

APPENDIX "A"

IN THE MATTER OF A MEDIATION/ARBITRATION
AND IN THE MATTER OF POLICY GRIEVANCES FILED BY
THE BRANDON UNIVERSITY FACULTY ASSOCIATION
DATED MARCH 15, 2006 AND JULY 25, 2007

BETWEEN:

BRANDON UNIVERSITY FACULTY ASSOCIATION

(hereinafter referred to as the "BUFA"),

- and -

BRANDON UNIVERSITY

PRELIMINARY MEMORANDUM

MEDIATOR/ARBITRATOR

A. Blair Graham, Q.C.

APPEARANCES

Kathy McIlroy - On behalf of BUFA
Grant Mitchell, Q.C. - On behalf of Brandon University

MEDIATION/ARBITRATION PRELIMINARY MEMORANDUM

INTRODUCTION

On June 16, 17 and 23, 2009, I met with representatives of the Brandon University Faculty Association (BUFA) and Brandon University (sometimes hereinafter referred to as the University) in Brandon, Manitoba.

Initially, I had been appointed by BUFA and Brandon University as an arbitrator with respect to two policy grievances dated March 15, 2006 and July 25, 2007. Both policy grievances related to the First Nations and Aboriginal Counselling program (the FNAC program).

Prior to the commencement of the arbitration, I was asked by the parties to consider converting the arbitration proceedings into a mediation/arbitration proceeding. It was proposed that pursuant to such a mediation/arbitration proceeding, I would assist the parties in attempting to reach a settlement of some or all of the issues arising from, or related to the two policy grievances. However, I would do so on the express understanding that if any issues were not resolved by agreement, I would retain my authority and jurisdiction to resolve the outstanding issues by the granting of a remedial order, acting as an arbitrator pursuant to the grievance arbitration provisions in the Collective Agreement, and Part VII of the *Labour Relations Act, C.C.S.M.*

After discussing the proposed mediation/arbitration process with counsel for the parties, it was agreed that the arbitration proceedings would be converted into a mediation/arbitration process. The mediation portion of the process commenced on June 16th in Brandon, and continued on June 17th and 23rd.

Many issues were discussed by the parties. Those issues were organized into seven general categories, many of which involved multiple issues. Those seven categories were:

1. A declaration;
2. A respectful environment policy;
3. The Advisory Committee;
4. Joint meetings;
5. FNAC;
6. The Ceremony Room;
7. Education.

Agreements were reached on some issues. Substantial progress was made in resolving the parties' differences on other issues. However, there were some issues which remained highly contentious.

On the afternoon of June 23rd, I was asked by the parties to prepare a memorandum summarizing the issues on which the parties had reached agreement, and to identify the issues which remained highly contentious. I was also invited to summarize the issues on which progress had been made towards resolving the parties' differences, and to suggest a basis upon which the parties might fully resolve those differences.

I indicated I would provide such a memorandum to the parties, and I am doing so by way of this Preliminary Memorandum. Given the extensive nature of the discussions which took place between the parties on June 16, 17 and 23, 2009, there may be some areas in which I have not fully or accurately recorded the discussions which took place. There may also be topics on which discussions between the lawyers, or the lawyers and me, may lead to some additional agreements on certain issues.

Accordingly, I wanted to afford the parties an opportunity to review this Preliminary Memorandum before making a significant number of suggestions with respect to the means by which the parties may resolve their outstanding differences. However, after the parties have reviewed this Preliminary Memorandum, there may be topics on which they wish me to be more active in suggesting a resolution. In that event, I will do so. I am mindful that on issues on which agreement is not reached, I will be required to exercise my remedial authority as an arbitrator.

The Preliminary Memorandum is organized on the basis of the seven categories of topics which were the subject of our discussions in Brandon.

1) Declaration

BUFA seeks a declaration that Brandon University has allowed a poisoned work environment to exist in the FNAC program.

The University submits that no declaration ought to be granted because the issues relating to a poisoned work environment in the FNAC program, and who may have contributed to such an environment, were addressed by the Katz report.

It is unlikely that the parties will be able to resolve their dispute with respect to whether or not a declaration ought to be granted in relation to the issues arising from the two policy grievances.

2) Respectful Environment Policy

I Introduction

The Respectful Environment Policy (the Policy) is a policy of the University. It was approved by the Board of Governors on April 24, 2008, and implemented on September 1, 2008.

Both the University and BUFA acknowledge that some changes to the Policy are required. The University and BUFA are in general agreement with respect to some changes that are required to the Policy, but disagree with respect to whether certain other changes are required, and if so, the specific changes which may be required.

Any changes to the Policy must be approved by the Board of Governors of the University before coming into effect. The University asserts that before any recommendations for changes to the Policy are presented to the Board of Governors for approval, widespread consultation must take place with:

- i) all unions with which the University has collective agreements, including but not limited to BUFA;
- ii) the administration of the University;
- iii) the students of the University, through the Brandon University Students' Union.

BUFA is not opposed to such consultation, but asserts that changes to the Policy are required on an expeditious basis, and that the process for amending the

Policy should move forward in a timely way, pursuant to a specific, rigorous timetable.

II Specific Proposed Changes to the Policy

All of the changes to the Policy, which are discussed hereunder, including the changes with respect to which there is agreement between the University and BUFA, are subject to approval through the "Process" described in a separate subsection of this Memorandum (subsection III - the Process for Amendments to the Policy).

Many specific potential amendments to the Policy were discussed between BUFA, the University, and me in my capacity as mediator, in late June, 2009. The specific potential amendments which were discussed are listed below. I have indicated with respect to each potential amendment whether or not the University and BUFA are in agreement. With respect to some of the potential amendments, there is agreement on some, but not all aspects of the amendment. In those cases, I have attempted to identify the points of agreement, any points of disagreement, and certain points which may not have been specifically discussed. In some cases, I have outlined the manner in which any contentious issues may be resolved.

The specific potential amendments are listed below.

- a) The University and BUFA agree that there should be a statement included in the Policy with respect to academic freedom. There is agreement that the statement should be:

"In administering this Policy, Conflict Resolution Committee members, the Conflict Resolution Advisors and Investigators, like all other officers of the University, are

obliged to uphold academic freedom and freedom of expression and association.”

BUFA says that such a statement should be within a preamble to the Policy. The University says that the statement should be in a prominent place, as close to the beginning of the Policy as possible.

I favour including the statement relating to academic freedom in a preamble to the Policy, as a principle which should guide the administration of the Policy.

- b) BUFA has proposed that Article 3.4.3 be amended so as to remove the President’s power to initiate an investigation in the absence of a formal complaint. The University is strongly opposed to the BUFA proposal. There appears to be little likelihood that BUFA and the University will reach an agreement on this point.
- c) BUFA has proposed that Article 3.4.4(c)(iv) be amended to allow for meaningful representation. BUFA has specifically proposed that the first sentence of the subsection be deleted and replaced with the following:

“The investigator will inform the complainant and the respondent that they may have a union representative, as well as legal counsel, should they choose, to participate in the interview/investigation process.”

The University characterizes the BUFA proposal as “well conceived” and “appropriate”. I understand the University to be in agreement with the proposal.

