

DRAFT**University of Toronto Faculty Association**
Policy and Procedure for Internal Harassment and Discrimination Complaints**Background**

1. The University of Toronto Faculty Association (“UTFA”) is committed to ensuring that all UTFA meetings, events, and communications are free of harassment and discrimination. Harassing or discriminatory behaviour undermines an individual’s right to participate fully and equally in UTFA’s work and the purposes and goals of our organization.
2. UTFA has resolved to adopt a policy for addressing complaints of harassment and discrimination within the organization.

Definitions

3. **Harassment** is any vexatious comment or conduct against someone that is known or ought reasonably to be known to be unwelcome. It includes harassment on the prohibited grounds identified under the Ontario *Human Rights Code*, as well as sexual, psychological, and personal harassment.
4. **Discrimination** is the act of treating an individual or group differently, unfairly, and usually to their detriment, because of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability, or other personal characteristics protected under the Ontario *Human Rights Code*.

Application of this Policy

5. This Policy applies to all UTFA members when they participate in UTFA meetings, events and communications with one another, and which flow from UTFA business. This Policy does not apply to UTFA members’ interactions which do not flow from or relate directly to UTFA activities.
6. Neither discrimination nor harassment will be tolerated in any UTFA meetings, events, or communications.
7. This Policy does not apply to UTFA employees. UTFA employees’ allegations of harassment or discrimination are covered by UTFA employee-specific policies and procedures.

Role of the Complaint Review Panel (“CRP”)

8. The CRP shall be five (5) members of the Executive Committee as follows: the President, two Vice-Presidents, and two other members of the Executive Committee, as appointed by the Executive Committee. Members of the CRP will be appointed bi-annually, as soon as practicable following the election of the UTFA President or a CRP member vacancy.
9. All members of the Executive Committee shall receive training on harassment and discrimination investigations and dispute resolution.
10. Conflicts of interest shall be handled as follows:
 - a) If a conflict of interest is substantiated for one (1) or two (2) of the members of the CRP, then the remaining four (4) or three (3) members shall proceed as the CRP for the purposes of this policy, and the person or persons with a conflict of interest shall recuse themselves.
 - b) If a conflict of interest is substantiated for three (3) or more members of the CRP, the Executive Committee shall appoint an alternate or alternates, as applicable.
11. The fact that someone has been named in a Complaint does not automatically create a conflict of interest such that they cannot participate in decision-making regarding the Complaint. It is only where the member cannot act impartially that they will need to be excluded from decision-making. A conflict of interest is substantiated when a threshold analysis concludes that the identified individual cannot act impartially in the decision-making process.
12. The President shall be the Chair of the CRP. If the President is excluded due to a conflict of interest or is otherwise unable to Chair the CRP for a given complaint process under this policy, the remaining members of the CRP shall select an alternate Chair.
13. The CRP shall:
 - a. be the decision-making body to address complaints.
 - b. implement processes for handling complaints that are procedurally fair, appropriate, confidential, and expeditious, to the extent possible.
 - c. uphold UTFA's constitution, by-laws, and existing policies.
 - d. receive Complaints and ensure that the processes outlined in this policy are followed.
 - e. receive mediated agreement and may assist with implementation and enforcement, as appropriate.

- f. make final decisions on the appointment of the external counsel, mediator/facilitator, and/or investigator.
 - g. maintain the confidentiality of complaints dealt with under this Policy throughout the investigation to the extent possible.
 - h. receive reports generated from investigations and make final determinations related to remedy, including at their discretion, releasing information regarding the outcome of the investigation, applicable remedies and/or a summary of the Report as appropriate.
14. The CRP may:
- a. discontinue a process under this Policy if it is satisfied that the complaint is trivial, frivolous, vexatious, or brought forward in bad faith. The CRP may also determine whether remedies or sanctions are appropriate in such circumstances.
 - i. **Trivial** complaints involve allegations that are of such a minor nature that proceeding with a dispute resolution process is not in UTFA's best interest.
 - ii. **Frivolous** complaints contain allegations that, even if true, could not amount to harassment or discrimination.
 - iii. **Vexatious** complaints are filed to annoy, embarrass, or harass the respondent, or are otherwise improperly motivated.
 - iv. Complaints are made in **bad faith** when an adequate remedy already exists or the complainant is engaging in improper action (including fraud, deception, intentional misrepresentation), or the complaint is filed out of malice, hostility, personal animosity, or vindictiveness.
 - b. suspend a process under the Policy if it is satisfied that the complaint is, in whole or in part, the subject matter of any civil, criminal, administrative or other proceeding until such proceeding (including all rights of appeal) has been completed.
15. Decisions of the CRP will be made by a simple majority, provided all members of the committee have been given five (5) days notice of a meeting of the CRP, unless there is consensus amongst the CRP to waive the notice period. Where a simple majority cannot be reached, the Chair of the CRP shall make the final determination, considering the input from the CRP and the purposes of this policy.

