

4. Protecting Your Rights – Harassment

APUO PROPOSAL – Presented to the employer on March 11, 2021

8.2.1.4 In keeping with the Employer’s commitment to maintaining a work environment free from harassment, discrimination and/or sexual violence, the Employer has established a Human Rights Office (“HRO”). If a Member feels that she is the subject of harassment, discrimination and/or sexual violence, she must contact the HRO to speak with an Officer (“Officer”) to initiate the process or open a complaint. Members may seek assistance from the Association at any time.

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8.2.1.6 The procedure below applies when the respondent is an APUO Member. If the respondent is not an APUO Member, the procedures outlined in Procedure 36-2 apply.

8.2.3 Interim Measures There may be times when complainants and respondents will need immediate interim measures, including the need to be separated in order to stabilize the situation pending the outcome of the process. The Appropriate Authority or Authorities will establish interim measures, in writing, in consultation with the HRO, Protection Services, Human Resources, the complainant’s and the respondent’s union or student association representative, the Dean and/or other Appropriate Authority (as defined in Procedure 36-1, clause 18 – revised January 18, 2017) as the case may be, taking into consideration the nature of the complaint and feasibility of the request. All interim measures must be the least intrusive as possible in order to stabilize the situation, and the measures should be communicated to the complainant, the respondent, and the Association (if applicable) in a timely fashion.

8.2.4 Informal Process

8.2.4.1 The informal resolution process described in this subsection is voluntary. The complainant must decide whether to proceed via the informal process, formal process or both. If the complainant proceeds solely with the formal process, then the matter moves directly to article 8.2.5 (Formal Process).

8.2.4.2 The complainant and the respondent shall be informed by the Officer of her right to be accompanied at any time by a union representative or a support person.

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8.2.5 Formal Complaint Process – Harassment and/or Discrimination

8.2.5.5 The Officer will provide guidance on how to file a formal complaint and response, but the onus remains on the complainant to provide sufficient information and be as precise and detailed as possible in order to allow the respondent to understand the allegations and respond to them. Members may seek assistance from the Association, at any time.

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8.2.5.9 Officer’s assessment

8.2.5.9.1 The Officer will assess the formal complaint and determine whether the conduct forming the basis of the formal complaint appears to fall within the definition of harassment and/or discrimination as set out in the Schedule – Glossary of terms of Policy 67a (as revised on February 21, 2012). If the Officer considers that the formal complaint does not fall within the definition of harassment or discrimination, the Officer will convey this assessment, with reasons, in writing to the complainant and respondent and will inform the complainant of his or her right to request a review under paragraph 8.2.5.9.2 of this section, and the Officer will provide the applicable timelines and procedures for requesting this review.

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8.2.5.9.2 Review of the Assessment A request to review the Officer’s assessment of the formal complaint can be made only if the Officer has determined that the formal complaint falls outside the definition of harassment and/or discrimination.

- a) If the complainant disagrees with the Officer’s determination that the formal complaint is outside the definition of harassment and/or discrimination, then the complainant may request a formal review of the Officer’s assessment. A request for a formal review must be submitted in writing within ten (10) business days after the date of the Officer’s determination, and will be conducted by the uOttawa Ombudsperson. Upon completion of the review, the Ombudsperson’s decision is final and will be communicated to the complainant and respondent in writing.
- b) If the Ombudsperson considers that the formal complaint in question appears to fall within the definition of harassment and/or discrimination, an investigator will be appointed as per subsection 8.2.5.10.
- c) If the Ombudsperson supports the finding as determined by the Officer, the matter will end.

The determination shall be sent in writing to the complainant, the respondent, the complainant’s and the respondent’s union or student association representative, and to the complainant’s and the respondent’s respective Deans or other Appropriate Authority.

8.2.5.10 Investigation – Harassment and/or Discrimination

8.2.5.10.1 For the purposes of a harassment and/or discrimination formal complaint, article 39.1.2.1 shall apply with the following modification, “the Dean may assign the investigative procedure to an internal or a third-party external investigator.” The Dean may not assign the Officer that assessed the complaint as per 8.2.5.9 as the complaint’s investigator. If a review of the assessment as per 8.2.5.9.2 was requested by the complainant, the Dean may not assign the Director of the HRO as the complaint’s investigator. The investigator will have competence in conducting investigations related to allegations of harassment and/or discrimination. The investigator must not present a conflict of interest to investigate the formal complaint.

The Employer, the complainant, the respondent and appropriate union representatives shall agree to the appointment of the investigator and her language requirement (English, French or bilingual) and the scope of the investigation.