- d) BUFA has proposed that prior to a complaint being assigned to an investigator, there should be an internal mechanism for determining whether or not the complaint falls within the scope of the Policy.

The University acknowledges that BUFA's proposal is well conceived and appropriate, and is in general agreement with BUFA's proposal.

This general proposal is also related to a specific amendment with respect to Article 3.4.1(c)(ii), which is discussed elsewhere in this Memorandum.

- e) With respect to Article 3.1 relating to the Conflict Resolution Advisor (CRA), BUFA and the University agree that:
 - i) CRAs should be selected based on their qualifications and experience;
 - ii) Attempting to achieve representation from various departments should be a factor in the selection of CRAs;
 - iii) Gender may be an important factor in the selection of CRAs in some cases. The University emphasizes however that recognizing gender as an important factor in some cases does not mean that a CRA must be of a specified gender in any particular case;
 - iv) The Conflict Resolution Committee (the CRC) shall be consulted as part of the selection process for CRAs.

There are some areas of potential disagreement between BUFA and the University with respect to changes to Article 3.1 of the Policy, which are:

- i) The current Policy contemplates that the President shall "designate" CRAs. It was not specifically discussed whether BUFA is agreeable to having the President designate the CRAs, having consulted with the CRC,

or whether BUFA proposes that the CRC should have an even more significant role in the selection of CRAs;

- ii) The current Policy contemplates that the President shall "designate" two CRAs. It is unclear to me whether BUFA wishes to have more than two CRAs to be appointed, in order to create a "roster" of qualified CRAs;
- iii) BUFA and the University agree that the performance of CRAs should be periodically reviewed and evaluated, but there were no discussions about the frequency of such reviews or who would be responsible for conducting the reviews;
- iv) BUFA also proposes that the actions of the President and other administrators in relation to the Policy be periodically reviewed, but the University maintains that any review and evaluation of the President's actions under the Policy should be conducted by either the Senate or by the Board of Governors of the University. The parties did not discuss who would conduct a review/evaluation of the performance of administrators in relation to the Policy.
- f) BUFA has proposed that Article 1(f)(iii) be amended to include a specific reference to academic freedom and freedom of expression. The University disagrees, arguing that such a reference would be redundant if academic freedom is referred to as a general principle in administering the Policy. The University is also concerned that if academic freedom is included in relation to some, but not all of the matters referred to in the Policy, a mistaken impression could arise that academic freedom is more important with respect to some matters than with respect to other matters.

I agree with the University's position in relation to this issue, particularly if a reference to academic freedom is included in the preamble as a principle which should guide the administration of the Policy.

- g) BUFA has proposed a change to the method by which the Chair of the CRC will be chosen (Article 3.2.1(a)), which would provide that the Committee would choose its own Chair. The University disagrees with the proposal and says that there should be no change to the current Policy pursuant to which the Director of Human Resources (or designate) is the Chair of the CRC. The University argues that the Director of Human Resources should be the Chair of the CRC because the Director of Human Resources will have the appropriate expertise and detachment to effectively perform the function of Chair of the CRC.
- h) BUFA has proposed that Article 3.4.2(b) be amended to include a specific reference to academic freedom. The University disagrees for the same reasons which are articulated with respect to subparagraph f) above.

I agree with the University's position in relation to this issue, particularly if a statement as to the importance of academic freedom is included in the preamble as a principle which should guide the administration of the Policy.

- i) BUFA has proposed that Article 3.4.3(a) be amended. Pursuant to the proposed amendment, CRAs will be entitled to recommend to the President that formal proceedings should be initiated (without an intervening mediation process) in the case of respondents who are alleged to be repeat offenders of the Policy, or who, in the judgment of the CRA are not amenable to informal resolution. CRAs are entitled to make such recommendations and to exercise such judgment under the current policy, but Administrative Officers are also entitled to make judgments as to whether a respondent alleged to have committed an offence is not

amenable to informal resolution. The effect of the BUFA proposal would be to take away from the Administrative Officer the ability to make such a judgment. BUFA also proposes that the CRAs must base their judgment on guidelines drawn up by the CRC, and that the CRC must be informed of the CRA decisions.

The University disagrees with this proposal, arguing that the proposal presumes that the CRC supervises CRAs, whereas CRAs report to the President.

j) Article 3.4.4(c)(v)(5) of the Policy currently states:

“During the investigation process, both the complainant and the respondent are entitled:

- a) to be informed of all of the allegations made against them; and
- b) the opportunity to make a full answer and defence.

This does not mean that either party is entitled to see or receive copies of the complete statements, except as required by law. Both are entitled, however, to see or receive an adequate summary of the evidence to make a full answer and defence.”

BUFA proposes that Article 3.4.4(c)(v)(5) should be amended by deleting the final paragraph.

The University disagrees with the proposed deletion.

k) Article 3.4.5(e) currently states:

“If no further complaint against the respondent is received within four years of the date of resolution, the disciplinary

action shall be removed from the file and shall be destroyed.”

BUFA proposes that Article 3.4.5(e) be amended by reducing the four years period to a two year period.

The University disagrees with BUFA's proposal, but remains willing to discuss the issue.

- l) BUFA initially proposed that significant portions of the University calendar, dealing with matters within the exclusive jurisdiction of the Senate, (including student grievance procedures, academic dishonesty and misconduct, plagiarism, cheating, falsifying records, research misconduct, transcript notations, and academic withdrawal) should be included in the Policy in order to make it clear that all of those matters are to be dealt with by the Senate, pursuant to their policies and procedures, not under the Policy.

The University disagreed with the specific BUFA proposal, but agreed in principle with the proposition of explicitly stating that certain matters within the exclusive jurisdiction of the Senate will continue to be dealt with by the Senate pursuant to their policies and procedures and will not fall within the scope of the Policy.

As one alternative, the University suggested that a new subparagraph be inserted as 1(f)(iv), which would read:

“(f) Examples of what is not personal harassment include, but are not limited to. . .

(iv) legitimate applications of Senate policies and procedures, including but not limited to purely academic appeals.”

BUFA has some reservations with respect to the wording proposed by the University. I also question whether Article 1(f) is the proper place for such a provision within the Policy. BUFA remains willing to discuss both the wording, and the appropriate placement of a provision which would state that certain matters will remain within the exclusive jurisdiction of the Senate, and will be outside the scope of the Policy.

Subject to a further consideration of where such a provision would be placed within the Policy, further alternate wording was discussed as follows:

“Student complaints of an academic nature and academic integrity and conduct issues are dealt with in the University calendar and are under Senate jurisdiction.”

It is my view that a statement making it clear that certain matters remain within the exclusive jurisdiction of the Senate, and are outside the scope of the Policy, could be usefully included in a preamble to the Policy, as a principle which should guide the administration of the Policy. If the parties wish, I will draft such a statement for their consideration.

- m) BUFA has proposed that Article 3.4.1(c)(ii) be amended to expressly provide CRAs with the jurisdiction and authority to dismiss complaints under the Policy in circumstances in which the complaint does not give rise to a *prima facie* case, or in which the complaint is frivolous, or in which the matter is solely within the jurisdiction of the Senate, and therefore beyond the scope of the Policy.

