

# CO-INVESTIGATION: PRINCIPLES AND APPLICATION FOR USW LOCAL 1998 AND THE UNIVERSITY OF TORONTO

## PARTICIPANT MANUAL

United Steelworkers  
Equality and Education, Department  
07usw2013

## **Welcome and introduction**

Welcome to *Co-Investigation: Principles and Application for USW Local 1998 and the University of Toronto*.

The learning objectives for this workshop are:

### *Overview of the investigation and co-investigation process*

- Understand competencies of an investigator
- Roles and responsibilities of an investigator
- Due process and procedural fairness
- Explore the nature of co-investigation at the University of Toronto

### *Know the overarching laws, and, specific policies and procedures of investigation and co-investigation*

- The definition and grounds of harassment under the Ontario Human Rights Code
- The definition of harassment and violence under Bill 168
- The Letter of Intent: Complaints based upon alleged breach of Civility Guidelines, and/or Guidelines on Discrimination and Discriminatory Harassment (USW Local 1998 and the University of Toronto)
- The Human Resources Guideline on Civil Conduct
- The Guideline for Employees on Concerns and Complaints Regarding Prohibited Discrimination and Discriminatory Harassment

### *Investigation skills: apply a process including*

- Intake
- Preparing an investigation plan
- Interview technique
- Interview protocol
- Managing interviews
- Analyzing interviews
- Preparing an investigation report
- Working with a co-investigator



Investigation is a craft that comprises detailed knowledge of the investigation mandate and the terms of reference, coupled with investigation, analysis and writing skills. As a result, the workshop will place significant emphasis on practice. This is not a workshop on legal or investigation theory.

Acknowledgement: This workshop is adapted from the Treasury Board of Canada Secretariat <http://www.tbs-sct.gc.ca/gui/hig02-eng.asp>

## **Competencies for Harassment Investigators**

The competencies listed below provide the minimum level of competencies required of investigators who conduct departmental harassment investigations.

### **Demonstrated Personal Qualities**

- Impartiality/fairness
- Thoroughness
- Tolerance for stress
- Tact/discretion/judgment
- Respect and professionalism

### **Knowledge**

- Principles of Procedural Fairness
- CBA Letter of Intent: Complaints based upon alleged breach of Civility Guidelines, and/or Guidelines on Discrimination and Discriminatory Harassment
- Human Resources Guideline on Civil Conduct
- Guideline for Employees on Concerns and Complaints Regarding Prohibited Discrimination and Discriminatory Harassment
- Organizational cultures and contexts
- Investigation Techniques

### **Skills and Abilities**

- Collect and synthesize information obtained through research which includes a review of the pertinent documentation and interviews with parties and witnesses
- Identify key issues and facts relating to the allegations
- Conduct a thorough analysis of the facts
- Develop logical and substantiated conclusions (make findings if needed)
- Effective oral communication
- Write clear, concise reports
- Active listening
- Handle difficult situations and sensitive subject matter

### **Roles and Responsibilities of the Investigator**

The investigator is responsible for managing the harassment investigation. Essentially, the investigator is accountable for:

- Researching and planning the investigation including gathering, examining and recording all relevant evidence from available documentation;
- Presenting an investigation plan to the person responsible for managing the harassment complaint process;
- Identifying gaps in information, potential sources of additional information and persons who may be able to supplement or corroborate information;
- Planning and preparing investigative and interviewing questions to assist in obtaining the necessary evidence about the alleged incidents;
- Conducting interviews with the parties and relevant witnesses;
- Analyzing the evidence and circumstances and determining the substance of each allegation;
- Preparing the preliminary summary of facts and the investigation report; and
- Ensuring that the parties are aware of their rights and responsibilities, including the right to be accompanied and assisted by a person of their choice.

Depending on the investigator's mandate, once the investigation confirms each of the above-listed elements, the investigator may also determine:

- The exact nature of the behaviour;
- Whether the complainant communicated to the other party his or her discomfort or disagreement with the behaviour;
- Whether the evidence suggests any intent on the part of the respondent to cause offence or harm to the complainant;
- The impact or consequences of the behaviour on the parties;
- In the case of an isolated incident, whether it could be interpreted, in the circumstances, as so serious and with such an impact on the complainant that it meets the definition of harassment set out in the policy.

## **The Concept of Procedural Fairness**

The duty to act fairly must be distinguished from the traditional principles of natural justice applicable to courts of justice and quasi-judicial tribunals. When a decision that will have serious consequences for those involved is made, there is a duty to provide certain procedural protections throughout

the process. The more serious the allegations and potential negative repercussions for the person accused of harassment, the more stringent the aspects of procedural fairness should be. Investigators should always respect procedural fairness, but the extent to which measures are taken to protect these principles will depend on the nature of the allegations and the consequences for the parties; this concept is explained in greater detail in the following paragraphs.

### *I. The Right to be Informed of the Allegation(s)*

The respondent has the right to know the totality of the allegation(s) made by the other party and must be afforded a reasonable opportunity to respond to them. It is generally the role of the person responsible for managing the harassment complaint process to notify the accused party of the allegations at the outset by providing him or her with a copy of the allegations and an opportunity to respond.

### *II. Investigator Must be Impartial*

The parties have the right to an impartial investigator. Investigators must be neutral third parties with no interest or stake in the case or its outcome. It is imperative that their skills be exercised impartially and independently.

An investigator must refrain from taking part in an investigation should a situation arise where bias or a reasonable apprehension of bias may be perceived by the parties.

A written request by a party that the investigator withdraw from the case because of a real or reasonable apprehension of bias on his part must be presented at the outset of the investigation or as soon as the party has knowledge of circumstances that could justify this apprehension. In other words, the parties may be considered to have agreed to proceed before this investigator by the fact that they have not objected. If a request for the investigator to be removed from the investigation reveals circumstances that could give a reasonable person grounds to believe that the investigator could be seen to have an interest in favouring one party over another or if the investigator demonstrates bias towards one of the parties, the person responsible for managing the harassment complaint process should decide whether it would be appropriate to hire the services of a different investigator to maintain the integrity of the process.

### *III. The Right to be Heard and to Present Evidence*

The parties must be afforded the opportunity to present their version of the facts, identify witnesses and submit documentary evidence (documents, videos, tapes, electronic files, photographs, etc.).

It is then up to the investigator to decide whether the evidence submitted is relevant and admissible. Any evidence that confirms or refutes incidents related to the allegations should be admitted as evidence.

The investigator may disregard evidence that would be inadmissible in law because of:

- Laws governing privilege (e.g. lawyers, mediators); and
- Laws protecting the confidentiality of medical records or other documents (e.g. psychologists, physicians, psychiatrists, Employee Assistance Program counsellor).

#### *IV. The Right to be Accompanied*

The parties may designate someone to accompany them during the investigation. This person may select a union representative, a spouse, a friend, etc. This person does not represent the party, but is there to assist.

#### *V. The Right to Review Statements to Confirm their Accuracy*

Every person who testifies in the investigation should have access to the statements to verify their accuracy. To ensure this, the investigator should ask the witness to sign and date their statement, before the preliminary summary of facts is written and disclosed to the parties.

### **The Burden and Standard of Proof**

In resolving harassment situations through administrative investigations, the parties must be treated with dignity and respect. The allegations are simply that - allegations. Directly or indirectly, the complainant must establish to the investigator that harassment did, according to the balance of probability, take place. Until that happens, it must be assumed that the harassment did not occur. This is called the burden of proof.

When analyzing the facts, the investigator will base his or her conclusions on the balance of probability. This is the civil standard of proof that an incident was more likely to have occurred than not.

#### ***Sexual Harassment***

Because sexual harassment does not generally occur in public, in order to make a determination as to whether someone was sexually harassed, circumstantial evidence is considered by drawing inferences from certain

behaviour. For the same reason, the credibility of witnesses is even more critical in sexual harassment cases than in any other type of harassment. Cases may be determined based on an assessment of the credibility of the parties and witnesses. Credibility implies that witnesses tell the truth without any attempt to hide or exaggerate the facts, in a straightforward and honest manner.

Further, in cases of alleged sexual harassment similar fact evidence can be used to demonstrate a pattern of behaviour by the respondent, however this is not usually considered in cases of general harassment. This evidence must be used very cautiously and in unique situations where there is limited evidence; it should be similar in nature to the incidents alleged in order to demonstrate a pattern of behaviour.



# Ontario Human Rights Code

## PART II

### INTERPRETATION AND APPLICATION

Definitions re: Parts I and II

**10. (1)** In Part I and in this Part,

“age” means an age that is 18 years or more; (“âge”)

“disability” means,

(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

(b) a condition of mental impairment or a developmental disability,

(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”)

“equal” means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination; (“égal”)

“family status” means the status of being in a parent and child relationship; (“état familial”)

“group insurance” means insurance whereby the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an association or an employer or other person; (“assurance-groupe”)

“harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome; (“harcèlement”)

“marital status” means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage; (“état matrimonial”)

“record of offences” means a conviction for,

(a) an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or

(b) an offence in respect of any provincial enactment; (“casier judiciaire”)

“services” does not include a levy, fee, tax or periodic payment imposed by law; (“services”)

“spouse” means the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage. (“conjoint”)

R.S.O. 1990, c. H.19, s. 10 (1); 1993, c. 27, Sched.; 1997, c. 16, s. 8; 1999, c. 6, s. 28 (8); 2001, c. 13, s. 19; 2001, c. 32, s. 27 (2, 3); 2005, c. 5, s. 32 (8-10); 2005, c. 29, s. 1 (1).

