

OFFICE OF THE  
PRESIDENT



THE UNIVERSITY OF BRITISH COLUMBIA  
VANCOUVER

April 8, 1987

Addendum

Please note that the deadline for comments on the Sexual Harassment Committee Report has been extended to June 30, 1987 from May 15, 1987.

per David W. Strangway  
President



THE UNIVERSITY OF BRITISH COLUMBIA  
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OFFICE OF THE  
PRESIDENT

April 6, 1987

Ms. Adrien Kiernan  
President  
C.U.E.  
c/o Dean of Medicine  
Vancouver General Hospital  
Campus Mail

Dear Ms. Kiernan,

Re: Ad Hoc Advisory Committee on Sexual Harassment

I enclose a copy of the report of the Ad Hoc Advisory Committee on Sexual Harassment.

As you will see from the introduction, it is not intended to be a definite document, but is intended to provide a basis for discussion. I would very much welcome receiving any comments you might have before any final decision is taken on the establishment of a policy and procedures for the University.

Yours sincerely,

David W. Strangway  
President

DWS:1km

## INTRODUCTION

An Ad Hoc Advisory Committee to assist in the development of a policy on Sexual Harassment was established by the President, Dr. Strangway, in June 1986.

The Committee's terms of reference required it to make recommendations to the President on a general statement on University policy on sexual harassment, and on a set of procedures for handling complaints of sexual harassment.

The Committee held 25 meetings. It extended an invitation to a number of groups and individuals to make oral or written submissions, and a notice about the appointment of the Committee appeared in UBC Reports. A number of submissions was received, both from some of those whom the Committee had contacted and from others who got in touch with the Committee on their own initiative. The submissions that were made were of great assistance to the committee, and the members of the committee would like to express their thanks to all who helped in this way.

The Report is divided into two parts. Part I sets out a recommended statement on general University policy. Part II contains a suggested set of procedures for dealing with complaints.

By way of introduction four points should be noted.

First, the Report is the beginning and not the end of the development of a sexual harassment policy on the campus. The Report will be circulated widely, and an opportunity provided for comment before any final policy and procedures are formally adopted.

Second, if the general thrust of the Report should prove acceptable to the University community, its recommendations will need careful implementation, the operation of the policy and procedures will require regular monitoring, and no doubt from time to time they will be modified. It will therefore be recommended that a Permanent Advisory Committee be established which, amongst other things, would have the task of supervising implementation, monitoring application and suggesting changes.

Third, the general statement of policy is intended to apply to all of the University community. However, it is recognized that some of the recommendations on procedures, particularly as they relate to discipline, may be inconsistent with existing agreements between the University and its faculty and staff. These agreements, until modified through negotiation, would, to the extent of any inconsistency, prevail over the recommendations of the Report. If, however, the procedures suggested here are adopted we think it most desirable that any existing agreements be reconsidered.

Fourth, we have drawn up a fairly detailed set of procedures; even then they may in some respects be incomplete. We went into some detail because we thought it would not be useful to simply make some general statements which would hide rather than highlight the difficulties that have to be faced. We realize that the procedures do not make easy reading. One of the tasks for a Permanent Advisory Committee would be the preparation of a short brochure which could give a simpler overview of the procedures. The detailed procedures would, however, govern the mode of dealing with complaints.

## PART I: UNIVERSITY POLICY

### 1. THE GENERAL POLICY

The University of British Columbia is committed to providing the best possible environment for working and learning for those associated with the University. The University cannot therefore condone harassment of any kind. This policy and the procedures in Part II have been developed to deal specifically with sexual harassment.

Sexual harassment violates the fundamental rights, dignity and integrity of the individual. The fundamental objective of the University policy is to prevent sexual harassment from occurring, but where it does occur to provide procedures for handling complaints and imposing discipline. These objectives may be achieved in a number of ways. Action needs to be taken to raise awareness on the campus of the nature and problems associated with sexual harassment, to provide support and counselling to those affected by it, and to establish procedures for mediation, investigation and discipline. It should be clearly understood by all associated with the University that sexual harassment is regarded as a serious offence, and is subject to a wide range of disciplinary measures, including dismissal or expulsion from the University.

The University has also the obligation to ensure that its policy and procedures are fair and are in fact applied fairly. It is necessary therefore to provide an environment in which those who allege they are the victims of sexual harassment feel free to bring complaints forward. It is equally important that those against whom allegations have been made have the opportunity to meet those allegations. The set of procedures in Part II attempts to strike that delicate balance in an equitable way.

### 2. IMPLEMENTATION, MONITORING AND CHANGE

The adoption of a policy and of a set of procedures is only a first step. The policy and procedures need to be implemented, their operation monitored and from time to time changed.