The University, while not disagreeing with the intent of the amendment, was reluctant to agree to the specific amendment pending a comprehensive review of all proposed amendments to the Policy, including proposals from the other unions with which the University has collective agreements and from students.

As an interim measure, the University proposed that CRAs could undergo some retraining (in the case of existing CRAs), or some initial training (in the case of new CRAs), which would include instruction relating to the importance of making preliminary determinations as to whether or not a complaint is frivolous, gives rise to a *prima facie* case, or is beyond the scope of the Policy.

BUFA wishes its proposed amendment to Article 3.4.1(c)(ii) to be considered as part of the review of the Policy, but is agreeable to the interim measure of training or retraining of the CRAs to include instructions as to the basis upon which to make preliminary determinations relating to the above-noted issues. BUFA emphasizes that such training ought to be completed in September, 2009.

III The Process for Amendments to the Policy

In the context of the University's position that any amendments to the Policy must be approved by the Board of Governors, and that prior to any proposed amendments to the Policy being submitted to the Board of Governors, consultation must take place with the other unions with which the University has collective agreements, and with students, the University proposed the following process with respect to potential amendments to the Policy:

1. The CRC shall conduct a thorough review of the Policy and prepare recommendations to the Board of Governors.
2. The composition of the CRC will be as follows:
 - a) the Director, Human Resources (or designate), who shall serve as Chair;

- b) the Learning and Development Officer;
 - c) two members (one of each gender) to be elected by and from each of the following constituencies:
 - Brandon University Students' Union
 - BUFA
 - Manitoba Government and General Employees Union, Local 135
 - International Union of Operating Engineers (A) and (D), Local 987
 - Exempt Staff
 - d) The CRAs shall be members, *ex officio*, of the CRC.
3. Any of the proposed changes to which BUFA and the University have agreed as referred to herein, and any proposed changes to which BUFA and the Union may agree on or before August 31, 2009, will be presented to the CRC as the joint recommendations of BUFA and the University along with an appropriate background briefing.
4. The CRC will prepare an initial re-draft of the Policy, and will send that re-draft to each of the stakeholder groups for their comments. The comments from the stakeholders groups will be considered by the CRC and a final draft of the amended Policy will be prepared for submission to the Board of Governors. Subject to obtaining appropriate legal advice, the CRC's recommendations for amendments to the Policy will be presented "intact" and without amendment to the Board of Governors.

5. Any of the stakeholders, including BUFA, or the University administration, may make separate submissions to the Board of Governors, on any or all of the proposed amendments to the Policy.

6. The CRC will begin this process as early as practicable in September, 2009. It will meet as required to complete the first draft of the amended Policy on or before October 31, 2009. Stakeholder groups will submit their comments on the final draft of the amended Policy for consideration by the CRC in sufficient time to allow the CRC to submit a final draft of the amended Policy to the Board of Governors for their consideration at the Board's December, 2009 meeting.

BUFA did not specifically comment on the composition of the CRC (i.e. item 2 above), but it was my impression that BUFA is agreeable to the remaining elements of the Process.

3) Advisory Committee

- a) An Advisory Committee to the Dean of the School of Health Studies, with respect to the FNAC program, will be established as promptly as possible.
- b) The Dean of the School of Health Studies, in consultation with Andrea Hinch-Bournes, the Acting Director of the FNAC program, and some of the interdisciplinary teaching faculty of the FNAC program, will formulate the terms of reference for the Advisory Committee, and the type of representative individuals who will serve on the Advisory Committee. The Faculty Council of the School of Health Studies will approve the terms of reference and the general composition of the Committee. Recruitment of the members of the Advisory Committee will be undertaken as soon as possible and will include representatives from some of the communities which may ultimately employ students enrolled in, or graduates from the FNAC program.
- c) The first meeting of the Advisory Committee will be held before the end of October, 2009. Minutes of the meetings of the Advisory Committee will be available to anyone on request.

There is agreement between BUFA and the University with respect to the matters outlined in paragraphs a) and c).

My notes indicate that some, but not all of the issues referred to in paragraph b) were discussed. Subject to receiving input from both BUFA and the University, I am suggesting that paragraph b) represents a reasonable basis on which to proceed.

4) Joint Meetings

Informal meetings, for the purpose of monitoring and assessing the state of relations between the Aboriginal community at Brandon University and the larger University community shall occur quarterly. The meetings will be designed to afford an opportunity to the attendees to discuss any issues of concern relating to Aboriginal issues at Brandon University. Those in attendance shall include, but will not necessarily be limited to the President of the University (or designate), the President of BUFA (or designate), and an elder associated with either an academic area or with student services. Other members of the University community, including the Director, or Acting Director of FNAC, may be included on an *ad hoc* basis, at the invitation of either the President of the University, or the President of BUFA.

I believe there is substantial agreement between the University and BUFA on this topic, and the above paragraph reflects a reasonable basis on which to proceed.

5) FNAC

- a) A selection committee will be immediately constituted for the purpose of selecting and hiring two suitable candidates for two academic positions within the FNAC program.
- b) The selection committee will be chaired by the Dean of the School of Health Studies and will include BUFA members representing Health Studies, Native Studies, and Psychology. Andrea Hinch-Bournes, the Acting Director of FNAC, will be invited to be on the selection committee, provided she is not a candidate for one of the two positions.
- c) There will be one advertisement for both positions. The advertisement will be published and distributed as early as possible in October, 2009. There will be a closing date of November 15, 2009, or until the position is filled, for the submission of applications for one of the positions, with a commencement date for that position of January 1, 2010, or subject to availability. There will be a closing date of May 1, 2010, or until the position is filled, for the submission of applications for the other position, with a commencement date for that position of July 1, 2010, or subject to availability.

There was agreement between BUFA and the University with respect to the items in paragraphs a), b) and c).

- d) The Director of the FNAC program will be selected as soon as reasonably practicable after the two academic positions have been filled.
- e) Thereafter, the Director of the FNAC program will be selected, and will be subject to removal pursuant to the provisions of Article 25.4 of the Collective Agreement.

I believe there is agreement, or substantial agreement with respect to paragraphs d) and e). However, the parties did not discuss the method by which the Director of the FNAC program will be chosen. Perhaps the parties agree with respect to how the Director will be chosen.

However, if there is disagreement on that issue, the parties should feel free to discuss the issue. If I am available, I would be happy to participate in those discussions.

Alternatively, if the parties wish me to suggest a method for choosing the Director, I will do so after considering the following alternatives:

- i) the Director being chosen by the Selection Committee referred to in subparagraph b), or a similarly composed committee;
- ii) the Director being chosen by a process similar to that outlined in the Memorandum of Understanding dated September 30, 2008;
- iii) the Director being chosen by the Faculty Council;
- iv) the Director being chosen by the Dean.

