

Respectful Work & Learning Environment Policy #10.13

CATEGORY: People & Culture/Diversity & Equity	APPROVAL DATE: November 9, 2022
EFFECTIVE DATE: November 9, 2022	REVIEW DATE: November 9, 2027
APPROVAL: Board of Governors	
SPONSOR: Director, Office of Diversity, Equity & Sustainability Initiatives	
CONTACT: Director, Office of Diversity, Equity & Sustainability Initiatives	
PREVIOUS VERSIONS: Harassment Policy, Approved May 11, 1992, updated 2004 Respectful Work and Learning Environment Policy, approved March 2010, May 13, 2019	

RELATED POLICIES

Policy on Prevention and Response to Sexual and Gender-Based Violence
Response to Violent or Threatening Behaviour Policy
Policy on Non-Academic Misconduct
Policy on Academic Accommodations for Students with Disabilities
Accommodation in Employment for Persons with Disabilities
Policy on Integrity in Research and Scholarship

STATEMENT OF COMMITMENT

1. The University is committed to supporting equity, diversity, inclusion and the dignity of all people. The University promotes equity and inclusion in its learning and work environment and in the conduct of the University's affairs, including by promoting an inclusive and respectful working and learning environment, free from harassment, discrimination and bullying.
2. The University will not tolerate harassment, discrimination or bullying against any Member of the University Community and will not condone behaviour that undermines the dignity, self-esteem or productivity of any of its members. Harassment and discrimination violate an individual's human rights and this conduct runs contrary to the University's fundamental values.
3. The University will endeavor to ensure that individuals who believe that they have been subjected to, or witnessed, harassment, discrimination or bullying are able to express concerns, make complaints and seek advice and assistance without fear of reprisal.
4. Prevention through training, education and community initiatives is a fundamental aspect of the University's commitment. As part of this commitment, the University will provide a

range of educational and community-based initiatives that foster understanding and awareness and promote knowledge exchange on human rights and equity issues of concern to the University community.

5. The University recognizes the importance of certain rights and freedoms at a university dedicated to intellectual inquiry and creative practice. The University is committed to upholding all fundamental human rights, including freedom of association, freedom of conscience, opinion and belief, and freedom of thought, inquiry, artistic and creative expression. Nothing in this Policy is to be interpreted, administered or applied in a way that infringes upon academic freedom, or upon legal conduct between individuals that is based on mutual consent. Nothing in this Policy is to be understood to prevent any faculty, employee or student from instructing, evaluating and engaging in fair criticism of another's behaviour or performance. In exercising these freedoms, all Members of the University Community are required to respect the rights and freedoms of others, including the right to freedom from discrimination, harassment and bullying. The University has a commitment to academic freedom and freedom of thought, inquiry, and expression which may result in respectful disagreements about beliefs and principles.
6. At the same time, cultural appropriation will not be tolerated by the University. This includes Indigenous cultural appropriation, misappropriation of Indigenous knowledge, and exploitation of Indigenous identity.
7. The University acknowledges the separate and distinct status of Indigenous peoples as affirmed by section 35 of the Constitution Act, 1982, Canadian Charter of Rights and Freedoms. The University also acknowledges and recognizes the importance of the United Nations Declaration on the Rights of Indigenous People (UNDRIP), including that: Indigenous peoples have the right to maintain, control protect and develop their cultural heritage, traditional knowledge, and traditional cultural expressions, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports, and traditional games and visual and performing arts¹.
8. The University will not tolerate racism, including anti-Indigenous racism. The University's approach will actively seek to identify, remove, prevent, and mitigate inequitable outcomes and power imbalances between groups and change the structures that sustain inequities.
9. The University recognizes that prevention of discrimination, harassment and bullying are matters of not only individual concern but of significance for the overall climate and wellbeing of the University community. Whether or not a complaint has been made, the University will address concerns of discrimination, harassment and bullying. In fulfilling this responsibility, the University will balance the principles of procedural fairness, thoroughness, timeliness and confidentiality in a manner that is appropriate in the circumstances. This includes by treating individuals who are parties to a concern or complaint fairly throughout the processes outlined in this Policy.
10. The University is also committed to anti-oppression as a process, a systematic method of analysis, and a proactive course of action. This is rooted in the recognition of the

¹ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295*, available at: <https://www.refworld.org/docid/471355a82.html> [accessed 24 November 2021]

existence of inequities, including racism, sexism, ableism, homophobia, transphobia, Islamophobia, antisemitism, and other forms of discrimination based on religion. The University's approach to anti-oppression will actively seek to identify, remove, prevent, and mitigate inequitable outcomes and power imbalances between groups and change the structures that sustain inequities.

11. The University recognizes that it has a duty to act in a manner consistent with the Ontario Human Rights Code (the "Code"), the Occupational Health and Safety Act ("OHSA"), the Accessibility for Ontarians with Disabilities Act (the "AODA") and related legislation and policies. Those responsible for the administration of this Policy will consult with the Office of Diversity, Equity & Sustainability Initiatives ("ODESI") for advice and guidance as necessary.
12. Human rights laws and policies are preventative and remedial. Their goal is to identify, prevent, and eliminate discrimination and, as such, they are key to promoting organizational transformation and change. This is achieved by implementing remedies to redress harm experienced by individuals who bring forward concerns and complaints and through public interest remedies that address systemic discrimination in institutional policies, practices, and procedures.

APPLICATION AND SCOPE

13. This Policy and its provisions apply to all acts of discrimination, harassment and bullying over which the University has jurisdiction to address the conduct and to take steps to safeguard the University community.
14. This Policy applies to all Members of the University Community engaged in University-related activities, including students, faculty, post-doctoral fellows, contractors and employees of the University. University-related activities include events (authorized and non-authorized) that occur on University premises or on non-University premises, including social media, where there is a clear nexus to the work or learning environment.
15. This Policy shall not be interpreted, administered or applied in such a way as to detract from the rights and obligations of Senior Administrators or others with supervisory authority to make personnel decisions, day-to-day management decisions or to take other supervisory actions affecting employees or students, including discipline, provided that the management and supervisory actions and decisions do not discriminate against the employee or student on the basis of a prohibited ground and do not amount to harassment or bullying.
16. Nothing in this Policy shall be interpreted, administered or applied in such a way as to deprive Members of the University Community from pursuing an application before the Human Rights Tribunal of Ontario or exercising grievance rights pursuant to a collective bargaining agreement, as applicable.
17. Definitions of certain terms can be found starting at paragraph 90 of this Policy.