There should therefore be appointed:

- (1) A President's Permanent Advisory Committee.
- (2) At least two Sexual Harassment Officers, one female and one male.
- (3) A panel of mediators drawn from the University community.
- (4) A Hearing Panel drawn from the University community.

The role of the Sexual Harassment Officer, the mediators and the Hearing Panel will be dealt with in detail in the procedures for dealing with complaints. In this part we deal only with the Permanent Advisory Committee.

#### 1. PERMANENT ADVISORY COMMITTEE

##### A. Terms of Reference

The Committee would be an advisory committee to the President. In general terms it would oversee the implementation of any policy and procedures, monitor their operation and recommend changes.

Its specific tasks would include, but would not necessarily be limited to, the following:

- (1) Making the whole University community aware of the policy and procedures.

- (2) Creating and implementing an educational programme designed to make all members of the University community aware of the nature of sexual harassment and of measures that may be taken to prevent it from occurring;
- (3) Advising the President on the appointment of sexual harassment officers, the panel of mediators and the hearing panel;
- (4) Arranging to provide for such instruction and education as the Committee may think necessary for mediators and hearing panel;
- (5) Providing such assistance and advice to the sexual harassment officers as may from time to time seem necessary;
- (6) Investigating complaints to decide if there is any evidence to justify a formal hearing;
- (7) Submitting an annual report to the President and to the University community.

**B. Composition of the Committee**

The Committee, and the chairperson of the Committee, should be appointed by the President. The following general guidelines should be borne in mind in making the appointments:

- (1) The Committee should consist of eight to ten people.
- (2) There should be representation from faculty, students and non-academic staff.
- (3) There should be equal representation of males and females.
- (4) Appointments should be for two years, and could be renewed. Initial appointments could be for one or two years in order to ensure continuity of experience.

**PART II: PROCEDURES**

INTRODUCTION

We set out in this Part a suggested set of procedures for dealing with complaints. In relation to some of the sections we provide some comment by way of background and explanation.

In summary, the sequence of procedures that we suggest is as follows:

- (1) Complaint to a sexual harassment officer.
- (2) Mediation.
- (3) Investigation.
- (4) Formal Hearing.

Not every complaint would go through all four steps; indeed it would be our hope that many of them would be resolved at the mediation stage.

1. DEFINITIONS

1. **SEXUAL HARASSMENT**

"Sexual Harassment" includes comment or conduct of a sexual nature, including sexual advances, sexual remarks, requests for sexual favours, suggestive comments or gestures, or physical contact when any one or more of the following conditions are satisfied:

- (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.

COMMENT:

This definition is based on definitions that have been adopted at a number of other universities. It attempts to strike a balance between being overly broad and general on the one hand and overly detailed and specific on the other.

As with all definitions, circumstances will no doubt arise when it will not be immediately clear if the event in question falls within the definition. It may be useful if we give some examples of what it will or will not cover.

The definition will cover the most common type of sexual harassment, of females by males. It is, however, broad enough to cover harassment of males by females, females by females and males by males.

The definition could cover a single incident or a series of incidents.

The literature on sexual harassment suggests that sexual harassment is most likely to occur where some power relationship exists between the victim and the harasser. The existence of such a relationship is not, however, a necessary element in the definition.

Subject to the application of section 2.01, the definition would apply to conduct or comment that takes place outside normal working hours or off the University campus.

2. COMPLAINT

"Complaint" includes a complaint, oral or written, respecting:

- (1) sexual harassment;
- (2) retaliation for the lodging of a complaint;
- (3) the lodging of a written complaint where the person lodging the complaint knows or ought to have known the complaint was not well-founded;
- (4) breach of an undertaking as to future conduct.

COMMENT:

The main thrust of the policy and procedures is to deal with sexual harassment as such. However, some ancillary matters need also to be dealt with.

On the one hand, it is important to protect those who make bona fide complaints, even if it is eventually decided that the complaint is not well-founded. Thus, retaliation against someone who makes a complaint may in itself be the

subject of a complaint. On the other hand, it is equally important to discourage complaints that may be vexatious or malicious. It is therefore provided that it is an offence to lodge a complaint which is clearly ill-founded.

In Section 4 there is a specific provision for the giving of undertakings as to future conduct. It is conceivable that such undertakings may also be given at other stages of the application of these procedures. The breach of an undertaking should in itself be an offence.

## 2. APPLICATION OF THE POLICY AND PROCEDURES

2.01 The policy and procedures apply in all cases where there is a sufficient nexus between the conduct or comment in issue and the functioning of the University.

### COMMENT:

The policy and procedures are intended to apply only to matters that concern the University. However, given that nexus, the events may take place during or outside normal working hours, or off the University campus.

2.02 The procedures for the imposition of discipline are inapplicable to the extent that they may be incompatible with any express provisions to the contrary in existing agreements between the University and its faculty or staff.