From <[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90h19\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm)>

## Bill 168

	Workplace Harassment	Workplace Violence
Definition	<p>“engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome”</p>	<p>a. “The exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,</p> <p>b. An attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,</p> <p>c. A statement of behaviour that is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.”</p>

# **GUIDELINE FOR EMPLOYEES ON CONCERNS AND COMPLAINTS REGARDING PROHIBITED DISCRIMINATION AND DISCRIMINATORY HARASSMENT**

*The University is committed to upholding the Ontario Human Rights Code. This Guideline is designed to supplement the existing Statement on Prohibited Discrimination and Discriminatory Harassment which is in the process of being updated to reflect the current organizational approach to dealing with discrimination and discriminatory harassment at the University. This Guideline describes what constitutes prohibited discrimination and discriminatory harassment and sets out a process for employees who are concerned that they have experienced discrimination and/or discriminatory harassment.*

*This Guideline applies to all employees of the University of Toronto while in the course of their duties or at work-related events, whether on or off University property.*

## **1. What are Prohibited Discrimination and Discriminatory Harassment?**

The meanings of the terms “discrimination” and “discriminatory harassment” as they are used in this Guideline are taken from the Ontario *Human Rights Code* (the “Code”).

Under the *Code*, every person has a right to equal treatment in employment without discrimination because of “race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, or disability.” Each of these terms is defined in the *Code*. (See Appendix “A” for relevant *Code* provisions).

Under the *Code*, every person who is an employee also has the right to freedom from harassment in the workplace by the employer or a person working for or on behalf of the employer, or by another employee because of any of the prohibited grounds listed above. Harassment is defined in the *Code* as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome” and that is based upon one of the prohibited grounds.

Harassment by students at the University is also prohibited by the Code of Student Conduct. Harassment by employees is also prohibited under their terms and conditions of employment. Some employees are covered by collective agreements that deal with the subject of discrimination and discriminatory harassment. In the case of any inconsistency between the collective agreement and this Guideline, the collective agreement provisions govern to the extent of the inconsistency.

If you are concerned about conduct that is not based on one of the prohibited grounds of discrimination listed above, your concern may be more appropriately dealt with under the process outlined in the *Human Resources Guideline on Civil Conduct* (“Civility Guidelines”). Under the Civility Guidelines, you may access the same offices/resources listed under this Guideline to discuss the matter and find possible ways to resolve your concern.

Harassment based on sex or on sexual orientation is not covered by this Guideline as it is specifically dealt with in the University’s *Policy and Procedures: Sexual Harassment*.

## **2. What should I do if I have a concern or complaint about discrimination and/or discriminatory harassment?**

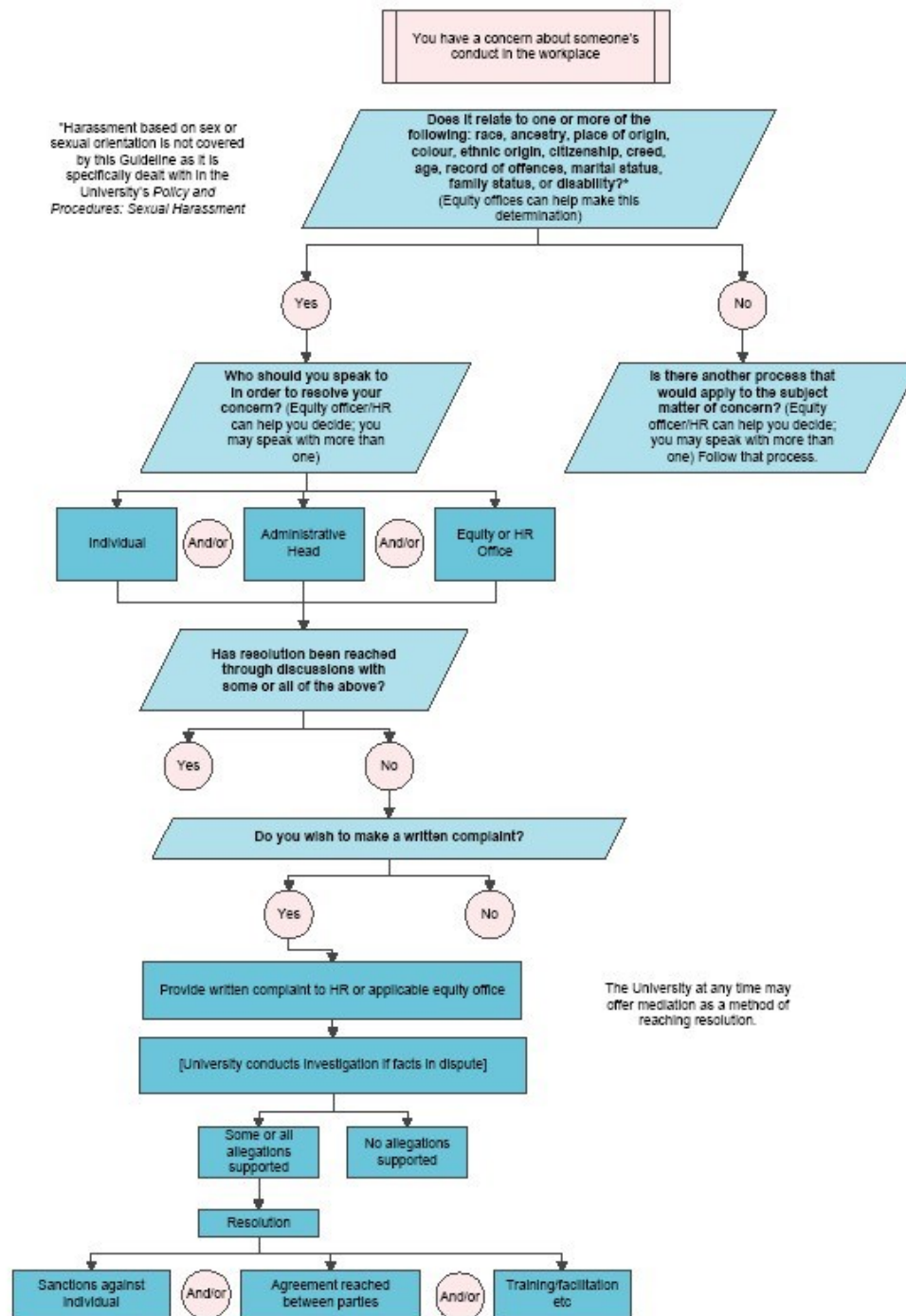
This Guideline uses the terms “concern” and “complaint” to refer to two separate but often sequential ways in which issues may be raised for resolution. The term “concern” means something you are raising in an informal way, often in the hopes of reaching early resolution. The term “complaint” refers to a more formal, written expression of a concern that has not been resolved at an early stage. A concern may or may not develop into a complaint. However, an issue that becomes a complaint should in almost every case have been raised first as a concern.

You should raise your concern as early as possible. Delays in raising a concern may hinder the parties’ ability to effectively resolve the matter.

When you begin developing a concern, it is recommended that you keep notes of specific incidents, including when and where they occurred and the parties involved, as well as relevant documents.



There are a variety of resources for dealing with concerns and complaints that are set out in more detail further below. On the next page is a flow chart that provides an overview of the available options and resources.



## 2(a) Where to go if you have a concern

Most concerns about discrimination and discriminatory harassment can be resolved informally, as outlined in this section. In order for a concern to be

resolved, it will usually have to be raised with the individual(s) who you believe engaged in discrimination/harassment. In appropriate cases, you should speak to that person yourself. That person may simply not be aware of how his/her behaviour is affecting you or others and should be given an early opportunity to change his/her behaviour. Thus an informal resolution will usually involve some type of discussion (ideally direct but possibly indirect) between you and the individual(s) who you believe engaged in discriminatory/harassing conduct.

Before and during such discussions you may consult with an equity officer and/or your human resources department. In some cases senior administrators in the applicable University department may also be involved in reaching an informal resolution. If the informal efforts described in this section do not resolve your concern, you may wish to file a complaint as described in the next section of this Guideline.

When you first become concerned about the conduct of another member of the University community, one key resource that you may wish to consult is an equity office. You can consult with an equity office throughout the stages described in this Guideline. The University's equity offices are staffed by officers who have expertise in different equity areas, who can help you figure out such things as whether your concern falls under this Guideline or another process, what steps to take to resolve your concern, and how to express your concern. You may meet confidentially with the equity offices without making any commitment to pursuing the concern. The equity offices that deal with complaints based on prohibited grounds under the Code are listed below. A complete list of equity offices is attached as Appendix B.

Sexual harassment office (sex and sexual orientation)

LGBTQ (Lesbian, Gay, Bisexual, Transgendered and Queer) Programs and Resources (sex and sexual orientation, including gender identity and expression)

Anti-Racism & Cultural Diversity Office (race, ancestry, place of origin, colour, ethnic origin, citizenship, creed).

Status of Women Office (sex, family status, marital status).

AODA Office (disability)





Another place that you could begin and from which you could seek advice at any stage of the processes set out in this Guideline is your human resources office.

If your concern involves a concern for your safety, you should contact the Community Safety Office at 416-978-1485.

