

TO: Professors Elder, Smith and Wilson

RE: SEXUAL HARASSMENT COMMITTEE

I set out below a summary. As you will see it is incomplete in many respects, but it gives an idea of the general thrust of our thinking to date.

I. DEFINITION

"Sexual Harassment", as used in this statement, includes comment or conduct of a sexual nature, including requests for sexual favours, sexual advances, sexual remarks, suggestive comments or gestures, and physical contact when any one or more of the conditions in (a) below and one or both of the conditions in (b) below are satisfied:

- (a) (1) the conduct is engaged in or the comment is made by a person who knows or who ought reasonably to know that the conduct or comment is unwanted or unwelcome;
 - (2) the comment or conduct is accompanied by a reward, or the express or implied promise of a reward, for compliance;
 - (3) the conduct or comment is accompanied by reprisal, or an express or implied threat of reprisal, for refusal to comply;
 - (4) the conduct or the comment is accompanied by the actual denial of opportunity or the express or implied threat of the denial of opportunity, for failure to comply;
 - (5) the conduct or the comment is intended to, or has the effect of, creating an intimidating, hostile or offensive environment;
- (b) the conduct or comment interferes, or could reasonably be regarded as being capable of interfering, with:
- (1) the proper functioning of the University;
 - (2) an individual's dignity or privacy during or in respect of matters connected with that individual's work for or other relationship with the University.

II. PROCEDURES

1. SEXUAL HARASSMENT OFFICER

[Do we need some description of the office and terms of reference; although all of this may appear from the rest of the procedures?]

2. COMPLAINTS

2.01 A person who believes that he or she has been subjected to sexual harassment ought to discuss the matter with a sexual harassment officer.

2.02 A sexual harassment officer shall provide a complainant with ^{ADVICE ON} counselling on how to deal with the alleged harassment, advice on what the University procedures are, on the apparent validity or the seriousness of the complaint, and on whether or not the complaint should be taken further.

2.03 The decision to pursue the complaint under these rules rests with the complainant. ^{2.04} A complaint may not be pursued unless the sexual harassment officer is notified in writing of that intent by the complainant by at the latest one year after the event, or in the case of a series of events, the last in the series, on which the complaint is based. [[^]] [←] may extend this time limit in exceptional circumstances.

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2.04 In any proceedings under these rules events that take place after the giving of written notice may, without the filing of a further complaint but with due notice to the respondent, be the subject of investigation, mediation or formal hearing.

2.05 Unless an objection is raised by one or other of the parties, ^A the sexual harassment officer may attend all meetings at which the complaint is being dealt with by way of investigation, mediation or formal hearing.

2.06 If a written complaint is not lodged no records shall be kept, except statistics as to the number of complaints made, information on the general type of complaints, including information on whether the complaints were made by or against faculty, staff or students.

III. MEDIATION

- 3.01 The sexual harassment officer will advise the complainant that the complaint may be handled through mediation, or a formal hearing, or mediation, followed, if the mediation fails, by a formal hearing. ←
- 3.02 Subject to 3.05 the complainant shall decide if he or she wishes to attempt to resolve the matter by mediation.
- 3.03 If mediation is to be attempted the sexual harassment officer shall arrange a meeting with the respondent to hand over a copy of the complaint and to explain the procedures. The sexual harassment officer shall not act as an adviser to the respondent, who should nonetheless be informed of the desirability of securing independent advice.
- WHERE
14 DAYS
= WEEKS* 3.04 If the respondent is willing to proceed to mediation he or she shall provide the sexual harassment officer with a written response to the complaint, and a written consent to mediation.
- 3.05 The sexual harassment officer may, either on seeing the complaint in writing or on seeing the written response of the respondent, decide that mediation is inappropriate, and that the matter is such that it needs to be dealt with at a formal hearing.
- 3.06 The mediator shall be a person acceptable to the complainant and the respondent. ^E _A
- 3.07 The complainant may be accompanied at the mediation by a person of his or her choice; and the respondent may be accompanied at the mediation by a person of his or her choice.
- 3.08 If mediation is successful the agreement should be put into writing, signed by each of the parties and countersigned by the mediator. Where appropriate it should include undertakings as to the future conduct of the respondent, and a breach of one or more of these undertakings may be a ground for discipline.
- 3.09 All of the documentation relating shall be retained by the sexual harassment officer, and shall be held on a confidential basis.

[The above procedures may or may not be susceptible to being applied campus-wide. However, it seems to have been our thinking that if mediation was either refused or failed, it may thereafter be difficult to have a set of procedures that would apply to all of the campus. It may be necessary to have separate procedures depending upon the position of the person against whom a complaint is made. The following assumes a complaint against a faculty member.]

EXCLUDES COMPLAINTS V. GROUPS WHERE COLLECTIVE AGREEMENT INCLUDES PROVISIONS FOR DEALING WITH S.H.

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IV. INVESTIGATION

4.01 If the complainant or the respondent does not agree to mediation, or mediation is carried out and fails, the complainant shall inform the sexual harassment officer as to whether he or she wishes to pursue the complaint further.

4.02 If the complainant so informs the sexual harassment officer, the officer shall refer the complainant to the University Committee on Sexual Harassment. //

4.03 The Committee shall conduct such investigation into the complaint as it sees fit. //

4.04 After conducting an investigation the Committee shall decide:

(a) if there is enough evidence to warrant the complaint being heard by a Hearing Committee, in which case a Hearing will be held according to the procedures set out in V below;

(b) if there is not enough evidence to warrant the complaint being heard by a Hearing Committee, in which case the complaint may not be pursued further. //

4.05 The University Committee on Sexual Harassment shall inform the complainant, the respondent and the President in writing of its decision. WITH REASONS

[We need to deal with:

(1) Composition of the University Committee on Sexual Harassment;

(2) Its procedures.]

V. HEARING COMMITTEE

5.01 Composition. There are two options:

- (1) The arbitration model - a person appointed by the University, a person appointed by the respondent, with these two parties selecting a third person.
- (2) A pre-existing panel of, say, 12, with nominees of the University, the constituency of the respondent, [and the constituency of the complainant?]. The panel could select the person who is to chair it, and that person would be responsible for allocating say 3 of its members to hear a case. 2/15

5.02 Parties. The parties to the Hearing should be the University and the respondent. Should the complainant be entitled to be present, and to have counsel with a "watching brief"? ←

5.03 Procedures. The standard procedures for any hearing should apply, with the committee (or the panel) having some discretion as to procedure.

5.04 Onus. The onus of proving that the complaint is justified rests on the University.

5.05 Jurisdiction. The committee shall (1) make findings of fact and (2) make, if it sees fit, a recommendation to the President on discipline. The findings of fact made by the Hearing Committee shall be binding on all parties.

5.06 A Hearing Committee shall give written reasons for its decisions.

VI. PRESIDENT

6.01 On receiving a decision of a Hearing Committee, the President shall decide whether or not he or she considers it appropriate to consider the imposition of discipline. In taking that decision the President shall take into account, but shall not be bound by, any recommendation of the Hearing Committee.

6.02 Procedures. ~~X~~Are those in the Handbook adequate?]X

VII. APPEALS

Our present thinking is that there should be no further appeals within the University. However, a faculty member has a statutory right of appeal to the Board where the President imposes a suspension. [Equally if a student were the respondent there would be an appeal to Senate.]

November 5, 1986