### COMMENT:

The intent behind this provision was explained in the introduction.

2.03 A complaint made under these procedures can be pursued, even though there are contemporaneous court or other proceedings related to the incident or incidents in question, unless:

- (1) it would be unlawful to pursue the complaint; or
- (2) the Permanent Advisory Committee, upon application, orders that the complaint be stayed.

### COMMENT:

It may happen that the events on which a complaint is based may be the subject of contemporaneous civil or criminal proceedings or of proceedings under human rights legislation. In general we do not think that this should be a ground for staying the University procedures. Indeed, if the allegations are serious enough to justify other proceedings that may be an indication that the University should be taking action.

It seems nonetheless prudent to provide for the situation where it might be unlawful to pursue a complaint within the University, and to give the Permanent Advisory Committee the authority to stay proceedings. This latter power could be exercised, for example, if the Committee decided that it would, in the circumstances, be unfair to one or more of the parties to continue the University proceedings.

2.04 All persons who may have reason to be involved in the handling of a complaint shall hold all information they may become aware of in the strictest confidence, and such information shall be disclosed only to those persons who have a valid reason for being made aware of it.

### COMMENT:

In order for the procedures to work effectively, and in order to protect the parties involved, it is important

to ensure that strict confidence is maintained. This applies to everyone - sexual harassment officers; members of committees and panels; administrators; secretarial and clerical staff - who become involved in the handling of a complaint.

It should however be noted that it is not possible to give an absolute and unqualified guarantee that information will never be disclosed. Thus, if there were civil or criminal proceedings, a person who was in possession of information could be required to disclose it under subpoena. However, this should not detract from the fact that complainants and respondents should be able to assume that complaints will be handled in the strictest confidence.

- 2.05 The President's Permanent Advisory Committee may, on application, vary any of the time limitations or any of the procedural steps provided for in these rules if the committee is of the opinion that it is desirable to make the variation and that to do so will not be unfair to any of the persons involved.

COMMENT:

This set of procedures is being set up to try to ensure that complaints are handled in an orderly and fair manner. Specifically, provision is often made for the various steps in the procedures to be carried out within certain time limits.

In general, we would expect that it will not be necessary to depart from the procedures. However, occasions may arise when the strict application of the rules, including those setting time limits, may operate unfairly. It is desirable therefore to confer a discretion on the President's Advisory Committee to depart from the rules where it is expedient to do so, and no unfairness to the persons involved would result.

PART III: COMPLAINTS

- 3.01 A person who believes that he or she has been subjected to comment or conduct which might form the subject matter of a complaint ought to discuss the matter with a sexual harassment officer.

COMMENT:

A person who believes that he or she has been subject to conduct which might be the subject matter of a complaint may in the first instance approach any one of a number of persons or offices at the University, e.g. an administrative officer, a faculty advisor, the Office of Women Students, union representative. The complaint may be handled to the satisfaction of the complainant at that level. However, anyone who is approached by a complainant should remind the complainant of the Sexual Harassment Policy and Procedures. If a complainant wishes to pursue the complaint following these procedures then the complaint must be brought to a sexual harassment officer.

- 3.02 The sexual harassment officer shall provide the complainant with advice and assistance on how to deal with the situation, on the policy and procedures, on the apparent validity or seriousness of the complaint, and on what action might be taken.

COMMENT:

The sexual harassment officer is an advisor to the complainant. The officer would be in a difficult position if he or she had to advise both a complainant and a respondent. We assume that in the vast majority of cases a respondent would be able to get advice and support from such organizations as the Faculty Association or a union.



We considered the possibility of providing that the sexual harassment officer would play a neutral role, giving impartial advice to both the complainant and the respondent (i.e. the person against whom the complaint is made). The attraction of that model is that it appears to offer equal treatment to both parties. On balance, however, we rejected this approach. It would, as has just been said, be difficult in many cases for the sexual harassment officer to advise the parties in a way that would be fair to both.

- 3.03 A complaint may not be pursued by the complainant unless the complaint is specified in writing in reasonable detail and lodged with a sexual harassment officer by at the latest one calendar year after the event, or in the case of a series of events, the last event in the series, on which the complaint is based.

COMMENT:

Complaints should be lodged promptly. This has a number of advantages; for example, events will be fresher in the minds of those involved, witnesses are more likely to be still available.

On the other hand, there may be valid reasons for someone taking some time over the lodging of a complaint. For example, a student in a course lasting through the full winter session may wish to have completed any final examinations and received the results before lodging a complaint. The one-year limitation period accommodates this example.

It should be noted that the written complaint must be lodged within at least one year of the alleged event. In order to comply with that requirement, a complainant would probably have to have discussed the complaint with a

sexual harassment officer some time reasonably in advance of the expiry of the one-year period.