6) The Ceremony Room

Revised Protocol for the Use of the Ceremony Room, Room 141 Health Studies Building

The Ceremony Room, Room 141 in the Health Studies Complex at Brandon University (the Ceremony Room), was designed to provide for the teaching needs of certain courses within the First Nations and Aboriginal Counselling Degree Program (FNACDP) and within certain other First Nations/Aboriginal courses and programs at Brandon University. The Ceremony Room was also designed for the holding of ceremonies important to the FNACDP and other First Nations Aboriginal courses and programs at Brandon University. The Ceremony Room is also a shared space which serves multiple purposes in the context of a public university and its functions. It is appropriate that the Ceremony Room be utilized for teaching, ceremonial, and other purposes, and that all parties bring a spirit of flexibility, respect and mutual accommodation to the use of the space, and that they recognize the significance of the space to members of the First Nations and Aboriginal communities within the Brandon University and treat the Ceremony Room appropriately. The usage of the room shall be guided by the principles and practices outlined below.

1. The room may be used as a teaching space. When classroom bookings take place, preference shall be given to First Nations and Aboriginal Counselling (FNAC) teaching requirements while considering effective use of space and other appropriate alternatives available for teaching.
2. The room may be used for ceremonies by the FNAC Program and by other groups. Any requirements of user groups will be provided by those groups and either removed or managed to not impact subsequent users. The fire pit shall remain covered at all times when it is not in use with an appropriate cover that

minimizes the chance that anyone will step on the pit or cover while ensuring the health and safety of occupants to the room.

3. The room may be used for meetings and events by programs within the building, by the broader campus community and by appropriate outside parties, as approved and booked by the Dean of Health Studies. Any setup required for a meeting or event is the responsibility of the intended user and the room must be returned to a standard setup, as determined by the Dean, at the close of the meeting or event. A standard setup will include arranging the chairs in the form of a circle.
4. a) Booking of the room is done through the office of the Dean of Health Studies. The first priority for the use of the room will be the teaching and academic activities undertaken by the FNACDP. The second priority for the use of the room will be ceremonial purposes as undertaken or determined by the FNACDP, or by the FNACDP in consultation with other Aboriginal groups or organizations within Brandon University. The third priority for the use of the room will be teaching and academic activities undertaken by other segments of the Brandon University community. The fourth priority for the use of the room will be other activities organized or undertaken by the Brandon University community, including non-teaching and non-ceremonial activities organized or undertaken by FNACDP. The final priority for the use of the room will be activities organized, undertaken, or sponsored by appropriate outside groups. The University Space Allocation on Campus Policy (<http://www.brandonu.ca/admin/policies/Administrative/Space%20Allocation%20Policy%20rev%20may%2015%202002.pdf>) as varied by this Protocol, shall generally guide this determination. Specific or unusual time requirements shall be indicated at the time of booking to allow, if possible, for the accommodation of those

requirements. Any requirements of user groups will be provided by those groups, and if necessary, will be either modified or managed in such a way so as to not adversely impact subsequent users.

- b) Bookings for the use of the room shall be made for the academic year commencing on or about September 1st of each year, by March 1st of the same year (i.e. not less than 6 months preceding the commencement of the academic year in question). Bookings of the room for the academic year commencing on or about September 1st, made on or before March 1st of that year will be made in accordance with the priorities outlined in paragraph 4a) hereof, regardless of the sequence in which notices of the intended bookings are received. After March 1st of any particular year, if notice of an intended booking is received which conflicts with a booking which has already been made, but the notice of the intended booking has a higher priority pursuant to paragraph 4a) hereof than the previously made booking, the parties wishing to use the room will attempt to agree between themselves as to which of them will use the room on the date and at the time in question. If the parties are unable to agree, then the Dean of Health Studies shall resolve the issue, on the basis of the availability of a reasonable alternate space, on the date and at the time in question.
5. The space occupied by the Ceremony Room on the main floor, and the George and Mary Gooden Art Gallery on the second floor, shall be considered a single space and booked on that basis to avoid conflicting uses.
 6. It is recognized that Aboriginal drumming and singing constitute standard ceremonial and pedagogical practices. FNAC Faculty and Elders will be alerted, whenever possible, as to the times when mid-term exams or other activities

reasonably believed to be sensitive to the sound of drumming and singing will be scheduled in the Health Studies Complex so that impacts may be minimized on those programs during those times.

7. Reasonable steps shall be taken to ensure that no alcohol will be served or consumed in the room at any time.
8. The University shall undertake a process to have an Aboriginal name selected for the room by January 31, 2010.

Protocol for the Use of the Fire Pit

1. The fire pit shall be protected from traffic at all times. It shall remain covered when not in use. The cover shall be appropriate to protect against traffic while ensuring the health and safety of occupants to the room.
2. The fire pit is only to be used with the guidance of an Elder and by people appropriately trained in the use of the equipment and following this protocol. Any supplies required must be sourced by the users according to their needs and funded from the user's budget.
3. Fires must be small to moderate in size and not fed one-half hour before the end of a session.
4. Only medicine can be offered to the fire. Food offerings are to be placed on the land.
5. The fire must remain attended until the embers have died down.

6. The cover must be replaced over the fire pit on the following day of a fire or as soon as the embers are completely out and cool.
7. A metal container, approved by Physical Plant, shall be used to store wood for the fire pit.
8. A metal container, approved by Physical Plant, shall be used for hot coals and to haul ashes from the fire pit.

Subject to any drafting improvements to paragraph 4 b) which may be suggested by the parties, I believe there is agreement between the University and BUFA with respect to the Revised Protocol for the use of the Ceremony Room.

If so, the University and BUFA should take the required steps to obtain the Board of Governors' approval to the change in the Protocol by the end of September, 2009.

7) Education

Brandon University and BUFA both understand the importance of educating the Brandon University community about living and working with Aboriginal colleagues and students. Brandon University and BUFA also understand that in order to be effective, such an educational initiative must be multifaceted, and offered regularly and repeatedly to faculty, support staff, and students. Brandon University promptly agrees to undertake such an educational initiative, which will have the following elements:

- a) All new employees will be given two sessions as part of the new employee orientation each August.

The first, done by a Brandon University Aboriginal faculty member will be a presentation which will provide new faculty members with perspectives on how to teach and work effectively with First Nations and Aboriginal students and colleagues.

The second, which will be presented by the Director of Human Resources, will provide all new employees with information, and an opportunity to discuss the Respectful Environment Policy, the definitions thereunder, and the processes contemplated by the Policy, and will also provide all new employees with information and an opportunity to discuss expectations regarding human rights discrimination and harassment, personal harassment and workplace violence.

- b) Members of the general University community, including faculty, support staff and students, will be invited to attend semi-annual sessions on how to teach and work effectively with First Nations and Aboriginal students and colleagues. Specific topics may include cross-cultural awareness, Aboriginal traditions and cultural practices, Human Rights principles, and anti-discrimination practices,

stress in the workplace, and Respectful Environment Policies. These sessions will be not less than 60 minutes in length, and will be held each October and February, beginning in October, 2009. They will be offered two times in one week, either on two consecutive work days, or on alternate work days, to enable as many people as possible from the University community to attend. Facilitators may include:

- i) faculty or instructional assistants from Brandon University, or other universities that have extensive experience in Aboriginal post-secondary education;
- ii) Elders with relevant experience; or
- iii) any other outside facilitator with appropriate qualifications and experience.