8.2.5.10.5 If applicable, the investigator will keep the HRO informed on the status of the investigation at regular intervals or at the request of the HRO in order to allow the HRO to monitor the timelines of the process and to ensure that the scope of the investigation is adhered to. The HRO will also keep the complainant, the respondent, the Dean, and the Association (if applicable) informed on the status of the formal complaint and of the investigation.

8.2.5.11 Investigation report

8.2.5.11.2 When the investigation is conducted by the Dean, she will send a copy of her investigation report to the complainant, the respondent, the HRO, and the Association (if applicable).

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8.2.5.11.3 When the investigation is conducted by an internal or external investigator, the investigator will send a copy of her investigation report to the HRO. The HRO will send the investigation report to the complainant, the respondent, the Dean, and the Association (if applicable).

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8.2.5.12 **Dean’s Decision** Within ten (10) working days of receiving the investigation report, the Dean will consider the report and, if she has reasonable grounds to believe the Member has committed an act of harassment and/or discrimination, shall proceed under section 39.4. Should the Dean decide not to proceed under section 39.4, no record of the matter shall be placed in the Member’s file. The Dean shall inform the HRO, the Member, and the Association (if applicable) of her decision.

8.2.6 Formal Complaint Process - Sexual Violence

8.2.6.1 Filing of a formal complaint.

- a) The HRO is responsible for receiving and handling formal complaints of sexual violence. Only a person who reports experiencing sexual violence (the “complainant”) can choose to file a formal complaint.
- b) To initiate the formal complaint process, a formal complaint, must be filed with an Officer if the individual who is said to have engaged in sexual violence is a member of the University community and was a member of the University community at the time of the incidents alleged in the formal complaint (the “respondent”).
- c) If the respondent’s relationship with the University ends and he or she is no longer at or with the University, the formal complaint process in this section may be suspended. If the respondent returns and once again becomes a member of the University community, a formal complaint process may resume. A respondent’s temporary leave of absence from the University or a temporary break in his or her relationship with the University does not prevent a resumption of a formal complaint process when such leave has ended or when the relationship between the University and the respondent resumes.
- d) A formal complaint must set out in writing the name of the respondent, the nature and the details of the circumstances, including detailed facts, specific dates and names of potential witnesses. The Officer who receives the formal complaint will acknowledge receipt, review it and if necessary, seek clarification from the complainant on the information it contains.

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8.2.6.2 The provisions of 8.2.5.1 to 8.2.5.6 inclusive apply, mutatis mutandis, to sexual violence formal complaints except that the Officer shall not send a notice of the formal complaint to the respondent, any Dean or Appropriate authority unless the Officer or Director of the HRO determine that the formal complaint shall proceed to an investigation as per 8.2.6.4. Notwithstanding the notice, in exceptional circumstances the respondent may request a copy of the complaint. Such a request shall not unreasonably be refused.

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8.2.6.3 Officer’s assessment

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8.2.6.3.1 The Officer will assess the formal complaint and determine whether the conduct forming the basis of the formal complaint appears to fall within the definition of sexual violence as set out in Section 3 of Policy 67b (as approved on June 27, 2016).

- a) If the Officer considers that the conduct in question appears to fall within the definition of sexual violence, the Officer will appoint an investigator as per subsection 8.2.6.4.1.
- b) If the Officer considers that the formal complaint does not fall within the definition of sexual violence, the Officer will convey this assessment in writing to the complainant and the respondent, and inform the complainant of his or her right to request a review under paragraph 8.2.6.3.2 of this section, and the Officer will provide the applicable timelines and procedures for requesting this review.

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8.2.6.3.2 **Review of the Assessment** A request to review the Officer's assessment of the formal complaint can be made only if the Officer has determined that the formal complaint falls outside the definition of sexual violence

- a) If the complainant disagrees with the Officer's determination that the formal complaint is outside the definition of sexual violence, then the complainant may request a formal review of the Officer's assessment. A request for a formal review must be submitted in writing within ten (10) business days after the date of the Officer's determination, and will be conducted by the Ombudsperson. Upon completion of the review, the Ombudsperson's decision is final and will be communicated to the complainant and respondent in writing.
- b) If the Ombudsperson considers that the formal complaint in question appears to fall within the definition of sexual violence, an investigator will be appointed as per subsection 8.2.6.4.1.
- c) If the Ombudsperson supports the finding as determined by the Officer, the matter will end.

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The determination shall be sent in writing to the complainant.