- 3.04 Subject to sections 5.01 and 5.07, a decision to pursue a complaint under these rules rests with the complainant, and having made a complaint the complainant may withdraw it at any time.

COMMENT:

As a matter of principle and as a matter of practicality it should be up to the complainant to decide if the complaint is to go forward. If in fact the complainant is not prepared to cooperate then it will in general not be possible to pursue the complaint.

This policy is, however, qualified in two ways later in the procedures. First, under section 5.01 the respondent or the University may ask for a complaint to be investigated even if the complainant does not ask for that to be done. Second, under section 5.07 the respondent may initiate a hearing even if the complainant does not exercise that option.

- 3.05 Events that take place after the giving of written notice may, without the filing of a further complaint but with due notice to the complainant or respondent, be the subject of mediation, investigation or formal hearing.

COMMENT:

Once a complaint has been lodged events may occur which the complainant or the respondent may allege are either relevant to the original complaint or which in themselves constitute further offences. An example of the latter might be an alleged retaliation for the lodging of a

complaint. The purpose of section 3.05 is to ensure these may be dealt with, on notice, but without the need for the filing of a further formal complaint.

- 3.06 If a written complaint is not lodged within the prescribed time limit, the sexual harassment officer shall destroy all records that may have been compiled, and shall keep no records, except statistical information as to the number of complaints made and information as to the general types of complaints, including information on whether the complaints were made by or against faculty, staff or students.

COMMENT:

A complainant may decide not to lodge a written complaint for a number of reasons. Whatever the reason, it would be unfair to the respondent to have any records in any files if the complaint was not reduced to writing.

- 3.07 If a written complaint is lodged within the prescribed time limit, the sexual harassment officers shall, within 5 working days of receiving the complaint:

- (1) deliver to the respondent a copy of the complaint, a copy of the policy and procedures, and, if so requested, shall explain the procedures to the respondent;
- (2) deliver a copy of the complaint to the administrative head of the faculty or unit to which the respondent is attached.

COMMENT:

Once a written complaint has been lodged, it is desirable that the respondent be informed promptly. It is also desirable that at this stage the administrative officer of the faculty or unit to which the respondent is attached be made aware of the fact that a written complaint has been lodged.

Section 3.07 would require both sexual harassment officers to deliver the complaint to the respondent; this would, it is hoped, diminish the risk of misunderstandings. The sexual harassment officers should make it clear that while they can explain procedures they cannot give advice. They should therefore impress upon the respondent the desirability of obtaining independent advice from other quarters.

- 3.08 (1) The respondent may, if he or she wishes, respond in writing to the complaint.
- (2) If the respondent, in response to the complaint, wishes to raise matters which in themselves could form the basis of a complaint by the respondent against the complainant, the respondent shall make a complaint in writing.
- (3) Any response in writing under sub-sections (1) and (2) shall be delivered to a sexual harassment officer within 15 working days of the receipt by the respondent of the written complaint of the complainant.
- (4) Within 5 working days of receiving a written response or complaint from the respondent the sexual harassment officer shall deliver a copy of that response or complaint to the complainant.

**COMMENT:**

The respondent should have the opportunity of responding to the complaint in writing. If, however, the respondent wishes to raise matters which in themselves constitute a complaint against the complainant that complaint must be put in writing. This is in line with the general principle that in order to be pursued complaints must be put in writing. In particular it is a necessary foundation for the provisions in section 5.01 under which the respondent may ask for an investigation, and in section 5.07 under which the respondent may ask for a formal hearing.

A copy of the response or complaint of the respondent should be delivered by the sexual harassment officer to the administrative head of the faculty or unit of the respondent.

**PART IV: MEDIATION**

INTRODUCTORY COMMENT

In many ways the most desirable way to dispose of a complaint is for the parties to resolve the issue themselves. Mediation offers that possibility. The role of a mediator is not to resolve the dispute or to come to a judgment about it. Rather it is to help the parties themselves to come to an agreement.

There will no doubt be complaints that do not easily lend themselves to mediation. However, the initiation of mediation requires the consent of both parties. This controls the risk of mediation being used where it might not be appropriate.

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- 4.01 (1) Within 30 working days of the delivery of the complaint to the respondent, either the complainant or the respondent may notify the sexual harassment officer in writing that he or she is prepared to resolve the matters in dispute through mediation.
- (2) If no such notice is given to the sexual harassment officer then it shall be presumed that mediation will not take place.

**COMMENT:**

The purpose of this section is to enable either the complainant or the respondent to indicate a willingness to proceed to mediation. There is no commitment to mediation at this stage, simply a commitment to a willingness to see if mediation can be arranged.

The 30-day period runs from the date of the delivery of the complaint to the respondent. It includes therefore the two time periods referred to in section 3.08.

