

 <p><b>BRANDON UNIVERSITY</b> Founded 1859</p>	<p><b>Respectful Environment Policy</b></p>	<p><b>Approved by</b> Board of Governors</p> <p><b>Administered by</b> Vice-President (Administration &amp; Finance)</p>
<p><b>Board of Governors Policy</b></p>	<p><b>First Approved:</b> April 24, 2008 (implemented September 1, 2008)</p>	<p><b>Updated:</b> August 26, 2010 (updates implemented September 1, 2010) August 1, 2011</p>

**1.0 POLICY**

**1.1 Purpose of Policy**

To support a climate of respectful behaviour in the workplace and in the learning environment where all workers, employees, students, guests or volunteers of the University community must be free from human rights harassment, human rights discrimination, personal harassment and workplace violence whether they are on campus or participating in an affiliated off-campus activity.

**1.2 Policy Statement**

- a) Brandon University recognizes that respectful behaviour regarding the rights, dignity and integrity of others is essential for the well-being of a community.
- b) Each individual has the right to work, learn and participate in an environment that promotes respectful behaviour by prohibiting discriminatory practices, and is safe from harassment, discrimination and violence.
- c) Brandon University does not condone behaviour that is likely to undermine the dignity, self-esteem, productivity, health or safety of any of its members and prohibits any form of discrimination, harassment or workplace violence whether it occurs on University property or in conjunction with University – related activities. Therefore, so far as is reasonably practicable, Brandon University is committed to an inclusive, respectful and safe work and learning environment, free from:
  - i. human rights discrimination or harassment;
  - ii. personal harassment; and
  - iii. workplace violence
- d) Brandon University and all members of the University community, and particularly those in leadership roles, share the responsibility of establishing and maintaining a climate of respectful behaviour within this community and to address any situations in which respect is lacking.
- e) It is the responsibility of all members of the University community to ensure that the working environment is free of discrimination, harassment, and violence. Everyone has a responsibility to treat each other in a respectful manner and to speak up if they or someone else is being harassed, harmed, or treated disrespectfully, in any way. When issues arise, people are encouraged to communicate directly with the other

party, in a respectful manner, and to listen respectfully to the other person's point of view. All individuals have a responsibility to report incidents under this Policy in accordance with the procedures set out in this Policy. They also have a responsibility to cooperate in the investigation of a complaint under this policy. Anyone who gives evidence in an investigation, or who is otherwise involved in the process, must keep all information confidential, except as may be necessary to address the complaint, pursuant to this policy, or as may be required by law.

- f) Harassment and discrimination violate an individual's human rights and run contrary to the University's fundamental values (refer to "The Principles By Which We Live: Brandon University"). Brandon University will act promptly and efficiently to deal with these behaviours and any acts of violence. It will endeavour to ensure that individuals who believe that they have been subjected to harassment, discrimination or workplace violence are able to express concerns and register complaints without fear of retaliation or reprisal. The University will exercise care to protect and respect the rights of both the Complainant and the Respondent.
- g) Brandon University will establish mechanisms to give effect to this Policy, including:
  - i. the appointment of four (4) Conflict Resolution Advisors (CRA) whose duties shall include, but not be limited to, the initial assessment of complaints made under this Policy, assistance towards the resolution of formal complaints and the provision of advice and assistance to Administrative Officers, employees, workers, students, guests and volunteers in connection with concerns and complaints;
  - ii. on a case by case basis, the appointment of an Investigator whose duties shall include the investigation of formal complaints;
  - iii. training of the CRA, Administrative Officers, employees, students and volunteers related to human rights harassment, human rights discrimination, personal harassment and workplace violence, and;
  - iv. establishing and implementing educational programs designed to enhance awareness of this Policy.
- h) In administering this Policy, Conflict Resolution Committee (CRC) members, the CRA and Investigators, like all other officers of the University, are obliged to uphold academic freedom and freedom of expression and association, while recognizing that some limits apply to the exercise of academic freedom and freedom of expression and association.

### **1.3 Application of Policy**

Student complaints of an academic nature, and issues of academic dishonesty and misconduct on the part of students, are addressed through Senate policies and procedures and are under Senate jurisdiction, except to the extent the complaints also include allegations of misconduct involving harassment, discrimination, or workplace violence, any of which may require the application of the Respectful Environment Policy.

## **2.0 DEFINITIONS**

- 2.1 Human Rights Discrimination:** the differential treatment, whether intended or not, of an individual or group of individuals, except where bona fide and reasonable cause exists or where it is based upon bona fide and reasonable requirements or qualifications, or reasonable accommodation, based on:

- a) an individual's actual or presumed membership in, or association with, some class or group of persons, rather than on the basis of personal merit; or
- b) any of the characteristics listed under "Human Rights Harassment".
- c) Examples include, but are not limited to:
  - i. evaluations of performance based on any characteristic referred to in "Human Rights Harassment";
  - ii. applying stereotypes or generalizations based on any characteristic referred to in "Human Rights Harassment";

**2.2 Reasonable Accommodation:** differential treatment to

- a) reasonably accommodate the special needs of an individual or group, if those special needs are based upon any characteristic referred to in "Human Rights Harassment";
- b) plan, advertise, adopt or implement an affirmative action program or other special program for an individual or group of individuals, including those who are disadvantaged because of any characteristic referred to in "Human Rights Harassment"; or
- c) exercise the provisions of the Brandon University Act.

Example policies include Academic Accommodation of Students with Disabilities Policy, and A.I.D.S. Policy.

