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I. INTRODUCTION

Saint Mary’s University is committed to the appropriate, respectful and informal resolution of all conflicts where possible; and to promoting an environment, free from discrimination and harassment, including sexual harassment based on the protective characteristics set out in the Nova Scotia Human Rights Act (<http://www.gov.ns.ca/humanrights/humanrightsact.htm>). Such discrimination and harassment undermine the mission of the University by discouraging individuals from fully participating in academic and professional work. Not only do discrimination and harassment negate the principles of university life, they are also against the law and will not be condoned at Saint Mary’s University. It is the responsibility of all members of the University community to contribute to a respectful environment for work and study.

II. THE POLICY

Saint Mary’s University’s Policy on the Prevention and Resolution of Harassment and Discrimination has four objectives:

1. To prevent discrimination and harassment, including sexual harassment, on grounds protected by the Nova Scotia Human Rights Act.
2. To provide informal and formal procedures for effectively managing all disputes, including those related to discrimination and harassment
3. To use best practices in Appropriate Dispute Resolution (ADR).
4. To provide relevant education and awareness on conflict resolution and human rights legislation

This policy applies to all members of the University community, including students, administrators, faculty and staff as well as permanent sub-contractors, consultants, volunteers and others who are acting in a recognized or sanctioned capacity. It applies to incidents that occur in the course of work or study or participation in

University sponsored events held on campus, at a satellite campus or learning center, or off-campus. Examples of off-campus settings include, but are not limited to field trips, athletic team road trips, conferences or training events, and university-sponsored social functions.

While the University has no control over companies that employ students of the Co-operative Education Programs, students should report incidents of harassment, which occur outside the University during work terms to the Co-operative Education Project Offices. The Conflict Resolution Advisor is available to Co-op students to discuss incidents and options. The Co-op Office will advise employers that we would like to see a Harassment and Discrimination Policy available in the workplace and will provide a copy of the Saint Mary's Policy to each employer.

Issues and complaints arising from this policy will ideally be dealt with through an informal process before moving, if necessary, to a formal process.

This policy is designed to guide the resolution of conflicts within Saint Mary's with dignity and respect through the introduction of ADR skills, education and interventions in order to support the leadership, enhance the morale of students, faculty, and staff and provide a supportive environment for work and study. The University intends to promote collaborative interest-based outcomes through the use of conflict resolution skills and the increased use of facilitated discussions, conflict coaching, educational workshops and mediations. The University will increase awareness of issues regarding discrimination and harassment through education and training and will respond to complaints and concerns in a cooperative, timely and fair manner.

Ultimately, Saint Mary's University has a vision to continue building on a long standing and successful history of providing an effective internal conflict resolution program that in turn will continue to foster a workplace and educational institution where people resolve their differences through dialogue, cooperation, respect and understanding.

Notwithstanding this Policy, individuals have the right to seek the advice and services of the Nova Scotia Human Rights Commission or legal recourse, as appropriate.

III. OVERVIEW (What is Conflict Resolution/Appropriate Dispute Resolution?)

Conflict Resolution or Appropriate Dispute Resolution (ADR) is generally viewed as a collection of tools and techniques that can be used to reach resolution on an issue (or issues) in dispute, and functions as an addition to more traditional adversarial approaches such as formal hearings and litigation. The ADR techniques are a series of options: any of these options may be appropriate, depending on the circumstances of the dispute.

ADR is a set of skills that help to promote collaborative interest-based outcomes rather than decisions based solely on parties' "positions". These listening and speaking skills of the ADR process can help to uncover the parties' underlying concerns, hopes, expectations, and preferences which are not always apparent from parties' initial statements and positions. Identifying and working with the underlying interests provides a basis for finding a "win-win" outcome that better meets the parties' needs. It is understood that ADR is a more progressive, preventative and pro-active approach to resolving disputes.

For these reasons the University has chosen to act in accordance with “best practices” in Conflict Resolution or Appropriate Dispute Resolution in order to highlight the importance of using appropriate techniques in any given situation.

Benefits of Conflict Resolution/Appropriate Dispute Resolution

- a. Participation in the conflict resolution process is voluntary.
- b. Most aspects of the conflict resolution process are confidential.
- c. The atmosphere in conflict resolution is informal and conducive to constructive, positive communication.
- d. Conflict resolution empowers individuals in managing their own disputes.
- e. In a conflict resolution process, participants always retain full control over the solutions that will form the settlement of their dispute.
- f. The conflict resolution advisor has no authority to make decisions in this process.
- g. Conflict resolution is particularly valuable in situations where the parties must continue to work together in the future as it helps to repair and preserve working relationships.
- h. Settlements reached through conflict resolution have high rates of satisfaction and compliance.
- i. Conflict resolution avoids the “win-lose” approach used in many other approaches to resolve conflict.
- j. The conflict resolution process is non-binding, as opposed to other interventions.
- k. If an agreement is not reached, the participants are free to pursue any other remedies they may have at their disposal.

IV. EDUCATION AND PREVENTION PROGRAM

The University recognizes that prevention, awareness, education and early intervention are the best means of achieving the objectives of this Policy; therefore, the university will actively undertake ongoing educational initiatives involving all members of the University community. Some of the initiatives will include:

- a. Making administrators, managers, supervisors, chairpersons and others in authority aware of their responsibilities and accountability under the Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination, in order to create and maintain an environment free from discrimination and harassment. As such, they will receive training and support in ADR processes and procedures. They will also be made aware of complaint procedures and internal and external conflict resolution resources available.
- b. Ensure that a copy of the Guiding Principles of the Policy is available to every employee, student and permanent sub-contractor.
- c. As the need arises, organize and facilitate training sessions, workshops, information sessions, or other activities on the topics of conflict resolution, harassment and discrimination.
- d. Inform members of the University community of the key elements of the Policy via posters and brochures.