Notice of these events will be distributed widely in order to encourage attendance from all segments of the Brandon University community. Attendance will be encouraged, but will not be mandatory.

- c) In addition to the foregoing, within the School of Health Studies, including Nursing, Psychiatric Nursing, and the FNAC program, the Acting Director of FNAC, Andrea Hinch-Bournes, will be asked to continue to lead sessions periodically with senior practicum students on the importance of being knowledgeable about Aboriginal and First Nations cultures when working with Aboriginal and First Nations patients, or their communities.
- d) Members of the general University community, including faculty, support staff and students, will be invited to attend semi-annual sessions on Human Rights principles, and the Respectful Environment Policy, as it presently exists, and as it

undergoes change, in the October/November, and February/March time periods in each year, starting in October/November, 2009. These sessions will be presented by the Education Development Officer.


- e) Brandon University and BUFA mutually declare that there is a value in joint education with respect to cross-cultural awareness, Aboriginal traditions and cultural practices, and Human Rights principles and policies. In furtherance of that mutual declaration, and in an effort to arrive at a common understanding of some current issues affecting the post-secondary education of Aboriginal and First Nations students, Brandon University and BUFA both undertake to use their best efforts to sponsor at least _____ attendees each, to a conference being presented by the Canadian Association of University Teachers from November 13 to 15, 2009 in Saskatoon entitled: "Transforming the Academy". Brandon University and BUFA shall each bear the cost of their own representatives attending the conference.

Subject to any drafting improvements which the parties may suggest, and subject to confirming the number of attendees each party will send to the CAUT conference in Saskatoon, I believe there is agreement between the University and BUFA with respect to all of the "Education" issues.

CONCLUSION


Following their review of this Preliminary Memorandum, I would invite the parties, through their counsel, to contact me to discuss next steps.

DATED this 10th day of July, 2009.



Blair Graham

APPENDIX "B"

 <p>BRANDON UNIVERSITY FOUNDED 1952</p>	<p align="center">Respectful Environment Policy</p>	<p><i>Approved by</i> <i>Board of Governors</i></p> <p><i>Administered by</i> <i>Vice-President</i> <i>(Administration & Finance)</i></p>
<p>Board of Governors Policy</p>	<p>First Approved: <i>April 24, 2008</i> (implemented September 1, 2008)</p>	<p>Updated:</p>

1.0 DEFINITIONS

Human Rights Discrimination: the differential treatment, whether intended or not, of an individual or group of individuals, except where bona fide and reasonable cause exists or where it is based upon bona fide and reasonable requirements or qualifications, or reasonable accommodation based on:

- a) an individual's actual or presumed membership in, or association with, some class or group of persons, rather than on the basis of personal merit; or
- b) any of the characteristics listed under "Human Rights Harassment".
- c) Examples include, but are not limited to:
 - i. evaluations of performance based on any characteristic referred to in "Human Rights Harassment";
 - ii. applying stereotypes or generalizations based on any characteristic referred to in "Human Rights Harassment";

Reasonable Accommodation: differential treatment to

- a) reasonably accommodate the special needs of an individual or group, if those special needs are based upon any characteristic referred to in "Human Rights Harassment";
- b) plan, advertise, adopt or implement an affirmative action program or other special program for an individual or group of individuals, including those who are disadvantaged because of any characteristic referred to in "Human Rights Harassment"; or
- c) exercise the provisions of the Brandon University Act.

Example policies include Academic Accommodation of Students with Disabilities Policy, and A.I.D.S. Policy.

Human Rights Harassment: any objectionable conduct, comment or display by a person:

- a) that is directed at an employee, student, guest, or volunteer; and
- b) that is made on the basis of:
 - i. ancestry, including colour and perceived race;
 - ii. nationality or national origin;
 - iii. ethnic background or origin;
 - iv. religion or creed, or religious belief, association or activity;

- v. age;
 - vi. sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
 - vii. gender-determined characteristics or circumstances other than those included in vi);
 - viii. sexual orientation;
 - ix. marital or family status;
 - x. source of income;
 - xi. political belief, association or activity; and
 - xii. physical or mental disability or related characteristics or circumstances; and/or
- c) that creates a risk to the health and safety of the employee, student, guest or volunteer.
- d) Examples include, but are not limited to:
- i. derogatory written or oral comments and gestures such as name-calling, slurs, graffiti, pictures, remarks or jokes based on any characteristic referred to in "Human Rights Harassment";
 - ii. behaviour stating or implying actual or perceived abilities or inabilities based on any characteristic referred to in "Human Rights Harassment";
 - iii. refusal to work with or share facilities based on any characteristic referred to in "Human Rights Harassment"; and
 - iv. inappropriate questions or sharing of information about any characteristics referred to in "Human Rights Harassment".
- e) Human Rights Harassment is prohibited in the Manitoba Workplace Safety and Health Act and the Manitoba Human Rights Code.

Sexual Harassment: the Manitoba Human Rights Commission definition of Sexual Harassment is "a course of abusive, unwelcome conduct or comment made on the basis of gender or any sexual solicitation or advance that is unwelcome, especially if it may reasonably be seen to be putting a condition on employment, or the receiving or withholding of any benefit or service. The unwanted behaviour may be either physical or verbal."

Sexual harassment may involve individuals of either sex, and be between members of the same or opposite sex. It need not be intentional and may involve a person in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance as the initiator.

Examples may include, but are not limited to:

- a) unnecessary or inappropriate physical contact, such as touching, patting or pinching;
- b) demands for sexual favours in return for a promise of a reward or a threat of reprisal;
- c) a threat of reprisal for refusing to comply with a sexually oriented request. The threat could be expressed directly or implied.
- d) displaying of pornographic or other sexually offensive or derogatory pictures or material;
- e) sexist remarks, jokes, innuendos or taunting about a person's body, appearance, characteristics, gender or clothing;
- f) persistent and unwelcome invitations or request for dates;

- g) leering, ogling or other sexually oriented gestures;
- h) sexual assault;

Personal Harassment: includes but is not limited to:

- a) objectionable and unwelcome comment or action directed toward a specific person or group of persons which serve no legitimate work or academic related purpose and have the effect of creating an intimidating, humiliating, hostile or offensive environment;
- b) bullying, physical or verbal abuse, threats or intimidation that are humiliating or demeaning;
- c) unconstructive, intentional and offensive comments or actions designed to offend, abuse or humiliate a person when such conduct has the purpose or effect of substantially or unreasonably interfering with an employee's work or student's academic performance, or creating an intimidating, hostile or offensive environment.
- d) maliciously and deliberately making a false complaint or retaliation against someone who has made a complaint under this policy or who has cooperated in an investigation under this policy.
- e) Examples may include, but are not limited to:
 - i. incidents of yelling, screaming, or name-calling;
 - ii. threats to terminate employment or contracts for reasons unrelated to performance;
 - iii. threats to withdraw funding, scholarships or advancement opportunities for reasons unrelated to performance; and
 - iv. comments addressed to a person that have the effect of undermining a person's role in the workplace or classroom.
- f) Examples of what is not personal harassment include, but are not limited to:
 - i. the legitimate right and responsibility of academic staff members to correct inappropriate student behaviour, insist on order in the classroom and evict, if necessary, those who disrupt order in the classroom;
 - ii. day-to-day management or supervisory decisions involving work assignments, job assessment and evaluation, workplace inspections, implementation of appropriate dress codes, and disciplinary action. Harassment does not include these decisions as long as they are not based on one of the prohibited grounds listed in "Human Rights Harassment";
 - iii. conflict or disagreements in the work and/or learning environment, where the conflict or disagreement is not based on one of the prohibited grounds listed in "Human Rights Harassment".