If within the 30-day period neither the complainant nor the respondent indicates a willingness to consider mediation then the way is open for an investigation under Part V.

4.02 On receipt of notice in writing from either the complainant or the respondent that he or she is willing to consider mediation, the sexual harassment officer shall immediately deliver to the chairperson of the mediation panel:

- (1) a copy of the complaint by the complainant;
- (2) a copy of the response or complaint, if any, of the respondent;
- (3) a copy of the written notice or notices indicating a willingness to consider mediation.

4.03 (1) The chairperson of the mediation panel shall, on receiving the material referred to in section 4.02, enter into consultations with the complainant and the respondent in an attempt to secure their agreement to a mediator and the terms of reference for the mediation.

(2) An agreement on a mediator and on the terms of reference for mediation shall be reduced to writing and signed by the complainant, the respondent and the chairperson of the mediation panel.

(3) If an agreement in writing is not arrived at within 10 days of the receipt by the chairperson of the mediation panel of the material referred to in section 4.02, it shall be presumed that mediation will not take place.

COMMENT:

If either party expresses an interest in mediation the chairperson should attempt to see if agreement can be reached on a mediator and on the terms of reference of a mediator. The attempt to agree on mediation will be a delicate process and the intent is to leave considerable discretion in the hands of the chairperson as to how consultations will take place.

4.04 At the mediation a complainant or a respondent may each be accompanied by a person of his or her choice.

COMMENT:

There are two opposing views on whether or not persons other than the mediator and the two parties should be present at the mediation.

Mediation offers the parties themselves the opportunity to resolve any differences that may exist. It may be argued that the less other parties are involved in that process the better. The role of the mediator is to advise, to warn, to suggest possible solutions, but also to be neutral. That, it may be thought, is a sufficient safeguard of the interests of both parties.

We think there is much to be said in favour of this point of view. In the end, however, we were persuaded by another consideration. In many cases a respondent will be in a position of some authority with respect to the complainant. We are not sure that even a skilled mediator would always be able to hold a fair balance in those circumstances. It seems to us, therefore, that it is desirable that either party may, if he or she wishes, be accompanied at the mediation by another person.

We do not think that it would be appropriate for a sexual harassment officer to be present at the mediation in addition to the mediator, the parties and any persons the parties select. The complainant might, however, select a sexual harassment officer as the person who is to accompany him or her.

4.05 (1) The mediation shall be completed within 15 working days of the mediator being nominated. If it is not completed within that period, the mediation shall be presumed to have failed.

(2) If the mediation fails, the mediator shall notify in writing the parties, the chairperson of the mediation panel, the sexual harassment officer, and the administrative head of the faculty or unit to which the respondent is attached.

4.06 If mediation is successful, the agreement arrived at between the complainant and the respondent shall be reduced to writing, signed by the complainant and the respondent and counter-signed by the mediator. If the agreement contains undertakings as to future conduct on the part of either the complainant or the respondent, the agreement shall also be signed by a representative of the University.

COMMENT:

The undertakings given in the agreement may relate to conduct directed by one of the parties towards the other, or to the general conduct of one or other of the parties in the future. In either case, the undertaking should be expressed to be in favour of the University, as well as the other party, and if the undertaking was broken the University could then take proceedings in respect of that

breach, either under these procedures or through any other existing procedures for imposing discipline. We have not thought it necessary to state who should sign on behalf of the University, but it would no doubt be a senior academic administrator.

4.07 A copy of any agreement reached under section 4.06 shall be provided to each of the parties, to the sexual harassment officer, and to the administrative head of the faculty or unit to which the respondent is attached.

4.08 Whether or not the mediation is successful, and subject to section 4.07, all records and notes relating to what took place during the mediation and which are in the control of the mediator shall be destroyed; and no person shall give evidence or introduce documents during any subsequent proceedings under these procedures or in any other University proceeding where that evidence or those documents would disclose what took place during the mediation.

COMMENT:

In order for mediation to be as effective as possible it is essential that the parties not feel constrained by the possibility that anything that they say or produce during mediation might be used in later proceedings. It is essential therefore to ensure the destruction of papers and to prohibit evidence of what happened in mediation being introduced in later proceedings.

It is important to note, however, that the University cannot control the introduction of evidence in proceedings not controlled by the University, for example in civil or criminal proceedings.

PART V: INVESTIGATION

5.01 If the complainant or the respondent does not agree to mediation, or if mediation is unsuccessful:

- (1) the complainant;
- (2) the respondent, if he or she has lodged the written complaint referred to in section 3.08(2);
- (3) the University

may notify the Sexual Harassment Advisory Committee that he or she or it wishes the complaint to be investigated. Such a notification shall be in writing and shall be delivered to the chairperson of the Sexual Harassment Advisory Committee within 5 days of the date on which it is known mediation is not to take place or on which mediation failed. If notification is not received within this period, it shall be presumed that neither the complainant, respondent, nor the University wishes to pursue the matter further.