**2.3 Human Rights Harassment:** any objectionable conduct, comment or display by a person:

- a) that is directed at an employee, student, guest, or volunteer; and
- b) that is made on the basis of Section 9(2) of the Manitoba Human Rights Code, i.e.:
  - i. ancestry, including colour and perceived race;
  - ii. nationality or national origin;
  - iii. ethnic background or origin;
  - iv. religion or creed, or religious belief, association or activity;
  - v. age;
  - vi. sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
  - vii. gender-determined characteristics or circumstances other than those included in vi);
  - viii. sexual orientation;
  - ix. marital or family status;
  - x. source of income;
  - xi. political belief, association or activity; and
  - xii. physical or mental disability or related characteristics or circumstances including physical size or weight; and/or

- c) that creates a risk to the health and safety of the employee, student, guest or volunteer.
- d) Examples include, but are not limited to:
  - i. derogatory written or oral comments and gestures such as name-calling, slurs, graffiti, pictures, remarks or jokes based on any characteristic referred to in "Human Rights Harassment";
  - ii. behaviour stating or implying actual or perceived abilities or inabilities based on any characteristic referred to in "Human Rights Harassment";
  - iii. refusal to work with or share facilities based on any characteristic referred to in "Human Rights Harassment"; and
  - iv. inappropriate questions or sharing of information about any characteristics referred to in "Human Rights Harassment".
- e) Human Rights Harassment is prohibited in the Manitoba Workplace Safety and Health Act and the Manitoba Human Rights Code.

**2.4 Sexual Harassment:** the Manitoba Human Rights Commission definition of Sexual Harassment is "a course of abusive, unwelcome conduct or comment made on the basis of gender or any sexual solicitation or advance that is unwelcome, especially if it may reasonably be seen to be putting a condition on employment, or the receiving or withholding of any benefit or service. The unwanted behaviour may be either physical or verbal."

Sexual harassment may involve individuals of either sex, and be between members of the same or opposite sex. It need not be intentional and may involve a person in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance as the initiator.

Examples may include, but are not limited to:

- a) unnecessary or inappropriate physical contact, such as touching, patting or pinching;
- b) demands for sexual favours in return for a promise of a reward or a threat of reprisal;
- c) a threat of reprisal for refusing to comply with a sexually oriented request. The threat could be expressed directly or implied.
- d) displaying of pornographic or other sexually offensive or derogatory pictures or material;
- e) sexist remarks, jokes, innuendos or taunting about a person's body, appearance, characteristics, gender or clothing;
- f) persistent and unwelcome invitations or request for dates;
- g) leering, ogling or other sexually oriented gestures;
- h) sexual assault;

**2.5 Personal Harassment:** does not apply to any conduct or incident(s) that are related to the protected grounds under the Human Rights Code, It includes but is not limited to:

- a) severe conduct (which includes a written or verbal comment, a physical act or gesture or a display of any combination of them), that adversely affects a worker's psychological or physical well being. "Severe conduct" means conduct that could

reasonably cause a worker to be humiliated or intimidated and is repeated, or in the case of a single occurrence, has a lasting and harmful effect on a worker.

- b) objectionable and unwelcome comment or action directed toward a specific person or group of persons which serve no legitimate work or academic related purpose and have the effect of creating an intimidating, humiliating, hostile or offensive environment;
- c) bullying, physical or verbal abuse, threats or intimidation that are humiliating or demeaning;
- d) unconstructive, intentional and offensive comments or actions designed to offend, abuse or humiliate a person when such conduct has the purpose or effect of substantially or unreasonably interfering with an employee's work or student's academic performance, or creating an intimidating, hostile or offensive environment.
- e) maliciously and deliberately making a false complaint or retaliation against someone who has made a complaint under this policy, or any other Brandon University policy or legislation, or who has cooperated in an investigation under this policy or any other Brandon University policy or legislation.
- f) Examples may include, but are not limited to:
  - i. incidents of yelling, screaming, or name-calling;
  - ii. threats to terminate employment or contracts for reasons unrelated to performance;
  - iii. threats to withdraw funding, scholarships or advancement opportunities for reasons unrelated to performance; and
  - iv. comments addressed to a person that have the effect of undermining a person's role in the workplace or classroom.
- f) Examples of what is not personal harassment include, but are not limited to:
  - i. the legitimate right and responsibility of academic staff members to correct inappropriate student behaviour, insist on order in the classroom and evict, if necessary, those who disrupt order in the classroom;
  - ii. day-to-day management or supervisory decisions involving work assignments, job assessment and evaluation, workplace inspections, implementation of appropriate dress codes, and disciplinary action. Harassment does not include these decisions as long as they are not based on one of the prohibited grounds listed in "Human Rights Harassment";
  - iii. conflict or disagreements in the work and/or learning environment, where the conflict or disagreement is not based on one of the prohibited grounds listed in "Human Rights Harassment".

