.
- (d) Some examples of possible sanctions and remedial actions for informal, mediated, and formal settlements follow, with consideration given to the differing groups represented in the University campus community:

Remedial Action

There are two broad types of remedy which the University may provide: relief and compensation. Relief may include but not be limited to:

- 1.01 directing that the discriminatory or harassing behaviours cease;
- 1.02 reassessment of work by another faculty member;
- 1.03 re-appraisal of job performance by another person;
- 1.04 physical relocation of the complainant with their consent;
- 1.05 transfer of a student, with the student's consent and the consent of the

- receiving instructor, from one course or section to another;
- 1.06 re-assignment of graduate or undergraduate advisors;
- 1.07 change in work or study conditions or arrangements;
- 1.08 reasonable alteration of a facility.

If a recommendation is made to separate the complainant and the respondent, as a matter of principle, the respondent, not the claimant, should be transferred.

Compensation may include but not be limited to:

- 1) compensation for leaves of absence, lost wages/benefits, tuition and other direct expenses resulting from the harassment or discriminatory behaviour;
- 1.02 compensation for reasonable costs of medical and/or psychological services required as a result of the harassment or discrimination;
- 1.03 provision of back-pay to any employee denied increments as a result of discrimination or harassment;
- 1.04 re-instatement of an employee or student to his or her former position.

Sanctions will be imposed commensurate with the seriousness of the offence, and may include:

- 1.01 verbal reprimand;
- 1.02 letter of reprimand which, in formal procedures, may be added to the individual's personal files within the University;
- 1.03 requiring a letter of apology, which could be private or public, oral or written;
- 1.04 relief from specific duties;
- 1.05 transfer to a different position or location;
- 1.06 demotion;
- 1.07 suspension/dismissal/expulsion from the University;
- 1.08 mandatory participation in counseling or training;
- 1.09 restriction of access to parts of or all of the campus.

6.08 **Appeal**

Any complainant or respondent who disagrees with the sanctions or remedial action or the investigative process has the right to an appeal. The University administration will generally accept only one submission of appeal per case from each party.

- (a) All appeals must be submitted in writing within ten (10) working days of receiving the original decision.

- (b) An appeal process begins with a letter written by the appellant to the University President specifying the grounds and nature of the appeal.
- (c) Acceptable grounds for appeal are limited to demonstrating unfairness of process during an investigation (for example, time lines were disregarded or there was bias in the selection of witnesses), unfairness in the selected sanction, or to introduce new evidence that was not previously available and that may have altered the decision.
- (d) In the case of students and non-unionized staff, the University President shall select two (2) Senior Administrative Officers (SAOs), not involved in the original decision, to determine if there are grounds for an appeal. The SAOs shall conduct any investigations necessary to determine if there appear to be legitimate concerns with the original finding. If grounds for an appeal are found, the SAOs will select an Appeals Committee, to be composed of 2 administrative officers, and one non-administrative employee or student. The Appeals Committee shall be charged with hearing the appeal and issuing a binding decision.
- (e) In the case of unionized faculty and staff, the right to grievance and arbitration will serve as the appeal process.

7. GENERAL PROVISIONS

7.01 Obstructing the Process

- (a) Any willful action or inaction that obstructs the application of these procedures or breaks an undertaking or agreement entered into as a result of a complaint resolution may result in an investigation and decision.

7.02 Right of Parties to Support and Assistance

- 1.01 At all times during any stage of the procedures, the complainant and the respondent are entitled to have a support person present. The Advocate will not act as a support person for either party but will remain a neutral third party.
- 1.02 Members of unions and employee associations have all rights to representation that their collective agreements confer.

7.03 **Retaliation**

- (a) Retaliation against anyone reporting or thought to have reported personal harassment, sexual harassment, and/or discrimination or who witnessed or otherwise is involved in informal, mediation or formal complaint proceedings is prohibited. Retaliation against a complainant, respondent or witness, whether the complaint was substantiated or unsubstantiated, may result in an investigation and decision. Encouraging others to retaliate also violates this policy.
- (b) All persons involved in these procedures shall report threats and other safety concerns immediately to the Advocate and/or relevant Department Heads.
- (c) Examples of retaliation are listed below but are not limited to the following:
 - 1. Unfair grading
 - 2. Unfair evaluation
 - 3. Unfair assignments
 - 4. Having information withheld or made difficult to obtain in a timely manner such as class information, recommendations, or grades
 - 5. Not being informed about important events such as meetings or changes in policies
 - 6. Ridicule both private and public
 - 7. Oral or written threats or bribes
 - 8. Refusal to meet with the complainant or respondent even though s/he has a right to a meeting
 - 9. Name calling
 - 10. Further harassment of any nature

7.04 **Confidentiality**

- (a) All members of the University community involved in a case are expected to maintain confidentiality. A breach of confidentiality is a disservice to both the complainant and the respondent.
- (b) 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 Advocate, the respondent, and those involved in the application of these procedures.

- (c) Terms of confidentiality, including the need to disclose information that restores a unit or classroom to effective functioning, may be agreed on in informal or mediation agreements between the complainant and respondent.
- (d) The University, through the Advocate, will take necessary steps to ensure the health, safety, and security of any member of the University community in relation to this policy.

7.05 **Record Keeping**

Records are used only for the purpose for which they were created and are retained by the Advocate as the property of U.P.E.I. Case files will be kept for seven years and then destroyed. The retention provisions of the relevant collective agreements govern staff and faculty files; otherwise, records will be maintained for seven years.

7.06 **Consensual Relationships**

- (a) Anyone who enters into a romantic or sexual relationship with a person where a power differential exists must realize that, if a charge of sexual harassment, personal harassment, and/or discrimination is subsequently lodged, it will be extremely difficult to defend the conduct on grounds of mutual consent.
- (b) This type of relationship may create a negative work or study environment for others and give rise to a complaint under this policy.
- (c) 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.

7.07 **Policy Review**

The contents and effectiveness of the policy will be subject to review every three years by a committee consisting of, as a minimum, one member each from the Board of Governors (non-student/non-employee), Senior Administration, Human Resources, the Student Union, Graduate Student Association, Faculty

Association, CUPE-501, CUPE-1870, IBEW-1432 and the Fair Treatment Office. The Advocate and President may elect to involve health professionals, community representatives or other interest groups in the review process.

Appendix I

Glossary of Terms

Complaint	A formal allegation of harassment submitted to the Harassment Officer, and which is based on actions defined as harassment
Complainant	Any person who seeks recourse pursuant to this policy as someone who has been subjected to harassment or discrimination, or who is aware of situations or incidents which may be having a discriminatory and adverse impact upon another member(s) of the University community.
Days	Refers to business days. Weekend and statutory holidays are not included in calculating the number of days referred to in this policy.
Discrimination	See Section 2
Harassment	See section 2
Mediation	A process used to resolve conflict by having a neutral person help the disputing parties arrive at a mutually acceptable solution.
Mediator	A person trained in mediating disputes.
Personal Harassment	See Section 2
Reasonable Person Test	Refers to an assessment of responsibility that takes into account not only what the complainant and respondent experienced, knew, or understood about one another, but also what a reasonable person in each of their circumstances would or ought to have experienced, known, or understood.
Respondent	Any person against whom an allegation or a complaint of harassment or discrimination has been made pursuant to this policy.
Sexual Harassment	See Section 2