PROHIBITED CONDUCT

18. **Prohibited Grounds:** This Policy prohibits discrimination and harassment based on the following grounds and any combination of these grounds:

Age	Ancestry
Creed (religion and spirituality)	Place of origin
Sex (including pregnancy and breastfeeding)	Ethnic origin
Sexual orientation	Citizenship
Gender identity	Race
Gender expression	Colour
Family status (being in a parent-child relationship)	Record of offences (conviction for a provincial offence, or for an offence for which a pardon has been received)
Marital status	Association or relationship with a person identified by one of the above grounds
Disability (including mental, physical, developmental and learning disabilities, including temporary and episodic disabilities)	Perception that one of the above grounds applies

19. **Discrimination** means any form of unequal treatment based on a prohibited ground, whether imposing extra burdens or denying benefits. It may be intentional or unintentional. It may involve direct actions that are discriminatory on their face or it may involve rules, practices or procedures that appear neutral but disadvantage groups of people protected by the Code. Discrimination may take obvious forms or it may happen in very subtle ways, including a series of micro-aggressions. Even if there are many factors affecting a decision or action, if discrimination is one factor, that is a violation of this Policy. The failure to meet procedural or substantive duties to accommodate, as well as authorizing, condoning, adopting or ratifying behavior that is contrary to the Code can amount to discrimination.
20. **Harassment** means a course of comments or conduct that is known, or ought reasonably to be known, to be unwelcome. Harassment can involve words or actions that are known or should be known to be offensive, embarrassing, humiliating or demeaning. Harassment can be based on a ground of discrimination identified in the Code or it can be personal harassment, as defined by the OHSA.
21. **Interference** with the conduct of a fact finding, or reprisal against any of the involved parties or witnesses, whether the complaint turns out to be substantiated or unsubstantiated, may itself result in disciplinary action up to, and including, termination.
22. **Sexual Harassment** means comments or actions based on sex, sexual orientation gender identity or gender expression that are unwelcome or should be known to be unwelcome.
23. **Sexual Solicitations** or advances by any person who is in a position to grant or deny a benefit to the recipient of the solicitation or advance are a form of sexual harassment and are prohibited by this Policy. This includes advances or solicitations made by

managers and supervisors, as well as faculty and staff, where one person is in a position to grant or deny a benefit to the other. Reprisals for rejecting such advances or solicitations are also not allowed.

24. **Sexual Assault** is a crime as defined in the Criminal Code and is also a form of sexual harassment under this Policy.
25. **Sexual Violence** means any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against a person without the person's consent, and includes sexual assault, sexual harassment, stalking, indecent exposure, voyeurism and sexual exploitation. Acts of sexual violence will be dealt with pursuant to the University's Policy on Prevention and Response to Sexual and Gender-based Violence.
26. A **Poisoned Environment** is created by comments or conduct based on a Code ground (including comments or conduct that are condoned or allowed to continue when brought to the attention of management) that create a discriminatory work environment. The comments or conduct need not be directed at a specific person, and may be from any person, regardless of position or status. A single comment or action, if sufficiently serious, may create a poisoned environment.
27. **Bullying** is a form of repeated, persistent and aggressive behavior that is directed at an individual or individuals and is intended to cause (or should be known to cause) fear and distress and/or harm to the person's body, feelings, self-esteem or reputation. Bullying usually occurs in the context where there is a real or perceived imbalance of power and may occur by electronic device, communication and/or social media.
28. **Reprisal** is negative treatment for bringing forward a complaint, providing information related to a complaint, or assisting in the resolution of a complaint.

CONFIDENTIALITY AND PRIVACY

29. Individuals need to be able to discuss their concerns and receive advice and assistance in a safe environment. The University recognizes the importance of confidentiality for anyone coming forward with a concern or complaint of discrimination, harassment or bullying and for anyone named as an alleged respondent and will protect confidentiality to the extent permitted by its legal obligations as set out in this Policy.
30. To ensure a fair process, protect against reprisals, maintain a healthy work and learning environment and to ensure the integrity of investigations, complainants and respondents are not permitted to discuss complaints under this Policy with anyone who is not necessary to the process of addressing the complaint, investigating the complaint or taking corrective action, or who is acting as their support person or representative. Where copies, portions or a summary of an Investigation Report have been provided to a complainant or respondent the Investigation Report must be kept in strict confidence. In cases of any intentional or unnecessary breaches of confidentiality, the complainant, respondent or other relevant person may be subject to disciplinary action by the University.
31. Employees of the University who receive a concern or complaint of discrimination, harassment or bullying or who are involved in addressing the complaint, investigating the

complaint or taking corrective action, will keep the information confidential to the extent possible in order to protect the rights of those involved in the allegations and to prevent an unjustified invasion of their personal privacy and to preserve the integrity of the investigation.

32. The University will make reasonable efforts to maintain confidentiality when it becomes aware of a concern or complaint of discrimination, harassment or bullying and will limit the sharing of information about individuals to those within the University who need to know for the purposes of, or those consistent with, addressing the concern or complaint, investigating the concern or complaint or taking corrective action.

LIMITS OF CONFIDENTIALITY

33. When University employees who are not health care providers become aware of a concern or complaint of discrimination, harassment or bullying, the University may be obliged to investigate or follow up as appropriate, even in the absence of a complaint.
34. Confidentiality cannot be maintained where information needs to be shared in order to address and investigate a concern or complaint of discrimination, harassment or bullying, a risk to the health and safety of a Member(s) of the University Community and/or where required by law. By way of example only, information may need to be shared with members of the University administration in order to facilitate an investigation as required by University policies and procedures, the Ontario *Human Rights Code* and/or the *Occupational Health and Safety Act*.
35. Confidentiality also cannot be maintained in situations which the evidence of a contravention of this Policy is in the public domain (e.g. social media), or in which multiple concerns or complaints have been made to the University, including Safety, Security & Campus Operations. If personal security while on campus is a concern, Safety, Security & Campus Operations staff are available on a 24/7 basis and can provide guidance and support.
36. In all circumstances, the University will endeavor to ensure that the person registering the concern has a voice in the decision-making process on how to follow up on the concern and that confidentiality is maintained to the extent possible consistent with the foregoing.
37. The Director, Diversity, Equity & Sustainability Initiatives will make available to the University community at large an annual report concerning the number, general type and general disposition of cases and/or on educational and other activities related to this Policy. Any annual reporting will protect the privacy of the parties.

COOPERATION AND SELF-INCRIMINATION

38. It is possible that individuals questioned as witnesses, those bringing concerns forward, or complainants in an investigation process, by cooperating with the University's processes, reveal their own infraction of University non-academic policy or guidelines. In such instances, and given the University's commitment to addressing discrimination, harassment and bullying, this information will not result in disciplinary proceedings by the University.