## **2.6 Actions that may constitute Human Rights Harassment, Human Rights Discrimination, or Personal Harassment:**

- a) one incident (depending on the nature and severity) or a series of incidents
- b) involving individuals or groups
- c) involving either peer or power relations
- d) may be physical, verbal, or psychological in nature

- e) may be intentional or unintentional
  - f) may occur among or between employees, students, visitors, volunteers or suppliers.
- 2.7 Workplace Violence:** the attempted or actual exercise of physical force against a worker, employee, student, guest or volunteer and any threatening statement or behaviour that gives that person reasonable cause to believe that physical force will be used against them, as defined by the Manitoba Workplace Safety and Health Act.
- 2.8 Complainant:** a person who discusses a concern with and/or makes a complaint (an allegation, whether oral or written) of human rights harassment, human rights discrimination, personal harassment or workplace violence to an Administrative Officer or a CRA.
- 2.9 Respondent:** a person against whom a complaint has been made.
- 2.10 Administrative Officer:** a person in a position with sufficient authority to take, and ensure the taking of, remedial action, such as deans, administrative and academic directors, vice-presidents, and the President.
- 2.11 Conflict Resolution Advisor (CRA):** a person appointed by Brandon University as someone possessing the appropriate training, skills and experience to review and resolve informal complaints related to all human rights harassment and discrimination, personal harassment, and workplace violence.
- 2.12 Conflict Resolution Committee (CRC):** a committee formed by the University to support the CRA and this Policy.
- 2.13 Investigator:** a person, from outside the University community, appointed by the President as someone possessing the appropriate training, skills and experience to conduct a formal investigation of a complaint related to human rights harassment and discrimination, personal harassment, and workplace violence.
- 2.14 Worker:** For purposes of workplace violence, worker shall include any person who is employed by Brandon University to perform a service whether for gain or reward, or hope of gain or reward or not, whether under a contract of employment or not, resembling the relationship of any employee more than that of an independent contractor, and who works or performs services in a workplace which is owned or operated by the University and any person undergoing training or serving an apprenticeship with the University as the employer. At Brandon University, this includes employees of Brandon University and employees of other employers working at Brandon University.
- 2.15 Prima Facie Case:** In this context means the initial, and as yet unsubstantiated, allegations relating to a complaint are presumed to be true and they fall within the scope of this Policy. **Prima facie evidence** is (1) evidence which tends to prove a fact, but does not do so conclusively; (2) evidence which is of sufficient weight to require the opposite party to answer it and which, unless explained or contradicted, may be sufficient to establish the facts in issue.

### **3.0 CONFIDENTIALITY**

- a) All inquiries and complaints shall be handled with confidentiality by the Complainants, Respondents, and persons who become privy to the inquiry or complaint, so far as is reasonably practicable. The name of a Complainant or a Respondent or the circumstances related to the complaint will not be disclosed unless it is necessary to the process of resolution, counseling, investigation, disposition, to take corrective/disciplinary action, is required by law, in the case of serious threat to life or property, or in the case of a workplace Violence Incident Report that is sent to the Workplace Safety and Health Committee.

All files relating to complaints shall be maintained in a secure place. Files relating to complaints handled through formal resolution shall be accessible only to the CRA(s), and files relating to formal investigation also shall be accessible to the President and the Investigator. Files may not be released for any other purpose without the written consent of both the Complainant and the Respondent unless otherwise required by law.

Information given in confidence to the Administrative Officer or CRA by either the Complainant or the Respondent may not be used as evidence in any formal disciplinary proceedings unless otherwise required by law.

Files relating to cases referred to formal investigation shall be accessible only to the President and the Investigator, unless otherwise required by law.

- b) Anyone who gives evidence in an investigation, or who is otherwise involved in the process, must keep all information confidential, except as may be necessary to address the complaint, pursuant to this policy, or as may be required by law. Intentional or unnecessary breaches of confidentiality by any person may be subject to disciplinary action by the President.

### **4.0 GENERAL**

- a) All complaints within this policy must be brought forward within six (6) months of the date of the last incident. However, on a case by case basis, the President, in his/her discretion, may extend the time limit for filing any complaint.
- b) In the event that the President may be a Complainant or Respondent, or in conflict of interest, under this Policy, the Chair of the Board of Governors or designate will take on the role of the President within this Policy.
- c) Notwithstanding the processes within this Policy, Complainants and Respondents shall maintain their right to take any action available to them, including but not limited to, through collective agreements, courts of law, the Manitoba Human Rights Commission, or the Workplace Safety and Health Division of Manitoba Labour and Immigration.
- d) This Policy is not intended to discourage or prevent a Complainant from exercising any other legal right pursuant to his/her respective collective agreement or any other law.

- e) All processes in this Policy shall be pursued with due regard to the principles of natural justice and due process of law and in accordance with the respective collective agreements in effect between the University and its bargaining units.
- f) Brandon University recognizes that as an academic and free community, it must uphold its fundamental commitments to academic freedom and to freedom of expression and association. Therefore, it will maintain a respectful environment in which students and teaching and non-teaching staff can engage in free enquiry and open discussion of all issues.
- g) Wherever the singular is used in this Policy, the plural may be applied where applicable.

## **5.0 THIRD PARTY RESPONDENTS**

- a) Customers, volunteers, guests, contractors or their workers, or other people invited to the University might engage or participate in unacceptable behaviour towards a member of the University community. The University may have limited ability to investigate or control their behaviour. However, the University shall take reasonably practicable action to stop or reduce the risk to its members of being treated inappropriately by third parties. This action may include, but is not limited to:
  - i. posting this Policy in locations visible to third parties, and/or
  - ii. requiring certain customers, volunteers, guests or contractors and their workers to accept and meet the terms of this Policy. This could include removing individuals who participate in inappropriate behaviour from the University, and
  - iii. involving legal authorities
- b) Where a customer, volunteer, guest or contractor has been asked to stop treating a University member inappropriately and does not, members of the University community are authorized to:
  - i. end telephone conversations;
  - ii. decline service;
  - iii. ask the individual to leave the University;
  - iv. involve the appropriate administrative officer, and/or;
  - v. involve the appropriate legal authority.