- e. For educational purposes, the Conflict Resolution Advisor reserves the right to use examples of previous conflict situations without identifying the parties involved.

V. DEFINITIONS

Discrimination/Harassment

(based on the protective characteristics set out in the Nova Scotia Human Rights Act)

In this policy, the words discrimination and harassment refer to any action or behaviour, which is known or reasonably ought to be known to be offensive or inappropriate, that denies equality and fair treatment. The Nova Scotia Human Rights Act states that discrimination "has the effect of imposing burdens, obligations, or disadvantages on an individual or class of individuals not imposed on others or which withholds or limits access to opportunities, benefits or advantages available to other individuals or classes of individuals in society." Discrimination can take the form of harassment. The grounds protected against discrimination by the Nova Scotia Human Rights Act include age, race, colour, religion, creed, sex, sexual orientation, physical or mental disability, an irrational fear of contracting an illness or disease, ethnic, national or aboriginal origin, family status, marital status, source of income, political belief, affiliation or activity.

Sexual Harassment

Defined in The Nova Scotia Human Rights Act as:

- a. Vexatious sexual conduct or a course of comment that is known or ought reasonably to be known as unwelcome;
- b. A sexual solicitation or advance made to an individual by another individual where the other individual is in a position to confer a benefit on, or deny a benefit to, the individual to whom the solicitation or advance is made, where the individual who makes the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- c. A reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance.

Systemic Discrimination

Refers to policies or practices that appear neutral, but which contain unjustifiable or unreasonable barriers that lead to adverse job- or study-related consequences for members of groups protected by the Nova Scotia Human Rights Act.

Retaliation

For the purpose of the policy, retaliation will be considered harassment. Retaliation includes vengeful actions against an individual:

- a. For having invoked this policy (on behalf of themselves or another individual)
- b. For having been associated with the persons invoking this policy or participating in these procedures

Reasonable Person Test

Refers to an assessment of responsibility that takes into account not only what the complainant and respondent actually experienced, knew, or understood about one

another or the situation, but also what a reasonable person in each of their circumstances would or ought to have experienced, known, or understood.

Organizational Conflict

Organizational conflict is a state of discord caused by the actual or perceived opposition of needs, values and interests between people working together. Conflict may take many different forms within an organizational setting. Issues that do not involve any of the grounds of prohibited discrimination are not formally covered by the Saint Mary's University Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination. Such behaviours, including bullying and / or other forms of interpersonal or inter-departmental conflict should be addressed with the Conflict Resolution Advisor, a manager, dean, union representative, residence advisors, or Human Resources. Although these concerns do not fall under the policy in a formal capacity, the Conflict Resolution Office can provide assistance and information about available resources and will educate the University community about the negative effects of these types of behaviours. This type of conflict will be addressed through a variety of appropriate conflict resolution processes.

ADR Definitions

Conflict Resolution and/or Appropriate Dispute Resolution processes are defined by the use of interest-based options such as: a) direct negotiation; b) conciliation; c) facilitation; and d) mediation. Interest-based processes enable and encourage parties who want to resolve their own conflict. Please see Appendix E for a detailed description of the most salient features and specific terms that apply to the practice of conflict resolution.

VI. SEEKING ASSISTANCE OR INITIATING A COMPLAINT

Who can seek assistance or file a complaint?

All members of the University community who believe they have been harassed or subjected to discrimination or believe they may become the subject of a harassment and/or discrimination complaint are encouraged to seek advice and assistance.

Are there time limits on filing a complaint?

In the absence of exceptional circumstances, a complaint shall be made within one calendar year of the alleged incident, or in the case of a series of incidents, one year since the last alleged incident in the series.

Do I have to file a written complaint?

No written complaint is required to begin an informal resolution, however, if the case is complex the participant may be asked to provide details in writing. In a formal process, the complainant will be informed that their written statement will be conveyed to the respondent so that the individual may tender a written reply.

At any time the individual may choose to withdraw from the complaint proceedings; however, the University's commitment to provide an environment free from harassment and discrimination may oblige the University to proceed in the absence of a complaint from the person directly affected.

What is the role of the Conflict Resolution Advisor in the initial stage of addressing a complaint?

The primary role of the Conflict Resolution Advisor is to assist individuals and groups in making informed decisions about the most appropriate method of resolving a

concern or complaint. The Advisor shall be impartial and shall protect the confidentiality of all parties who the Advisor has been requested to assist. (See limits to confidentiality Section 9.) The Conflict Resolution Advisor shall provide individuals seeking advice with a copy of this policy; explain the procedures and make them aware of other available, appropriate support services (i.e., counseling, Employee Assistance Programs, [relevant internal and / or external resources](#) etc).

The Advisor will determine whether the complaint:

- a. Falls within the University's policy's definition of harassment and/or discrimination on the grounds protected by the Nova Scotia Human Rights Act
- b. Falls within the University's definition of Organizational Conflict
- c. Is not within the jurisdiction of this policy, in which case the Advisor shall, if appropriate, re-direct the complainant to relevant channels for redress
- d. Is frivolous, vexatious or made in bad faith; or is being heard, or already has been heard by another University officer, or through another procedure
- e. Does not meet the criteria for an informal resolution
- f. Does not appear to be supported by sufficient evidence

Given any of c, d, e or f above, the Advisor may refuse to assist in an informal resolution and may suggest alternate resources for the resolution of the complaint.

