
Type:	A – Educational (Board)	Last Approved:	March 25, 2010
Executive Responsibility:	President and Vice-Chancellor	Next Review:	Nov., 2013
Administrative Responsibility:	Human Rights Advisor	Policy:	21.03

STATEMENT:

1. EDUCATIONAL INITIATIVES

The Human Rights Advisor is responsible for developing and implementing an educational program for the institution. This educational program will be developed in consultation with the Human Rights Advisory Committee and include at least the following:

- a. Provision of information to all members of the University regarding the kinds of behaviour that may constitute discrimination and harassment under this Policy;
- b. Broad dissemination of information regarding the process for filing a complaint under this Procedure;
- c. Provision of education, training and consultation to administrators and other members of the University regarding ways to promote and maintain an environment free of discrimination and harassment;
- d. Provision of training to members of the University that enhances awareness of racism, heterosexism, homophobia, sexism, and other manifestations of prejudice.

2. DEFINITIONS

2.1 Discrimination is:

Differences in treatment of individuals or groups of individuals on the basis of a prohibited ground under the [B.C. Human Rights Code](#). The prohibited grounds include race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, or age, or in the case of employment, unrelated criminal convictions.

2.2 Harassment is:

A form of discrimination that adversely affects the recipient on one or more of the prohibited grounds under the [BC Human Rights Code](#).

Harassment, as defined above, is behaviour or the effect of behaviour, whether direct or indirect, which meets one of the following conditions:

- a. is abusive or demeaning;
- b. would be viewed by a reasonable person experiencing the behaviour or effect of the behaviour, as an interference with her/his participation in an institutional related activity;
- c. creates a poisoned environment.

2.3 Sexual Harassment is:

Behaviour of a sexual nature by a person who knows or ought reasonably to know that the behaviour is unwanted or unwelcome; and

- a. which interferes with another person's participation in an institution-related activity; or
- b. leads to or implies employment, educational, or academically-related consequences for the person harassed; or
- c. which creates a poisoned environment.

2.4 The Human Rights Advisor is:

An employee of the University who is assigned the responsibility to fulfill the roles outlined in the Human Rights Policy and Procedure.

2.5 The "Appropriate" Vice-President is defined as follows:

- a. When the respondent is an employee, the Vice-President with line authority for the respondent shall resolve complaints pursuant to section 4.9.7(a);
- b. When the respondent is an employee, the Vice-President who does not have line authority for the respondent will determine appeals under sections 4.9.4(b) and 4.9.6(a) and take interim action under section 4.9.5(a);
- c. When the respondent is a student, the Vice-President, Administration and Finance will determine appeals under sections 4.9.4(b) and 4.9.6(a) and take interim action pursuant to section 4.9.5(a).

3. JURISDICTION

- 3.1 This Policy applies to all members of the University and applies to behaviour that occurs in the context of University related activities whether or not the behaviour occurs on or off University premises or during or outside formal working hours.
- 3.2 When incidents that could have a discriminatory impact become publicly known within the University the Advisor may intervene in the situation by contacting the parties involved and providing information on how the situation can be addressed under this Procedure.