## **6.0 DUTIES AND RESPONSIBILITIES**

### **6.1 Conflict Resolution Advisor**

The President, on behalf of the University, shall appoint four (4) CRA after consulting with the CRC. The CRA, for matters relating to this function, shall report directly to the President who will periodically review and evaluate their performance. Each CRA shall be selected on the basis of his/her qualifications, experience, counseling expertise and accessibility while attempting to achieve balanced representation based on gender and from various departments. The appointment of CRA should be for a term of two years,



with the possibility of one or more renewals. Any renewals shall be made by the President after consulting with the CRC. Responsibilities of the CRA shall include those as listed in 1.2 g) and shall also include, but not be limited to:

- a) providing a campus education program on human rights discrimination and harassment, personal harassment, and workplace violence, in conjunction with the CRC;
- b) advising both Complainant and Respondent of their rights and of the procedures set out in this Policy;
- c) maintaining confidential records of complaints and issuing an annual report to the President concerning the number, type and disposition of cases, on education and other activities related to the policy;
- d) acting as mediator (where appropriate) between Complainant and Respondent to facilitate resolution; and
- e) making recommendations to the President on cases requiring formal investigation.

## **6.2 Conflict Resolution Committee**

The University shall form a Conflict Resolution Committee (CRC).

### **6.2.1 The composition of the committee shall be as follows:**

- a) the Director, Human Resources (or designate), who shall serve as Chair,
- b) the Learning and Development Officer,
- c) two members (one of each gender) to be elected by and from each of the following constituencies:
  - Brandon University Students' Union,
  - Brandon University Faculty Association,
  - Manitoba Government and General Employees Union Local 135,
  - International Union of Operating Engineers (A) and (D) Local 987,
  - Exempt staff, and
- d) The four (4) CRA shall be members, ex officio, of the committee.

### **6.2.2 The duties of the CRC shall be as follows:**

- a) to prepare a brochure or other appropriate educational material outlining this Policy and procedures at Brandon University, for campus distribution;
- b) to design a campus-wide program of education on human rights harassment and discrimination, personal harassment, and workplace violence;
- c) to provide support to the CRA in interpreting and implementing this Policy, but the CRA shall not discuss the identities of those involved or any information that may identify those involved in a specific complaint;
- d) to conduct a review of 6.2.2 a) and b), this Policy and the workload of the CRA and make recommendations to the President every two years.

## **7.0 WORKPLACE VIOLENCE**

### **7.1 Preventing and Eliminating Workplace Violence**

In some circumstances, the elimination of a risk of violence to a worker and/or student may not be possible, therefore the University has developed and implemented certain policies and procedures to inform and train workers and students about their risk of violence and how to respond to threats of violence. These procedures relate to:

- a) working alone (see Working Alone Policy);
- b) campus safety (see Workplace Safety and Health Policy, Suspension of University Activities Policy, Emergency Procedures Manual, University Security Policy, Workplace Hazard Identification and Control Procedures);
- c) how to deal with violent individuals (see Violent Intruder Procedures, Emergency Procedures Manual); and
- d) how to protect one's personal safety and remove oneself from a violent situation (see Workplace Safety and Health Policy, Emergency Procedures Manual, University Security Policy, Workplace Hazard Identification and Control Procedures).

### **7.2 Notification of Individuals at Risk**

When an actual incident of violence has occurred, or when it is reasonable to expect that violence may occur, the University will take the following steps to prepare, and to ensure the safety of, all workers and students:

- a) The President, or designate, will advise individuals who are at risk of the nature and extent of the risk of violence from persons whom the worker, employee, and/or student are likely to encounter in the course of their work.
- b) All available information about the potential source of violence will be provided to the workers and students who are at risk, and their supervisors (where appropriate).

### **7.3 Complaint Process Relating to Workplace Violence**

- a) All incidents or threats and attempted or actual workplace violence should be reported to a CRA. The CRA will immediately notify the President, or designate.
- b) Anyone who is subject to workplace violence should contact the Brandon Police Service.
- c) Anyone who has been the victim of workplace violence is encouraged to seek medical and any other assistance/treatment they deem appropriate.
- d) A Brandon University Violence Incident Report form (**Appendix "A"**) will be completed by a CRA for all incidents, whether it involves actual violence or a threatening situation where there is a reasonable expectation that it may become violent. The completed report provides a description of the incident and requires an assessment of any on-going risk associated with the incident and is also used to assess the effectiveness of policies and actions of those involved to determine whether improvements are required.

- e) The Brandon University Violence Incident Report must be submitted by the CRA to the President, or designate, within twenty-four (24) hours of the occurrence of the incident.
- f) If any injury or mental trauma occurs, affected parties to the incident must complete an Injury Report form (**Appendix "B"**) as soon as reasonably possible and submit it to the President, or designate.
- g) A copy of all Brandon University Violence Incident Reports shall be sent to the University Safety & Health Committee for review.

## **8.0 PROCEDURES: COMPLAINTS OF HUMAN RIGHTS DISCRIMINATION, HUMAN RIGHTS HARASSMENT (INCLUDING SEXUAL HARASSMENT) OR PERSONAL HARASSMENT**

Pursuant to the following, anyone who wishes to make a complaint, informal or formal, under this Policy shall contact their Administrative Officer or a CRA. Notwithstanding the procedures outlined below and depending on the nature and the severity of the conduct or incident(s), Brandon University reserves the right to require a formal investigation.

### **8.1 Informal Process**

The objective of the Informal Process is for the Complainant and the Respondent to find a mutually acceptable resolution.