The Conflict Resolution Advisor shall facilitate and monitor the processing of each concern and/or complaint and shall ensure that the participants are aware of their options and rights throughout the procedure.

The Conflict Resolution Advisor can make referrals to request support from internal and external conflict resolution advisors and investigators. Conflict Resolution Advisors and Investigators will be trained in accordance with standards used by the Nova Scotia Human Rights Commission in both mediation and investigation.

VII. INFORMAL RESOLUTION OF A COMPLAINT

What is the rationale for using the Informal Resolution process?

It is anticipated that most complaints of harassment and discrimination can be resolved informally through the use of conflict resolution strategies and supportive interventions. It is the aim of the policy, and those charged with carrying out its procedures, to assist individuals in reaching voluntary settlement of disputes through mutually agreeable solutions where possible, so that formal and more adversarial processes may remain a last resort. Every effort will be made to stop the offending behavior and to resolve complaints as quickly as possible.

How is the Informal Resolution process started?

Individuals may complain initially to a supervisor, Human Resources, union representative, or, in the case of students, to a staff or faculty member. The university/union representative has the responsibility to maintain confidentiality and strongly encourage the individual to seek advice from the Conflict Resolution Advisor. The university/union representative may seek advice from the Conflict Resolution Advisor as to further action without identifying the individual(s) in question.

What is the role of the Conflict Resolution Advisor or other individual receiving the complaint in the Informal Resolution process?

In the Informal Resolution process, the Conflict Resolution Advisor shall not reveal the identity of the individual without that individual's knowledge, unless not acting would pose a threat to the University community. Disclosure of identity may or may not be required, depending on the action pursued.

Options under Informal Resolution include but are not limited to:

- a. Confidential "conflict coaching" to the individual raising a concern or complaint
- b. Use of non-accusatory mechanisms such as: raising the awareness of a supervisor, staff, or faculty in a department of harassment issues generally
- c. An apology from one or more of the individuals involved in the dispute
- d. Referral of one or more of the parties for counseling
- e. A letter to one or more of the parties to the dispute
- f. Voluntary relocation of one or both of the parties to the dispute
- g. Using a neutral third party, such as the Conflict Resolution Advisor, to negotiate with the individuals involved in the dispute
- h. Collaborative, solution-focused discussions within the department or office of the University

What is the process for Informal Resolution through conflict resolution?

Should individuals opt to proceed with an informal approach through conflict resolution, they shall permit the Conflict Resolution Advisor to take steps to attempt to resolve the complaint in this capacity.

How long is this process?

Normally, this effort shall not exceed sixty (60) working days, without compelling reason to extend the period of resolution. In the case of multi-party and / or complex and / or long-standing historical conflicts, the timeframe for resolution may exceed 60 days as appropriate.

What are the possible outcomes?

Informal procedures are without prejudice to either party. No record of complaint or informal resolution will be entered into the official file of either a staff member, faculty member or a student. Informal procedures do not include making a formal determination as to whether or not harassment and/or discrimination have occurred.

If the conflict resolution process is unsuccessful and a formal procedure is initiated, the Advisor who facilitated the conflict resolution process will not reveal the details of the intervention(s) without the permission of the participants who were involved. An informal agreement is voluntary and the advisor has no authority to impose conditions or sanctions on either party.

The participant may withdraw at any time during the informal process or the Advisor may withdraw from the process if one determines no useful purpose will be achieved by continuing to attempt an informal resolution.

A successful outcome in the conflict resolution process may result in the parties signing an Agreement of Resolution, which sets out a course of action agreed upon, by the parties, intended to eliminate harassment/discrimination and restore harmony, collegiality and cooperation. This Agreement of Resolution will be retained in the confidential records of the Conflict Resolution Office. (See Appendix D.)

What happens if an Agreement of Resolution is violated?

Every effort will first be made to repair damage and broken trust; however, violation of the Agreement of Resolution may lead to reopening the file. The participant may choose to proceed to the formal complaint process.

What if the informal resolution process is unsuccessful?

If the informal process does not achieve an acceptable outcome, the participant may decide to use the formal process. As well, an individual may choose not to proceed to the formal complaint process even if the informal resolution has proven to be unsuccessful. No record of an informal resolution will be entered into an employee or student file. A record will be kept in the confidential files of the Conflict Resolution Advisor (see Section 15 - Time Lines, Documents, Files and Records).

What are the exclusions from the Informal Resolution Procedures?

Harassing events, which may result in an exclusion from the Informal Resolution Procedure, include:

- a. Events which might constitute a criminal code violation: physical assault, sexual assault, sexual abuse and misconduct, including coercive sexual exploitation, stalking, intimate partner violence (in such cases, persons involved are always apprised of their right to invoke the criminal code process, but there is a recognition that this is not always compellable).
- b. The University recognizes its responsibility to adjudicate situations where the University considers a response is warranted to ensure the health, safety and security of individuals during the course of university business whether this occurs on or off-campus.
- c. Repeated instances of harassment and/or discrimination where previous interventions have not been successful in persuading respondent(s) to rein in offending behaviours.

VIII. FORMAL RESOLUTION OF A COMPLAINT

When is a formal complaint appropriate?

