

Brandon University

Discrimination and Harassment Prevention Procedures

1. Purpose

The Discrimination and Harassment Prevention policy and related procedures are based on principles of fairness and due process for all parties involved in any human rights proceeding at Brandon University. These procedures are in place to implement the Discrimination and Harassment Prevention Policy. The University's Discrimination and Harassment Prevention Policy was established to support a climate of mutual respect in the workplace and learning environment so that all members of the University community are free from discrimination and harassment.

These procedures apply to cases of direct and systemic discrimination, discrimination-based harassment and personal harassment. Cases of sexual harassment fall under Brandon University's Sexualized Violence Policy.

2. Recourse Options

This Policy and Procedure does not limit the right of a member of the University community to file a complaint with the Manitoba Human Rights Commission. This Policy and Procedure is not intended to discourage the complainant from exercising any other rights under the law. Members of the University community retain the right to address issues through the grievance process outlined in their respective collective agreement or through other University policies. It is possible to pursue more than one of these options at a time.

3. General

Any party to a complaint has the right to have another individual accompany them to interviews or other meetings required under this procedure. This may include union/association representative, student advocate, elder, friend, relative, or other. Interpretation or translation services will be provided where needed.

Complaints submitted anonymously cannot be used on their own in any disciplinary action against the respondent, though they may prompt further inquiry by the University.

Complaints should be brought forward to the Diversity and Human Rights Advisor (DHRA) at the earliest possible date to prevent further harm and to increase the chance of an early and positive resolution. Complaints should be made within 6 months of the offending behaviour.

Extenuating circumstances may delay the reporting of concerns, so members of the University community are encouraged to contact the DHRA if they wish to file a complaint either within or beyond the 6 month time frame.

Complainants may choose to withdraw their complaint or resolve it through other means at any point in this procedure. Under some circumstances the University may find it necessary to continue with an investigation or to consider other action.

Complaints which are found to be malicious or made in bad faith may, in turn, be treated as harassment under this Policy and Procedure.

4. Consultation

Anyone who believes they have been subject to discrimination and/or harassment, or anyone who receives an inquiry or concern about discrimination and/or harassment from a member of the Brandon University community should consult the *Guide to Resolving Conflict at Brandon University*. This guide contains information to assist determining whether a complaint meets the threshold for discrimination and/or harassment. The DHRA can help members of the University Community in making this determination. Others who may be available to consult on these issues include Human Resources Officers, Student Services Personnel, BUSU, union representatives, a direct supervisor, Department Chair, Dean or Director.

When a concern has been brought to a member of the University community, they are encouraged to give the complainant a copy of the Discrimination and Harassment Prevention Policy and Procedures (the Policy and Procedures) and assist the complainant in contacting the DHRA.

5. Confidentiality

Brandon University recognizes the importance of confidentiality, and issues brought to the DHRA will be treated as confidential. Confidentiality must be balanced with the University's legal obligations to address discrimination and harassment, so at times information will need to be shared in order to investigate a matter, to address a risk or threat, or to comply with requests from legal entities. This confidentiality extends to any member of the University community who may be privy to information or who possesses documentation about a complaint or investigation. Breaches of confidentiality may be subject to penalties.

Confidentiality should not be confused with anonymity. Those who bring forward a concern and wish for action to be taken on their concern must be prepared to be identified as the complainant. The University will make every attempt to ensure that there are no reprisals against anyone making a complaint under this policy or participating in an investigation.

6. Complaint Process

The DHRA strives to resolve complaints as quickly as possible. A complaint is considered submitted once it is received by the DHRA in writing on the appropriate form and signed by the complainant.

STEP 1: WRITTEN COMPLAINT

Where the consultation indicates that the concern should be dealt with under the Discrimination and Harassment Policy and Procedures, and the complainant wants the University to take action, they must file a written complaint with the DHRA. The form is available online. The DHRA can provide guidance on what information should be included in the complaint.

At the earliest stage of contact with the complainant, the DHRA will consider whether there needs to be interim measures put in place to safeguard the physical and psychological safety of all parties. This may involve sharing limited information with supervisors/faculty members or others so that the involved parties may be kept separate or other measures put in place.

The complaint will be addressed through alternate means if the DHRA determines that the written complaint:

- seems to fall under the heading of “interpersonal conflict”. The DHRA will inform the complainant of this, and will review options for resolving the concern through other means, such as the Guide to Resolving Conflict at Brandon University.

The complaint may not proceed to Step 2 if the DHRA determines the written complaint:

- is based on events occurring more than 6 months prior to the complaint being filed. The complaint may either be dismissed as “out of time” or accepted where the delay in reporting is due to extenuating circumstances.
- is trivial, frivolous, malicious, or made in bad faith. The DHRA will advise the complainant of this and may recommend that the complaint not be addressed. Malicious or bad faith complaints may be subject to sanctions under this procedure.