The Informal Process focuses on opening up communication between the parties so that they can achieve a prompt resolution, and does not involve assigning blame or taking disciplinary action. It occurs between the parties through their own efforts or with the assistance of an Administrative Officer or a CRA. The Informal Process can be especially helpful in situations where clarification of policy, or increased awareness of the concerns of the Complainant, is all that is required to stop the unwelcome behaviour and resolve the matter. This allows both parties the opportunity to identify their concerns, discuss underlying interests and values, and work together to find creative and effective resolutions.

- a) Anyone who believes this Policy has been breached is encouraged, where appropriate, to bring the matter to the attention of the person responsible for the conduct and ask them to stop as the action is unwelcome; and attempt to resolve the matter by discussing the issue privately and in a respectful manner with the other party or parties. This method often leads to the most satisfying outcome for both the parties.
- b) When direct communication is not possible or appropriate or has been unsuccessfully attempted through the Administrative Officer, the Complainant is encouraged to seek assistance from a CRA.
- c) In the case of a student, the Administrative Officer will normally be his/her dean, director or the Dean of Students.
- d) The Complainant, Respondent, CRA, Administrative Officer and witnesses are encouraged to keep a record of incidents (i.e. dates, times, locations, possible witnesses, what happened, steps taken to deal with the situation, etc.)

- e) The Complainant may choose to consult with an Administrative Officer or the CRA for the purpose of receiving advice and assistance with a view to resolving the situation, prior to lodging a complaint.

## 8.2 Formal Process

- a) If the Informal Process is not successful, or if the Complainant does not wish to participate in the Informal Process, then the Complainant has the option of filing a formal complaint.
- b) If the Informal Process is not successful, and if the Complainant or Respondent had the assistance of a CRA during that process, and if the Complainant wishes to file a formal complaint, the formal complaint must be filed with a different CRA to eliminate any chance or appearance of bias.
- c) If a formal complaint is brought to an Administrative Officer, he/she shall refer the matter to a CRA. The Complainant will be advised that this referral is being made.

The Administrative Officer must keep a written record of the date, time and nature of any incident that is brought to his/her attention, along with the names of the Complainant, the Respondent, any witnesses and the steps taken to deal with the situation to that point. This documentation, original and all copies, will be provided to the CRA to assist with the review and resolution of the case and so that data can be included in the annual report.

- d) When a formal complaint is brought to a CRA by a Complainant or Administrative Officer, he/she shall:
  - i. inform the Complainant of the Policy and procedures and provide a copy of the Policy;
  - ii. interview the Complainant; and
  - iii. advise the Complainant to put the complaint in writing, setting out the particulars of the allegations, including, where possible, the dates, times, nature of the allegations, the names of any witnesses to the behaviour, and the expected remedy; and sign and date the complaint.
- e) Following receipt of the written complaint, the CRA will advise the Complainant, normally within three (3) days whether there appear to be grounds to proceed (prima facie case) within the terms of this Policy. If the CRA decides, on the basis of the written complaint, that the complaint does not fall within the scope of the Policy, the Complainant shall be so informed in writing normally within three (3) days of the CRA reaching a decision, and provided with brief written reasons for the CRA's decision, and also advised that no further action will be taken in relation to the complaint.
- f) Upon receipt of the CRA written decision and reasons in e) above, the Complainant shall be entitled, within seven (7) days of the receipt of the CRA's decision, to request a review of the decision by, and a meeting with, the President. To conduct the review, the President shall read the written materials relating to the complaint, including the Complainant's written account of the alleged behaviour, and the CRA's decision and the reasons for the decision. The President may consult with the CRA and/or the Complainant. The President shall not be required to convene a hearing as part of the review. The review shall be completed within fourteen (14) days of the receipt, by the President, of the Complainant's request for a review. Following the review, the President shall decide whether the complaint will be dismissed or whether it should

proceed with a different CRA pursuant to the procedures outlined in 8.2 g) hereof, or whether it will be re-directed to be dealt with pursuant to some other process.

- g) Where the CRA or President (pursuant to 8.2 f)) determines that there is a prima facie breach of this Policy, he/she shall:
- i. inform the Complainant of the Policy and procedures; and
  - ii. within three (3) working days of receipt of the written complaint, the CRA shall:
    - Provide the Respondent with a copy of the written complaint;
    - Provide the Respondent with a copy of this Policy and procedures; and
    - Discuss the nature of the complaint with the Respondent.
  - iii. within five (5) working days of receiving a copy of the written complaint, the Respondent shall provide the CRA with a written response to the complaint, a copy of which shall be made available to the Complainant.
- Note:** These time limits are imposed to ensure expeditious handling of complaints, and may, at the discretion of the CRA, be waived in individual instances.
- h) The CRA may suggest, and in some cases may recommend, to the President that the matter be resolved by the External Investigative Process in accordance with 8.3.
- i) The CRA will provide both the Complainant and the Respondent with information regarding counseling services or other resources that are available and appropriate for the situation. The CRA will provide a source of unbiased consultation, outline the options, and assist the Complainant and the Respondent in making initial or additional efforts at a resolution.
- j) In cases where the Respondent has supervisory or academic authority over the Complainant, the CRA may request the appropriate Administrative Officer to make special arrangements relating to the Complainant, such as, but not limited to, assigning a third party to teach classes, mark papers or exams, and/or oversee supervision and evaluation of the Complainant's work. The CRA shall provide the Administrative Officer with any details of the complaint necessary to enable him/her to decide what special arrangements are appropriate. The Administrative Officer shall keep in confidence all information provided by the CRA.
- k) Each party may have an advocate and/or union representation, and/or legal representation at their own expense, should they choose, to participate in their Formal Process interview(s).
- l) During the Formal Process, and with the agreement of the parties, the CRA may mediate between the Complainant and Respondent, or may suggest that an external mediator (acceptable to both parties) be retained.
- m) Such mediation will not be a prerequisite to the Formal Process or the External Investigative Process. Where it occurs, such mediation will be conducted without prejudice to any further action by either party. Information disclosed during such mediation shall not be used against either party. If the complaint is resolved through mediation, the matter will go no further.
- n) If such mediation or the Formal Process fails to arrive at a mutually acceptable resolution normally within twenty (20) days, the Complainant may request that an