4. PROCEDURE FOR RESOLVING COMPLAINTS

- 4.1 All members of the University have the right to access this Procedure. Reprisals or threats of reprisal against anyone who attempts or does enforce his/her rights under the Policy or Procedure or who participates under the Procedure will themselves be considered violations of this policy.
- 4.2 The confidentiality provisions in Section 6 of the Procedure apply to all complaints under the Procedure and breaches of confidentiality may be considered a violation of this Procedure.
- 4.3 The complainant must be prepared to be identified by name and to have the nature of the complaint revealed to the respondent if any action is to be taken by the Advisor under this Procedure.
- 4.4 It is the responsibility of the complainant and the respondent to inform the University of the use of any other problem resolution procedure or process. If a complaint becomes the subject of any other problem resolution procedure, the University may decide to take no further action until the other process has been concluded and the complainant requests further action.
- 4.5 The president shall appoint alternate administrators to all offices under this Procedure who may be in a conflict of interest. If the President is in a conflict of interest, the University Board will appoint an alternate.
- 4.6 A complaint may be made by any member of the University on behalf of another. However, action under this Procedure will normally be commenced only with a written consent to proceed given by the individual on whose behalf the complaint is made. The Advisor has the discretion to initiate action without consent when s/he deems taking action important to meeting the goals of the Human Rights Policy or Procedure.
- 4.7 Any student or employee who believes s/he has been subjected to discrimination or harassment is encouraged to make a direct request of the individual(s) concerned that the behaviour cease. It is recognized that power imbalances, intimidation, and other factors may make this approach inappropriate or unwise and that an individual may need assistance in resolving the concern.
- 4.8 In order for any action to occur under this Procedure, complaints received by other employees must be referred to the Advisor.
- 4.9 There are three routes available to members of the University under this Procedure:
 - a. Consulting with the Human Rights Advisor pursuant to clause 4.9.1;
 - b. Seeking informal resolution pursuant to clause 4.9.2;
 - c. Filing a formal complaint pursuant to clause 4.9.6.

4.9.1 Consultation with the Advisor

Any member of the University with a concern related to human rights may review the matter with the Advisor.

4.9.2 Seeking Informal Resolution

- a. Any member of the University can file a complaint with the Advisor, and request informal resolution.
- b. When the complainant and the respondent agree, the Advisor will endeavour to resolve complaints through education, and/or consensual dispute resolution processes. The Advisor may bring in another individual to provide mediation services. A support person may accompany each party to the complaint to any meetings that occur as part of the informal resolution process.
- c. Any resolution to the complaint at this stage must be agreed to by both parties and will not result in formal disciplinary action.

4.9.3 Fact-finding

The Advisor will conduct the initial fact-finding of any complaint. This fact-finding is to be conducted in a fair, unbiased and timely manner.

4.9.4 Decision to Accept Complaint for Consideration

- a. The Advisor may decide not to proceed with a complaint when, in her/his opinion:
 - i. there is no reasonable basis to justify the complaint proceeding;
 - ii. it could be more appropriately dealt with under some other policy or procedure; or
 - iii. it is frivolous, vexatious, or malicious.
- b. If the decision is to not accept the complaint, the reasons for this decision will be provided in writing to the complainant by the Advisor. This decision can be appealed to the appropriate Vice-President.
- c. The lodging of frivolous, vexatious or malicious complaints may be considered a violation of this Procedure.

4.9.5 Interim Response

- a. When the complaint may warrant interim action by the University, the Advisor will refer the matter directly to the appropriate Vice-President, who will determine whether any interim action will be taken. Interim action can include a directive mandating no contact between the parties, removal of the respondent from the work place or classroom on a temporary basis through transfer, temporary

suspension with pay, or any other measure deemed suitable by the Vice-President. Interim measures will normally be maintained until the complaint is resolved.

- b. This action does not reflect any decision on, or prejudgment of, the complaint.

4.9.6 Filing a Formal Complaint

- a. Complaints of violations of the Policy shall normally be made to the Advisor within one year of the most recent incident of discrimination or harassment. A complaint which does not meet the time limit can be accepted for consideration under this Procedure when, in the opinion of the Advisor:
 - i. the delay was incurred in good faith; and,
 - ii. no substantial prejudice will result to any person because of the delay.

The decision of the Advisor may be appealed to the appropriate Vice-President

- b. The complainant must request formal resolution in writing; the request for formal resolution must be accompanied by a written complaint. No action under this clause will be commenced without a written consent to proceed from the complainant.
- c. The Advisor will take the following actions without delay except in the situation where the Advisor declines to allow the complaint to proceed pursuant to clause 4.9.4(a) or 4.9.6(a) or if the complaint is to be addressed under the relevant Collective Agreement, pursuant to clause 4.9.7(b):
 - i. provide a copy of the complaint to the person against whom allegations have been made together with a copy of the Human Rights Policy and Procedure;
 - ii. request a response to the complaint within ten working days;
 - iii. upon a response being received, the Advisor will forward a copy to the complainant.