AVAILABLE SUPPORTS

39. Supports, services and/or accommodations appropriate in the circumstances are available to Members of the University Community. A Member of the University Community does not need to make a complaint pursuant to this Policy in order to access available supports, services and/or accommodation. ODESI and the Dean of Students can provide information about the availability of supports, services and/or accommodation (see Appendix B for a list of on and off-campus resources), including counselling, access or referrals to medical and legal services, access to and support by Elders, safety planning and emergency bursaries.
40. Counselling support is available through the Student Wellness Centre to any student involved in a complaint process, including upon the conclusion of an investigation, pursuant to University policies. This includes student complainants and respondents. Counsellors can provide confidential support with the emotional and mental health impacts of the incident and/or the process. Counsellors can also coordinate accommodations students may require with respect to engaging in the process. The University will connect students to internal or external culturally-specific counselling support. For example, students who identify as Black or Indigenous may specifically request the support of the Black Student Counsellor or the Indigenous Student Counsellor. Counsellors can attend meetings with students upon request of the student.

Counsellors are **not** responsible for taking complaints and/or providing advice with respect to this Policy and its processes.

41. Employees may be represented or supported by their union representatives through the resolution, restorative resolution and complaints process, if applicable.

INTERIM MEASURES

42. In some cases, the University may take temporary steps while a resolution, restorative resolution or investigation process is proceeding to maintain a healthy work or learning environment, to safeguard complainants and witnesses, to protect the integrity of an investigation and/or to protect the respondent from having their conduct construed as reprisal. These steps may include limiting contact between the complainant/witnesses and the respondent or temporarily removing one or more of the parties from the work or learning environment or from decision-making bodies, pending the outcome of the investigation.

Where the respondent is in a position of authority with respect to the complainant, the appropriate supervisor may, where it is feasible to do so, reassign either the complainant or the respondent to different duties or supervisors, or provide a student with an academic accommodation, for example switching sections of a course, pending the resolution of the complaint. Any steps taken should not penalize the complainant or put them at a disadvantage for making a complaint.

RESOLUTION OPTIONS

INFORMAL RESOLUTION OPTIONS

43. An informal resolution option is facilitated by ODESI through means other than a complaint. This process can include clarification of the issues, facilitated conversations, informal dispute resolution, workplace coaching, workplace restoration and mediation.
44. ODESI will provide information about the informal resolution options available under the this Policy and related policies and the possible outcomes and implications of each process. Members of the University Community who have a concern may pursue one or more of the options below. Prior to pursuing one of the options below, community members should read the sections on Confidentiality and Privacy and Limits to Confidentiality.
45. Resolution options are available to the parties at any stage in the complaint process provided that all parties to the complaint consent to voluntarily participate in a resolution option. The resolution process shall cease upon the withdrawal of participation of one or more of the parties to the complaint.

Seek Information, Advice or Referral

46. All Members of the University Community who believe they have witnessed or been subjected to discrimination, harassment or bullying, as well as those who are the respondent to a concern or complaint under this Policy, may benefit from having access to advice and information about this Policy.
47. All Members of the University Community can consult with ODESI in respect of a concern or complaint of discrimination, harassment or bullying. Where the Member of the University Community is Indigenous, the ODESI staff member assigned will have either Indigenous knowledge, trauma-informed approaches, or equivalent training. An employee or student may also choose to consult with their immediate supervisor or union representative (employees), Indigenous community relations lead, or the Dean of Students (students) to receive information on available options for resolving the concern and to receive appropriate referrals to University resources and relevant policies and procedures.
48. If a concern or complaint is against a direct supervisor, the complainant may choose to consult with ODESI, People and Culture, or their union representative to receive information on available options for resolving the situation and to receive appropriate referrals to University resources and relevant policies and procedures.

Communicate Directly (Self-Managed)

49. This option provides the parties with the flexibility to manage the resolution process and seek suitable solutions. Initially, individuals may choose to address their concerns directly on their own, or with the support of a friend or colleague. This process does not require documentation and no records will be kept in the individuals' student or personnel file.
50. This process is not required prior to engaging any other resolution option or making a complaint and is not recommended in situations where it is believed that speaking to the person could lead to an escalation of the comment or conduct or to safety risks. In the event that the concern is not resolved or if the person feels that they cannot speak directly to the other person, they may pursue any other resolution option or make a

complaint.

Request Assistance from Supervisor

51. Individuals may use this option in situations where they feel unable to take direct action or if the offensive behavior persists in spite of it being brought to the person's attention. The purpose of the process is to seek assistance addressing the concern. The complainant may consult with their Supervisor to resolve the matter. For students, this could be a faculty member, Program Chair or Associate Dean. For employees, this could be the manager to whom they report.
52. Supervisors may support the parties to resolve the matter by clarifying expectations under this Policy, restoring the work or learning environment and addressing issues and concerns of discrimination, harassment or bullying. Where information emerges in this process indicating a breach of this Policy, the Supervisor may take appropriate action to remedy the misconduct and prevent further discrimination, harassment or bullying.
53. Following the resolution, the Supervisor will forward a written communication to one or both parties, setting out the terms of the resolution and will assist in bringing about whatever administrative or other action is needed to implement the resolution, and will ensure that the Director, Diversity, Equity & Sustainability Initiatives receives a copy of the written communication and any written acknowledgement by the parties. No record of the resolution will be kept in the individuals' student or personnel file.

Request Mediation

54. Mediation services are provided as a support service that is available to ensure a healthy work environment. Participation in mediation is voluntary and offers a facilitated environment that can assist parties to resolve concerns and/or enhance the workplace and strengthen communication, relationships, trust and collegiality.
55. It is up to the parties to determine the issues that they would like to discuss at the mediation. In order to ensure that parties can speak freely, the mediation process is confidential and without prejudice (any statements or offers cannot be used against the parties in future complaints or proceedings). The mediator will be an impartial third party who may or may not be an employee of the University. Elder involvement in mediation will be available at the discretion of the mediator at the request of the parties.
56. At the conclusion of mediation, if a mutually acceptable resolution is agreed to by the parties, the mediator will prepare a Resolution Agreement and have it signed by both parties, who will each be provided with a signed copy. The mediator will ensure that the Director, Diversity, Equity & Sustainability Initiatives receives a copy of the written communication and any written acknowledgement by the parties. In the event that mediation does not resolve the issue or if there is a breach of an agreed upon settlement, the complainant will have the right to submit a complaint pursuant to this Policy.

Request Training and/or Coaching

57. Through the Policy Administrator, training, education and coaching sessions can be organized for Members of the University Community to build awareness and

understanding on preventing and responding to a range of concerns and on this Policy and related procedures. The Policy Administrator may facilitate a request or requirement for coaching/education/training on behalf of either a complainant or respondent.