- d. When sixty (60) work days of informal negotiation has failed to result in a resolution.
- e. When the substance of a complaint concerns events excluded from the informal procedures (see above) and the complainant wishes to immediately and directly initiate a formal procedure by the submission of a formal written complaint.
- f. When the university through designated officers files a formal complaint on its own behalf.

How is the formal process initiated?

A formal process may be initiated directly by the submission of a formal written complaint signed by the complainant.

- a. The complainant files a written complaint with the Conflict Resolution Advisor or delegate, who will forward it to the appropriate Investigator.
- b. The statement of complaint should include the names of the parties involved, a detailed description of the harassing behaviour or comment (nature of the complaint, events, time and dates, location of incidents, witnesses).

- c. A written complaint may include a statement explaining how the incident(s) affected the complainant, and if appropriate, a statement of the remedy being sought.

What are the elements of the formal process?

The Investigator will provide a copy of the written complaint to the respondent within five (5) working days of its receipt. The respondent is asked to address the complaint, in writing, within ten (10) working days. This response is conveyed to the complainant.

In circumstances where the allegations could also potentially give rise to criminal charges against the respondent(s), the respondent(s) will be advised by the Investigator that they may seek legal counsel before participating in any meetings about and/or investigations of the complaint. The respondent(s) should also be advised that their lack of participation will not impede the University's investigation and that a ruling will be based on available evidence or information.

The University may undertake interim measures to ensure the orderly function of the academic/work environment before their investigation is complete. Such measures are not an indication that a decision has been made of the merits of the complaint.

When the complainant has received the respondent's reply, and is not satisfied that a resolution is achievable, the complainant will notify the Investigator in writing within 10 working days to proceed with the formal complaint. The Investigator will begin the investigation and notify the Chair of the Harassment and Discrimination Hearing Committee that a Hearing will be required. In consultation with the Conflict Resolution Advisor, the appropriate Administrator will convene the Hearing committee within 20 working days of a request to do so.

The Conflict Resolution Advisor and/or an appropriate Investigator will advise the complainant and respondent of the procedure to be followed in a formal hearing.

Investigations will be facilitated by internal and/or external investigators who have received the appropriate training in investigating matters of harassment and discrimination. The Investigator will ensure the complainant and respondent are informed of the progress of the hearing and of resources for support that are available to them until the resolution or termination of the formal complaint.

The Investigator will provide the Harassment and Discrimination Hearing Committee with the relevant information including: the signed complaint; the respondent's reply; the summary of proceedings including the Advisor's efforts in conflict resolution, if applicable; an investigative report by the Investigator, signed statements from witnesses, if applicable; basic background information for identification purposes, about the complainant and respondent; records of referrals for personal counseling.

The complainant and respondent will be made aware of all documents or other information to be reviewed by the Committee during the Hearing and in rendering its decision.

Formal Hearings are based on the principles of Natural Justice. Both parties will be given equal opportunity to be heard by the Harassment and Discrimination Hearing Committee. Both parties may be accompanied by a union representative, legal representative or other support person for the purposes of guidance and support. (Any expense incurred is the responsibility of the individual being supported.) The participants will be asked to give the Hearing Committee 48 hours notice of support

persons who will be attending the hearing. At no time will the support person participate in the proceeding.

The Hearing Committee submits a decision along with recommended sanctions, if appropriate, to the President within ten (10) working days of the Hearing. The decision of the majority will be the decision of the committee.

The Hearing Committee shall determine:

- a. Whether the charges are valid or whether or not enough evidence exists to form the basis of an adjudication;
- b. Whether the complaint is with or without merit, or has been brought with malicious intent (which may be different from arising without merit); and
- c. If the complaint is sustained, what discipline, sanction, remediation or compensation will be recommended to the President to be taken to secure a respectful environment where all individuals can work or study without harassment or discrimination. Disciplinary action will be in accordance with University policies, the appropriate collective agreement or the student disciplinary system.

Disciplinary action recommended by the Harassment and Discrimination Hearing Committee will be in accordance with University policies, the appropriate collective agreement or the student disciplinary system. This recommendation will be sent to the President for ratification and a copy of the Report will also go to the Complainant, the Respondent and the Conflict Resolution Advisor. No record of complaint will appear on the complainant's official file.

The President will ratify the recommendation or request further information from the Hearing Committee within ten (10) working days of receiving the Report and will notify the Complainant, Respondent, the Hearing Committee and Advisor of his/her decision.

IX. CONFIDENTIALITY

All members of the University community involved in a case are required to maintain confidentiality. All complaints of harassment and/or discrimination and reports on these complaints are kept in strict confidence except as required to investigate and respond to a complaint. The exceptions to complete confidentiality are:

- a. Cases where disclosure is necessary to carry out the procedures outlined in this Policy, including the University's obligation to investigate allegations of misconduct and to take corrective action. It does not preclude the discreet disclosure of information in order to elicit the facts of the case or to implement and monitor the terms of any resolution. Confidentiality must be distinguished from anonymity. A complainant who wishes to seek a more formal remedy must be prepared to be identified to the respondent.
- b. Cases where disclosure is required by a legal subpoena. Normally, documentation in conflict resolution is exempt from being subpoenaed.
- c. Cases where, in the University's opinion, disclosure is necessary to ensure health, safety and security of individuals; i.e., in cases that involve imminent danger or where an institutional response is warranted.

All files shall be treated confidentially, in accordance with FOIPOP (Freedom of Information/Protection of Privacy) Guidelines for Confidential Records, unless the complaint is brought before civil or legal authorities.