If discussion with the individual(s) who you believe engaged in discrimination/harassment does not resolve the issue or if, for some reason, you believe such discussion is not appropriate, you are encouraged to discuss your concern with the administrative officer responsible for the department or division in which your concerns arose, or someone at a more senior level of the department or division. That person may be able to assist in resolving your concern.

## **2(b) Filing a complaint**

If your concern has not been resolved informally despite you meeting with one or more of the offices/individuals described in the section above, you have the option of filing a formal complaint. This involves setting your complaint in writing and delivering it to an equity office or your human resources office. At that point, your complaint will be recorded and tracked by the University until it is resolved. You should file your complaint as soon as possible after the informal efforts at resolution described above have concluded. Failure to file a complaint in a timely manner may affect the University's ability to proceed.

A written complaint must specify the individual(s) who you believe engaged in discrimination/harassment, and details of the conduct that gave rise to your complaint and the remedy requested. It should include a description, dates and location of events or situations. It should also include the name of any witnesses. The written complaint must be in sufficient detail for the appropriate University officers (usually senior administrators in consultation with others including HR and equity officers) to make decisions including whether an investigation is appropriate and if so, its scope, and what other steps should be taken to resolve the situation. The person handling your complaint may contact you to clarify or obtain additional details on your complaint and/or to narrow the issues where appropriate.

## **2(c) A University Complaint**

In exceptional circumstances, the University may decide to pursue issues that you have raised as either a concern or complaint, even if you choose not to pursue them. For example, this might be the case if several people have raised similar concerns in one department, suggesting that there is a broader issue that the University needs to address beyond your particular concerns.

### **2(d) If a complaint has been made against you**

If a complaint has been made about you, you have a right to be notified of the fact that the complaint has been made and you will be given sufficient details to enable you to respond to the allegation(s). If there is an investigation, you will be interviewed and you will in most cases have a right to identify others who you think should be interviewed. You will also be entitled to produce any other evidence you believe to be relevant.

If you require information or advice at any stage of the complaint process you may access any or all of the following resources: the applicable equity office, your divisional human resources office, or the Employee and Family Assistance Program. If you and the person making the complaint about you are both represented by the same divisional human resources office, you may choose to seek advice from a different divisional HR office. You will be advised of the outcome of the investigation in a timely fashion. Information about the complaint will be provided only to people who need to know about it, either because they have relevant information about it or because they have a role to play in processing or responding to it. The employer will otherwise treat the matter as confidential.

Once you have been notified that a complaint has been made against you, it is advisable to create and keep written notes about the events at issue and maintain relevant written documents.

### **3. Responsibility for Dealing with Your Concern/Complaint**

Primary responsibility for dealing with your concern/complaint will rest with one office, and you will be informed at all times of which office has responsibility. That office will be responsible for tracking your concern/complaint until its resolution. Responsibility for your concern/complaint will initially rest with the office to which you directed the concern or complaint. However, the University may ultimately transfer responsibility to another office, such as the division/department in which the

complaint arose, or another equity office, or the human resources department. If the University is of the view that your concern/complaint more appropriately falls within a different procedure than that set out in this Guideline, responsibility for your concern/complaint will be in accordance with that procedure.

The fact that one particular office has responsibility for your complaint does not prevent you from discussing the matter with the other offices that may be involved. For example, you may always seek advice from an equity office even if it does not have responsibility for your concern/complaint.

Regardless of who has responsibility for the concern/complaint, departments and human resources offices that receive a concern/complaint about issues of discrimination or discriminatory harassment are expected to contact the applicable equity office(s) to discuss the equity considerations before advising you as to what next steps may be.

Ultimately, the department/division will need to be involved in the resolution of any complaint. Accordingly, you need to be aware that a concern/complaint can only proceed with the involvement of administrators in the applicable work unit.

#### **4. Investigating the Concern/Complaint**

The decision of whether or not to conduct an investigation and the scope of that investigation will be made by the University, usually by senior administrators in consultation with others including HR and equity officers.

If a decision is made by the University to investigate a concern/complaint, the specific process that is followed will depend upon contextual factors such as the subject-matter of the concern/complaint, the complexity of the complaint, and the parties involved.

For purposes of this Guideline it is important to understand that the term “investigation” applies to any inquiries designed to ascertain relevant facts. This could mean anything from the equity officer asking some questions of you and the party against whom your complaint is made, to a larger scale investigation that could involve many witnesses and documents. The scope of the investigation in any particular case depends on factors such as the type and scope of the allegations, the number of parties who are alleged to be involved and the relationship of those parties to the University. The scope

also depends upon whether the investigation involves a concern or a complaint. Generally, at the concern stage the equity officer, human resources office or administrator may make some inquiries, but a larger scale investigation would not occur unless the concern were to progress to a written complaint that the University feels warrants such an investigation. All employees are expected to cooperate with an investigation under this Guideline.

There are a variety of reasons why a decision may be made not to investigate a complaint. For example, if there are no facts in dispute, there would be no purpose in having an investigation. As another example, the University would not investigate allegations where even if those allegations are true they would not amount to discrimination or discriminatory harassment within the meaning of this Guideline. In some cases there is another forum in which the complaint could more appropriately be raised.

While efforts are made to provide appropriate protection of the confidentiality of information obtained during the investigation process, anonymity is not possible. In almost all cases the person(s) against whom allegations of discrimination or discriminatory harassment have been made will need to know who is making the allegations in order to respond, and others will need to know information in order to process and respond to the complaint.

Both the complainant and the person(s) against whom a complaint is made will be entitled to invite one support person to accompany them to investigation interviews. This person may be a representative from the employee's union. The support person's role will be limited to support and that person will not be permitted to speak on behalf of the person being interviewed.

## **5. Resolution of Concern/Complaint:**

Potential resolutions of your concern/complaint vary greatly, depending on such factors as the subject matter of the concern/complaint, the part of the University community of which the individuals involved are members (e.g., student, staff, visitor, contractor), and the specific policies and contracts applicable in the circumstances (e.g., Student Code of Conduct, employment policies, collective agreements, employment contracts and contracts with independent contractors).



You will be advised of whether your concern/complaint is found to be substantiated or not. If it is found to be unsubstantiated it will be dismissed.

Generally speaking, if a concern/complaint is found to be substantiated, steps will be taken to address the conduct that has occurred and to prevent recurrence. For example, there may be sanctions against, or remedial action involving the individual(s) who engaged in act(s) of discrimination or discriminatory harassment. The resolution will be monitored as appropriate. While you will generally be advised of the outcome of your concern/complaint, you will not be told the details of any sanctions against or remedial action involving the individual(s) who engaged in discriminatory/harassing conduct unless the sanctions/remedial action have a direct impact on you.

Whether or not the concern/complaint is found to be substantiated, the University may request or require that one or more of the parties participate in processes including the following: training, coaching, or facilitation.

At any time during the processes described in this Guideline the University may offer mediation as a method of reaching resolution. Mediation will be conducted by an appropriate individual selected by the University from inside or outside the University.

### **1. University Commitment**

In respect of your concern/complaint, the University makes the following commitments:

- Your issues will be heard and taken seriously.
- You will be given assistance to determine whether or not your concern/complaint should be processed under this Guideline or whether some other process is more appropriate.
- If your concern/complaint does not fall under this Guideline, you will be given advice regarding how you might pursue it or assistance in resolving it.
- You will be given assistance in determining the next step you may wish to take to resolve your concern/complaint.



- You will be advised of the next step(s) that the University plans to take in order to move your concern/complaint toward resolution.
- You will be told of other resources that might be of assistance to you in the circumstances.
- You will be told which office at the University will have primary responsibility for handling your concern/complaint. You will be advised if at any stage responsibility for your matter is transferred to another office.
- You will be advised of whether an investigation will be undertaken into your concern/complaint, the scope of the investigation and the process that will be followed.
- If an investigation is not undertaken, you will have the opportunity to discuss other mechanisms through which your concern could be raised/resolved, such as other policies that may apply.
- Any investigation will be conducted in a confidential manner, involving only those who need to know.
- You and other individuals involved in the concern/complaint will be provided with a fair process.
- You and any individuals who you have said engaged in discriminatory/harassing conduct will be advised in a timely manner of the resolution of your complaint, although you may not be advised of the details of any sanction/remedial action against any other party.

## **2. If you are not satisfied with the resolution of a complaint**

The available channels if you are not satisfied with the resolution of a complaint depend on the policies, contracts or other documents that govern your relationship with the University and the relationship to the University of others involved. For example, a unionized or confidential employee may

file a grievance in accordance with the applicable collective agreement/employment policy. Employees in the professional/managerial or Research Associate groups may use the applicable Problem Resolution policies. Members of UTFA may file a grievance. You should speak with the office that had responsibility for your concern/complaint to determine what avenues are available in your circumstances.

The Office of the Ombudsperson is also available to provide assistance in certain circumstances. Information on the scope of the Office of the Ombudsperson and how to contact the Office is available online at <http://www.utoronto.ca/ombudsperson/>.

### **3. Application under Ontario Human Rights Code**

At any stage of this Guideline members of the University community retain the right to bring an application directly to the Human Rights Tribunal of Ontario in accordance with the provisions of the *Code*.

### **4. Reprisals**

There will be no reprisals against persons who, in good faith, bring forward a concern or complaint or otherwise take action under this Guideline. Reprisals may be the subject of a complaint under this Guideline.

### **5. Vexatious or bad faith complaints**

There may be penalties or sanctions for bringing forward concerns or complaints under this Guideline in bad faith or that are vexatious.