Restorative Resolution

58. Restorative Resolution services are provided as an informal resolution option that is facilitated by ODESI which emphasizes repairing harm done to members of the community rather than concentrating on punitive outcomes. Participation in a Restorative Resolution process is voluntary and offers a facilitated environment that can assist parties to create a resolution that fulfills their needs, discourages future misconduct, and restores the community's trust in the responsible party.
59. Participation in Restorative Resolution services are voluntary, and all parties must willingly agree to engage. The respondent must have previously accepted responsibility for the behavior in question and the member of ODESI will determine whether a Restorative Resolution process can be conducted ensuring safety of all parties and the community. A Restorative Resolution may or may not result in additional restorative actions, depending on the outcome.
60. In order to ensure a safe and supportive Restorative Resolution process all parties must agree that the process is confidential and without prejudice (any statements or offers cannot be used against the parties in future University complaints or proceedings). The Restorative Resolution process is facilitated by members of the University community and/or external community members trained in the process.
61. At the conclusion of a Restorative Resolution process, if a mutually acceptable resolution is agreed to by the parties, a resolution agreement will be prepared and signed by both parties, who will each be provided with a signed copy. If the issue has not been resolved or there is a breach of an agreed upon settlement, the complainant will have the right pursue other resolution options through the policy.

INDIGENOUS RESTORATIVE RESOLUTION PROCESS

62. In circumstances which both parties to a concern or complaint are Indigenous and harm has been experienced, both parties may mutually agree to participate in an external Indigenous restorative resolution process through a healing, sharing, or peacemaking circle. While these processes vary across Indigenous cultures, they find commonality in their use of cultural protocols. Cultural protocols include, but are not limited to, spiritual laws, traditional medicines, ceremonies, teachings, songs, and circle processes². **Appendix C** provides an example of the purpose, values and process often found in restorative resolution models. Parties to concern or complaint may seek guidance from an Elder/Knowledge Keeper about external Indigenous restorative resolution processes that may be available. Participation in this process is optional.
63. At the conclusion of the Indigenous restorative resolution process, if a mutually acceptable resolution is agreed to by the parties, a consensus agreement will be prepared and signed by both parties. The parties and the University will each be provided with a signed copy. The University will honour the agreements made as part of

² <https://yorkstreet.ca/2018/08/14/an-indigenous-peacemaking-mediation-nexus/>

the process undertaken, as appropriate. If the issue has not been resolved or there is a breach of an agreed upon settlement, the complainant will have the right pursue other resolution options through the policy. The University is committed to supporting the Indigenous restorative resolution process in additional iterations, if required.

THE COMPLAINT PROCESS

64. A complaint of discrimination, harassment or bullying may be made against any Member of the University Community under the terms of this Policy. A complaint may be made when the parties have not reached an agreeable resolution or when the complainant wishes to have their concerns addressed through the complaint process.
65. A complainant must normally file a complaint within one (1) year of the date of the last alleged incident. The University recognizes that there may be extenuating circumstances that may prevent a complaint from being made within this time period and a complaint outside this timeframe may be permitted to proceed at the discretion of the Decision Maker, as defined below.
66. The complainant and the respondent have the right to be accompanied by a support person at any point during the complaint process under this Policy and will be advised that they may designate a support person, should they choose to:
 - (a) upon the making of a complaint; or
 - (b) upon being notified that they are a respondent to a complaint.

The support person is expected to adhere to the principles of Confidentiality and Privacy outlined in this Policy and may not respond to questions on behalf of the complainant or respondent unless permitted to do so by the investigator. Accommodations are available to support participation in all aspects of the complaint process.

67. No person shall be negatively treated for bringing forward a complaint, providing information related to a complaint, or assisting in the resolution of a complaint. Bringing forward a complaint under this Policy shall not adversely affect the student or employment status at the University. The University will take reasonable steps to protect complainants from reprisal, including advising individuals of their duty to refrain from committing an act of reprisal and sanctioning individuals for a breach of that duty. The University may also address the potential for reprisals by providing an accommodation appropriate in the circumstances. Threats of or acts of reprisal will be treated as violations of this Policy or other related policies, including the University's Non-academic Misconduct Policy.
68. The complaint must set out the name of the complainant, the name of the respondent(s), the nature and the details of the allegation(s), including detailed facts, specific dates and names of potential witnesses.
69. The complaint must be submitted to the Director, Diversity Equity and Sustainability Initiatives, who may ask the complainant to set out the complaint in writing. If a complainant is unable to set out the complaint in writing due to a disability related restriction, the Director, Diversity Equity and Sustainability Initiatives will arrange for accommodation to be provided.

70. Should there be a conflict of interest with a Decision Maker or where a Vice President is named as a respondent to a complaint, the Director, Diversity Equity and Sustainability Initiatives will determine the most appropriate Decision Maker to assume the decision-making responsibilities. Where an assessment has been undertaken and the President is properly named as a respondent to a complaint, the Chair of the Board of Governors will be the Decision Maker on the allegations involving the President.
71. The Decision Maker, in consultation with the Director, Diversity Equity and Sustainability Initiatives, will first make a determination as to whether the complaint falls under the Policy and/or whether the subject-matter of the complaint is trivial or frivolous. This decision may be made at any stage of the complaint process. Where appropriate, the Decision Maker may appoint an impartial investigator to gather preliminary information and conduct an assessment.
72. If it is determined that the subject-matter of the complaint does not fall under the definitions set out in this Policy or that it is trivial or frivolous, the Decision Maker will convey this assessment to the complainant and inform the complainant of their right to seek remedy through other University policies if applicable.

UNIVERSITY-INITIATED INVESTIGATION

73. Through data gathering on issues, incident and complaints, ODESI and/or Members of the University Community may become aware of situations where a University-initiated investigation may be warranted, including, but not limited to circumstances where:
 - (a) Repeated allegations are made about the conduct of the same individual and/or environment;
 - (b) None of those coming forward regarding an issue or incident have been willing to proceed with a complaint;
 - (c) The power differential in the alleged incident suggests the potential for a pattern of repeated discrimination, harassment or bullying;
 - (d) The University has a duty to investigate as per the *Occupational Health and Safety Act*;
 - (e) Available information suggests there may be a poisoned environment or systemic discrimination; and/or available information suggests there may be concerns about climate and/or conduct in an area of the University.

INVESTIGATION OF A COMPLAINT

74. If the Director, Diversity Equity and Sustainability Initiatives determines that the conduct complained of falls under this Policy and the complaint is not resolved through a Restorative Resolution process, the University will initiate an investigation.
75. The University will conduct an investigation that is appropriate in the circumstances. An investigation will include the appointment of an impartial external investigator as recommended by the Director, Diversity Equity and Sustainability Initiatives.