Role of Administrator

16. The Executive Director shall be the central administrator (the "Administrator") to facilitate the processes under this policy. If the complaint relates to the Executive Director, or the Executive Director otherwise has a conflict of interest with respect to a Complaint, UTFA's General Counsel will act as the Administrator. If a further

conflict arises with the first designate, the CRP shall determine an alternative Administrator.

17. The Administrator shall work with the Complainant, Respondent, CRP, UTFA Executive Committee and third-party mediators/facilitators and investigators to implement this Policy.
18. The Administrator may work with internal and external counsel to identify appropriate mediators/facilitators and investigators to address complaints under this Policy. The Administrator shall make recommendations for the appointment of mediators/facilitators and investigators to the CRP, who are responsible for making the final selection.
19. The Administrator may consult with internal or external counsel to obtain advice on issues raised by the CRP or related to managing a dispute resolution process and report and/or provide advice to the CRP, as appropriate.
20. The Administrator shall review and approve retainer agreements with mediators/facilitators and investigators, confidentiality agreements, terms of reference, and other documents generated by third party mediators/facilitators and investigators in accordance with the processes and objectives set out herein.
21. Where a potentially contentious decision must be made regarding a process under this policy, the Administrator shall obtain instructions from the CRP.
22. The Administrator shall maintain the confidentiality of complaints dealt with under this Policy, to the extent possible, except as it relates to reporting to the CRP.

Process if a UTFA member experiences harassment or discrimination as defined in this Policy

23. The UTFA Executive and UTFA Council recognize the value of engaging in informal dispute resolution prior to initiating the procedures under this policy.
24. A UTFA member who believes they are being harassed or discriminated against is encouraged to make it clear to the person(s), if possible, that they do not welcome the behaviour. They can do so either on their own, verbally or in writing, or with the assistance of another party. The UTFA member should also indicate if they intend to take further action under this Policy if the behaviour continues. Alternatively, the UTFA member can reach out to the Administrator to seek assistance in communicating the concern to the person(s).
25. If the matter is not resolved under paragraph 24, or if the UTFA member is not comfortable approaching the person, they should contact the Administrator in

writing. The UTFA Administrator will serve as a liaison to facilitate a dispute resolution process under this Policy, which could be mediation/facilitation, investigation, or both.

Processes under this Policy

Intake Process

26. Where an UTFA member pursues the process under paragraph 25 the member becomes a Complainant under this Policy. The Complainant shall contact the Administrator and provide their Complaint in writing. When determinations are made about whether to investigate a matter, contextual factors will be considered, including but not limited to the time between the alleged incident and the date of the Report, the ability of the Respondent to respond to allegations due to the passage of time, the individual circumstances of the Complainant, the severity of the incident, and the principles of natural justice. Complaints under this Policy must normally be reported within twelve (12) months from the date of the alleged incident. In exceptional circumstances, such time limits may be extended having regard to contextual factors, including the individual circumstances of the Complainant and the severity of the incident, and the principles of natural justice.
27. The Complaint should include:
- a. Who is the Complainant;
 - b. Who is the Complaint about (the “Respondent”);
 - c. The particulars underlying the Complaint (including dates, times, who was involved, and what happened and who was present);
 - d. If there are key documents relating to the Complaint, they should be included as part of the description;
 - e. Information about other proceedings or complaints pending that arise from the same set of facts;
 - f. Any perceived conflicts of interest that may exist for members of the Executive Committee; and
 - g. The remedies sought by the Complainant.
28. The Complainant should be aware that, in addressing the Complaint, the particulars of the Complaint and documents may be shared with the Administrator, the CRP, the Respondent, and any appointed third-party mediator/facilitator or investigator, as applicable, and in accordance this policy. Documents provided by the Complainant and Respondent will only be shared as necessary with witnesses and other representatives of UTFA as set out in this Policy. All persons with involvement in the processes under this Policy shall keep the details of the Complaint, responses, and dispute resolution processes strictly confidential.