### **6. Other processes**

The University reserves the right to not proceed under this Guideline or to stop any process that has started under this Guideline if before a resolution has been reached another process is engaged regarding the same subject

matter, including the filing of a grievance or an application under the *Human Rights Code*.

April 5, 2010

Appendix “A”

Human Rights Code

(March 2010)

### **Employment**

5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (1); 1999, c. 6, s. 28 (5); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (5).

### **Harassment in employment**

1. Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability.

### **Harassment because of sex in workplaces**

7. (2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

### **Sexual solicitation by a person in position to confer benefit, etc.**

2. Every person has a right to be free from,

- a. a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- b. a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by



a person in a position to confer, grant or deny a benefit or advancement to the person.

### **Reprisals**

**8.** Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

### **Definitions**

**10. (1)**

“age” means an age that is 18 years or more; (“âge”) “disability” means,

- a. any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- b. a condition of mental impairment or a developmental disability,
- c. a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- d. a mental disorder, or
- e. an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”)

“equal” means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination; (“égal”)

“family status” means the status of being in a parent and child relationship; (“état familial”)

“harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome; (“harcèlement”)

“marital status” means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage; (“état matrimonial”)

“record of offences” means a conviction for,

- a. an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or
- b. an offence in respect of any provincial enactment; (“casier judiciaire”)

Appendix “B”

Equity Offices

#### [Anti-Racism and Cultural Diversity Office](#)

Works to ensure an environment free of biases based on race, ancestry, place of origin, colour, ethnic origin, citizenship or creed and where the individual feels entitled to treatment which is dignified and respectful.

#### [Community Safety Office](#)

Coordinates ongoing education and outreach initiatives directed at improving personal safety and security on campus.

#### [Family Care Office](#)

Offers assistance to staff and faculty across all three campuses to help access the most appropriate services on or off campus to meet family needs.

#### [Faculty Renewal](#)

Develops and implements various faculty recruitment and retention initiatives.

#### [Health and Well-being Programs and Services](#)

Addresses issues of workplace health, injury, illness and accommodation.

#### [LGBTQ Resources and Programs Office](#)

Works towards addressing discrimination based on sexual diversity and/or gender diversity in the University’s working and learning environments.

#### [Sexual Harassment Office](#)

Handles complaints of harassment based on sex or sexual orientation.

#### [Status of Women Office](#)

Works towards full gender equity for all women staff, faculty and students at the University of Toronto.

### Employment Equity/AODA Office

Assists employees and candidates who identify as members of designated groups [LIST] with regards to furthering equity in recruitment, hiring, retention, training and promotion.

### Quality of Work/Life Advisor

Assists in developing policies and programs that support an employee's work/life experience and offers individual consultations to employees and managers.

### **Special Advisor on Equity Issues**

Advises the Vice-President Human Resources and Equity and other senior administrators on a broad range of equity-related policy and programme issues and initiatives.

### UTSC Special Advisor to the Principal on Equity Issues

Works to support and enhance equity on the UTSC campus community.

### Aboriginal Initiatives

Supports recruitment and retention of Aboriginal staff and faculty and acts as a resource for current Aboriginal employees.

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University of Toronto Policies on related issues

- Employment Equity Policy
- Policy on Equity, Diversity and Excellence
- Statement on Human Rights
- Statement on Prohibited Discrimination and Discriminatory Harassment
- Sexual Harassment: Policy and Procedures

## **HUMAN RESOURCES GUIDELINE ON CIVIL CONDUCT**

*This Guideline sets out the expectations of the University, through its Vice-President, Human Resources and Equity, on behalf of the President, regarding the standard of civil conduct that it trusts that all employees will maintain in their dealings with each other. It is intended to guide Central and divisional Human Resources Offices throughout the University as they respond to situations where it is felt that the standard of civility has not been maintained, and also to assist them as they work with managers and others in communicating expectations. This Guideline may be adapted to give it more specific effect in light of the interests of particular employee groups and/or their representatives.*

*This Guideline describes what constitutes civil and uncivil conduct and sets out a general framework for staff members who are concerned that they have experienced such conduct.*

The University wishes to maintain a collegial work environment in which all employees behave in a civil manner and treat each other with respect and civility regardless of position or status in the organization. The University will not condone uncivil conduct.

In many cases, the determination of whether conduct is civil or uncivil depends on the context. Context can include the activities occurring at the time of the conduct. In an environment as diverse as the University, we must also be mindful of cultural differences that influence behaviour and the interpretation of that behaviour. We must also appreciate that all members of the University community have a right to freedom of speech and expression, in accordance with the University's Policy on Freedom of Speech. The guideline is not intended to infringe on academic freedom including the academic freedoms and responsibilities articulated in article 5 of the Memorandum of Agreement with its faculty members and librarians, but rather to describe conduct expected of all members of the community even when exercising their academic freedom.

Civil conduct includes:

- Treating others with dignity, courtesy, respect, politeness and consideration
- Speaking in tones of voice that are appropriate for the circumstances

- Being respectful of others’ right to express their views, even if you disagree
  - Managing conflict with others in a respectful way rather than a confrontational way

Some examples of behaviour that will generally not be viewed as civil are set out below. Generally, these behaviours will only be in breach of this Guideline if they are part of a pattern of conduct, as opposed to isolated events.

- Shouting
- Profanity, abusive, aggressive or violent language directed at an individual or individuals
- Using props suggestive of violence
- Slamming doors
- Throwing objects
- Humiliating, degrading, demeaning, belittling, insulting, frightening or intimidating another person
- Distributing comments about an individual, whether verbally or in writing, including on-line, that are unjustified and are likely to have a negative impact on the individual if he/she were to see them
- Telling inappropriate jokes

The following are examples of behaviours that are NOT in and of themselves considered uncivil conduct:

- Normal management action, taken in accordance with the relevant collective agreement or employment contract where applicable, such as:
  - Meetings, letters or conversations dealing with performance management, attendance management, coaching
  - Instructions given by a supervisor/manager such as what to do, how to do it, the expected standard of performance
  - Disciplinary action
  - Denial of leave requests
    - Requests for documentation to substantiate requests for leave
- Comments made in the context of peer review processes

- Differences of opinion or debate conveyed in a respectful manner
- Interpersonal conflicts where the parties remain respectful of one another

This Guideline does not apply to concerns of discrimination or discriminatory harassment that are dealt with under the Policy on Discrimination and Discriminatory Harassment, the Policy and Procedures: Sexual Harassment, or the Guidelines on Complaints Regarding Prohibited Discrimination and Discriminatory Harassment, although concepts of civility underlie each of these Policies/Guidelines.

### **Where to go if you have a concern/complaint**

The first step, whenever possible, is to approach the person whose conduct is at issue. That person may not be aware of how his/her behaviour is affecting you or others and should be given an early opportunity to change his/her behaviour.

If discussion with the person in question does not resolve the issue or if, for some reason, such discussion is not appropriate, you are encouraged to discuss concerns regarding uncivil behaviour with the administrative officer responsible for the department or division in which the incident is alleged to have occurred. If, for some reason, this is not appropriate, you may wish to speak to someone at a more senior level of the department or division. Administrators in the department/division should seek advice in a confidential way from their human resources office and/or an equity office to assist in determining the appropriate course of action.

If you require assistance in raising a complaint, you are encouraged to discuss the issue with the manager/director of any human resources office, whether or not it is the HR office for your own division. The HR manager/director can assist you in determining such matters as whether there is an issue that should be raised, how to raise it, with whom to raise it, and the range of resolutions that might be possible.

If the behaviour that you are concerned about relates to a ground of discrimination under the Ontario *Human Rights Code*, you should consult the Human Resources Guideline on Complaints Regarding Prohibited Discrimination and Discriminatory Harassment. If you require assistance in

determining where your complaint falls, you may wish to speak with a human resources manager/director or one of the equity offices listed in that Guideline (also listed in appendix A to this Guideline).

The University makes the following commitments:

- Your concerns will be heard.
- You will be given assistance in determining whether or not your concerns can be processed under this Guideline or whether some other process is more appropriate.
- If your concerns do not fall under this Guideline, you will be given advice regarding how you might pursue those concerns.
- You will be given assistance in determining whether or not you wish to pursue a complaint.
- You will be told of other resources that might be of assistance to you in the circumstances.
- You will be told who will have primary responsibility for the complaint if you decide to go forward with it. You will be advised if at any stage responsibility for the complaint is transferred to another party.
- The person/office responsible for responding to your concerns will advise you whether your concern is of such a nature that an investigation into it will be undertaken.
- If an investigation is undertaken, you will be advised of the process that will apply to the investigation.
- If an investigation is not undertaken, you will have the opportunity to discuss other mechanisms through which your complaint/concerns could be raised/resolved.
- Any investigation will be conducted in a confidential manner, involving only those who need to know either to respond to the complaint or to process it.
- Respondents to complaints will be provided with procedural fairness and the University will take their interests into account so as to

minimize any risk of reputational or other impact while the complaint is being assessed and dealt with in a confidential manner.

- You will be advised in a timely manner of the ultimate resolution of your complaint.

### **Responsibility of Complainant**

You have a responsibility to bring your complaint forward as soon as reasonably possible, so that it can be dealt with in a timely manner.

In the event of an investigation, you will have a responsibility to provide sufficient details to allow the person(s) against whom you are making a complaint to be able to respond to the complaint. In most cases where an investigation is to be done, you will be expected to particularize your complaint in writing.

