



## Issue Paper on Handling Complaints of Discrimination at the University of Ottawa

Office of the  
**Ombudsperson**

August 12<sup>th</sup>, 2011

Since I started working in this position, I have had the opportunity to review a few student complaints against professors regarding discrimination on grounds set out in the Ontario *Human Rights Code*. The students came to me after they had exhausted all other means, because they remained unsatisfied, for various reasons, with the outcome of their complaints.

I should emphasize that I have not performed a systematic analysis of this issue, and the concerns raised in this paper are the result of my involvement in but a small number of complaints. However, I believe that the procedures I have seen followed for those complaints are very likely similar to the complaints procedures of other faculties. In fact, I know this to be true, having spoken with human resources officers to gain an understanding of the procedures followed.

Page 7 of the Ontario Human Rights Commission's *Guidelines on Developing Human Rights Policies and Procedures* sets out five elements that a strategy should include:

1. «a barrier prevention, review and removal plan
2. anti-harassment and anti-discrimination policies
3. an internal complaints procedure
4. an accommodation policy and procedure
5. an education and training program»<sup>1</sup>

This issue paper deals solely with the third element, the internal complaints procedure, and I have not checked for the presence of the other required elements—the University would be wise to perform that check. A description of a proper complaints procedure is given on pages 16 to 25 of the *Guidelines on Developing Human Rights Policies and Procedures*.

My main concerns involve the handling of formal student complaints of discrimination or harassment. Obviously, most situations of that kind can and should be settled informally, and I am not suggesting that a more formal means of resolution is preferable. However, a complaints procedure is needed that is simple and fair to the complainant and respondent. The nature of the first-level response to a complaint of discrimination or harassment greatly affects the outcome and the chances of finding a suitable solution informally.

I have read a number of documents (see References) and selected the following five general principles to provide a backdrop for my concerns and provide ideas for improving the complaints procedure for student complaints of discrimination:

1. the procedure must be accessible and well-understood
2. conflicts of interest or duties must be eliminated or managed
3. the procedure must be fair to the complainant, respondent and all parties involved
4. the investigation process must be effective
5. every step of the procedure must be documented

On page 22 of its *Policy on Discrimination and Harassment Because of Sexual Orientation*, the Ontario Human Rights Commission lists factors to be considered in determining whether or not an organization has met its responsibilities (I am assuming that the factors are the same regardless of the ground of discrimination):

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<sup>1</sup> Ontario Human Rights Commission, *Guidelines on Developing Human Rights Policies and Procedures* (2008) 7. <http://www.ohrc.on.ca/en/resources/Policies/gdpp/pdf>

*«The following factors have been suggested as considerations for determining whether an organization met its responsibilities to respond to a human rights complaint:*

- *procedures in place at the time to deal with discrimination and harassment*
- *the promptness of the institutional response to the complaint*
- *the seriousness with which the complaint was treated*
- *resources made available to deal with the complaint*
- *whether the organization provided a healthy work environment for the person who complained*
- *the degree to which the action taken was communicated to the person who complained»<sup>2</sup>*

In the complaints that I reviewed, three factors were causes for concern, namely, the lack of clarity in the procedures, the time required to respond and the degree to which the complainant was informed about the action taken.

### **Principle 1: The procedure must be accessible and well-understood**

The University of Ottawa recently changed the organizational structure and assignment of responsibilities for handling discrimination and harassment complaints. A new office, the Office for the Prevention of Discrimination and Harassment, recently opened and is setting up its student services. Its role in reviewing formal complaints is unclear. Also unclear is whether or not it will have the duty or power to settle a complaint. Will it provide confidential services, or will it have to act if a disclosure or complaint is made? When it learns of a complaint, will the university be formally notified about it? Will it conduct investigations? Will it act as an expert? It would appear that the responsibilities of the Office for the Prevention of Discrimination and Harassment—and the procedure for discrimination complaints—need to be clarified.

Procedures for complaints on various grounds are not clear enough, except for the sexual harassment complaints procedure, which is set out in the University of Ottawa's Policy 67. There seems to be no university-wide data gathering system that can provide information on the numbers and kinds of complaints filed. Without such data, there is little hope of effecting positive change at the university.

A written document is needed—available to all—that sets out clear responsibilities for handling discrimination and harassment complaints and that sets out a complete complaints procedure, from the filing of the complaint to the closing of the file.

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<sup>2</sup> *Wall v. University of Waterloo* (1995), 27 C.H.R.R. D/44 (Ont. Bd. Inq.) as cited by Ontario Human Rights Commission, *Policy on Discrimination and Harassment Because of Sexual Orientation* (2009) 22.  
<http://www.ohrc.on.ca/en/resources/Policies/SexualOrientationPolicyEN/pdf>

## **Principle 2: Conflicts of interest or duties must be eliminated or managed**

When a complaint must be investigated (not all complaints need to be), the investigation must be objective and impartial. Investigators must understand the complaint and neither support the opinions of the complainant nor protect the interests of the university or respondent. A good decision cannot be rendered without good information. Duties must be set out in a clear procedure known to all. The information collected and used to render a decision must be recorded in writing. In the files I reviewed, information gathering roles and responsibilities seemed unclear and poorly understood.