76. The investigator will be an impartial external third party who has competence in conducting investigations related to the allegations. Investigators will act promptly and expeditiously to investigate the allegation(s) in accordance with the principles of natural justice and procedural fairness. The investigation will be conducted in a neutral manner, with the purpose of determining facts that will either prove or disprove the complaint.
77. The decision-maker will formally confirm receipt of the complaint with the complainant and will identify the investigator who has been appointed.
78. The decision-maker will inform the respondent that a complaint has been filed under this Policy and will provide the respondent with the name of the complainant, the details of the complaint and a copy of this Policy. The investigator may request that the respondent provide a written response to the complaint within a specified time period. If the respondent does not provide a response, the investigation will proceed in the absence of a response.
79. The investigator will ordinarily interview the complainant, the respondent and all relevant witnesses and keep a written record of each interview. The investigator will also gather additional relevant documents. The investigator will advise all persons involved in the investigation that they are expected to keep all information provided or obtained during the investigation. The investigator will provide updates to the parties on the status of the investigation every three (3) weeks. ODESI will reach out to the parties every two (2) weeks and will meet with the parties every six (6) weeks to provide information on the investigation process and ensure that the parties are able to access supports. Additional counselling supports may be available, as necessary.
80. Upon completion of the investigation, the investigator will send the Policy Administrator a written confidential Draft Investigation Report for review by the parties. The Final Investigation Report containing the investigator's findings of fact will be shared with the Decision Maker by the Policy Administrator.

LIABILITY

81. No one charged with responsibility under this Policy, who carries out his/her duties in good faith, shall be personally liable in accordance with the University's Policy on Legal Representation for any action or claim arising out of their good faith execution of those duties.

ROLES AND RESPONSIBILITIES

82. All Members of the University Community are responsible for:
 - (a) Conducting themselves in an appropriate manner and treating others fairly and with dignity and respect at all times;
 - (b) Being cognizant of the fact that working and learning can best be accomplished in a climate of understanding and mutual respect and that harassment and discrimination can occur even when there is no intention to harass or offend another person;
 - (c) Establishing and maintaining a respectful environment by demonstrating respect

for others and by not condoning and/or engaging in conduct that is inconsistent with the law or this Policy;

- (d) Thinking, speaking, writing, creating, studying, learning, pursuing social, cultural and other interests and associating together for these purposes in accordance with the principles of mutual respect for the dignity, worth and rights of others as outlined in the Code; and
 - (e) Cooperating fully in any investigation under this Policy.
83. Senior Administrators, Deans, Associate Deans, Directors, Managers, Program Chairs, Directors and Supervisors (“Senior Administrators”) are responsible for building awareness and understanding of this Policy and for creating and maintaining a harassment, discrimination and bullying free organization. Senior Administrators must act immediately upon becoming aware of potential violations of this Policy, whether or not a complaint has been filed, including by contacting ODESI for advice and assistance prior to advising or taking action.
84. ODESI acts as a subject matter expert in the areas of harassment, discrimination and bullying. In its capacity as human rights advisor, ODESI provides information and guidance to students, employees and Senior Administrators on the various options for addressing and resolving matters under the Policy, on ensuring fair and effective administration of the University’s human rights policies and on the related obligations in the resolution of complaints.
85. The Director, Diversity Equity and Sustainability Initiatives, is separate from the person designated to investigate complaints and will ensure that concerns or complaints made to ODESI are kept in the strictest of confidence, subject to the requirements set out in this Policy, and will limit the sharing of information about a concern or complaint to those within the University who need to know for the purposes of addressing the concern or complaint, investigating the concern or complaint or taking corrective action.

ADMINISTRATION OF THIS POLICY

86. The Director, Office of Diversity, Equity & Sustainability Initiatives is responsible for the review and implementation of this Policy. This Policy will be reviewed at least once every 5 years.
87. The Director, Office of Diversity, Equity & Sustainability Initiatives may delegate any of their duties or powers under this Policy to an appropriate designate.
88. Amendments made to this Policy require the approval of the Board of Governors.
89. A copy of this Policy as approved and amended is posted on the University’s website. A print copy of this Policy is available on request at ODESI.

DEFINITIONS

90. **Bad Faith and Vexatious Complaints:** A complaint made in **bad faith** is one that is known by the complainant to be false and/or that is made for a purpose other than obtaining a satisfactory resolution. A **vexatious** complaint is one instituted maliciously

and without probable cause and/or one which is not based on reasonable factual grounds, but is merely vindictive.

91. **Complainant:** A person who brings forward a concern and/or makes a complaint. A complaint is an allegation of harassment, discrimination or bullying.
92. **Confidentiality** is required to ensure a fair process, protect against reprisals, maintain a healthy learning environment and ensure the integrity of investigations. It is a requirement that all Members of the University Community who are involved in an informal resolution option or investigation pursuant to this Policy hold all information confidential except to facilitate an informal resolution option or investigation pursuant to this Policy. Confidential information may be disclosed to allow an individual to obtain or access supports. Complainants and respondents are not permitted to discuss complaints under this Policy with anyone who is not necessary to the process of addressing the complaint, investigating the complaint or taking corrective action, or who is acting as their support person or representative. There are circumstances in which confidentiality cannot be maintained as outlined above.
93. **Decision Maker:** The Decision Maker is the person who receives the findings from the fact finder and makes a determination on how the matter will be addressed. ODESI is not a Decision Maker within the meaning of this Policy.
94. **Electronic Device, Communications and Social Media:** Communications by email, text, social media (e.g. on social networking sites such as Twitter, Instagram, Snapchat and Facebook) and any other electronic means.
95. **Employee:** Any University faculty, academic staff, administrative staff, manager and contract or temporary employee. Employees of the University may also be students at the University. An employee will be treated as a student under this Policy where an incident occurs while the employee is acting within their role as a student and outside the scope of their employment.
96. **Investigation:** An investigation is a fact-finding inquiry that is appropriate in the circumstances and that is consistent with the requirements of this Policy.
97. **Mediator:** A neutral party who assists in negotiations and facilitates voluntary resolution agreements between parties to a dispute.
98. **Members of the University Community:** students, faculty, post-doctoral fellows, contractors and employees of the University.
99. **Micro-aggressions:** The brief and everyday slights, insults, indignities and denigrating messages sent to equity-seeking communities by individuals who are often unaware of the hidden messages being communicated. Micro-aggressions can include *micro-insults*, such as verbal and nonverbal communications that demean a person's identity, as well as *micro-invalidations* such as communications that subtly exclude, negate or nullify the thoughts, feelings or experiential reality of equity-seeking communities.
100. **Policy Administrator:** The Director, Diversity Equity & Sustainability Initiatives.
101. **Respondent:** A person against whom a concern has been brought forward or a

complaint has been made.