You have a responsibility to respect confidentiality and to respect the other steps taken by the University to assist in maintaining both procedural fairness and a fair working environment for both you and the respondent while the complaint is being assessed.

### **Responsibility for a complaint**

Primary responsibility for your complaint will rest with one office. That office will be responsible for tracking your complaint until its resolution. Responsibility for your complaint will initially rest with the office to which you directed the complaint. However, it may ultimately be transferred to another office, such as the division/department in which the complaint arose, an equity office, or your human resources department. If the University is of the view that your complaint more appropriately falls within an existing procedure, responsibility for your complaint will be in accordance with that procedure.

Some employees are covered by collective agreements that deal with the subject of civil conduct. In such a case, the collective agreement provisions govern to the extent of any inconsistency with this Guideline.

Both the complainant and respondent will be kept informed regarding which office has primary responsibility for processing the complaint.



Regardless of who has responsibility for the complaint, departments and human resources offices that receive complaints about uncivil conduct are expected to contact the applicable equity office to discuss the equity considerations, if any, before advising you as to what next steps may be. Departments are also expected to contact their human resources office. Ultimately, the department/division will need to be involved in the implementation of any resolution. Accordingly, you need to be aware that a complaint can only proceed with the involvement of the department/division.

### **Informal Resolution**

In many cases, matters of uncivil conduct will be resolved through discussions between the parties with the assistance of a manager.

### **Investigating the Complaint**

If a decision is made by the University to investigate a complaint, the investigation may proceed through one of several different mechanisms, depending upon contextual factors such as the subject-matter of the complaint and the parties involved in the complaint.

There are a variety of reasons why a decision may be made not to investigate a complaint. For example, it might be decided that a complaint will not be investigated where, even if the facts alleged are true, they would not amount to uncivil conduct.

While efforts are made to provide appropriate protection of the confidentiality of information obtained during the investigation process, anonymity is not possible since in almost all cases the respondent will need to know who is making the allegations, and others will need to know certain basic information in order to process the complaint.

It should be understood that the word “investigation” does not necessarily involve a fullscale, complex inquiry. Often, informal inquiries and discussion, with the views of the parties being solicited and assessed, will be sufficient.

### **Resolution of Complaint:**

Resolutions to complaints involving uncivil conduct vary greatly, depending on such factors as the subject-matter of the complaint, the part of the



University community of which the Complainant and Respondent are members (e.g., student, staff, visitor, contractor), and the specific policies and contracts applicable in the circumstances (e.g., Student Code of Conduct, Code of Behaviour on Academic Matters, Sexual Harassment Policy, employment policies, collective agreements).

Generally speaking, if a complaint is found to be substantiated it will result in some remedial action involving the respondent.

The University may request or require that one or more of the parties participate in processes including the following: training, coaching, mediation, or facilitation.

### **If you are not satisfied with the resolution of a complaint**

The available channels if you are not satisfied with the resolution of your complaint depend on the policies, contracts or other documents that govern your relationship with the University and the relationship of others involved in the complaint. You should speak with the office that had responsibility for your complaint to determine what avenues are available in your circumstances.

Should a complaint result in disciplinary action against an employee that individual will have access to the normal grievance or other processes available to him or her under the applicable memorandum of agreement, collective agreement, policy, or other terms of employment.

### **Reprisals**

There will be no reprisals against persons who bring forward a complaint or otherwise take action under this Guideline provided that they are not acting in bad faith or in a manner that is vexatious or otherwise clearly improper. In such cases there may be penalties or sanctions for doing so.

December 15, 2009



## Appendix “A”

Sexual harassment office (dealing with issues of sex and sexual orientation; see Policy and Procedures: Sexual Harassment).

Anti-Racism & Cultural Diversity Office (dealing with issues of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed).

Health and Well-being Programs and Services (dealing with employee disability issues).

AccessAbility Services (dealing with student disability issues).

Status of Women Office (dealing with issues of marital status, family status, sex, sexual orientation).

Lesbian, Gay, Bisexual, Transgendered, or Queer (LGBTQ) office (dealing with issue relating to individuals identifying as lesbian, gay, bisexual, transgendered, or queer)



## **Chronology and Details of Parties**

Date of Intake \_\_\_\_\_

### *Complainant*

Name \_\_\_\_\_

Department and Position \_\_\_\_\_

Contact Information \_\_\_\_\_

Other Information \_\_\_\_\_

### *Respondent*

Name \_\_\_\_\_

Department and Position \_\_\_\_\_

Contact Information \_\_\_\_\_

Other Information \_\_\_\_\_

### *Witness 1*

Name \_\_\_\_\_

Department and Position \_\_\_\_\_

Contact Information \_\_\_\_\_

Other Information \_\_\_\_\_



*Witness 2*

Name \_\_\_\_\_

Department and Position \_\_\_\_\_

Contact Information \_\_\_\_\_

Other Information \_\_\_\_\_

*Witness 3*

Name \_\_\_\_\_

Department and Position \_\_\_\_\_

Contact Information \_\_\_\_\_

Other Information \_\_\_\_\_

*Co-investigator*

Name \_\_\_\_\_

Department and Position \_\_\_\_\_

Contact Information \_\_\_\_\_

Other Information \_\_\_\_\_



# Chronology

<i>Date</i>	<i>Action</i>	<i>Notes</i>

## **Investigator's Checklist**

- Obtain and review mandate, seek clarification if needed
- Review the written allegations and response to allegations
- Review the applicable policies, legislation and jurisprudence, as applicable
- Develop an investigation plan and provide a copy to the person responsible for managing the harassment complaint process
- Meet with the complainant
- Meet with the respondent
- Explain the parties' rights and responsibilities with respect to the investigation
- Record the parties' statements and have them date and sign them
- Meet with the witnesses
- Record the witnesses' statements and have them date and sign them
- Review and adapt your investigation plan, as needed
- Proceed with further interviews, as needed
- Visit the premises, if relevant and appropriate
- Provide the person responsible for managing the harassment complaint process with periodic verbal progress reports
- Prepare the preliminary summary of facts and submit it to the person responsible for managing the harassment complaint process for onward submission and review by the parties
- Obtain and review comments and submissions from the parties
- Assess whether further investigation is warranted
- Analyze the evidence
- Prepare the investigation report and present it to the person responsible for managing the harassment complaint process
- Submit the investigation file to the organization

## **Preparing an Investigation Plan**

The following key elements should be considered and included in the investigation plan before proceeding with the investigation.

### *Definition of the Subject(s)/Issues*

- What are the allegations?
- Are there any other questions or points that require clarification?

### *The Required Elements for Determining a Breach of the Policy*

- What elements must be proven to determine that there has been a breach of the Policy?

### *Logistics*

- Where will the interviews be conducted?
- Are there any special accommodations required?

### *Information Critical to the Investigation*

- What documents or records will need to be examined?
- Which witnesses or experts will need to be questioned?
- What is their relevance to the allegations?
- In what order will they be questioned?
- What policies and/or directives will need to be reviewed?

### *Key Areas of Inquiry*

- How will the questions be tailored to each specific event or subject?
- What extent of questioning will be required to determine a particular issue?
- What issues will be likely to require follow-up depending on the answers given?

### *Order in which the Information Should be Obtained*

- In what order should the information be gathered?
- Should some records be reviewed before certain witnesses are questioned?
- Should some witnesses be interviewed before others?



## Complaint

It has taken me a long time to find the courage to lodge this formal complaint against my co-worker, Mary Smith, but I can't take her abuse anymore. Mary has been emotionally and verbally abusing me for the past few months. As Mary is quite popular with a group of people who all go skating during the winter and running during the summer, I'm afraid that I'll get singled out by this group as well. I am also not trying to make something bigger than it is, but I feel I have no choice but to do this, as Mary's behavior is starting to hurt my health and how I feel about coming in to work.

It began three months ago, in April, when I was awarded a promotion by our boss, Mr. Lim. Even though Mary is still my co-worker, she has taken my promotion as a means to degrade me. She constantly calls me stupid, ignorant, sloppy, and ugly. She tells me that I can't do anything right, even when I believe my work to be efficient. She comments on my lack of education and lack of wealth. The first month it started happening, it wasn't so awful, but especially this past month, I have not been able to handle it anymore, and I don't feel that I should have to. Recently, I've had to take sick days because the idea of being harassed by her without warning is something that is increasingly difficult to take.

Three weeks ago, I asked if I could speak with her privately. She finally said yes, and I told her that I do not like how she has been talking to me, listing the words she has used. She said that she had no idea what I was talking about and pretended to be very nice to me. I told her that maybe we should have a meeting with our boss to try to work it out. She said sure, even though she "has no idea what's going on," but every time I try to set up a meeting, she is busy or says it's pointless. Meanwhile, the comments have not stopped, and when I point them out to her, she says she's "joking." If I tell her I don't think it's funny, she just laughs it off and walks away.

One time, in front of Greg and me, she told Greg "You know, although John is not the sharpest knife in the drawer, is one egg short of a dozen and buys his clothes at Value Village, I really like him." She then walked away. I asked Greg whether he thought this was funny. He said he didn't think it was funny, but also, I should just forget it. He said that a couple of years ago, Mary did the same thing to someone else who was promoted, but after a few



months, the joking had stopped. Greg said “Look on the bright side. You just got a promotion – Mary didn’t – and I’m saying this even though I’m a good friend of Mary.”