COMMENT:

Where mediation does not take place or it takes place and fails, the complainant should be afforded the opportunity of having the complaint formally investigated. This is a necessary preliminary step to a formal hearing under Part VI.

We also think that it should be open to the respondent to require a more formal investigation. However, in order to do this, the respondent must have filed a response under section 3.08(2) setting out the basis on which the respondent alleges that the complainant has engaged in conduct which could form the subject matter of a complaint. The intent here is to ensure that the respondent may not at this stage for the first time raise issues about which the complainant ought to have been put on notice earlier.

The University should also have the opportunity of asking for a formal investigation. It may be that such an investigation would prove futile if the complainant and the respondent refused to cooperate. Nonetheless there are cases - for example the breach of an undertaking in a previous mediation agreement - where the University may wish a further investigation of the issues.

5.03 Within 5 days of receiving the request for an investigation, the chairperson of the Sexual Harassment Advisory Committee shall appoint two persons (one of whom may be the chairperson of the Sexual Harassment Advisory Committee) to conduct an investigation.

COMMENT:

It is obviously not feasible for the whole Sexual Harassment Advisory Committee to engage in an investigation. It would, however, be unwise for one person to conduct an investigation alone. It is better to have at least two people.

5.04 The investigating committee should make every effort to interview the complainant, the respondent, and such other persons as it sees fit, and to examine any documents it may think relevant, and it shall report its findings to the Sexual Harassment Advisory Committee within 15 working days of the date of its appointment.

COMMENT:

The investigating committee cannot compel the complainant, the respondent or other parties to speak to it, nor can it compel the production of documents. It should, however, make every effort to secure the cooperation of those who may have relevant information. Its report should not be invalidated if it makes a bona fide attempt to gather information, and comes to a conclusion on the basis of such information as it is able to gather.

5.05 (1) The Sexual Harassment Advisory Committee shall consider the report and shall decide, within 5 working days of receiving it, if there is any evidence which would warrant the complaint being referred to a Hearing Committee; in which case the University shall be obliged to initiate proceedings before a Hearing Committee;

(2) If the Sexual Harassment Advisory Committee is not of the opinion that there is any evidence which would justify a hearing, the complainant or the respondent may nonetheless initiate proceedings before a Hearing Committee.

COMMENT:

In carrying out its mandate under section 5.05 the Sexual Harassment Advisory Committee would not be making a decision on whether or not the complaint is well-founded. Its task is more limited - to determine if there is some evidence which would justify a formal hearing. In reaching that conclusion the committee should not make decisions that resolve issues of credibility. If in part a decision may turn on whether the evidence of one witness is to be preferred to that of the other, that decision should be left for a formal hearing and not be decided by the Sexual Harassment Advisory Committee.

There is room for some difference of opinion on the extent to which a complainant or respondent should be able to insist on a formal hearing.

On the one hand, with respect to a complainant, it may in fact be argued that a complainant ought to be able to insist on a formal hearing without the need for a prior investigation of any sort. It is said that as a

matter of principle, complainants ought to be able to obtain a formal hearing if they perceive that some wrong has been done to them, even if it should eventually be decided that the complaint is ill-founded. Moreover, experience has shown that very few complaints are made lightly and very few have no foundation in fact.

It seems to us, however, that it would be unfair to respondents to require that they be forced to participate in a University initiated hearing if there is not determined to be at least some evidence that would indicate that a hearing is needed; and that it would be equally wrong to require the University to initiate a hearing in such circumstances. Moreover, the threshold for a mandatory hearing is low - simply that the Sexual Harassment Advisory Committee decides that there is some evidence that would warrant a hearing. The suggested procedure does not, therefore, set up a major hurdle to a University initiated formal hearing.

On the other hand, if the Sexual Harassment Advisory Committee has decided that there is not any evidence to warrant a hearing, it may be argued that neither the complainant nor the respondent ought to be able to insist on a formal hearing. However, we recognize that it is possible that the Sexual Harassment Advisory Committee may on occasion err in its judgment. It might be possible to provide for a re-investigation. We are not sure how feasible that would be, and it would add to what already may have been a long process. It seemed desirable, therefore, to give to a complainant the option of proceeding of his or her own volition to a formal hearing. We think that this is unlikely to be a common occurrence, but that there is some value in providing for that eventuality.