## **Principle 3: The procedure must be fair to the complainant, respondent and all parties involved**

The fairness of the procedure is without a doubt my greatest concern.

I believe that a procedure that is fair to all must meet the following requirements:

- The respondent must be informed, and the allegations must be specific
- The respondent must be given time to prepare a response to the allegations and must be permitted to have a representative or receive assistance
- Relevant information must be obtained before a decision is rendered, and all relevant information obtained must be considered
- Each person must act fairly and must withdraw if there is a conflict of interest
- The complaint must be acted upon promptly
- The reasons for decision must be given

In the files that I reviewed, the decisions were rendered months after the complaints were filed. The decisions were summarized in an email message only a few sentences long, with no explanation. The complainants, however, had prepared highly detailed submissions with supporting evidence and requests for specific remedies. Their great disappointment upon receiving a one- or two-line email message as a response after waiting for months is completely understandable. It should also be noted that the formal complaints were filed only after informal channels had failed. I again point out that most of the complaints could have been settled informally and that it is in the interest of university officials to take all complaints seriously and seek informal settlements. Refusal to take a complaint seriously or discuss it, or to examine a situation objectively can only cause harm to both the university and the parties involved.

The complainant and respondent must be able to see the reasoning behind a decision. A clear-cut decision is one in which the information that the decision maker allowed is logically linked to the findings that the decision maker made. The decision-making process will then be transparent, and biased or arbitrary decisions will then be prevented. Decision makers will have to explain the reasons for their decision, which will likely lead to better decisions, because they will have to clarify their thoughts.

Best practices for handling complaints include managing complainant expectations, e.g., the way in which a complaint will be handled, the time required to receive a response and the solutions that may be recommended. In the files that I reviewed, not enough attention was paid to those expectations. There appears to have been little or no consideration for the needs of the complainant. In fact, the

complainant seems to have been removed from the process altogether. Unfortunately, a lack of feedback can exacerbate the situation, and waiting for months without receiving any news can raise doubt about the university's commitment to resolving the problem. As time goes on, the complainant will become increasingly convinced that the university does not care and the final decision will be biased.

In addition to determining the merits of the complaint, the complainant's expectations must be managed and the respondent's rights respected.

At the end of the procedure, the decision maker's ruling must be communicated and the following information must be provided:

- enough information about the decision to enable the complainant to decide whether or not to pursue other channels
- information on other channels that are available
- the information used to render the decision and relevant quotations from the investigation report, if any, while maintaining the anonymity of the parties
- a response to any requests from the complainant for specific solutions or actions

#### **Principle 4: The investigation process must be effective**

Discrimination complaints may require an investigation to gather the information needed to come to a decision, while protecting the anonymity of the parties involved as much as possible. In the files that I reviewed, there was communication between the decision maker and the respondent, and there appeared to be agreement on the facts.

However, protecting the respondent seemed to have such a high priority in the complaints procedure that it was awkward to meet with the complainant. Decision makers handling discrimination complaints must understand their responsibilities and duties, and there must be an alternative process through which they may report any conflict of interest. Depending on the complaint, it may be useful to have someone other than the decision maker gather the information required to come to a decision. I cannot say whether or not human resources specialists or other experts were consulted in making the decision in accordance with Ontario law.

#### **Principle 5: Every step of the procedure must be documented**

As mentioned above, I believe that the university is depriving itself of useful information by failing to collect information on complaints in a systematic fashion. The Office for the Prevention of Discrimination and Harassment that has been created will not become involved in a complaint unless the complainant has chosen to approach it; therefore, there will be no centralized database for analyzing complaints, seeing what is happening and making appropriate changes and improvements. Again, I am not recommending that all complaints be made formal by creating files. Discrimination and harassment complaints must continue to be settled informally as often as possible, but there also needs to be a simple, accessible procedure for filing a formal complaint.

My main concern regarding documentation is that the complaints procedure is not well documented. I have not found any policies or procedures that are in writing and available to the entire university community regarding discrimination complaints, except for the policy on sexual harassment. The lack

of policies leaves decision makers without any support structure that ensures administrative fairness and high-quality decisions.

## **Summary**

The purpose of this paper is to make the university aware of my concerns regarding the complaints procedure for student complaints of discrimination so that the necessary changes can be made to ensure fairness and respect for all parties, especially students. As mentioned above, I have reviewed but a small number of complaints and therefore have not performed a systematic analysis of this issue. Nonetheless, given the lack of written policies and procedures, I can only conclude that the way in which discrimination and harassment complaints are handled lack transparency and are inconsistent between faculties. The complainant is not always right, but the decision maker of the university must come to a decision in a way that is impartial, and in a way that respects the rights of all the parties involved while managing the complainant's expectations and maintaining the confidentiality of the information collected. For now, I am pointing out the shortcomings I have found in the files that I reviewed, so that the university may become aware of them and consider ways to make the complaints procedure for harassment and discrimination complaints fairer.

Office of the  
Ombudsperson

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