I also feel that in the past few weeks, Mary has begun what she never did before, which was to make sexual types of innuendos. Just last week, I was surprised when she said “Would you like to discuss our stuff after work?” I welcomed the suggestion, and after work, I was waiting for her while talking to Carraffa, another co-worker. Mary arrived and said in front of Carraffa “John and I are going to a bar to discuss our relationship.” Carraffa was confused and said “I didn’t know you two were in a relationship.” At this point I said “We’re not in a relationship, and I’m definitely not going to a bar to discuss this. I thought that we were going to meet for coffee or something like that.” At this point, Mary said “I guessed you’d be scared to go out with me. You’re probably gay, and that’s your whole problem.”

Her comments are not conducive to a healthy atmosphere in the workplace. If this issue isn’t resolved, I don’t think I can continue working here, even though I love the place, have a good relationship with my boss, and feel proud about the work I’ve done here.

I want Mary to be transferred to another department where I don’t have to run into her during work. I also want Mary to be disciplined for making my life miserable, and, for making sexual innuendoes about my sexual orientation.

John Doe  
April 23<sup>rd</sup>, 2013

## The Active Listening Skill Set

Solidarity Skills are essential in the activist’s tool box. Solidarity Skills is a set of six interrelated listening techniques which must be learnt in order to deal with interpersonal and organizational conflicts.

In order, these are:

### Technique 1. Encouraging the Speaker (Body Language)

Purpose	Allows <i>you</i> to control a situation by de-escalating people non-verbally. Provides a space for <i>her/him/them</i> to talk to you about what is important to her/him/them.
Method	Use body language to show attentiveness
Examples	<ul style="list-style-type: none"> <li>▪ Position your body facing the speaker</li> <li>▪ Look with calmness and openness toward the speaker</li> <li>▪ Nod your head while listening</li> <li>▪ Connect to their conversation through encouraging sounds, such as “Uh-huh...”</li> </ul>

## Technique 2. Open Ended Questions

Purpose	To get more information for yourself while helping her/him/them to provide more information.
Method	Ask questions that cannot be answered with only “yes” or “no”.
Examples	<p>“So, what do you think about that?”</p> <p>“How does all this make you feel?”</p> <p>”What is the difference between the situation then and now?”</p> <p>“When you were given a disciplinary note, how did your workspace look?”</p> <p>“What were things like before the incident?”</p> <p>“You mentioned that a supervisor was involved. Why is this important to the story?”</p>

### Technique 3. Restating Key Points

Purpose	You control information by slowing down a conversation and not getting overwhelmed by information. They are able to get deeper into their issues.
Method	Using your own words, state the person’s main points briefly and check to see if you are right. Follow up with an open ended question about one of the main points.
Examples	<p>“Thanks, you’ve told me a lot. The main things are that you went to your manager about the situation (first point), you asked him to deal with it (second point), and that nothing has been done so far (third point). Is that right?” Can you tell me more about the second point?</p> <p>“From what you’ve said, when you elected your executive, you wanted more action for the local (first point). You’re frustrated because even though they are trying their best (second point), some people are just disrupting union meetings and throwing them off their agenda (third point). Right? What’s the result of the union meetings?</p>

## Technique 4. Reflecting Emotions

Purpose	To acknowledge level and type of emotion, and, to predict possible future behaviour
Method	Identify the speaker’s emotions, encourage the speaker to correct you if you are wrong, and to follow up with an open ended question.
Examples	<p>“You sounded betrayed (emotion) when you heard that after twenty years working next to someone, she spread a rumour about you behind your back. Is that how you feel? How did you feel about your co-worker before feeling betrayed?”</p> <p>“It didn’t seem like a big deal at the time, but you felt encouraged (emotion) and more confident (emotion) after speaking about it, am I right? How did these emotions change the situation in the long run?”</p> <p>You said that you were so angry (emotion) you were prepared to quit or do something else desperate, right? What is your “anger meter” telling you now?”</p>

## Technique 5. Identifying Interests

Purpose	To identify the deepest elements of conflict on which all other dynamics are based.
Method	Identify the person's values and interests and check in to see if you're right.
Examples	<p>“Underneath everything you've told me, it seems that this you're really looking for respect (value). So, respect is an issue for you. Would you say that's true?”</p> <p>“Beneath it all, it's like he's trying to build some solidarity (value) in the local, even though the way he's doing irritates people. So, the issue here is building solidarity in a positive way. Am I right?”</p> <p>“So, by filing your own grievance, you're saying you're also doing it for everyone else in your department because really, everyone could benefit (group interest), not just you. So the issue is actually a group interest. Is that how you see it?”</p>

## **First Contact with the Parties**

### *Understand the Organizational Structure and the Workplace*

If the investigator is not familiar with the structure of the organization or with the layout of the workplace and this information is relevant to the allegations, he or she should request an organization chart or floor plan to help situate the parties and understand the location of where the events allegedly occurred. In addition, if deemed necessary, the investigator can do a site visit before the interviews. Whenever practicable, these visits should occur in the absence of employees, outside regular office hours so as not to disturb or distract the employees.

### *Choose an Appropriate Location*

The choice of location for the interviews is critical since it allows investigators to create an atmosphere conducive to trust, comfort and openness. Such locations should be quiet, very private and neutral (i.e. not in one of the parties' offices or at their home).

### *Establish Contact*

The investigator should determine, in advance, whether the interviewee has any special needs that will need to be accommodated during the interview and ensure that they are able to participate in the language of their choice. The investigator should also take this opportunity to remind the interviewee of his or her rights and responsibilities and ensure that they are understood (e.g. information disclosed will not be considered confidential, right to be accompanied, importance of not sharing testimony or allegations with others, etc.)

### *Explain the Interview Protocol*

At the beginning of the interview, the investigator should explain how the interview will be conducted and what is expected from the interviewee. He or she should also verify that he or she clearly understands the purpose of the interview. At this point, it would be a good idea to allow the person to ask any questions they might have.

The investigator should also explain he/she cannot ensure the confidentiality of the testimony because the parties have the right to know what has been said about them and by whom.

### *Accompaniment*



If one of the parties is accompanied by a union representative, a non-represented employee advisor, legal counsel, or any other person of their choice, the investigator should clarify this person's role at the outset of the interview.

If the parties attempt to bring more than one person to accompany them, the investigator should ask why they feel this is necessary and determine whether this presence is justified. The investigator is entitled to request the exclusion of observers if the process will be hindered in some way.

The accompanying person may not answer questions for the person being interviewed or inhibit the proceedings in any way. His or her role is to provide support and guidance to the person being interviewed. The role of advisors can be summed up as follows:

- To help the person they accompany gather and present evidence;
- To help the parties draft their allegations and respond to those allegations;
- To help the person they accompany to determine the appropriateness of informal conflict resolution;
- To make themselves available so that the investigation can proceed in a timely manner;
- To prepare the person they accompany for the interview by helping him or her present the facts in a logical and coherent fashion;
- To attend the interview and provide moral support to the person they accompany;
- To encourage the person they accompany to remain calm and objective and if necessary, request a caucus or an adjournment;
- To help the person they accompany to manage anger or frustration; and
- To review the preliminary summary of facts and ensure procedural fairness has been observed.

### *Records of the Interview*

The investigator should inform the interviewee that he or she will take notes during the interview and explain the reasons for taking notes:

- To ensure a common understanding of what was said;

- To have a record of the exchange;
- To assist in compiling the report; and
- For verification at a later date.

The use of video or audio recording devices is not advisable. This practice is not conducive to building an atmosphere of trust and may serve to intimidate interviewees who are already experiencing stress and anxiety about the interview. Under such circumstances, they may have a tendency to withhold information. Moreover, the investigator must be prepared to provide, upon request, copies of these transcripts which can be very costly and time consuming.

## **Managing the Interview**

The investigator is responsible for the interview and should have some degree of control over the proceedings. However, the investigator cannot guarantee certain factors such as the outcome of the interview, the interviewees' participation or the accuracy of their statements. While the investigator leads the interview, his or her role should consist primarily of listening to the parties and witnesses.

Investigators should demonstrate active listening skills. This could include:

- Showing open body language (e.g. arms uncrossed, facing the interviewee, etc.); and
- Making eye contact and acknowledging comments made by the interviewee (e.g. nodding, verbal cues, etc.).

There may be situations where the interviewee attempts to invoke a strong reaction from the investigator; it is important that the investigator avoid being provoked. The investigator must concentrate on obtaining all of the information that is required to better understand the situation under investigation. If the person being questioned contradicts him or herself or one of the other witnesses or parties, clarifying questions could be asked to help the investigator weigh the information.

During the course of an investigation, it is not uncommon for the parties and the witnesses to demonstrate strong emotions such as fear, stress, anger and frustration. The investigator should know how to recognize these emotions, show empathy (not sympathy) toward the interviewee and re-establish a stable and comfortable atmosphere for the interview. If it is determined that it would not be appropriate to continue the interview or that a break is warranted, either by the investigator or by at the request of the interviewee,

the investigator should not hesitate to suspend or reschedule the interview at a time that is mutually convenient.

## **Questioning**

The order and type of questions that will be asked during the interview should be determined beforehand. At the beginning of the interview, it is a good idea to begin with conciliatory questions that are less likely to be invoke strong emotions. After a few introductory remarks, the investigator can begin by asking the interviewee routine questions such as his or her full name, position, group, level, work telephone number, and section within the organization.