It may equally be argued that if the Sexual Harassment Advisory Committee has decided there is some evidence to

justify a formal hearing that the respondent ought not to be able to require that a hearing take place. An analogy may be drawn to the trial process - a claim may be made and then withdrawn before a trial. However, the issues in question having been raised the respondent may wish to have a clear resolution one way or the other, and we think that opportunity should be afforded. It is important that this opportunity not be misused and become a mechanism for harassing the complainant. That is why it is provided in section 3.08 that if a respondent thinks that he or she has grounds for the lodging of a complaint that should be done at the outset by way of written complaint. The respondent would thus have put the complainant on notice of the position that he or she was taking, and the complainant would not be taken by surprise by allegations being made late in the day. Again, however, we should say that we expect that this option (of requiring that a hearing take place) would be exercised rarely by respondents.

5.06 Within 5 days of reaching its decision, the Sexual Harassment Advisory Committee shall inform the following persons in writing of the decision:

- (1) the complainant;
- (2) the respondent;
- (3) the sexual harassment officer;
- (4) the appropriate administrative officers; and
- (5) the chairperson of the Hearing Panel.

5.07 When the Sexual Harassment Advisory Committee decides that a hearing is not warranted, the complainant or the respondent shall, within 10 days of receiving the decision of the Committee, notify the chairperson of the Hearing Panel in writing if it is his or her intention to initiate proceedings before the Hearing Committee.

## PART VI: HEARING

6.01 The President, with the advice of the Sexual Harassment Advisory Committee, shall nominate a Hearing Panel and shall designate one of its members as the chairperson of the panel.

### COMMENT:

We have not spelled out the composition of the Hearing Panel in detail. We envisage this being done on the advice of the Sexual Harassment Advisory Committee.

There are, however, certain criteria which would be relevant in selecting a panel:

- (1) The panel should be composed of 15 to 20 people. This would be a large enough group from which to select Hearing Committees for specific cases (see section 6.02), and would enable there to be a broadly based campus representation.
- (2) There should be representation from faculty, students, and non-academic staff.
- (3) There should be equal representation of males and females.
- (4) No member of the Sexual Harassment Advisory Committee or of the panel of mediators should be a member of the Hearing Panel.
- (5) Appointments should be for two year terms, but should be renewable. Initial appointments might be for both one and two years to ensure continuity of experience on the panel.



6.02 On being notified that a hearing is to take place, the chairperson of the Hearing Panel shall appoint three persons (of whom one may be the chairperson of the hearing panel) to act as a Hearing Committee, and nominate one of the three to act as the chairperson of the Hearing Committee; and shall notify the complainant, the respondent and the University of the composition of the Hearing Committee within 10 working days of being informed that a hearing is to take place.

COMMENT:

Beyond stating the number of members, we do not think it possible or desirable to give more precise directions on the composition of the committee. Any given Hearing Committee ought to have male and female representation, and representation from the constituencies of the complainant and respondent. The exact composition of each committee is, however, best left to the judgment of the chairperson of the Hearing Panel.

- 6.03 (1) Challenges for cause to the composition of the Hearing Committee may be made in writing to the chairperson of the Hearing Panel within 7 days of the receipt of notification of the composition of the Committee.
- (2) Challenges for cause may be made at a later date to the chairperson of the Hearing Panel, or, at the commencement of the hearing, to the Hearing Committee only if the information on which the challenge is based was not available in order to make a timely challenge under sub-section (1).
- (3) The chairperson of the Hearing Panel, or the Hearing Committee, shall make a ruling in writing on any challenge for cause. If the challenge for cause is upheld the chairperson of the Hearing Panel shall appoint a replacement member of the Hearing Committee.

As a matter of general principle there is a need to provide the opportunity for a challenge for cause. If, however, some care is taken in the selection of the Hearing Committee there should be few challenges.

Challenges should in general be made promptly. If a successful challenge is made at the hearing the nomination of a replacement may delay the proceedings. There may nonetheless be good reason for a late challenge and that is provided for.

- 6.04 The chairperson of the Hearing Committee shall make arrangements for the hearing with all reasonable dispatch.

COMMENT:

Making arrangements for a hearing may be fairly complex, if for no other reason than because of the number of people involved. It would not be sensible to impose a specific time limit, but it can be assumed that the chairperson of the Hearing Committee will act promptly.

- 6.05 (1) Where the University initiates the hearing, the parties shall be the University and the respondent; and the complainant may attend the hearing as an observer.
- (2) Where the complainant or the respondent initiates the hearing, the parties shall be the complainant and the respondent; and the University may attend the hearing as an observer.
- (3) Each of the parties shall be entitled to be accompanied or represented by a person of his or her choice. An observer may be accompanied by a person of his or her choice, and may participate in the proceedings when and as permitted by the Committee.

COMMENT:

Even if they are not parties, the complainant or the University should be able to attend, and to the extent permitted by the Committee, participate in the Hearing. Where the hearing is initiated by the University, the complainant has an interest beyond that of being a witness. Similarly, if the University is not formally a party, it has an interest in how the proceedings are conducted, given that they are taking place under the aegis of University policy and procedures.