The complaint will move forward to Step 2 if the DHRA determines that the written complaint:

- seems to fall under the heading of direct or systemic discrimination, discrimination- based harassment or “personal harassment” . The DHRA will notify the complainant of this and will proceed to Step 2. At this point, the DHRA contacts the respondent to inform them of the complaint and to provide them with a copy of the written complaint.

STEP 2: INVESTIGATION (COMPLAINANT AND RESPONDENT INTERVIEWS)

The complainant meets with the DHRA at the earliest possible time to go over the details of their complaint, to fill in any missing information and to be advised of the process that will be followed.

The respondent is normally given up to 10 working days to review the complaint and prepare a response before being interviewed by the DHRA. The respondent may choose to prepare a written response to the complaint in order to acknowledge or deny the validity of the allegations in whole or in part, provide additional information as well as information identifying any possible witnesses and/or propose a resolution of the complaint.

Alternatively, the respondent may choose not to participate in these procedures, in which case this will be noted and these procedures will continue without input from the respondent.

After interviewing both complainant and respondent, the DHRA will meet with the appropriate Complaint Review Committee (CRC) to consult on next steps.

STEP3: COMPLAINT REVIEW COMMITTEE

The DHRA consults with the CRC to determine:

- if there needs to be further investigation;
- the scope of that investigation;
- whether the use of an external investigator is required;
- if the complaint is malicious or made in bad faith, and should be dismissed;
- if additional interim measures are needed to ensure physical/psychological safety of any party; and
- what “appropriate administrators” will decide on the resolution of the complaint

The CRC consists of three members and the composition of the committee is dependent upon the identity of the respondent. CRC members and an alternate will be identified each year in September for each of the categories mentioned below. In order to guard against undue delays in resolving complaints, a standing meeting of the committee will be set on a biweekly basis. The DHRA will inform members in a timely manner if there is a need to meet and who should attend.

If the respondent is a member of staff or faculty of the university, the CRC will be made up of President’s Advisory Council (PAC) members as follows; one Dean from a different faculty, academic department or non-academic unit and one nonacademic administrator. Once these two members are identified, they will choose a third representative, also from PAC, to chair the committee, being mindful to avoid real or perceived conflicts of interest. The Chief Human Resources Officer will not sit on this committee.

If the respondent is a student the CRC will be made up of PAC members as follows; one academic administrator not from their faculty or department and one non-academic administrator. Once these two members are identified, they will choose a third representative, also from PAC, to chair the committee, being mindful to avoid real or perceived conflicts of interest. The Dean of Students will not sit on this committee.

If the respondent is a member of PAC the DHRA will consult with the President's Executive Council (PEC) in lieu of the CRC. If the respondent is a member of PEC the DHRA will consult with the Chairperson of the Board of Governors of Brandon University in lieu of the CRC.

If the information already gathered is sufficient to determine if the Policy was breached, the DHRA prepares a Report of Findings, as described in step 5, and provides it to the appropriate administrators. If additional information is needed, either the DHRA or external investigator continues to step 4.

STEP 4: INVESTIGATION (WITNESS INTERVIEWS AND EVIDENCE GATHERING)

Where an investigation is required, the Investigator gathers information as quickly as possible, and either the DHRA or the external investigator contacts both the complainant and respondent regularly to inform them of the progress and expected timelines. An internal investigation will normally be completed within 20 working days, and where an external investigator is engaged the investigation will normally be completed within 40 working days. A quick resolution is of great importance, but the need to be thorough and fair takes precedence, so any timelines given are estimates and may be adjusted depending on the circumstances.

Respondents or other parties to a complaint may choose not to participate in an investigation. This will be noted and the investigation will proceed without their input.

Under Workplace Safety and Health legislation, the University must ensure that no one is subjected to harassment in the workplace, so at times investigations are required even in the absence of a named complainant.

For more detailed information on the process, please see the *Guide to Investigations at Brandon University*.

STEP 5: REPORT OF FINDINGS

The Investigator produces a report outlining the alleged breach(es) of the Policy and the relevant evidence pertaining to each allegation. Using the "balance of probabilities" standard, the report specifies if there is evidence of a breach for each allegation. Implementation of remedial and disciplinary action falls to the appropriate administrators, as identified in step 3. The investigator will normally submit this

report to the appropriate administrators no more than 10 working days after the completion of the investigation.