At some point in the interview, the investigator should ask the interviewee to describe the incidents or behaviour relating to the allegations and ask him or her to explain any related workplace norms, if deemed relevant. The focus of the investigator should be on obtaining facts and direct evidence – not hearsay. This is important because the investigation report must reflect the facts.

Generally, the investigator should not share the allegations with the interviewee during the interview. The allegation is the personal information of the parties and their privacy must be respected to the greatest extent possible. In the case where the allegation may have to be disclosed to a witness, the investigator should state that, *“It has been alleged that... Would you please comment?”* Also, the investigator should not reveal information discovered from other sources. Such information may prejudice the response and could violate the privacy of the person who provided it.

## **Recap**

*At the conclusion of the interview, the investigator can provide a brief recap to ensure that the person agrees with the investigator’s understanding of what was said. The investigator should also ask the interviewee whether he or she has anything to add.*

*In addition, the investigator must have the interviewee verify and sign his or her notes to ensure their accuracy. If the investigator prefers to have the interviewee sign a statement at a later date, he or she should inform the interviewee accordingly and have it signed by him or her at this time.*

## **Some Final Tips for the Investigator**

- Bring a copy of your mandate to the interview. There may be times when you have to refer to it or even show it, either to identify yourself or to assert your investigative authority.
- Refrain from allowing any interruptions during the interview such as telephones or other electronic devices unless this has been agreed to beforehand.
- For the comfort of the interviewee, ensure that water and tissues are available during the interview and that the room is comfortable and conducive to this type of exchange. For example, consider lighting, seating, noise level, level of privacy, accommodation needs, etc.).
- To the greatest extent possible, schedule your interviews to ensure that you have sufficient time to prepare for the interview, interview the parties and witnesses, complete your notes and reflect on the outcome of the interview.
- Number your pages of handwritten notes during the interviews.
- Remember that your notes could be accessed at a later date and so anything you record should be written with this in mind.
- The interviewee is not normally provided with a copy of your notes. This is in part to ensure the integrity of the investigation process.
- He or she will be allowed to review and sign a statement which will then be put on the investigation file.
- At no point during the interview should you exit the interview room and leave your notes or documents unattended.
- Refrain from expressing surprise, distrust or disbelief; maintain objectivity and impartiality.
- In cases where there is tension, fatigue or strong emotions, suggest breaks or spread your interview over more than a day.

## **Interview Protocol**

### **At the Beginning of the Interview:**

1. Welcome the interviewee and the person accompanying him or her (if present), noting the latter's name in the file.
2. Provide a brief explanation of the context of the investigation, taking into account that the allegations should not be shared with the

- witnesses as they are confidential and considered to be the personal information of the parties.
3. Explain the role of the investigator; his or her neutrality and impartiality with regard to the allegations, and the requirements of the mandate (have a copy of the mandate).
  4. Confirm that the interviewee has been informed of his or her rights and obligations under the Policy. If interviewing the respondent, confirm that he or she has received a copy of the allegations and has been invited to respond to it in writing.
  5. Explain how the interview will be conducted and the roles and responsibilities of any person accompanying the interviewee, including the importance of discretion in relation to the information revealed during the interview.
  6. Explain the process of validating the notes taken by the investigator during the interview. For example will they be presented to the interviewee at the end of the interview for his or her signature or will they be transcribed and presented for validation and signature at a later date?
  7. Ask the interviewee to provide his or her title, position and brief work history (if relevant), as well as their working relationship with the parties. This information should be recorded in the investigator's notes.
  8. Permit the interviewee the opportunity to ask questions about the interview and subsequent process.
  9. Ask the interviewee if he or she is ready to proceed, and ask the questions.

### **At the End of the Interview:**

#### **Ask the interviewee if he or she has any questions or anything to add.**

1. Remind him or her about the obligations of confidentiality and discretion that are essential to a fair investigation procedure for the parties and the importance of not discussing the allegations or the interview with the parties or any other person.
2. Make any necessary arrangements to meet at a later date, if necessary, so that the interviewee can review and sign his or her statement.

3. If another interview will be required, schedule the interview at a time that is mutually convenient.

## **Note Taking**

The investigator must be careful to only record facts. Moreover, the persons interviewed can expect to review their statement as recorded by the investigator, to confirm its accuracy, prior to submission of the investigation report.

During the interview, the investigator should weigh the information provided by the parties and witnesses. In gathering the evidence, the investigator should be able to weigh the importance of the information provided. For example, is it direct evidence, opinion or hearsay? Gaps or weaknesses in evidence will require further investigation before accurate conclusions can be drawn.

The investigator's notes are of vital importance to the investigation. What follows is a list of considerations that should be taken into account in recording notes so as to avoid complications following an investigation:

- The collection and recording of notes should reflect the principles of procedural fairness;
- Poorly written notes, which can be characterized by a lack of detail, bias or inaccuracies, may lead the participants to question the integrity of the process;
- Poorly written notes may have to be corrected and could lead to challenges, thereby throwing the investigative process into disrepute; and
- Poorly written notes will prove difficult to interpret and analyze for the purpose of writing the preliminary summary of facts.
- Good quality notes can be characterized as:
  - Written in neutral language;
  - Organized coherently to facilitate the writing of the preliminary summary of facts;
  - Signed by the interviewee, if applicable

## **What are Some Suggested Note-Taking Practices?**

- Identify the witness' name, address, telephone number, fax number and e-mail address, as applicable;

- Clarify the witness' title (both at the time of the alleged incidents and at the present time) and his or her role within the organization;
- Specify which party identified the witness;
- Identify the issues discussed including the date, time and location of any alleged incidents;
- If the witness relies on documentary evidence or makes reference to a document, include this document in the file, if appropriate; and
- Determine whether the evidence provided by the witness is direct evidence, opinion or hearsay and record the facts.

### **What Note-Taking Practices should be avoided?**

- Recording your personal opinions or value judgments about the witness or information that was disclosed to the investigator.
- Recording too much information, including irrelevant information.
- Overuse of abbreviations, acronyms or symbols. The information should be easily understood by a third party.
- Attempting to diagnose the physical or psychological health of the person being interviewed; investigators do not possess such expertise.

## **Analyzing the Facts**

### ***Compare Similarities and Differences***

All statements made by interviewees should be compared to identify similarities (those accounts which are strikingly similar) and differences (those accounts which bear major discrepancies).

The investigator will need to gain a clear understanding of the facts, based on the evidence compiled. In order to do this, the investigator will compare the statements provided by the parties and the witnesses to uncover where the similarities and the differences lie.

While the various statements of the alleged incidents may bear certain similarities, it is equally possible for the perceptions of those involved to vary considerably. If there are important differences in testimony, the investigator should weigh it according to the validity or strength of the information (e.g. direct, firsthand evidence vs. hearsay, personal perceptions) and the credibility of the witnesses. If the statements of the parties are in conflict, the investigator should review the witnesses' versions

to determine whether they serve to support or refute either party’s statement and to what extent. For example, if a majority of the witnesses interviewed support the allegations, the investigator may reasonably conclude that the allegations are more than likely to have occurred. However, the number of witnesses that support a version of events should not be the only consideration; the investigator should also consider whether their testimony is credible and whether there is other supporting evidence.

### ***Create a Chronological Description of Key Evidence***

A chronological description will help establish the sequence of events related to the allegations and can be a useful tool for preparing the analysis. The information should be organized in chronological order according to the allegations and the evidence that either supports or refutes these allegations. Once completed, the description should be reviewed to identify any gaps or inaccuracies which may require further investigation.

The following chart can be used to record the chronological description related to the allegations and can prove to be a useful tool in preparing the analysis.

<b>Date &amp; Time</b>	<b>Alleged Incidents</b>	<b>Description of Evidence</b>

### ***Weigh the Information***

Once all of the information is collected, it should be weighted against the following considerations:

- How important is the evidence?
- What is the relevance of the fact to the allegation?
- Does it prove or disprove the allegation?
- If the evidence is not directly related to the allegation, does it reveal other important information or lead to another source?
- Are there gaps or inaccuracies that require further investigation?

It is important to note that the fact that evidence may not appear to be relevant at the time that it is revealed to the investigator does not mean that it may not gain importance at a later stage in the investigation.



In determining the accuracy of evidence provided, the investigator should identify whether there is conflicting information and seek additional sources to establish whether the evidence is valid or not. The investigator will need to reconcile the data while also taking into consideration the fact that it is natural for witnesses to observe and remember situations differently given the subjectivity of the perceptions of each individual. The more time that elapses, the more difficult it is for people to recollect events clearly.

In determining the credibility of the witness, the investigator should consider whether the witness has provided direct or first hand knowledge of the incidents or whether the witnesses is providing a personal opinion or repeating hearsay. A credible witness is one that is believed to be telling the truth without any attempt to hide or exaggerate the facts, in a straightforward and honest manner.

In examining the facts, the investigator should examine each piece of information individually and as a whole. Information that could be considered weak if viewed on its own might be strengthened by supporting evidence. On the other hand, evidence that appears strong on its face can be weakened by the provision of contradictory evidence.

### ***Important Principles for the Investigator to Consider***

Even if the body of information contains significant contradictions or if there is a lack of convincing evidence, the investigator is still required to draw a conclusion. In order to determine that the allegation is founded, the evidence must demonstrate on a balance of probability that the allegation is likely to have occurred. In the absence of such evidence, the investigator must conclude that the allegation is not founded.