102. **Resolution Agreement:** A document prepared by a mediator outlining a mutually acceptable resolution agreed to by the parties after a resolution process. Both parties sign this document.
103. **Restorative Resolution:** An approach to addressing conduct that enables the person who caused the harm to come together with the person and community that was affected to create a meaningful solution that will repair damage and restore relationships.
104. **Student:** A person who is registered in one or more University courses of study at the University, either full-time or part-time, in any program of study, including special students, that leads to the assigning of a mark, grade or statement of performance by the appropriate authority within the University and/or who is entitled to a valid student ID card between sessions.
105. **Trivial and Frivolous Complaints:** A **Trivial Complaint** is one in which there may be a technical breach of this Policy but the impact of the breach is of such a trivial nature that involvement of ODESI is not warranted. A **Frivolous Complaint** is one which is clearly insufficient on its face and which alleges that this Policy has been breached but the evidence does not in any way bear this out. It is one which may be perfectly true in its actual allegations, but yet is liable to be dismissed because it is totally insufficient in substance.
106. **Workplace Coaching:** A process of guiding employees through learning and growth to enhance performance. Coaching can support employees to achieve specific goals or outcomes or can develop skills or deepen competency in key performance areas.
107. **Workplace Restoration:** The establishment or re-establishment of harmonious working relationships amongst individuals and within a team, group or unit, following a violation of this Policy.

APPENDIX A: INVESTIGATION PROCEDURES

DISPOSITION BY THE DECISION MAKER

108. If the parties do not pursue resolution or if a resolution is not reached, the Decision Maker will determine whether or not, based on the findings of the investigator, there has been a breach of this Policy. In advance of making this determination, where appropriate, the Decision Maker will consult with a resource collective comprised of the Advisor to the Provost, Indigenous Knowledge, Practices and Production, and/or Elders.
109. If it is determined by the Decision Maker that this Policy has **not** been breached the Decision Maker will, in consultation with the Director, Diversity Equity and Sustainability Initiatives, advise the parties accordingly. No further action will be taken and no record of the complaint will be kept in the complainant or respondent's student or personnel file.
110. Complainants will not be penalized where a complaint is not found to be in breach of this Policy. There may be very rare cases, however, where there is objective evidence to show that the complaint was vexatious or made in bad faith. If the Decision Maker determines there is objective evidence to show that the complaint was vexatious or made in bad faith, with intent to injure or mislead, a record will be kept in the complainant's complainant student or personnel file and the University may take disciplinary action as set out in this Policy.
111. If it is determined by the Decision Maker that this Policy has been breached, the Decision Maker will, in consultation with the Policy Administrator, determine the appropriate corrective action, including sanctions. The Decision Maker and Policy Administrator will also take into account all applicable mitigating factors, including whether there is an intersection between the misconduct and a prohibited ground pursuant to the Code. This would include, for example, whether a respondent's disability within the meaning of the Code was a factor in the misconduct. In considering the mitigating factors the Decision Maker may consult with ODESI for advice and guidance as necessary.
112. In determining the appropriate consequences, the Decision Maker, in consultation with Director, Diversity Equity and Sustainability Initiatives, will take into account the nature of the violation of this Policy, its severity, and whether the individual has previously violated this Policy. Where there is a finding of harassment, discrimination, or bullying, there are a range of remedies and/or sanctions that may be imposed. These include, but are not limited to one or more of the following.
 - Modification of the complainant's work or learning arrangements to remedy the impact of the Policy breach;
 - A verbal and/or written apology to the complainant from the respondent;
 - A program of education, training or one-on-one remedial coaching and assessment for the respondent and/or the department;
 - A written warning or directive from the relevant supervisor to the respondent to cease the behavior, with failure to do so leading to further penalty;

- The exclusion of the respondent from one or more designated University activities or duties or transfer to another area of the University;
 - A no contact order, which may include restrictions on registration for specific classes, other academic or non-academic activities, or attendance at specific meetings, events; contact with particular individuals or groups of individuals; or access to a physical area of the University;
 - For students, suspension for a set time or expulsion, as set out by the Non-Academic Misconduct Policy;
 - For employees, a disciplinary suspension for a set time or dismissal.
113. Wherever possible, dispositions will include clear timelines for implementation. Appropriate corrective action may include, but is not limited to, one or more of the following:
- (a) Modification of the complainant's work or learning arrangements to remedy the impact of the Policy breach;
 - (b) A program of education, training or one-on-one remedial coaching and assessment for the respondent and/or the department;
 - (c) A written warning or directive from the relevant supervisor to the respondent to cease the behavior, with failure to do so leading to further penalty;
 - (d) The exclusion of the respondent from one or more designated University activities or duties or transfer to another area of the University;
 - (e) A no contact order, which may include restrictions on registration for specific classes, other academic or non-academic activities, or attendance at specific meetings, events; contact with particular individuals or groups of individuals; or access to a physical area of the University;
 - (f) For students, suspension for a set time or expulsion, as set out in the Non-Academic Misconduct Policy; and/or
 - (g) For employees, a disciplinary suspension for a set time or dismissal.
114. The complainant and the respondent will receive information about findings that pertain to their allegations or allegations in which they have been named as well as the corrective action imposed (the "Disposition"). Where necessary for the purposes of implementation, academic and administrative managers of the University may receive information about the findings and corrective action.
115. A copy of the Disposition will be kept in the respondent's student or personnel file, as appropriate.
116. A copy of the complaint, response, Investigation Reports and disposition and appeal documents, if any, will remain with the Director, Diversity, Equity and Sustainability Initiatives and are confidential. All individuals involved in the complaint resolution

process must keep records safe and secure. This means locked cabinets and/or secure electronic devices. Electronic records should be managed in a separate folder and password protected or made secure in an appropriate manner.

117. The Executive Director, Office of People and Culture, or their designate, will be responsible for the implementation of a Disposition. Concerns about the implementation of a Disposition, or whether a Disposition has been implemented, may be filed with the Executive Director, Office of People and Culture.

APPEAL OF A DISPOSITION

118. In the event that a respondent to a complaint who does not have access to recourse through a union has one or more of the specific concerns listed below, a request may be made to the Decision Maker to convene an appeal. The respondent has 15 business days to request an appeal from the date of receiving the Disposition. The grounds for appeal are:
- (a) The Disposition was grossly disproportionate to the findings of the investigator.
 - (b) There are significant new facts or evidence that have come to light that could change the outcome of the case. An appeal is not available where the new facts or evidence could have been identified prior to the Disposition by the exercise of reasonable diligence.
 - (c) The Disposition or findings upon which the Disposition is based, are contrary to law.
119. An impartial Appeal Adjudicator will be appointed by the Decision Maker to hear the appeal. After gathering information from the parties, the Appeal Adjudicator will first determine whether there are grounds for an appeal and, if so, they will proceed to hear the appeal.
120. After hearing the appeal, the Appeal Adjudicator can either recommend that the Disposition be upheld, that the Disposition be amended, and/or that further steps be taken by the University as appropriate. At the request of a respondent, the Decision Maker, in consultation with the Policy Administrator, may suspend or vary the imposition of the corrective action, including disciplinary measures, pending the outcome of an appeal by the respondent.
121. An appeal is not intended to be a re-argument of a response to a complaint nor is it an opportunity for a party to repair any deficiencies in the presentation of their response. The purpose of an appeal is to determine if there is any significant error in the rendering of a Disposition. In general, the University only reconsider a Disposition where it finds that there are compelling circumstances for doing so and where these circumstances outweigh the public interest in the finality of the Disposition.