X. RIGHTS AND RESPONSIBILITIES

General Responsibilities

Each member of the University community is responsible for helping to create an environment that is free of harassment and discrimination. Any individual who believes they have been subjected to harassment and/or discrimination should take direct action. Where appropriate, this can mean confronting the person initiating the harassment and expressing disapproval; or, consulting with the Conflict Resolution Advisor and/or appropriate faculty or administrative officer as soon as possible.

In order to facilitate the implementation of this policy, every university employee and student is obliged to cooperate with the Conflict Resolution office.

Responsibility of Administrative Officers and Academic/Administrative Supervisors

Senior Administrative Officers (this would include members of the Executive Management Group, the Senior Administrative Group, and others as yet to be named) bear a primary responsibility for maintaining a learning and work environment free from discrimination and harassment.

Administrative officers and Academic/Administrative Supervisors have a responsibility to deal expeditiously and fairly with incidents of organizational conflict, harassment and/or discrimination and to make those for whom they are responsible aware of the University's Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination. They are also obliged to contact the Advisor if they receive a complaint, or are aware of allegations, whether or not there has been a complaint. They should not wait until complaints are brought forward.

Since failure to act could be interpreted as condoning the prohibited behaviour and may in itself be construed as a human rights offence, administrative officers must act promptly, in consultation with the Conflict Resolution Advisor, whenever it is feasible to do so. They must keep a written record of the date, time and nature of the incident(s), the names of any witnesses, and the steps taken to deal with the situation.

It is a violation of this policy for anyone who is authorized to recommend or take action regarding complaints of organizational conflict, harassment/discrimination of students or employees to disregard or fail to cooperate with a formal investigation of allegations or, in the event that harassment/discrimination has occurred, to fail to take timely corrective action. Senior Administrative Officers should be aware that they might be held responsible/liable for actions or inactions, which obstruct the application of this Policy.

Members of the University community who have supervisory responsibilities bear a responsibility to act in a timely and effective manner when they become aware of any violation of this Policy. This responsibility includes an awareness of what constitutes harassment, knowledge of the procedures that are in place for dealing with such allegations and cooperation in the processing of complaints made under this Policy. The supervisor must inform those who bring such concerns of the existence of the University's Policy on the Prevention and Resolution of Harassment and Discrimination and of the office of the Conflict Resolution Advisor.

Some individuals may complain initially to their supervisor, or, in the case of students, to a staff or faculty member. When complaints are initiated at this level, the supervisor, staff or faculty member shall maintain confidentiality and encourage the complainant to talk with the Advisor. Such personnel are to, without necessarily

revealing the identity of the persons involved, seek advice from the Advisor as to how to proceed in those instances where a person alleging to have been subject to harassment is unwilling to take the matter to the Advisor.

Management Rights

The Policy on the Prevention and Resolution of Harassment and Discrimination will not be applied, interpreted or administered in such a way as to detract from the inherent right and duty of the University to manage the University nor shall it restrict the rights and obligations of those in supervisory or instructional roles to manage and discipline employees and students.

Union Rights

This policy is not to be applied in such a way as to detract from the rights of unions to defend the interests of their members and to exercise their rights under a collective agreement. Members of unions and employee associations have all rights to representation that their collective agreements confer.

Rights of Complainant

- a. To lodge a complaint and have it responded to without fear of retaliation or harassment, in accordance with the procedures put in place under this policy;
- b. To be fully informed about all measures taken in resolving the case
- c. To determine one's own level of participation in the resolution of the case, without compulsion
- d. To bring the complaint forward to authorities outside of the University
- e. To be accompanied by a person of choice at any proceeding relating to the complaint (the costs incurred are the responsibility of the complainant). Complainants are asked to give the Chair 48 hour notice of who is attending
- f. To have the complaint or any reference to the complaint excluded from official file unless the complaint was frivolous or vexatious
- g. To have the complaint dealt with in a confidential manner (see section 9)
- h. To be kept informed of the status of any proceedings under this policy
- i. To receive the results of any investigation in writing
- j. To be assured that the complaint will be handled within a reasonable length of time (see section 15)

Rights of the Respondent

- k. In the event a complaint is formalized, the respondent has the right to receive a written statement of the allegations within five (5) working days and have ten (10) working days to reply to them
- l. To be accompanied by a support person of choice at any proceeding relating to the complaint (the costs incurred are the responsibility of the respondent); Respondent is asked to give the Chair 48 hour notice of who is attending
- m. To have the complaint or any reference to the complaint excluded from the official file unless the individual is found to have committed an offense under the policy
- n. To be treated fairly and equitably

- o. To be dealt with in a confidential manner (see section 9)
- p. To be kept informed of the status of any proceedings under the policy
- q. To receive the results of any investigation in writing
- r. To be assured that the complaint will be handled within a reasonable length of time (see section 15)

Protection of Freedom of Speech

This policy is not to be applied in such a way as to detract from the right of faculty, staff and students to engage in the frank discussion of potentially controversial matters. This policy is not intended to limit or prohibit debate, instructional techniques, or the assignment of readings that advocate controversial positions, provided that discussion and instruction are conducted in a mutually respectful and non-coercive manner. This policy also recognizes the right to teach according to one's best judgment, within the bounds of the course calendar description and requirements of competency.

Recourse at Law

This policy does not detract from the right of complainants to seek recourse at law. For example, they may seek assistance from the Nova Scotia Human Rights Commission, or where a criminal act is involved, the police. In situations where the University is unable to proceed with a complete investigation, the University may undertake interim measures to ensure the orderly function of the academic/work environment. Such measures are not an indication that a decision has been made on the merits of any complaint.