4.9.7 Formal Resolution

- a. Upon receipt of a written request for formal resolution, the Advisor shall refer the request to the appropriate Vice-President when the respondent is an employee, and to the Executive Director, Student Services, when the respondent is a student, for adjudication.

- b. When the complaint includes allegations of harassment and the respondent is a member of the B.C. Government and Service Employees Union or the Vancouver Island University Faculty Association, the procedure outlined in the Harassment section of the relevant Collective Agreement will be utilized to resolve the complaint and section 4.9.8 of this Procedure shall not apply.

4.9.8 Investigation

- a. When a complaint is referred to the appropriate Vice-President for adjudication, pursuant to section 4.9.7(a), s/he will appoint an investigator. The Advisor, another member of the University, or a person who is external to the University, can fill the role of investigator. The Vice-President will take into consideration the previous role of the Advisor in the resolution of the complaint, the seriousness and complexity of the complaint, and the wishes of the parties in the appointment of the investigator.
- b. The investigator will normally be appointed within 10 working days of referral of the complaint to the appropriate Vice-President and the investigation will normally be completed within a further 10 working days.
- c. There may be circumstances when, in the interest of fairness, the extension of these timelines would be appropriate. Decisions to extend the timelines will be made by the person adjudicating the complaint, after consulting with the parties to the complaint.
- d. The Investigator will interview the complainant and the respondent and may interview other persons and/or examine any documents that the Investigator considers may have or contain relevant information pertaining to the complaint, with the following exceptions:
 - i. the Advisor regarding confidential details of the informal resolution process;
 - ii. the Mediator (if any);
 - iii. documents prepared as part of an informal resolution process.
- e. If the complainant or the respondent refuses to cooperate with the investigation, the Investigator may either proceed with the investigation or recommend to the person adjudicating the complaint that the complaint be dismissed. S/he will make a decision concerning this recommendation and may direct the investigation continue.
- f. The Investigator will prepare a report within five working days of completing the investigation, which includes an opinion on the facts of the case, disputed and undisputed. Persons quoted and/or interviewed will be identified by initials in the report. Copies of the

report will be provided to the complainant, respondent, and to the person adjudicating the complaint.

- g. The parties to the complaint have the right to respond to the Investigator's report within five working days of its receipt, in writing, to the person adjudicating the complaint.
- h. Should the person adjudicating the complaint wish to meet with the complainant and/or the respondent in person to clarify any area covered in the investigator's report or their submission both parties to the complaint have the right to be present at any such meetings and to be accompanied by a person of their choice.

5. REMEDIATION AND CORRECTIVE MEASURES

- 5.1 The appropriate Vice-President will determine the disposition of the complaint, normally within 10 working days of receipt of the Investigator's report. S/he is charged with resolving complaints in a fair, unbiased and timely manner.

The decision shall normally include:

- a. a determination of whether the policy has been violated;
- b. any orders for remedies which s/he deems appropriate, including remedial or preventive action;
- c. restitution for the complainant; and/or,
- d. complete exoneration of the respondent.

The Vice-President may also recommend disciplinary sanctions which include, but are not limited to, dismissal or suspension.

- 5.2 When decisions by the Vice-President includes disciplinary sanctions requiring University President and/or University Board action (normally expulsion, suspension or dismissal from the University), they shall be forwarded to the President for appropriate action.
- 5.3 Should the Vice-President determine the policy has been violated by the lodging of a frivolous, vexatious or malicious complaint s/he is charged with determining remedial and/or corrective measures to be taken as outlined in section 5.1. A finding that a complaint is unfounded is insufficient grounds to make a determination that a complaint is frivolous, vexatious or malicious.
- 5.4 Implementation of any decisions made by the Vice-President for suspension or dismissal shall be dealt with in accordance with established policies and procedures, existing contracts of employment or collective agreements and the University Act.
- 5.5 Any formal discipline of an employee by the University may be recorded in his/her personnel file held in the Human Resources Office. These recordings are subject to any removal provisions that exist in the appropriate collective agreement.