APPENDIX B: SUPPORTS & SERVICES AVAILABLE TO STUDENTS AND/OR EMPLOYEES

The following supports are available when students and employees are addressing a concern or complaint under the *RWLEP*:

OCAD U Student Union (Students)

The [Manager of Advocacy Services](#) at the OCAD U Student Union provides advocacy and support services to all students at OCAD U. This is a confidential service that provides students with support and guidance when dealing with difficult situations on campus, which may include bullying, discrimination, harassment, or sexual harassment.

Dean of Students Office (Students)

The Dean of Students is available for consultation on difficult situations and can advise on resolution options, including through university policies. The Dean of Students also provides conflict resolution support for students experiencing conflict with peers or others on campus. Contact [Jennifer Robinson](#), Dean of Students.

Student Wellness Centre (Students)

The Student Wellness Centre is a central point of access for student accessibility, counselling, sexual violence, peer support program, art therapy and health programs and services. The services are accessible and responsive to issues relating to gender, race, age, culture, ability, sexual orientation, income and faith. Also available is a list of [community health resources and crisis support](#) for students.

Indigenous Student Centre (Students)

The Indigenous Student Centre offers a welcoming environment with a wide range of specialized services to support the academic, cultural, social and emotional well-being of Indigenous students at OCAD University. The Indigenous Student Success Coordinator can assist students in navigating University policies and processes and provide referrals to community resources.

International Student Support (Students)

The International Student Support Office provides international students with support, information, and guidance on a range of matters, including immigration matters (study permits, work permits) and university policies.

Office of Diversity, Equity & Sustainability Initiatives (ODESI) (Students & Employees)

ODESI administers the University's human rights policy. At any time, you can [contact ODESI](#) to confidentially ask a question, raise a concern or seek assistance on how to address an issue.

ODESI arranges departmental training and education, assists individuals with bringing a concern forward, and provides coaching to assist the University in addressing human rights concerns. ODESI provides access to culturally-appropriate external mediation and facilitates the resolution of human rights concerns without an investigation and the restoration of workplace environments.

Members of the community can also file a formal complaint which typically involves an investigation by an external fact-finder, and results in remedies to address the concern.

People and Culture (Employees)

At any time, you can contact [People & Culture](#) to ask a question, raise a concern or seek assistance on how to address a workplace concern. Your confidentiality is protected. The [Employee Assistance Program \(EAP\)](#) provides resources and supports for work-related issues, as well as personal matters including: emotional well-being, elder care, parenting & childcare, finances, health & wellness and legal matters.

Ontario Public Service Association Employees Union (OPSEU) (Employees)

Ontario College of Art & Design Faculty Association (OCADFA) (Employees)

At any time, students and employees can also seek legal advice or exercise their legal rights by contacting the following:

Toronto Police Services

Telephone: Non-emergency line 416-808-2222

TTY: 416-338-OTTY (0889)

Human Rights Tribunal of Ontario (HRTO)

The HRTO resolves claims of discrimination and harassment brought under the *Human Rights Code*. If you believe you have experienced discrimination or harassment, you can file an application with the HRTO who first offers parties the opportunity to settle the dispute through mediation. If the parties do not agree to mediation, or mediation does not resolve the application, the HRTO may hold a hearing.

Telephone: 416 326 1312 Toll Free: 1 866 598 0322

TTY: Call the Bell Relay service at 1 800 855 0511

Email: hrto.registrar@ontario.ca

Human Rights Legal Support Centre

The Human Rights Legal Support Centre (HRLSC) offers human rights legal services to individuals throughout Ontario who have experienced discrimination contrary to Ontario's *Human Rights Code*. Services may include legal assistance in filing applications at the Human Rights Tribunal of Ontario (HRTO), and legal representation at mediations and hearings.

Tel: (416) 597-4900 Toll Free: 1-866-625-5179

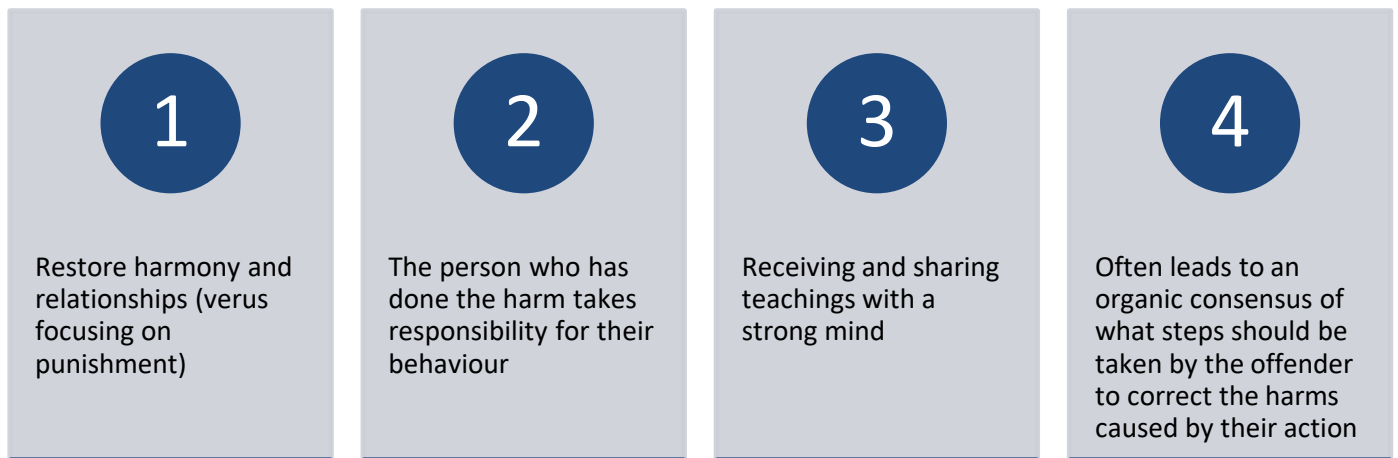
TTY: (416) 597-4903 TTY Toll Free: 1-866 612-8627

APPENDIX C: EXAMPLE OF INDIGENOUS RESTORATIVE RESOLUTION PROCESS

Definition

Indigenous restorative resolution processes are meant to reflect Indigenous approaches to restorative justice – a means to manage conflict wherein the community and the respondent demonstrate accountability to the harmed party. Healing, sharing, and peacemaking circles are often at the core of Indigenous restorative resolution process which aim to develop consensus on how to repair relationships and the harmful results of the offence. These processes vary across Indigenous cultures but find commonality in their use of spiritual laws, traditional medicines, ceremonies, teachings, songs, and circle processes³. Also, aspects of these processes are common to many Indigenous legal traditions including Circle discussions, ceremony, performance, listening and witnessing⁴.