Actions that may constitute Human Rights Harassment, Human Rights Discrimination, or Personal Harassment:

- a) one incident or a series of incidents
- b) involving individuals or groups
- c) involving either peer or power relations
- d) may be physical, verbal, or psychological in nature

e) may be intentional or unintentional

f) may occur among or between employees, students, visitors , volunteers or suppliers.

Workplace Violence: the attempted or actual exercise of physical force against a worker, employee, student, guest or volunteer and any threatening statement or behaviour that gives that person reasonable cause to believe that physical force will be used against them, as defined by the Manitoba Workplace Safety and Health Act.

Complainant: a person who discusses a concern with and/or makes a complaint (an allegation, whether oral or written) of human rights harassment, human rights discrimination, personal harassment or workplace violence to an Administrative Officer or a CRA.

Respondent: a person against whom a complaint has been made.

Administrative Officer: a person in a position with sufficient authority to take, and ensure the taking of, remedial action, such as deans, administrative and academic directors, vice-presidents, and the President.

Conflict Resolution Advisor (CRA): a person appointed by Brandon University as someone possessing the appropriate training and skills to review and resolve informal complaints related to all human rights harassment and discrimination, personal harassment, and workplace violence.

Conflict Resolution Committee (CRC): a committee formed by the University to support the CRA and this policy.

Investigator: a person, from outside the University community, appointed by the President as someone possessing the appropriate training, skills and experience to conduct an investigation of a formal complaint related to all human rights harassment and discrimination, personal harassment, and workplace violence.

Worker: For purposes of workplace violence, worker shall include any person who is employed by Brandon University to perform a service whether for gain or reward, or hope of gain or reward or not, whether under a contract of employment or not, resembling the relationship of any employee more than that of an independent contractor, and who works or performs services in a workplace which is owned or operated the University and any person undergoing training or serving an apprenticeship with the University as the employer. At Brandon University, this includes employees of Brandon University and employees of other employers working at Brandon University.

2.0 POLICY

2.1 Purpose of Policy

To support a climate of respect in the workplace and in the learning environment where all workers, employees, students, guests or volunteers of the University community must be free from human rights harassment, human rights discrimination, personal harassment and workplace violence whether they are on campus or participating in an affiliated off-campus activity.

2.2 Policy Statement

- a) Brandon University recognizes that respect for the rights, dignity and integrity of others is essential for the well-being of a community.
- b) Each individual has the right to work, learn and participate in an environment that promotes respect, prohibits discriminatory practices, and is safe from harassment and violence.
- c) Brandon University does not condone behaviour that is likely to undermine the dignity, self-esteem, productivity, health or safety of any of its members and prohibits any form of discrimination, harassment or workplace violence whether it occurs on University property or in conjunction with University – related activities. Therefore, so far as is reasonably practicable, Brandon University is committed to an inclusive, respectful and safe work and learning environment, free from:
 - i. human rights discrimination or harassment;
 - ii. personal harassment; and
 - iii. workplace violence
- d) Brandon University and all members of the University community, and particularly those in leadership roles, share the responsibility of establishing and maintaining a climate of respect within this community and to address any situations in which respect is lacking.
- e) Harassment and discrimination violate an individual's human rights and run contrary to the University's fundamental values (refer to "The Principles By Which We Live: Brandon University"). Brandon University will act promptly and efficiently to deal with these behaviours and any acts of violence. It will endeavour to ensure that individuals who believe that they have been subjected to harassment, discrimination or workplace violence are able to express concerns and register complaints without fear of retaliation or reprisal. The University will exercise care to protect and respect the rights of both the complainant and the respondent.
- f) Brandon University will establish mechanisms to give effect to this policy, including:
 - i. the appointment of two Conflict Resolution Advisors (CRA) whose duties shall include, but not be limited to, the investigation of informal complaints and the provision of advice and assistance to Administrative officers, employees, workers, students, guests and volunteers in connection with concerns and complaints;
 - ii. the appointment of an investigator whose duties shall include the investigation of formal complaints and the provision of advice and assistance to Administrative officers, the CRA, employees, workers, students, guests and volunteers in connection with formal complaints;
 - iii. training of the CRA, Administrative officers, employees, students and volunteers related to human rights harassment, human rights discrimination, personal harassment and workplace violence, and;
 - iv. establishing and implementing educational programs designed to enhance awareness of this Policy.

3.0 PROCEDURES

3.1 Conflict Resolution Advisor

The President, on behalf of the University, shall designate two CRA, who, for matters relating to this function, shall report directly to the President. Each CRA shall be selected on the basis of his/her qualifications, counseling expertise and accessibility. Responsibilities of the CRA shall include those as listed in 2.2 f) and shall also include, but not be limited to:

- a) providing a campus education program on human rights discrimination and harassment, personal harassment, and workplace violence, in conjunction with the Conflict Resolution Committee;
- b) advising both complainant and respondent of their rights and of the procedures set out in this Policy;
- c) maintaining confidential records of complaints and issuing an annual report to the President concerning the number, type and disposition of cases, on education and other activities related to the policy;
- d) acting as mediator (where appropriate) between complainant and respondent to facilitate informal resolution; and
- e) making recommendations to the President on cases requiring formal resolution.

3.2 Conflict Resolution Committee

The University shall form a Conflict Resolution Committee (CRC).

3.2.1 The composition of the committee shall be as follows:

- a) the Director, Human Resources (or designate), who shall serve as Chair,
- b) the Learning and Development Officer,
- c) two members (one of each gender) to be elected by and from each of the following constituencies:
 - Brandon University Students' Union,
 - Brandon University Faculty Association,
 - Manitoba Government and General Employees Union Local 135,
 - International Union of Operating Engineers (A) and (D) Local 987,
 - Exempt staff, and
- d) The two CRA shall be members, ex officio, of the committee.

3.2.2 The duties of the CRC shall be as follows:

- a) to prepare a brochure or other appropriate educational material outlining this Policy and procedures at Brandon University, for campus distribution;
- b) to design a campus-wide program of education on human rights harassment and discrimination, personal harassment, and workplace violence;
- c) to provide support to the CRA in interpreting and implementing this Policy, but shall not discuss the identities of those involved or any information that may identify those involved in a specific complaint;
- d) to conduct a review of the policy and of the workload of the CRA and make recommendations to the President every two years.