8.2.6.4 Investigation

8.2.6.4.1 Where the HRO has determined under paragraph 8.2.6.3 that the complaint is within the definition of sexual violence, the Officer will appoint a third-party external investigator, with competence in conducting investigations related to allegations of sexual violence, to investigate the complaint, except in the following case: If the complaint is a complaint of sexual harassment, then the Officer can choose to appoint an investigator that is internal to the University with competence in conducting investigations related to sexual harassment and whose status at the University and role as investigator does not present a conflict of interest.

The HRO, the Employer, the complainant, the respondent and appropriate union representatives shall agree to the appointment of any third-party external or internal.

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investigator, her language requirement (English, French or bilingual), ~~and the scope of the investigation.~~

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8.2.6.5 Review committee

8.2.6.5.1 Within five (5) business days after receiving the investigation report, the Director of the HRO will appoint three (3) individuals to form a review committee, taking into consideration the parties to the formal complaint. When either the complainant or the respondent is a Member, the Director will appoint at least one Member to the review committee.

a) The members of the review committee must have knowledge of proper investigative practices and basic principles of fairness in complaint processes. ~~There shall be a list of not fewer than ten (10) review committee members. The initial list and subsequent modifications shall be agreed upon by the Association and the Employer. Before participating in her first review, review committee members shall undergo training on the role and duties of the review committee, on~~ the sensitive issues surrounding sexual violence, in procedures leading to fair resolution and in consequences or measures that may be appropriate to an incident of sexual violence and which act as deterrents to further occurrence of sexual violence. This training will not deal with the specific formal complaint currently before the review committee and is in no way meant to hinder the independence of any review committee member to make a decision and/or recommendation based on the information provided to the review committee and according to his or her conscience. ~~The training will be developed and delivered jointly by the Employer and the Association. Review committee members shall be required to undergo refresher training every four (4) years.~~

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b) The Director of the HRO will send a copy of the formal complaint, the response and any written replies and the final investigation report to the members of the review committee.

c) The members of the review committee will decide who among them will chair the committee.

8.2.6.5.4 The recommendations of the review committee and the reasons in support of it must be in writing and be delivered to the complainant and to the respondent within ten (10) business days of completion of the process, referred to in paragraph 8.2.6.5.2. Simultaneous with the delivery of the recommendations to the complainant and the respondent, the recommendation of the review committee will also be communicated to the Director of the HRO, ~~to the respondent's Dean, and the Association (if applicable).~~ If the review committee believes that sexual violence occurred and the respondent was involved, the review committee will also provide the respondent's Dean with a copy of the investigation report and all of the documentation submitted to and considered by the review committee.

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8.2.6.6 Dean's Decision

8.2.6.6.1 The Dean will consider the review committee's recommendations and with due regard for and deference to the review committee's recommendations, will decide:

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- a) whether the investigation was fair and conducted properly;
- b) whether or not sexual violence occurred and the role of respondent;
- c) whether to accept, alter or reject the review committee’s recommendations on consequences or measures;
- d) whether or not to impose additional consequences or employment disciplinary measures (examples could include written reprimand, suspension, or dismissal) pursuant to section 39.4. Where a consequence or measure is not within his or her authority to decide, the Dean may recommend such consequence or measure to the University body that has the authority to approve or decide.

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8.2.6.6.2 The consequences or measures stated in subsection 8.2.6.6.1 d) will depend on the circumstances, on the severity of the conduct, on any mitigating factors and on applicable collective agreements. If a formal complaint of sexual violence is substantiated, consideration will be given to preventing its reoccurrence in the future, to correcting the negative impact of the incident on the complainant and to ensuring or enhancing the safety of the complainant and the University community. The following list provides examples of consequences and measures and is not meant to be exhaustive nor necessarily represent a progression of consequences or measures:

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- a) a letter of apology;
- b) attendance at educational sessions on the impact of sexual violence;
- c) attendance at coaching sessions to improve communication or conflict resolution skills;
- d) restricted or prohibited access to University campuses and/or services.

8.2.6.6.3 The Dean will decide on consequences or measures as per 8.2.6.6.2 and on the imposition of any disciplinary measure within ten (10) business days after receipt of the review committee’s recommendation, and will immediately notify the complainant and the respondent in writing of the following:

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- a) whether the investigation was fair and conducted properly;
- b) whether or not sexual violence occurred and the role of respondent;
- c) the consequences or measures and any corrective action that has been taken or that will be taken as a result of the investigation and review committee report and recommendations, subject to applicable collective agreement provisions and access to information and privacy legislation;
- d) if the Dean decides not to accept the review committee’s recommendation on consequences or measures or decides to diverge from the review committee’s recommendation, she shall present detailed reasons supporting her decision to reject or diverge from the review committee’s recommendation.

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