- 6.06 The Hearing shall be conducted in a manner consistent with the requirements of natural justice, so as to give those involved a full and fair hearing.

COMMENT:

It is not possible nor perhaps desirable to set out a detailed set of rules for the conduct of hearings, though some specific matters are dealt with in sections 6.07, 6.08 and 6.09. It nonetheless may be useful to indicate, as section 6.07 does, the general objectives of a full and fair hearing.

- 6.07 (1) Subject to sub-section (2) the hearing shall be held in private.
- (2) A sexual harassment officer, the chairperson of the Hearing Panel, the chairperson of the Advisory Committee, and a representative of the professional association, union or student body of the complainant or respondent may be present at a hearing, subject, on application, to a contrary ruling by the Hearing Committee.

COMMENT:

There is an advantage in the operation of the policy and procedures in having the sexual harassment officer, the chairperson of the Hearing Panel and the chairperson of the Advisory Committee at the hearing. That could be of considerable value to them in carrying out their respective roles. It also seems desirable that the professional association, union or student body be able to send someone who can see how hearings are conducted.

It should be stressed that those who attend the hearings by virtue of this section are subject to rules of confidentiality. While they may use their attendance at a hearing as a basis for comment on the general nature of the policy and procedure, they must not disclose the identity of those involved or any other information about the case.

Even though there is a value in permitting those listed in section 6.06 to attend, the complainant, respondent or the University may on occasion have reasons for wishing to object to their attendance. The Hearing Committee should therefore have jurisdiction to rule on such an objection, and if it so decides order that a particular person or persons shall be excluded.

- 6.08 The Hearing Committee may admit such evidence as it deems necessary and appropriate, and is not bound by the rules of evidence that apply in judicial proceedings; though in deciding what evidence it will admit the committee may take those rules into account.

COMMENT:

It is not uncommon for it to be provided that arbitrators are not bound by the rules of evidence that are applied in judicial proceedings. These rules are sometimes excessively technical, and may result on occasion in the exclusion of

evidence that would be of value. In general we think it would not be useful to comment on specific evidential problems that might arise. These are better left to argument in a particular case.

6.09 The onus of proof shall rest on the party seeking to prove that conduct that may be the subject matter of a complaint has occurred; and the standard of proof shall be on the balance of probabilities.

COMMENT:

This section states the general rule that a person making an allegation bears the onus of proving it. We think it important, however, to specify that the standard of proof shall be on the ordinary balance of probabilities which would apply in any civil action. This is the standard which would apply in any other discipline proceeding, and we do not see that any other standard should apply because the issue may be one of sexual harassment.

6.10 The Hearing Committee has the jurisdiction to (1) make findings of fact; (2) decide if on the facts the complaint is justified; and (3) make recommendations as to discipline to the appropriate University Officer. The findings of fact and a decision on whether or not the complaint is justified shall be binding on the University, the complainant and the respondent.

6.11 The Hearing Committee shall have 20 working days from the date of the conclusion of the hearing to reach its decision.

6.12 The Hearing Committee shall give reasons in writing and it shall send copies of its reasons to the following:

- (1) the President;
- (2) the administrative head of the faculty or unit of the respondent;
- (3) the complainant;
- (4) the respondent;
- (5) the sexual harassment officer;
- (6) the chairperson of the Sexual Harassment Advisory Committee.

PART VII: DISCIPLINE

- 7.01 On receiving a decision of a Hearing Committee the appropriate University officer shall decide whether or not it is appropriate to impose discipline.
- 7.02 In deciding on appropriate discipline, the officer shall consider, but shall not be bound by, the recommendations of the Hearing Committee.

COMMENT:

It was noted in the introduction that questions would no doubt arise about the relationship between these procedures and existing regulations on discipline. Our assumption is that it is at the stage of the actual imposition of discipline that the existing regulations are likely to become applicable. We have not taken it to be within our mandate to attempt to analyse all of the existing regulations in detail and see how they would tie in with these procedures. However, two observations may be made on sections 7.01 and 7.02

First, it is our understanding that, depending on the particular circumstances, any one of a number of people may have the authority to impose discipline. In section 7.01 we have therefore simply referred to the appropriate University officer.

Second, if these procedures are adopted it will be desirable, as we noted in the introduction, to rethink some of the existing agreements. For example, the Collective Agreement on Conditions of Appointment between the Faculty Association and the University provides for a Hearing Committee after the President has decided to impose discipline. We suggest

a hearing before the question gets to the President. There seems no need for two hearings, or if there were to be a second hearing it should be confined to the issue of the discipline that has been imposed. This is, of course, a matter to be settled between the parties to the collective agreement. We refer to it simply as an illustration of the need, if these proposals be implemented, to consider the relationship between them and existing agreements.