Investigator be appointed and the External Investigative Process, as outlined in 8.3, pursued.

- o) If a resolution acceptable to both parties is reached, the CRA shall: prepare an Agreement of Resolution (**APPENDIX "C"**) that is agreeable to and signed by both parties; and assist in bringing about whatever administrative or other action is needed to implement the resolution. An Agreement of Resolution is a statement of the terms by which the parties agree to abide, may include mutually agreed remedies, sets out a course of action that is agreed upon by the parties and is intended to eliminate harassment/discrimination and restore harmony, collegiality and cooperation.
- p) The Complainant and Respondent shall retain copies of the Agreement and an additional copy shall be retained in the confidential files of the CRA. It shall be understood that if any party subsequently does not abide by the Agreement, the settlement may be nullified and the case may be re-opened. The Agreement of Resolution is confidential and shall not be disclosed, unless required by law.
- q) No record of the Formal Process, including any Agreement of Resolution or formal complaint, shall be kept in either the Complainant's or Respondent's student non-academic discipline file or personnel file.
- r) The fact that a Formal Process has previously taken place may be referred to in the event of a subsequent breach of the Policy by the Respondent, but does not re-open the previous case(s).
- s) If any attempt is made by the Respondent to manipulate or intimidate the Complainant, or if any attempt or perceived attempt of reprisal by the Respondent is taken against the Complainant or anyone assisting with the Formal Process, the case shall be reopened and referred to the President, who will consider whether to refer it to the External Investigative Process. If the President decides to refer the matter to an Investigator, the CRA will provide necessary and sufficient information to the Investigator, through the President, to allow for a fair and thorough investigation.
- t) If no further substantiated complaint against the Respondent is received within four (4) years of the date of conclusion of the Formal Process, the file shall be destroyed. In the event of repeated infringement by the Respondent within four (4) years, the CRA shall provide the President with a written report of previous cases involving the Respondent, containing necessary and sufficient information to allow the President to determine the appropriate course of action to be taken at that time.

### **8.3 External Investigative Process**

- a) If the matter is not resolved through the Formal Process, or if the behaviour continues or re-occurs, or if the parties choose not to attempt to resolve the matter through the Formal Process, the complaint shall be advanced to the External Investigative Process.

The CRA may also recommend to the President that the External Investigative Process be initiated, bypassing the Formal Process, in the case of a Respondent who has committed repeated, substantiated, infringements of this Policy, or who is alleged to have committed an offence that, in the judgment of the CRA, is not amenable to the Formal Process.

The President may also, in consultation with the CRA, direct that the External Investigative Process be conducted in the absence of a formal complaint and in circumstances where he/she deems it appropriate to do so.

- b) Complaints requiring the External Investigative Process shall normally be referred by the CRA to the President who shall appoint an Investigator from outside the University community.
- c) The CRA shall provide to the President a copy of the written complaint (see 8.2 d) iii), and the written response from the Respondent. The President, in turn, will provide those documents to the Investigator.
- d) If the complaint has not been addressed through the Formal Process, and if the Investigator determines that the allegation does not fall within the scope of this Policy, the President shall advise the Complainant accordingly and no further action will be taken under this policy, and all records of the complaint and process shall be destroyed after the period for appeal (refer to 8.2 f.) has elapsed if no such appeal is filed.
- e) If the complaint has not been addressed through the Formal Process, and if the Investigator determines that the allegation does fall within the scope of this Policy, he/she shall launch an investigation.
- f) The investigation shall be concluded as expeditiously as possible. If the Investigator foresees significant and unavoidable delays in the completion of the process, he/she shall notify the Complainant and the Respondent. The Investigator shall advise them of the reason for the delay and shall provide an estimate of the time required to complete the investigation.
- g) If, at any time during the course of the investigation, the Investigator deems it appropriate for the Complainant and the Respondent to seek resolution through some other means, and where they both consent to do so, the Investigator may interrupt the investigation for such period(s) of time as he/she considers reasonable to facilitate such an approach to resolution. Any such resolution may provide for withdrawal of the complaint or a portion thereof.
- h) Upon an investigation being launched, the Investigator shall:
  - i. notify the Respondent in writing that an investigation has commenced. In the event that the Formal Process has not previously occurred, the Investigator shall notify the Respondent, in writing, that a formal complaint has been received and provide the Respondent with a signed copy of the formal complaint and this Policy;
  - ii. advise the Respondent and the Complainant that he/she may have an advocate and/or union representation, and/or legal representation at their own expense, should they choose, to participate in their investigation interview(s);
  - iii. investigate the complaint, including interviewing the Complainant, the Respondent, and all material witnesses as well as any other person(s) deemed relevant to the investigation. The Complainant and the Respondent shall cooperate fully with the Investigator and provide any information required by the Investigator upon request;
  - iv. conduct the investigation in accordance with the following guidelines:
    - 1) witnesses are interviewed separately, and written witness statements are prepared;

- 2) witnesses are asked to review and sign their written statements;
- 3) witnesses are advised to keep the investigation and the identity of the Complainant and Respondent in confidence, unless they are required to disclose them by law;
- 4) during the External Investigative Process, both the Complainant and the Respondent are entitled:
  - a) to be informed of all the allegations made against them; and
  - b) to the opportunity to make a full answer and defense.