For respondents who are staff and faculty, the Chief Human Resources Officer will always be involved in the resolution of the complaint. For respondents who are students, the Dean of Students will always be involved in the resolution of the complaint. For respondents who are members of PAC, the President will always be involved in the resolution of the complaint. Where the respondent is a member of PEC, the Chairperson of the Board of Governors of Brandon University will always be involved in the resolution of the complaint.

STEP 6: RESOLUTION OF COMPLAINT

After a review of the Report of Findings, the appropriate administrators meet with the complainant to inform them of the results of the investigation. The appropriate administrators also meet with the respondent to inform them of the results of the investigation.

Corrective Action – No Breach

Even where it is determined that this policy has not been breached, the behaviour giving rise to the complaint may be contrary to the University's commitment to maintaining a productive and respectful work and learning environment. In such a case, Brandon University may find it necessary to provide developmental or educational opportunities to address the behaviour. This may include:

- Verbal feedback from the appropriate supervisor/administrator to the respondent to cease the behaviour;
- An opportunity for the complainant to share the impact of the behaviour with the respondent, either directly or through the appropriate administrator.
- Mediation between the complainant and the respondent;

These actions shall be considered non-disciplinary, and are in line with management rights and responsibilities. They will not be documented on any personnel or student file.

Corrective Action - Breach

The University takes corrective action respecting any person in the University community who subjects another to discrimination and/or harassment.

These remedies or penalties are meant to prevent further acts of discrimination and/or harassment, and restore the working and learning environment to a positive, respectful space. The nature and severity of the behaviour determines the level of initial response. Repetition of the behaviour following clear communication that it is unwelcome adds to the severity of the response.

Some possible responses to a finding of discriminatory/harassing behaviour may include:

- A written directive from the appropriate supervisor/administrator to the respondent to cease the behaviour, with information about possible consequences should the behaviour continue.
- Education or personal development for the respondent.
- A planned course of supervision and feedback for the respondent by the appropriate administrator.
- A verbal or written apology from the respondent to the complainant.
- Counselling for the respondent.
- Restricted access to a physical area of the University.
- Restrictions on attendance or participation in specific University activities.
- Removal from residence.
- Banning from campus.
- Suspension for a set period of time for students.
- Suspension with or without pay for a set period of time for employees.
- Expulsion for students.
- Dismissal for employees.
- Cancellation of contract for contractors and suppliers of services.

These actions shall be recorded on the respondent's personnel or student file. Disciplinary action is confidential, and the complainant or other parties to the investigation are not informed of the nature of such action. However, it may be necessary to share some information about remedial action in order to maintain the complainant's ongoing physical or psychological safety, or to reduce the possibility of contact between the parties.

In some cases the resolution of a complaint will require that some action be taken or some condition be met, either by the respondent or by an administrator at the university. Both the complainant and the respondent will receive notification in writing from the DHRA when they are satisfied that these are completed.

7. Right to Grievances and Appeals

Union members may grieve decisions or actions under this procedure through the processes outlined in their respective collective agreements. Students have the right to appeal decisions or actions under this procedure directly to the Vice- President, Academic and Provost. Exempt staff have the right to appeal decisions or actions under this procedure directly to the Vice-President, Administration and Finance. Where a member of PEC is the respondent the appeal will be raised with the Chairperson of the Board of Governors.

Timelines for grievances are outlined in the relevant collective agreements. Appeals must be brought forward within 15 working days of being informed of the outcome of the investigation. Appeals must be in writing and must outline the grounds for the appeal.

Some possible grounds for appeal include, but are not limited to:

- bias on the part of the investigator.
- failure to follow the policy and processes outlined in these procedures.
- new substantive information or evidence not made available previously to the investigator.
- errors made by the investigator which likely affected the outcome of the investigation.
- the level or nature of the corrective action.

DEFINITIONS

- a. **Balance of Probabilities** refers to the standard of proof used in deciding harassment complaints. It requires that the evidence be weighed and the decision be made in favour of the side which is more likely to be true. This is in contrast to the “beyond a reasonable doubt” standard used in criminal matters.
- b. **Complaint Review Committee** is a group that consults with the DHRA or investigator upon the receipt of a written complaint to determine whether an investigation is needed, the scope of the investigation, and other details.
- c. **Management Rights** are implicit rights of management to determine the institution’s mission, budget, and strategy, and to make operational decisions such as work assignments, direction of employees, and hiring of employees.
- d. **Student Advocate** is a representative appointed by the Brandon University Students’ Union (BUSU) to assist and support students and at the student’s request to assist in resolving complaints under this policy.

This document is available in PDF and Microsoft Word format on the Brandon University website. A printed copy can be attained from the Diversity and Human Rights Office, Room 333 Clark Hall. Persons involved with the processes outlined in this policy (complainants, witnesses or respondents) may conduct their involvement verbally or with the assistance of an interpreter upon request.