XI. SANCTIONS AND REMEDIES

Following Formal Resolution procedures, including investigation and decision, sanctions may be imposed and remedial action taken to stop harassment/discrimination. Recommendation for remedial or disciplinary action shall be part of the Hearing Committee's Report and shall be recorded and forwarded to the President or other appropriate University official for consideration and action, if necessary. The University may impose fair and reasonable penalties, appropriate to the offence and relevant circumstances of the case, ranging from reprimand to dismissal/expulsion and taking into consideration the provisions of an applicable collective agreement or code of conduct.

Remedial Action

Remedial actions are intended to mitigate the negative effects of the harassment.

Remedy Options

Once a case has been decided, the complainant or the respondent may request measures be taken to correct damage done to that individual's career development, academic record, physical or emotional health, reputation, or finances. Arrangements are negotiated with the appropriate University officer.

Disciplinary Action

The discipline imposed will be commensurate with the seriousness of the offense. Any disciplinary action shall be undertaken pursuant to the relevant University policy or collective agreement. In cases of violation of computer privileges, such as the transmission of abusive E-mail or display of pornographic material, the respondent's account will be suspended.

XII. RETALIATION AND FALSE ACCUSATIONS

Any reprisals or attempts at retaliation shall be subject to disciplinary action. Anyone found guilty of making vexatious or misleading accusations will be subject to disciplinary action (this is not the same as charges made in good faith for which there is insubstantial evidence to sustain a finding of harassment and/or discrimination).

XIII. APPEALS

In the case of unionized faculty and staff, the right to grievance and arbitration will serve as the appeal process. Nothing in the policy shall be construed as removing any rights of appeal or rights to grieve which members of the University community have independent of the Policy.

XIV. CONSENSUAL RELATIONSHIPS

Saint Mary's Policy does not contain a specific prohibition against consensual relations; however, members of the community need to be advised that relationships with an imbalance of power are often problematic, and that complaints arising from them may be considered as sexual harassment. The university and its employees (faculty and staff) have a fiduciary responsibility to students. Most professional organizations have codes of conduct prohibiting relationships between professionals and their clients and university employees must recognize their fiduciary responsibility to students.

Consensual relations between a student and a faculty or staff member possess certain characteristics, which may lead to sexual harassment problems because of the potential breach of power, trust and authority.

A faculty member or teaching assistant who enters into a romantic/sexual relationship with a student, should declare conflict of interest to the Dean and/or Chair and should refer teaching and grading responsibilities for that student and/or involvement in decisions affecting the student to an appropriate individual.

(Adapted from: The Educator's Guide to Controlling Sexual Harassment. Thompson Publishing Group, Inc. 1993.) For further information see Ethical Principles in University Teaching - The Society for Teaching and Learning in Higher Education, 1996.

Even if a person submits to unwanted sexual behaviour, it may be sexual harassment. A person feeling coerced who unwillingly submits to sexual activity does not lose the right to file a complaint of sexual harassment.

XV. TIME LINES, DOCUMENTS, FILES AND RECORDS

Time Limits for Bringing a Complaint

In the absence of exceptional circumstances, complaints shall be initiated within one (1) calendar year of the alleged incident, or in the case of a series of incidents, within one (1) calendar year of the most recent incident.

Time Limits for Effecting an Informal Remediation of a Complaint

Efforts to affect an informal resolution of a complaint should usually be concluded within sixty (60) working days (12 weeks of term time or 12 consecutive weeks, in the case of non-student complaints). An extension of time may be granted by the Conflict Resolution Advisor at the request of either party if there is a compelling reason.

Time Limits for Concluding a Formal Investigation

A formal investigation, with review and final report, should be concluded within a fifty (50) working days time frame. The need to extend this time limit shall be documented in writing.

Time Limit for Convening the Harassment and Discrimination Hearing Committee

The Investigator will notify the Chairperson of the Harassment and Discrimination Hearing committee when the investigation report is ready and the Chair will have twenty (20) working days to convene the committee.

Time Limit for Harassment and Discrimination Hearing Committee to Report Its Decision

The Harassment and Discrimination Hearing committee will report its decisions and recommended sanctions to the President or designate, the complainant, the respondent and the Conflict Resolution Advisor within ten (10) working days of the end of the Hearing.

Time Limit for Ratification

The President or designate will have ten (10) working days to review the report and recommendations. Recommendations will be ratified solely upon the discretion of the President or designate.

Documents, Files and Records

The Conflict Resolution Advisor will retain all records relating to a case, resolved and unresolved, for up to six (6) years after which they will be destroyed unless a subsequent complaint arises involving the complainant(s) or respondent(s). Before the records are destroyed, the Conflict Resolution Advisor shall make and retain a record of the complainant, the respondent, and a summary of the findings and outcome of the complaint.

If during an investigation or an informal resolution procedure, the Advisor detects a repeated pattern of harassment by the respondent(s) from past resolved and unresolved cases, or repeated pattern of unfounded, malicious complaints by the complainant(s), the record of complaints will be amended by the Advisor with a signed notation indicating the date, reason for retaining the file beyond the six (6) year period, and the length of time the file will be retained beyond that period.

All files shall be treated confidentially, in accordance with FOIPOP (Freedom of Information/Protection of Privacy) Guidelines for Confidential Records, unless the complaint is brought before civil or legal authorities.