This does not mean that either party is entitled to see or receive copies of the complete statements of witnesses, except as required by law. However, the Complainant shall be entitled to receive copies of any and all statements provided by the Respondent, and the Respondent shall be entitled to receive copies of any and all statements provided by the Complainant. Both the Complainant and the Respondent are entitled to receive timely and adequate summary of all of the evidence, including information contained in witness statements.

- v. prepare a written report, at the conclusion of the investigation, for the President, which sets out the allegation(s), the information and evidence obtained, a description of any conflict in the evidence, and a conclusion as to whether this Policy has been breached, on a balance of probabilities, with the facts and reasons on which the conclusion is based.

#### **8.4 Findings and Subsequent Actions**

- a) If, based on the findings of the Investigator, it is determined that this Policy has not been breached then the Investigator shall report the findings to the President. The President will advise the parties accordingly, and
  - i. no further action will be taken on the complaint.
  - ii. no record of the complaint will be kept in the Complainant's or Respondent's official personnel file or student non-academic discipline file unless it is determined by the Investigator that the complaint was malicious or frivolous, in which case, a record will be kept in the Complainant's personnel file or student non-academic discipline file.. The President may take disciplinary action against a Complainant who initiates a frivolous or malicious complaint. Inability to prove one's case will not in itself be regarded as an indication of frivolous or malicious intent.
- b) If, based on the findings of the Investigator, it is determined that this Policy has been breached, including that there has been retaliation or reprisal or the making of a frivolous or malicious complaint,
  - i. the final determination of any disciplinary or other measures to be taken, for all Respondents, whether student or employee, will be made by the President, subject to 8.5.
  - ii. Disciplinary or other action may include, but is not limited to, a requirement to participate in counseling, a letter of reprimand, suspension, or dismissal in the case of an employee or expulsion in the case of a student.



- iii. Other measures may be considered as efforts to ensure a safe and respectful environment.
  - iv. Any disciplinary action for an employee shall be in accordance with the Collective Agreement of the applicable bargaining unit.
  - v. Any form of retaliation against someone who has complained or provided information in an investigation will be considered grounds for disciplinary action up to and including dismissal, or in the case of a student, expulsion.
- c) Notice of any disciplinary or other action will be provided to the Complainant, the Respondent and the appropriate Administrative Officer. The appropriate Administrative Officer will file a copy of the disciplinary action in the University's official personnel file for the Respondent, in the case of an employee; or in the University's official student non-academic discipline file, in the case of a student.
  - d) All other information pertaining to the investigation shall be retained in a secure file held by the President.
  - e) No disciplinary action shall be implemented until the time for appeal has elapsed, see 8.5, unless for safety and security reasons or where deemed reasonably necessary.
  - f) If no further complaint against the Respondent is received within four (4) years of the date the President received the findings of the Investigator, the documentation relating to the disciplinary action shall be removed from the personnel file or student non-academic discipline file, and shall be destroyed.

In the event of repeated infringement by the Respondent within four (4) years;

- i) the CRA shall provide the President with a written report of previous cases involving the Respondent that were formally resolved, containing only information on date, the general nature of the offence and resolution;
- ii) the President shall refer to the file of any previous formal investigations and findings; and
- iii) the President shall determine whether formal disciplinary proceedings are to be initiated.

## **8.5 Appeal**

### **8.5.1 Appeal of Findings**

- a) Within ten (10) working days of receipt of the findings as a result of an investigation conducted pursuant to this Policy, the President, Complainant or the Respondent may file an appeal, in writing, to the ad hoc Respectful Environment Policy Appeal Committee (REPAC). This Committee shall be comprised of the following members, which cannot include current members of the Conflict Resolution Committee:
  - i) The Vice-President, Administration & Finance, or designate in the event that the Vice-President (Administration & Finance) is the Complainant or Respondent, to serve as Chair (voting);
  - ii) One member appointed by BUFA;
  - iii) One member appointed by MGEU;

- iv) One member appointed by IUOE;
- v) One member appointed by the Exempt Staff; and
- vi) One member appointed by BUSU

Quorum for this Committee shall be a majority of those members appointed.

- b) The President, Complainant or Respondent may file an appeal of the findings, and provide supporting evidence and/or documentation, on the following grounds:
  - i) Real bias or the reasonable apprehension of bias on the part of the Investigator;
  - ii) A material failure to follow the process provided for in the policy which could not have been otherwise noted in a timely manner by the appealing Party. This may include but is not limited to fraudulent or perjured evidence having been supplied to the Investigator or the unexplained or unreasonable failure by the Investigator to interview or attempt to interview a material witness;
  - iii) Evidence which was not available at the time of the investigation and which is likely to have a material influence on the finding; and/or
  - iv) The Investigator made palpable and overriding error[s] that were likely to affect the result.
- c) Upon receipt of a written appeal, the REPAC will determine whether the reasons for the appeal satisfy the grounds as stated above. If so, the Vice-President shall take appropriate action to have the matter reviewed; and if not, no further action will be taken and the President, Complainant or Respondent shall be so informed. The decision of the REPAC will be final and binding under this policy. Should it be determined that a subsequent investigation is to be conducted, that investigation will be conducted in accordance with the process outlined in 8.3, but an investigator from a short-list of individuals who have been identified as qualified and experienced from the University of Manitoba/Winnipeg will be appointed.
- d) At all times during an investigation that results from an appeal, all the parties shall be advised that the requirement for confidentiality is of the utmost importance.
- e) Upon being advised of the findings of the appeal, the President, or designate in the event the President is the appellant, in consultation with the Vice-President and the University's legal counsel shall proceed in accordance with 8.4.
- f) The decision of the President at this stage shall be final and binding under this policy. Alternative recourse may be available as noted in 4.0 of this policy.