29. Once the Complainant provides the particulars, the Administrator shall speak with the Complainant to review the Complaint and the dispute resolution processes under this Policy. The Complainant will be required to sign a confidentiality agreement relating to the dispute resolution processes under this Policy.
30. The Administrator will then notify the CRP that an internal Complaint under this Policy has been received and that they will be submitting the Complaint to external counsel to conduct a preliminary analysis of the Complaint. The particulars of the Complaint will not be disclosed to the CRP until external counsel has completed its preliminary analysis.
31. The preliminary analysis will contain, if applicable:
- a) an opinion of whether the allegations could, if true, amount to a breach of the Policy such that UTFA should proceed with the processes under the Policy.
 - b) an opinion on whether there exist any conflicts of interest that ought to be considered in the processing of the Complaint and/or determinations on the merits, and offer recommendations on how UTFA should proceed.
 - c) A consideration of other proceedings or complaints pending, if applicable, and make recommendations about how UTFA should proceed.
 - d) A recommendation on whether interim measures may be needed.
 - e) If the subject matter of the Complaint relates to or may reasonably be found to engage the Complainant or Respondent's employment-related interests with the University of Toronto, provide an analysis of whether an alternate proceeding should supersede those outlined in this policy.
32. If circumstances warrant, the external counsel may seek a preliminary response from the Respondent before making their recommendation.
33. The CRP will be responsible for reviewing the recommendations of external counsel and make determinations on how to proceed.
34. If it is determined that the Complaint should be addressed through this Policy, the Administrator will be directed to contact the Respondent, to describe in general terms the nature of the Complaint against them, and to review the dispute resolution processes under this Policy. The Respondent will be required to sign a confidentiality agreement relating to the dispute resolution processes under this Policy.
35. If the Complainant or Respondent refuses to sign the confidentiality agreement, processes under this Policy may proceed without their participation.

36. The Administrator will then communicate with a third-party mediator/facilitator or investigator, as appointed by the CRP.
37. If a civil, criminal, administrative, or other proceeding is engaged and involves the same allegations giving rise to the Complaint, the processes set out herein may be suspended pending the resolution of the other proceeding. If the other proceeding (including all rights of appeal) concludes or is otherwise abandoned, the Complainant may request that their Complaint be resumed. In such circumstances, the CRP may seek recommendations from external counsel about whether it is appropriate to resume a process under this policy, and may decline to resume a process under this policy, considering the policy's purposes, the outcome of the other proceeding, UTFA's role and UTFA's resources..

Mediation/Facilitation process

38. The objective of mediation/facilitation is to efficiently reach a practical resolution to a complaint that both the Complainant and the Respondent can accept.
39. The Complainant and any Respondent participating in the process must voluntarily agree to engage in the process. Participants in mediation/facilitation are expected to conduct themselves respectfully and professionally during a mediation process.
40. Mediation/facilitation processes are without prejudice to any party's position in the event the matter is not resolved through mediation/facilitation. The Parties to the mediation/facilitation shall sign a mediation/facilitation agreement setting out the parameters of the process, including confidentiality and the without prejudice nature of the process. This agreement may be drafted by the mediator/facilitator in consultation with the Administrator. It is desirable for the parties to agree that the discussions in mediation will be treated as off the record for the purposes of this Policy and any other legal process, and should explicitly consider whether the mediation discussion will be subject to settlement, litigation, or any other privilege.
41. The mediator/facilitator does not have the authority to implement an outcome, but instead works to encourage parties to come to a mutual agreement voluntarily. Mediation/facilitation does not produce findings of fact or a determination of whether harassment or discrimination occurred.
42. The Parties to the mediation/facilitation do not have authority to bind UTFA to the resolution. They may agree to jointly make requests and recommendations to the CPR, if the request/recommendation falls within the CPR's jurisdiction under this policy, or to the UTFA Executive Committee, if the request/recommendation has more systemic or far-reaching implications for the organization which would usually fall under the UTFA Executive Committee's jurisdiction.

43. If the Parties reach an agreement to resolve the Complaint, then that resolution is binding on the Parties. The agreement shall be shared with the Administrator and the CRP, with appropriate redactions as agreed by the parties.
44. If a mutual agreement is not reached by the parties, the Complainant may request a formal investigation process.