The complainant bears the onus of proof and the standard of proof is “more likely than not”, in assessing if that person has been subjected to workplace harassment. Drawing such conclusions can be especially challenging in situations where two people present different versions of incidents. However, two conflicting views should not necessarily lead the investigator to conclude that the allegations are not founded. Rather, each account should be carefully assessed in light of all of the other information and evidence collected. Facts analysis is more than a counting game; the number of witnesses who can support a version of events should not be the only consideration. At times, fewer strong pieces of information may outweigh a larger number of weaker pieces of information. The investigator must be able to account for and explain the different weight allotted to the evidence collected.

Furthermore, when analyzing the evidence the investigator should avoid trying to read into the motives of the person against whom the allegations are made, unless there is evidence to demonstrate that malicious intent was indeed a factor.

In most cases, the intent of person alleged to have harassed another should not be a factor in determining whether harassment occurred. While the intent to harass another individual may be an aggravating factor to determining appropriate corrective and/or disciplinary measures, the investigator should not be overly concerned with this aspect of the allegation. The investigator must simply determine whether the behaviour meets the definition of harassment.

### ***Identify Areas that Require Further Inquiry***

The investigator should ensure that he or she has collected the information required by the Mandate, including information to support or refute each individual allegation. In the absence of this, the investigator will need to determine the reason for the lack of information – e.g. lack of sources, limited scope of questioning or witnesses, poor understanding of the issues or allegations, etc.

If collecting further information is not feasible, the investigator will have to describe what information is lacking and how it affects the outcome of the investigation. If the evidence does not demonstrate on the balance of probability that an allegation is founded, it should be deemed unfounded in accordance with the burden and standard of proof required in harassment situations.

The following table may prove useful in helping the investigator reconcile evidence that is conflicting or inconclusive. It can be completed for each allegation in order to identify the discrepancies or gaps in evidence.

**Consolidated Analysis**

	<b>Allegation #1</b>				<b>Factual vs. Perception</b>	
	<b>Version</b>	<b>Similarities</b>	<b>Differences</b>	<b>Explanations</b>	<b>Direct Knowledge of Events</b>	<b>Status of Source</b>
<b>Complainant</b>	<i>Alleges harassment</i>					
<b>Respondent</b>	<i>Denies the conduct</i>					
<b>Witness #1</b>	<i>Saw the alleged conduct</i>				Yes, was in the room	
<b>Witness #2</b>	<i>Did not see the alleged conduct</i>				No, was in the hallway	
<b>Documents</b>	<i>None used</i>					
<b>Physical Information</b>	<i>None used</i>					
	<b>Allegation #2</b>				<b>Factual vs. Perception</b>	
	<b>Version</b>	<b>Similarities</b>	<b>Differences</b>	<b>Explanations</b>	<b>Direct Knowledge of Events</b>	<b>Status of Source</b>
<b>Complainant</b>	<i>Alleges harassment</i>					
<b>Respondent</b>	<i>Denies the conduct</i>					
<b>Witness #1</b>	<i>Saw the email</i>				After the fact	
<b>Witness #2</b>	<i>Saw the email</i>				After the fact	
<b>Documents</b>	<i>Email</i>					
<b>Physical Information</b>	<i>None used</i>					

## Report Writing

### *Characteristics of a Good Report*

These objectives should be applied throughout the report-writing exercise, in order to ensure that the investigation report is concise and readable.

- The report must achieve its objective – to respond to the requirements of the mandate and answer the questions raised (i.e. are these allegations of harassment founded or not?).
- The report must be designed to meet the needs of the person responsible for managing the harassment complaint process.
- The report must be logical, sufficiently detailed and accurate. It should not include extraneous or irrelevant information or unsubstantiated opinions. The person responsible for managing the harassment complaint process must be able to rely on the facts set out in the report and render a decision accordingly.

The investigator should ensure that the structure of the report is clear for the reader so that he or she can easily access and reference the information. The pages should be clearly numbered, dates and witnesses should be accurate and there should not be any spelling or grammar mistakes. Failing to write in a clear and coherent fashion may cause the person responsible for managing the harassment complaint process to be concerned that other critical errors in the content or methodology could have occurred.

To the greatest extent possible, the investigator should rely on simple and direct language to describe the facts and to develop the analysis. The person responsible for managing the harassment complaint process will expect the facts to be clearly spelled out and the analysis to be sound.

As a general rule, the investigator should avoid using:

- Ambiguous language;
- Abbreviations or acronyms;
- Overly long or complex sentences;
- Characterisations or descriptions which could denote bias; and
- Medical, legal or overly technical terminology.

Finally, it is a good idea for the investigator to set aside the report for a day or two and then read it anew. This will enable him or her to more readily



flag any gaps or errors. Before submitting the report the investigator should consider the following questions:

- Would someone unfamiliar with the situation be able to easily understand the report?
- Is the report coherently and concisely written?
- Does the report satisfy the requirements of the mandate?

## **Investigation Report**

### **Cover Page**

#### **Investigation Report**

Complainant: [complainant]

Respondent: [respondent]

Nature of the allegations:

*(This a brief description of the type of allegations being made)*

The allegations are attached to this report as Annex 1.

The mandate, including any subsequent amendments, is attached to this report as Annex 2.

The parties' responses are attached to this report as Annex 3.

### ***Body of the report***

#### **Allegation(s)**

[Name of the complainant] alleges that [Name of the respondent] harassed him/her in the workplace.

The allegations that formed the subject of this investigation are as follows:

*(Reproduce the allegations)*

#### **Mandate**

(The first paragraph of the body of the report indicates the basis upon which the investigation was conducted.)

### ***The Investigation Procedure***

*The interviews were conducted in [location] from [date] to [date] at which point the following persons were interviewed:*

The parties to the dispute:

*[Name of the complainant] accompanied by [Name, title and organization of the person accompanying him or her].*

*[Name of the respondent] accompanied by [Name, title and organization of the person accompanying him or her].*

The witnesses:

*[Names, titles and organizations of the witnesses]*

The following documents were considered:

### ***Facts***

It is the investigator's responsibility to determine which elements should be included. However, the comments of the parties should be included in this report if, following the responses from the parties to the preliminary summary of facts, the investigator had to reopen the investigation.

### ***Analysis***

The analysis section is found only in the final investigation report. The analysis brings together all of the salient evidence. The analysis should start with the description of the criteria to be met under the definition of Policy in order to conclude that there has been a breach of the Policy. The analysis is a critical component of the report; it requires sophisticated analysis on the part of the investigator who analyzes the evidence adduced and the arguments made by the parties, as well as any other relevant information gathered in the course of the investigation. The analysis must explain how the information gathered was assessed, and why the investigator reached a particular conclusion. Each allegation should be identified and analyzed separately and as a whole if there is an attempt to demonstrate a pattern of repetitive behaviour.

Note: Comments related to underlying workplace factors that may have led to the allegations can be included in the report if so required by the mandate.

### ***Conclusion***

In determining whether the alleged conduct constitutes harassment, the investigator must determine whether the conduct meets the criteria set out in the Policy.

*For example:*

1. **Allegation** *[Identify the alleged conduct]*
  - a. **Evidence/Facts**

*"The evidence indicates that..."*
  - b. **Analysis**

*Example: “The conduct was improper in that...It was directed at and offensive to the person alleging harassment...the person knew or ought reasonably to have known that this conduct would cause offense of harm... it occurred within the workplace. Therefore, the allegation is founded.”*

Or

*“The conduct was not improper in that..... Therefore, the allegation is not founded.”*

**2. Allegation (if applicable)**

**a. Evidence/Facts**

**b. Analysis**

***Conclusions***

In this section, the investigator summarizes his or her findings and draws conclusions with supporting rationale for each individual allegation. Investigation reports should include a section with conclusions to summarize the main points and highlight the essential information of the report. The conclusions are often considered the most helpful element of the report, because they succinctly clarify the findings.

With respect to the allegations, the findings should never be inconclusive. If the investigator determines that there is not sufficient evidence to conclude that the allegations are founded or partially founded, the investigator must find that the evidence does not support the allegations, consistent with the required burden and standard of proof.

The conclusions on each allegation must give readers a clear understanding that:

- on the balance of probabilities, the evidence available does (or does not) support the allegation(s);
- and if supported, the conduct does (or does not) satisfy the criteria for harassment as per the Policy.

The conclusions must not contain any surprises, that is, they must all relate to the allegations and evidence contained in the report. The conclusions must be coherent (logical and easy to follow), clear (written in plain language), concise, and appropriate to the facts as stated.

*Example: “Given the above-noted evidence and in light of the available information, I conclude on the balance of probability that the allegations of*





*harassment in the workplace made by [Name of the complainant] regarding [Name of respondent] are founded/not founded.”*

If the mandate required the investigator to identify issues, the investigator would also need to include this finding in the investigation report.

*Example: It appears that roles and responsibilities of the parties are confusing and might be source of conflict between them. There seems to be an overlap in responsibilities which generates a conflict which has been ongoing for months.*

**Note: The investigator’s report does not contain recommendations on what administrative, corrective/ restorative, and/or disciplinary action should be taken.**

***Investigator’s Closing Declaration:***

*I declare that, in conducting this investigation, the rules of procedural fairness were observed. I ensured that the parties were reminded of their rights and obligations with respect to the investigation process and gave all those involved, including witnesses, the opportunity to verify their statements. I also declare that I took into account all the comments made by the parties in regard to the preliminary summary of facts in my assessment of this case and in the conclusions presented above.*

**[Signature]**

**[Date]**