XVI. POLICY REVIEW

The Policy is submitted in recognition that its perspective may be relative to a set of perceived needs in the present; that actual application may point out adjustments and inconsistencies. The Conflict Resolution Advisor and/or others involved in the application of this policy may recommend changes to the Policy. Changes to the Policy shall be subject to the approval of the Executive Management Group.

Appendix A Conflict Resolution Advisory Committee

Appointment and Composition

The President appoints the Conflict Resolution Advisory Committee. Members are selected from faculty, staff and students. The committee may include other members as might be recommended by the Committee and approved by the President, or designate, including a member external to the University.

The Conflict Resolution Advisor will be a member, ex-officio.

Members of the Committee shall normally serve staggered two (2) year terms. Members are eligible to serve more than one term.

The Committee will nominate its own Chair and Secretary from among its members. The Chair shall be responsible for calling meetings, organizing the agenda and conducting meetings. The Committee shall meet at the call of the Chair, or at the call of any three (3) members of the Committee, but no less than twice per academic year.

Duties:

- a. To consult and collaborate with the Advisor on matters of prevention, education, and policy review;
- b. To maintain communication between the various University constituency groups and the Committee concerning policy, education, and programs;
- c. To provide feedback on the Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination and to make suggestions for changes as needed;
- d. To maintain and respect the confidential nature of all information received as a member of the committee, including signing a "confidentiality agreement"; and
- e. To review the Advisor's annual report.

When operationally feasible, Committee members will be provided with opportunities to participate in annual training session(s) facilitated by the Conflict Resolution Advisor and/or other individuals with expertise in the field of conflict resolution, harassment and discrimination.

Appendix B Harassment and Discrimination Hearing Committee

Students, staff and faculty will be chosen, as needed, to serve in this capacity by the Chair of the Hearing Committee, i.e., the Vice President, Administration, Vice President, Academic, or Director of Student Services. The Hearing Committee will have diverse representation. Members of the Committee shall normally serve staggered two-year terms and members are eligible to serve more than one term.

The Hearing Committee will be comprised as follows:

Student vs. Student Complaint

Senior Director of Student Services or designate, administrative representative, and a student.

Faculty vs. Student Complaint

Vice President Academic and Research or designate, member of the faculty, and a student.

Faculty vs. Faculty Complaint

Vice President Academic and Research or designate and two faculty members.

Staff vs. Faculty Complaint

Vice President Academic or designate, one staff, and one faculty member.

Staff vs. Staff Complaint

Vice President Administration or designate, two staff members.

Staff vs. Student Complaint

Vice President Administration or designate, Senior Director of Student Services, and a student.

The purpose of the Hearing Committee will be:

- a. To hear formal complaints of harassment/discrimination and assess the information provided;
- b. To determine if the charges are valid or whether or not there is enough information to make a decision;
- c. To determine if the complaint is with or without merit, or has been brought with malicious intent; and
- d. To recommend to the President or designate, discipline or sanctions proportionate to the offense if upheld, compensation or remediation as well as other measures necessary to secure a respectful environment.

Appendix C Conflict Resolution Advisor

Appointment, Role and Responsibilities

The Conflict Resolution Advisor (the Advisor) is appointed by the Senior Director of Human Resources. The Advisor shall be experienced and skilled in organizational conflict management as well as issues arising from harassment and discrimination. The Advisor must act in accordance with the professional and ethical standards as determined by both recognized professional associations and the Nova Scotia Barrister's Society Code of Conduct for Mediators. The Advisor shall also have significant amount of experience and understanding of best practices in organizational conflict management system design.

The Role of the Advisor

- a. To provide advice and recommendations to senior representatives within Saint Mary's University on dispute resolution policies, standards, practices and guidelines and on strategies to prevent or manage critical existing or potential conflicts;
- b. To coordinate the conflict resolution process from initial contact through all stages to resolution or termination;
- c. To create public awareness and education about conflict resolution, issues of discrimination and harassment, including sexual harassment, and provide consultation and information to all constituencies of the University concerning matters related to conflict resolution and harassment/discrimination, including the University's policies and procedures; and
- d. To submit an annual report to the Senior Director of Human Resources no later than July 15th. This annual report shall cover the period from April 1st to March 31st.

Appendix D Agreement of Resolution

An Agreement of Resolution is a statement of the terms by which both parties to a mediated settlement agree to abide. It may also include any remedies that are mutually agreed upon. Both parties shall retain copies, and an additional copy retained in the file in the Advisor's office. It shall be understood that if either party subsequently does not abide by the agreement, that the settlement may be nullified and the case may be re-opened. The agreement of resolution is confidential and will not be disclosed, unless required by law.

Appendix E Definitions in Appropriate Dispute Resolution (ADR)

Active Listening

Using the techniques of clarifying, paraphrasing, reflecting, and summarizing to better understand a person's meeting and to ensure that information obtained is accurate.

Adjudication

A dispute resolution method where those involved present evidence and arguments to a neutral person who is given the power to arrive at a binding decision. Arbitration and litigation are both types of adjudication.

Appropriate Dispute Resolution

Also, known as ADR, is a widely used term referring to the entire range of dispute resolution options outside the traditional administrative, judicial or legislative decision making process.

Arbitration

An alternative dispute resolution process in which a third party decision-maker, selected by the other parties involved, gathers information, holds a mini-hearing, and makes a decision.

Arbitrator

The neutral decision maker in arbitration.

Bad Conflict

A conflict that is not addressed positively and ultimately creates group division and more conflict; a conflict with no good outcomes.

Binding

A decision that must, by law, be accepted by the disputants involved in a decision.

Brainstorm

Coming up with as many ideas as possible.