Investigation Process

45. A formal investigation may occur
- a. following a mediation/facilitation process where a mutual agreement is not reached, or
 - b. if there is no mutual agreement to participate in a mediation/facilitation process.
46. In an investigation process, a neutral and external third-party engages in a fact-finding exercise with a view to determining whether harassment or discrimination occurred. The investigator will be a competent person, defined as someone who is impartial, and reasonably seen to be impartial, has knowledge, training and expertise on harassment and discrimination investigations, and has knowledge of relevant legislation and the Policy.
47. The investigator is appointed by the CRP.
48. The investigation process shall be procedurally fair, confidential, and appropriate in the circumstances. Investigations will be handled confidentially and expeditiously. Normally, confidentiality extends until a resolution is implemented.
49. Normally, the time frame for an investigation to be undertaken and an investigation report written is ninety (90) days after the appointment of an investigator, unless delays occur in good faith and no substantial prejudice will result to any person affected by the delay.
50. The Complainant shall review the information provided in advance of the intake process, as well as documentation, to confirm that the Complainant's full complaint is set out in writing (the "Full Complaint"). The investigator's mandate shall be to investigate the Complaint and shall not exceed that mandate without the express approval of the CRP.
51. The investigator shall then interview the Complainant to discuss the Complaint.
52. Following the Complainant interview, the investigator provides the Respondent with the Complaint. The investigator may also provide the Respondent with other

information obtained from the interview with the Complainant, as deemed appropriate by the investigator.

53. The investigator may review relevant documents from the parties. The investigator may also interview witnesses the investigator determines relevant to the Complaint. Witnesses shall also be required to agree to the confidentiality agreement prior to participating in the investigation.

Reporting on findings

54. At the conclusion of the investigation, the investigator shall provide their report (the "Report") to the Administrator. The Report may also be shared with internal and/or external counsel.
55. The Report should summarize the investigation process and include findings of fact and determinations of whether there has been harassment or discrimination within the meaning of the Policy.
56. The Administrator shall share the Report with the CRP. Prior to sharing the Report with the CRP, the Administrator may redact portions of the Report if appropriate pursuant to the UTFA Privacy Policy or to protect sensitive or private personal information.
57. At the discretion of the CRP, the investigator may be requested to:
- a. Make recommendations for corrective actions. These recommendations may focus on the particular parties to the Complaint or may be more general/systemic in nature;
 - b. Offer any other information or service which supports UTFA's desire to uphold UTFA's commitment to be a harassment- and discrimination-free organization and deters abuse or misuse of the Policy.
58. The Report will be kept confidential by the Administrator and the CRP, to the maximum extent possible.
59. A summary of the findings of the Report shall be provided to the Complainant and Respondent ("Summary Report").
60. The CRP may share, at its discretion, and when circumstances warrant, a summary of the Report with the UTFA Executive Committee, the bottom-line findings in the Report, or the corrective actions or remedies that flow from the Report.
61. The UTFA Executive Committee may, when circumstances warrant, share this information with Council.

Remedy

62. Where a Complaint is addressed and resolved through the mediation/facilitation process, the parties to the Complaint together determine the resolution with the assistance of the Mediator/Facilitator.
63. Where a matter is addressed through the investigation process, the CRP shall determine what remedies and/or corrective actions are appropriate considering the findings in the Report from the investigator and submissions of the Complainant and Respondent as set out below. Where the investigator offers recommendations, the investigator's recommendations will also be taken into consideration by the CRP. Where remedies implicate UTFA resources more broadly, or go beyond an individual remedy, those remedies must be submitted to the UTFA Executive Committee for consideration and/or approval.
64. The Complainant and the Respondent may make submissions to the CRP on the Summary Report and appropriate remedies. The CRP shall consider the Complainant's and Respondent's submissions prior to the CRP making any final determinations as to remedy.
65. Remedies may include, but are not limited to, reprimand, removal from a committee, coaching, training, and possible additional action in accordance with UTFA's legal obligations and policies. However, in no circumstances shall a remedy include the payment of monetary compensation or damages by UTFA or the Respondent. Remedies that follow investigations shall not constitute reprisals.

Reporting to the Complainant and Respondent on Remedy

66. Once the CRP has determined what remedies are appropriate in the circumstances, the CRP shall provide the Complainant and Respondent with a written notice indicating the outcome of the investigation and any corrective actions or remedies applicable.

Record of Complaints

67. All records of a Complaint, including the original Complaint and Investigation Report, shall be securely retained by the Administrator, for a period of at least seven years from the date of the conclusion of the process followed under this policy. Electronic records of the complaint may be stored, providing they may be accessed only by the Administrator, CRP, and UTFA staff responsible for providing support to the Administrator and CRP. Security protocols will be put in place to ensure that only the Administrator, CRP and UTFA staff have access. UTFA staff