3.3 Workplace Violence

3.3.1 Preventing and Eliminating Workplace Violence

In some circumstances, the elimination of a risk of violence to a worker, employee, student may not be possible, therefore the University has developed and implemented certain policies and procedures to inform and train workers, employees, and students about their risk of violence and how to respond to threats of violence. These procedures relate to:

- a) working alone (see Working Alone Policy);
- b) campus safety (see Workplace Safety and Health Policy, Suspension of University Activities Policy, Emergency Procedures Manual, University Security Policy, Workplace Hazard Identification and Control Procedures);
- c) how to deal with violent individuals (see Violent Intruder Procedures, Emergency Procedures Manual); and
- d) how to protect one's personal safety and remove oneself from a violent situation (see Workplace Safety and Health Policy, Emergency Procedures Manual, University Security Policy, Workplace Hazard Identification and Control Procedures).

3.3.2 Notification of Individuals at Risk

When an actual incident of violence has occurred, or when it is reasonable to expect that violence may occur, the University will take the following steps to prepare, and to ensure the safety of, all workers, employees and students:

- a) The President, or designate, will advise individuals who are at risk of the nature and extent of the risk of violence from persons whom the worker, employee, and/or student are likely to encounter in the course of their work.
- b) All available information about the potential source of violence will be provided to the workers, employees, and students who are at risk, and their supervisors (where appropriate).

3.3.3 Complaint Process Relating to Workplace Violence

- a) All incidents or threats and attempted or actual workplace violence should be reported to a CRA. The CRA will immediately notify the President, or designate.
- b) Anyone who is subject to workplace violence should contact the Brandon Police Service.
- c) Anyone who has been the victim of workplace violence is encouraged to seek medical and any other assistance/treatment they deem appropriate.
- d) A Violence Incident Report form (**Appendix "A"**) will be completed for all incidents, whether it involves actual violence or a threatening situation where there is a reasonable expectation that it may become violent. The report form provides a description of the incident and assesses any on-going risk associated with the incident. The report form also assesses the effectiveness of policies and actions of those involved to determine whether improvements are required.
- e) The Violence Incident Report form must be submitted by the CRA to the President, or designate, within twenty-four (24) hours of receiving the report.
- f) If any injury or mental trauma occurs, parties must complete an Injury Report form (**Appendix "B"**) as soon as reasonably possible and submit it to the President, or designate.
- g) A copy of all Violence Incident Report forms shall be sent to the University Safety & Health Committee for review.

3.4 Human Rights Discrimination, Human Rights Harassment or Personal Harassment

3.4.1 Complaint Process Relating to Human Rights Discrimination, Human Rights Harassment or Personal Harassment

- a) Anyone wishing to lodge a complaint of human rights discrimination, human rights harassment or personal harassment under this Policy involving a member of the University community shall contact an Administrative Officer and/or a CRA.

In the case of a student, the administrative officer will normally be his/her dean, director or the Dean of Students.

The complainant may choose to consult with an Administrative Officer or the CRA for the purpose of receiving advice and assistance with a view to resolving the situation, prior to lodging a complaint.

- b) If a complaint, oral or written, is brought to an Administrative Officer, he/she will normally refer the matter to a CRA. The complainant will be advised that this referral is being made.

The Administrative Officer must keep a written record of the date, time and nature of any incident that is brought to his/her attention, along with the names of the complainant, the respondent, any witnesses and the steps taken to deal with the situation. This information will be provided to the CRA to assist with the review and resolution of the case and so that data can be included in the annual report.

- c) When a complaint is brought to a CRA by a complainant or Administrative Officer, he/she shall:
- i. inform the complainant of the policy and procedures; and
 - ii. interview the complainant and advise that person whether there appear to be grounds to proceed within the terms of this policy. Either the CRA or the complainant may decide whether to proceed with the complaint.
 - iii. Provide both the complainant and the respondent with information regarding counseling services that are available and appropriate for the situation.
 - iv. Within five working days from the date on which the complainant notifies the CRA that the complainant wishes to proceed with the complaint, the complainant shall provide the CRA with a written account of the alleged behaviour.
 - v. Within three working days of receipt of the written complaint, the CRA shall:
 - 1) provide the respondent with a copy of the written complaint;
 - 2) inform the respondent of this Policy and procedures; and
 - 3) discuss the nature of the complaint with the respondent.
 - vi. Within five working days of receiving a copy of the written complaint, the respondent shall provide the CRA with a written response to the complaint, a copy of which shall be made available to the complainant.

Note: These time limits are imposed to ensure expeditious handling of complaints, and may, at the discretion of the CRA, be waived in individual instances.

3.4.2 Informal Resolution of a Complaint

The objective of the informal stage is for the complainant and the respondent to meet with a CRA and to find a mutually acceptable resolution.

- a) After following the steps in the Complaint Process, the CRA shall initiate a process of informal mediation between complainant and respondent. This mediation may consist of separate and/or joint interviews, exchange of written communication and any other mediation techniques agreed upon by both complainant and respondent.

Mediation is a voluntary process of dispute resolution and requires the agreement of both of the parties to proceed. Although not mandatory, mediation is encouraged because it can resolve complaints more quickly than a more formal process, it is not adversarial in nature, it allows for the protection of privacy and dignity of the parties, and it promotes respectful, interpersonal communication. Mediation places the parties in control of decisions made, including the final resolution, rather than having them imposed by a third party.

However, if one or both of the parties, or the CRA, are unwilling to proceed with mediation, the matter will be referred to the formal resolution process.

- b) In cases where the respondent has supervisory or academic authority over the complainant, the CRA may request of the appropriate administrative officer to make special arrangements relating to the complainant, such as, but not limited to, assigning a third party to teach classes, mark papers or exams, and/or oversee supervision and evaluation of the complainant's work. The CRA shall provide the area head with any details of the complaint necessary to enable the area head to

decide what special arrangements are appropriate. The area head shall treat in confidence all information provided by the CRA.

- c) If satisfactory resolution is achieved through informal mediation, an Agreement of Resolution (**APPENDIX "C"**) may be signed by the parties. An Agreement of Resolution is a statement of the terms by which parties to an informal mediated settlement agree to abide, may include mutually agreed remedies, sets out a course of action that is agreed upon by the parties and is intended to eliminate harassment/discrimination and restore harmony, collegiality and cooperation. This Agreement of Resolution will be kept in the confidential files of the CRA.

All parties shall retain copies of the agreement and an additional copy shall be retained in the confidential files of the CRA. It shall be understood that if any party subsequently does not abide by the agreement, that the settlement may be nullified and the case may be re-opened. The Agreement of Resolution is confidential and shall not be disclosed, unless required by law.

- d) If satisfactory resolution is achieved through informal mediation, and an Agreement of Resolution is not entered into, the CRA shall prepare a written communication for both parties, setting out the understandings and/or agreement. Receipt of, and agreement with, this written communication must be acknowledged by both parties. This written communication will be kept in the confidential files of the CRA.
- e) If an informal resolution acceptable to both parties is reached without informal mediation, and an Agreement of Resolution is not entered into, then the appropriate Administrative Officer and/or CRA, depending on who handled the complaint, will prepare a written communication for both parties, setting out the understandings and/or agreement. Receipt of, and agreement with, this written communication must be acknowledged by both parties. This written communication will be kept in the confidential files of the CRA.
- f) If no further complaint against the respondent is received within four (4) years of the date of resolution, the file shall be destroyed. In the event of repeated infringement by the respondent within four (4) years, the CRA shall provide the President with a written report of previous cases involving the respondent, containing only information on date, the general nature of the offence and resolution, with a recommendation that formal disciplinary proceedings be initiated.
- g) The case shall be reopened and referred to formal resolution if any attempt is made by the respondent to manipulate or intimidate the complainant, or if any attempt or perceived attempt at reprisal is taken against the complainant or anyone assisting with the investigation.
- h) No record of the informal resolution, including any Agreement of Resolution, shall be kept in either the complainant's or respondent's student or personnel file.