5.6 Any formal discipline by the University of a student may be recorded in a student record file held by the Executive Director, Student Services. This file shall normally be maintained by the Executive Director, Student Services for a maximum of five years.

6. RIGHT TO APPEAL

6.1 Subject to the provisions outlined in sections 6.2 and 6.3, either party may appeal to the President decisions made by the Vice-President pursuant to section 4.9.7(a), except in the circumstance where an employee chooses to pursue her/his concerns through the grievance procedure in the relevant collective agreement. When the appeal involves a decision made by the President under section 5.2 the appeal shall be to the University Board.

6.2 The complainant may appeal the decision on whether the policy was violated, and/or the adequacy of the remedy, but has no right to appeal the adequacy of any disciplinary sanctions imposed by the University on the respondent.

6.3 The respondent can appeal the decision on whether the policy was violated, any measures required of him or her to remedy the situation for the complainant, and any disciplinary sanctions imposed, but have no right to appeal other remedies, preventive actions or restitution ordered by the University.

6.4 A request for an appeal must be submitted within ten working days of receiving written notice of the decision. Any such appeal must be made in writing, and must outline the reasons for the appeal. No decision shall be implemented until the ten-day appeal period has expired.

7. LIMITS OF CONFIDENTIALITY

7.1 This section shall apply to all persons under this Procedure, that is, to the Advisor, Mediators and Investigators, to University administrators and other employees as well as to the parties, their witnesses and representatives, and to all documents prepared under this Procedure, with some exceptions as set out below and subject to the relevant Collective Agreement.

7.2 If the circumstances surrounding a complaint have a serious negative impact on the workgroup, program, or class of which the parties to the complaint are members, disclosure of some information may be appropriate

7.3 When a complaint becomes public due to circumstances outside the control of the University, the University may respond to queries regarding this procedure and how the individual complaint is being handled. Information regarding details of the complaint can be disclosed, with the permission of the parties to the complaint or in accordance with law.

- 7.4 Subsequent to the resolution of a complaint, disclosure of information may be appropriate. The Vice-President may recommend to the President that the facts of the complaint be disclosed.
- 7.5 When a report to the University Board and/or action by the Board is required, the confidentiality of the complainant should be maintained unless there are compelling reasons for the disclosure of information.
- 7.6 All decisions regarding disclosure of information, as outlined in clauses 7.2, 7.3, 7.4, and 7.5, shall be made by the person charged with making decisions related to the specific complaint, as outlined in clauses 4.9.7(a) and 6.1.

8. RECORDS

- 8.1 The Advisor will be responsible for the secure and confidential maintenance of all records of complaints, related correspondence, and decisions made regarding complaints, including any discipline imposed. General information about complaints shall be made available to the University in the form of periodic reports, subject to appropriate privacy considerations. The files of the Advisor shall be closed to all members of the University, including members of the University Administration or Board, and information contained in those files will only be disclosed under conditions permitted by this Procedure or by law.
- 8.2 Records of all complaints will be maintained in a confidential file by the Advisor, for seven years.

9. ROLES MANDATED BY THIS PROCEDURE

9.1 Advisory Committee on Human Rights (the "Committee")

9.1.1 Membership

The Committee shall consist of representatives of various constituency groups, nominated by these groups and appointed by the Executive Director, Student Services, as follows:

- i. 2 representatives of VIU Administrative employees
- ii. 2 representatives of BC Government and Service Employees' Union
- iii. 2 representatives of Canadian Union of Public Employees, Local 1858
- iv. 2 representatives of Vancouver Island University Faculty Association
- v. 2 representatives of VIUStudents' Union
- vi. Executive Director, Student Services

The Chair will be elected by the membership. Committee decisions shall be by majority vote of members present. The quorum for formal decision making shall be five voting members with attempt made for each constituent group to be represented. The following shall also participate on the

Committee on an ex-officio basis: the Human Rights Advisor and the Manager, Human Resources.