Caucus

Private session between a mediator and a party involved in dispute resolution in which the mediator considers issues involved in the case and the available options. If the mediator meets separately with one party, the mediator will almost always then meet separately with the other parties to the mediation.

Conciliation

A process that facilitates dispute resolution. In conciliation, the parties do not meet together. Rather, a neutral third party, or conciliator, acts like a go-between, communicating each side's position to the other, relaying settlement options, and sometimes offering non-binding advice in an effort to bring the sides closer to settlement.

Conciliator

Neutral party serving in the process of conciliation.

Conflict

A disagreement, usually based on a difference over goals, objectives, or expectations between individuals or groups. Conflict also occurs when two or more people, or groups, compete over limited resources and/or perceived, or actual, incompatible goals.

Conflict Management

The practice of identifying and handling conflict in a sensible, fair, and efficient manner.

Conflict Resolution

The process by which the parties involved in a conflict agree to discuss the problem and negotiate a solution. Conflict resolution can be done with the help of a neutral person.

Consensus

Solution to a problem which is arrived at by and agreed upon by all parties. An agreement reached through consensus may not satisfy each participant's interests equally or receive a similar level of support from all participants.

Dispute

A dispute reflects a specific issue in conflict, whereas the definition of conflict is more broad-based and can include more than one dispute.

Early Neutral Evaluation (ENE)

A form of dispute resolution in which the legal and factual positions of the parties are presented to a neutral third party who is a subject matter expert. This third party evaluates the position of each party and advises each side of the weaknesses and strengths in its position, and may offer an opinion regarding the trial's outcome.

Facilitation

A collaborative process used to help parties discuss issues, identify and achieve goals and complete tasks in a mutually satisfactory manner. This process uses an impartial third party, the facilitator, who focuses on the processes and procedures of dispute resolution and decision-making. The facilitator is impartial to the issues being discussed and has no decision-making authority.

Facilitator

A neutral party who conducts facilitation.

Fact-finder

A neutral party who carries out the process of fact-finding to help encourage the resolution of a dispute.

Fairness

Decided-upon rules are understood by all, are consistently applied, and are unbiased.

Good Conflict

Conflict that is approached creatively and constructively with the goal of using the conflict as a learning opportunity; a conflict with positive outcomes.

Group Problem-solving

Working out problems together as a group.

Impartiality

Freedom from favouritism or bias.

Interest

The needs, desires, hopes and fears of the parties that lead them to take a particular position. The parties' interests serve as the motive for their positions. They are the

reasons, or underlying needs and concerns that motivate people to ask for certain outcomes.

Issue

The matter being disputed. A conflict may have one or more issues.

Litigation

The process through which a case is tried and resolved in a court of law, an administrative agency, or another decision making tribunal.

Lose-lose Solution

An idea or suggestion in which no one benefits.

Mediation

The intervention into a disagreement by a third party, who has no decision-making authority, is impartial, and helps the parties communicate so they can reach a solution. Mediation is voluntary and confidential. Mediation can be used when the parties want to keep an ongoing relationship or end a relationship in a positive and cooperative way.

Mediator

Another name for an impartial third party who helps the disputing parties discuss and negotiate a solution.

Neutral Evaluation

A process in which a neutral party gathers information and then submits an evaluation to the parties involved. This evaluation can be used in future negotiations.

Neutral Fact-finding

A process in which the parties to a dispute, and/or their representatives, ask an impartial third person to decide disputed factual issues between them. Unless the parties otherwise agree in writing, the findings are not binding.

Neutral Person

The impartial third party who helps the disputing parties discuss and negotiate a solution.

Non-binding

Not mandatory; a non-binding dispute resolution procedure is one from which any disputant is free to walk away at any time; a non-binding decision in a case is one that any party may reject, opting instead to negotiate another settlement or to proceed to another type of dispute resolution procedure.

Partnering

A technique designed to prevent business disputes from occurring by establishing working relationships between business partners that are based on open communication, joint problem solving, teamwork, and shared risks and rewards. By entering into, and agreeing to uphold, a partnering relationship, business associates also agree to employ innovative, business-oriented methods to resolve disputes.

Peer Review

An alternative dispute resolution process in which a workplace dispute is presented to a panel of employees who make a decision. These panel members are skilled in handling sensitive issues.

Position

A disputant's ideal, unilateral solution to a dispute. Positions describe possible outcomes or solutions.

Settlement

The agreement reached at the conclusion of any dispute resolution procedure.

Trial

A dispute resolution process in which a judge or jury renders a decision after hearing the evidence and oral arguments in a case. A trial is often conducted as a public hearing and is subject to formal rules.

Win-lose Solution

An idea or suggestion in which only one side benefits.

Win-win Solution

An idea or suggestion in which both sides can benefit.

Appendix F Links to Relevant Web Pages

The following links will provide the reader with additional information directly linked to the key areas reflected in this policy:

Institute on Conflict Resolution (ICR) - <http://www.ilr.cornell.edu/icr/>

A partnership between The School of Industrial and Labor Relations at Cornell University and The Foundation for Prevention and Early Intervention of Conflict

ADR Atlantic - <http://www.adratlantic.ca/>

A Regional Professional Association which provides information to those interested in how conflict resolution is being addressed within Atlantic Canada

Association for Conflict Resolution (ACR) - <http://www.acresolution.org/>

This association is widely regarded as the pre-eminent association for dispute resolution practitioners.

Nova Scotia Human Rights Commission -
<http://www.gov.ns.ca/humanrights/humanrightsact.htm>