### **8.5.2 Appeal of Disciplinary Action or Sanction**

- a) Within ten (10) working days of receipt of the findings and the decision by the President to impose disciplinary action or sanction as a result of an investigation conducted pursuant to this Policy, the Complainant or the Respondent may file an appeal of her/his disciplinary action or sanction, in writing, to the ad hoc Respectful Environment Policy Appeal Committee (REPAC).
- b) Such appeal must contain supporting evidence and/or documentation and may be filed on the following grounds:
  - i) real bias or the reasonable apprehension of bias on the part of the President;
  - ii) the disciplinary action or sanction was inappropriate in relation to the behaviour that led to a finding of breach of the Policy, bearing in mind all relevant circumstances including but not limited to the fact that this may have been a culminating incident resulting from a pattern of behaviour.

- c) Upon receipt of a written appeal, the REPAC will determine whether the reasons for the appeal satisfy the grounds as stated above. If so, the Vice-President, in consultation with the Chair, Board of Governors, or designate, and legal counsel, shall over-rule the decision of the President, and shall impose disciplinary action or sanction as deemed appropriate.
- d) The decision at this stage shall be final and binding under this policy. Alternative recourse may be available as noted in 4.0 of this policy.

**APPENDIX "A"**

**Brandon University Violence Incident Report**

This form must be completed for all incidents of workplace violence or attempted workplace violence and submitted to the Brandon University President or designate **within 24 hours of the CRA being advised of the incident**. A copy will be provided to the Workplace Safety & Health Committee where required.

Name of Complainant / Victim: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Summary of incident: (include location of incident, names of persons involved and potential witnesses, dates, times)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Medical help required? Yes \_\_\_\_\_ No \_\_\_\_\_ Provided Yes \_\_\_\_\_ No \_\_\_\_\_

List All Departments Notified: \_\_\_\_\_ When? \_\_\_\_\_ How? \_\_\_\_\_ By Whom? \_\_\_\_\_

Any other faculty/staff/students notified? Yes \_\_\_\_\_ No \_\_\_\_\_ How? \_\_\_\_\_

Any others identified as "at risk" during the incident? \_\_\_\_\_ If yes, who? \_\_\_\_\_ notified when? \_\_\_\_\_ How? \_\_\_\_\_ By Whom? \_\_\_\_\_

Review Relevant Campus Policies as applicable:

- Workplace Safety and Health Policy
- Suspension of University Activities Policy
- Emergency Procedures Handbook
- University Security Policy
- Workplace Hazard Identification and Control Procedures
- Working Alone Policy
- Violent Intruder Procedures

Crisis counseling offered? Yes \_\_\_\_\_ No \_\_\_\_\_

Reviewed confidentiality and privacy issues? Yes \_\_\_\_\_ No \_\_\_\_\_

Workers Compensation applicable? Yes \_\_\_\_\_ No \_\_\_\_\_

Investigation conducted? Yes \_\_\_\_\_ No \_\_\_\_\_ When? \_\_\_\_\_ By Whom? \_\_\_\_\_

Workplace Safety and Health Committee contacted? Yes \_\_\_\_\_ No \_\_\_\_\_ When? \_\_\_\_\_ By Whom? \_\_\_\_\_

Brandon Police Service contacted? Yes \_\_\_\_\_ No \_\_\_\_\_

Action Taken:

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Future Action Required:

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Any Future Risk Identified? Yes\_\_\_\_\_ No\_\_\_\_\_

Steps to Eliminate / Minimize Any Future Risk (may include one or a combination of the following, to the extent practicable):

- design of workplace;
- design of workplace process;
- use of engineering controls; and
- implementation of safe work procedures.

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**If future injuries/traumas develop, please update this report as soon as reasonably possible.**

CRA Signature: \_\_\_\_\_

Date: \_\_\_\_\_

President or Designate Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Injury Report Form

Person reporting \_\_\_\_\_ Date \_\_\_\_\_

Name of Person(s) involved: \_\_\_\_\_

\_\_\_\_\_

Date of injury \_\_\_\_\_ Time of injury \_\_\_\_\_

Explanation of injury (who, what, when, where, nature of injury)

Action taken (by whom and when)

Name of person completing Report \_\_\_\_\_

Title of person completing Report \_\_\_\_\_

Work location and phone number \_\_\_\_\_

Signature \_\_\_\_\_ Date of Report \_\_\_\_\_

**CONFIDENTIAL**

**Agreement of Resolution**

Name of Complainant \_\_\_\_\_

Name of Respondent \_\_\_\_\_

Statement of terms:

Remedies:

This Agreement is confidential and will not be disclosed, unless required by law.

\_\_\_\_\_  
(Signature of Complainant)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Respondent)

\_\_\_\_\_  
(Date)