Purpose



Values

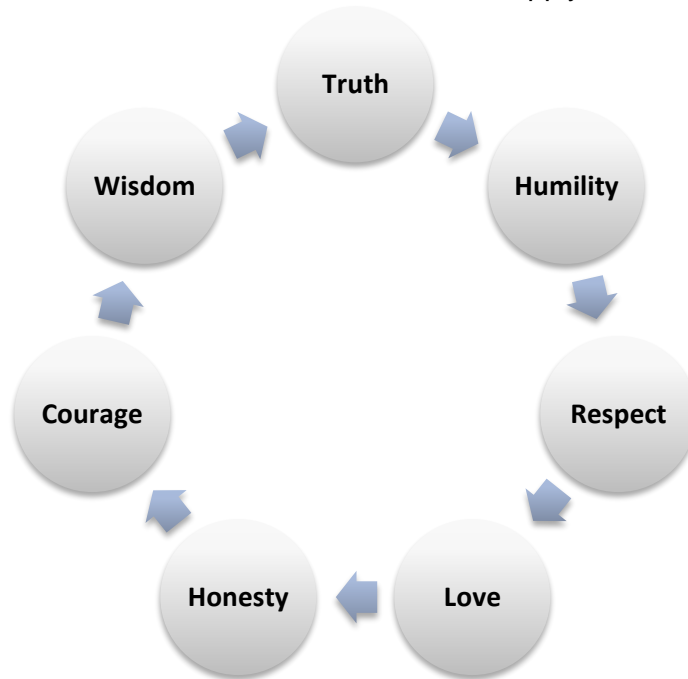
Indigenous concepts of “justice” are generally centered upon the family and reflect a way of life that focuses on relationships and the interconnectedness of all life. Restorative resolution processes generally require engagement from all involved parties and often involve community members (Inclusive), both to offer support and to build community strength through relationships and knowledge (Community empowerment). Restorative processes encourage both the community and the individual to take ownership of the act or harm (Accountability).

Discussions are led by guiding values and are grounded in ceremony. These guiding principles may be the seven grandfather teachings – or the culturally appropriate equivalent, based on the

³ <https://yorkstreet.ca/2018/08/14/an-indigenous-peacemaking-mediation-nexus/>

⁴ <http://www.nawash.ca/wordpress/wp-content/uploads/2016/10/Web-version-Final-Indigenous-Centred-Conflict-Resolution-app.pdf>

nation(s) of the participants. Fair, neutral, and confidential also apply⁵.



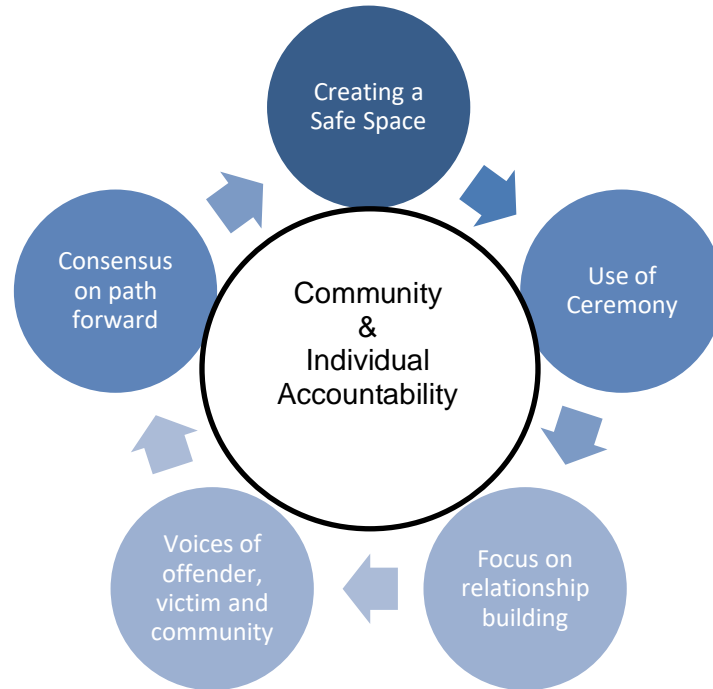
By way of example, the Hodiŋshq:nih/Rotinoŋhson:ni values of Ga'nigohi:yo:/Kanikoriiŋ (Respect and the Good Mind)⁶ may also be used:

- Fairness
- Integrity
- Consistency
- Sharing
- Responsibility
- Cooperation
- Honesty
- Openness
- Responsiveness
- Kindness
- Confidentiality
- Trustworthiness

Members of the University community may seek help outside the University (e.g. police, legal counsel, etc.). The harmed party may choose a process based on the heaviness of the offence. Prior to selecting a course of action, individuals may seek further information on processes by consulting with ODESI and/or an Elder.

⁵ <http://www.nawash.ca/wordpress/wp-content/uploads/2016/10/Web-version-Final-Indigenous-Centred-Conflict-Resolution-app.pdf>

⁶ <https://www.snpolytechnic.com/about-us/mission-vision>



All relevant persons, particularly those who have been harmed, will be fully informed and offered the opportunity to participate in an external Indigenous restorative resolution process when they are ready. Circles are facilitated by an experienced circle keeper—an Elder, Chief, healer, or respected member of the community⁷.

A restorative resolution circle will:

- include members of the community alongside the complainant or harmed parties, respondent, and Elders, if the Elders agree to participate
- discuss the offence and how it has affected the complainant and the community and the relationships between these and the respondent
- focus on the underlying causes of the offence, in addition to healing community ties.

Circles often lead to an organic consensus of what steps should be taken by the respondent to take responsibility for and correct the harms caused by their actions. These could include:

- Specialized counselling or treatment programs targeted at the impact factors that contributed to the offence
- Community work service at the direction of an Elder's counsel
- Direct restitution to the complainant or the community
- Sometimes unique and creative solutions emerge, such as the offender agreeing to tell the public their story and speak out against the conduct that led to their offence.⁸

⁷ A group of community members who organize and lead restorative Circles undergo extensive training on traditional Circle processes and other “[Indigenous] justice initiatives,.... restorative justice and conflict resolution.” They organize and lead the Circles, inform participants of expectations, document the proceedings and, when necessary, the resolution.

⁸ <https://www.justiceeducation.ca/about-us/research/aboriginal-sentencing/restorative-justice>

RESPECTFUL WORK AND LEARNING ENVIRONMENT POLICY (RWLEP): FLOWCHART