9.1.2 Length of Appointments

The Vancouver Island University employees shall be appointed for two-year terms as of 15 August each year. The length of terms may be modified to establish a rotation of membership. The student representatives shall be appointed for one-year terms as of 01 October each year.

9.1.3 Responsibilities

The Committee has responsibility, in consultation with the Human Rights Advisor, to:

- i. promote awareness of the Human Rights Policy and Procedure;
- ii. make recommendations to the Human Rights Advisor pertaining to the educational component of the Human Rights Policy;
- iii. bring forward concerns of, and support from, their respective constituencies and make recommendations on the continued development of policy and procedure;
- iv. review on an ongoing basis and at least annually the effectiveness of the Human Rights Policy and Procedure;
- v. participate in the preparation and dissemination of an Annual Report of the Human Rights Office throughout the University.

9.2 Human Rights Advisor (the “Advisor”)

9.2.1 Responsibilities

The Human Rights Advisor is responsible for the administration, implementation and evaluation of the Human Rights Policy and Procedure. The duties of the Advisor include:

- i. developing awareness in the University of the Human Rights Policy and of the rights and responsibilities related to human rights and harassment by ensuring the implementation of the educational component of the Policy. This responsibility shall include developing orientation sessions for employees and students, presenting workshops to the University, developing appropriate educational materials, and contributing to University publications;
- ii. being available for individual consultations with members of the University who have human rights related concerns;
- iii. receiving allegations of violations of the Policy, acting as a resource to all parties to a complaint, conducting initial fact-finding processes in order to determine if the basis for a complaint exists; participating in related dispute resolution processes; and managing the formal complaint resolution process;

- iv. acting as a resource to the Advisory Committee, to the Vice President Administration and Finance, and to the University generally; attempting to ensure that the most current information about law and policy is available to the University;
- v. reviewing the effectiveness of the Human Rights Policy and making recommendations for revision to the Advisory Committee and to the Vice President, Administration and Finance;
- vi. co-ordinating the collection of data on complaints of harassment and discrimination, maintaining case files as mandated by the Procedure; preparing and disseminating through the Advisory Committee an annual report as of September 30 each year. The report should provide to the constituent groups and to the University information on the activities of the Human Rights Office, cases processed and resolution attained subject to the confidentiality provisions of this Procedure.

9.3 Mediator

The role of a mediator under this Procedure is to work with both parties in an unbiased manner to facilitate the resolution of a complaint. The Advisor may appoint a mediator as outlined in section 4.9.2(b) of the Procedure on a case-by-case basis when both parties agree to consensual dispute resolution.

9.4 Investigator

The role of an investigator under this Procedure is to investigate a complaint and to provide an opinion on the facts of the complaint.

9.5 The Vice-President who does not have line responsibility for the respondent

9.5.1 The role of the Vice-President who does not have line responsibility for the respondent under this Procedure is:

- i. to receive appeals under section 4.9.4(b);
- ii. to take interim action under section 4.9.5(a);
- iii. to receive appeals under section 4.9.6(a).

9.6 The Vice-President Who Has Line Responsibility for the Respondent

The role of the Vice-President who has line responsibility for the respondent under this Procedure is to adjudicate complaints pursuant to section 4.9.7(a).

9.7 Vice-President, Administration and Finance

The role of the Vice-President, Administration and Finance, when the respondent is a student, under this Procedure is:

- i. to receive appeals under section 4.9.4(b);

- ii. to take interim action under section 4.9.5(a);
- iii. to receive appeals under section 4.9.6(a).

9.8 Executive Director, Student Services

9.8.1 The role of the Executive Director, Student Services under this Procedure is to adjudicate complaints pursuant to section 4.9.7(a).

9.9 President

9.9.1 The role of the President under this Procedure is to appoint alternate administrators for all officers under this Procedure who may be in a conflict of interest pursuant to section 4.5 and to adjudicate appeals pursuant to section 6.1.

9.10 University Board

9.10.1 The role of the University Board is to act for the President when the President is in a conflict of interest, pursuant to section 4.5 and to adjudicate appeals pursuant to section 6.1.

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