3.4.3 Formal Resolution of a Complaint

- a) If the matter is not resolved informally, or if the behaviour continues or re-occurs, or if the parties choose not to attempt to resolve the matter informally, the complaint shall be advanced for formal resolution.

The CRA may also recommend to the President that formal proceedings be initiated, bypassing the informal/mediation process, in the case of a respondent who is alleged to have committed repeated infringements of this Policy, or who is alleged to have

committed an offence that, in the judgment of the Administrative Officer or CRA, is not amenable to informal resolution.

The President may also, in consultation with the Administrative Officer and/or CRA request that an investigation be conducted in the absence of a formal complaint and in circumstances where he/she deems it appropriate to do so.

- b) Complaints requiring formal resolution shall normally be referred by the CRA to the President who shall appoint an investigator from outside the University community.
- c) The formal complaint shall:
 - i. be in writing indicating that it is a formal complaint;
 - ii. set out the particulars of the allegations, including, where possible, the dates, times, and nature of the allegations, the names of any witnesses to the behaviour, and the expected remedy;
 - iii. be signed and dated by the complainant; and
 - iv. be submitted to the President, who in turn will provide it to the investigator.
- d) A complainant may request the assistance of the CRA to draft the formal complaint.
- e) Upon receipt of the formal complaint, the Investigator will review the allegation to ensure that it falls within the definitions set out under this Policy.
- f) If it is determined that the allegation does not fall under the definitions set out in this Policy, then the complainant shall be advised accordingly by the President and no further action will be taken under this policy.
- g) If it is determined that this allegation does fall within the definitions set out in this Policy, an investigation shall be launched.

3.4.4 The Investigation

- a) The investigation shall be concluded as expeditiously as possible. If the Investigator foresees significant and unavoidable delays in the completion of the process, he/she shall notify the complainant and the respondent. The Investigator shall advise them of the reason for the delay and shall provide an estimate of the time required to complete the investigation.
- b) If, at any time during the course of the investigation, the Investigator deems it appropriate for the complainant and the respondent to seek resolution through mediation, and where they both consent to do so, the Investigator may interrupt the investigation for such period(s) of time as he/she considers reasonable to facilitate such an approach to resolution. Any such resolution may provide for withdrawal of the complaint or a portion thereof (refer to 3.4.2).
- c) Upon an investigation being launched, the Investigator shall:
 - i. notify the respondent in writing that a complaint has been received and that an investigation has commenced. The respondent shall be provided with a signed copy of the formal complaint and this Policy;
 - ii. provide the respondent with a reasonable opportunity to consult with counsel or a union or personal representative;

- iii. advise the respondent to provide a written response to the complaint within five (5) working days unless otherwise agreed;
- iv. investigate the complaint, including interviewing the complainant and the respondent, and any other person(s) deemed relevant to the investigation. The complainant and the respondent shall cooperate fully with the Investigator and provide any information required by the investigator upon request. The complainant and respondent may be accompanied during their respective interviews by a representative;
- v. conduct the investigation in accordance with the following guidelines:
 - 1) witnesses are interviewed separately, and written witness statements are prepared;
 - 2) witnesses are asked to review and sign their written statements;
 - 3) witnesses are advised to keep the investigation and the identity of the complainant and respondent in confidence, unless they are required to disclose them by law;
 - 4) the complainant and respondent are entitled to be accompanied by a representative at all meetings during the informal and/or formal process;
 - 5) during the investigation process, both the complainant and the respondent are entitled:
 - a) to be informed of all the allegations made against them; and
 - b) to the opportunity to make a full answer and defense.

This does not mean that either party is entitled to see or receive copies of the complete statements, except as required by law. Both are entitled, however, to see or receive an adequate summary of the evidence to make a full answer and defense.
- vi. prepare a written report, at the conclusion of the investigation for the President, which sets out the allegation(s), the information and evidence obtained, a description of any conflict in the evidence, and provide a conclusion as to whether this Policy has been breached, on a balance of probabilities, with the facts and reasons on which the conclusion is based.

3.4.5 Findings and Subsequent Actions

- a) If it is determined that this policy has not been breached, based on the findings of the investigator, then the investigator shall advise the President. The President will advise the parties accordingly.
 - i. No further action will be taken on the complaint.
 - ii. No record of the complaint will be placed in the respondent's official personnel file or student record.
 - iii. No record of the complaint will be kept in the complainant's official personnel file or student record unless it is determined, based on the findings of the Investigator, that the complaint was frivolous or malicious. The President may take disciplinary action against a complainant who initiates a frivolous or malicious complaint. Inability to prove one's case will not in itself be regarded as an indication of frivolous or malicious intent.

- b) If it is determined that this policy has been breached, based on the findings of the Investigator,
 - i. the final determination of any disciplinary or other measures to be taken, for all respondents, whether student or employee, will be made by the President.
 - ii. Disciplinary or other action may include, but is not limited to, a requirement to participate in counseling, a letter of reprimand, suspension, or dismissal in the case of an employee or expulsion in the case of a student.
 - iii. Other measures may be considered as efforts to ensure a safe and respectful environment.
 - iv. Any disciplinary action for an employee shall be in accordance with the Collective Agreement of the applicable bargaining unit.
 - v. Any form of retaliation against someone who has complained or provided information in an investigation will be considered grounds for disciplinary action up to and including dismissal, or in the case of a student, expulsion.
- c) Notice of any disciplinary or other action will be provided to the complainant, the respondent and the appropriate Administrative Officer. The appropriate Administrative Officer will file a copy of the disciplinary action in the University's official personnel file for the respondent, in the case of an employee; or in the University's official student file, in the case of a student.
- d) All other information pertaining to the investigation shall be retained in a secure file held by the President.
- e) If no further complaint against the respondent is received within four (4) years of the date of resolution, the disciplinary action shall be removed from the file and shall be destroyed.

In the event of repeated infringement by the respondent within four (4) years;

- i. the CRA shall provide the President with a written report of previous cases involving the respondent that were informally resolved, containing only information on date, the general nature of the offence and resolution.
 - ii. The President shall refer to the file of any previous formal investigations and findings.
 - iii. The President shall determine whether formal disciplinary proceedings are initiated.
- f) The CRA will facilitate any request or requirement for counseling/education/training on behalf of either the complainant or the respondent.

3.5 Confidentiality

- a) All inquiries and complaints shall be handled with confidentiality by the complainants, respondents, and persons who become privy to the inquiry or complaint, so far as is reasonably practicable. The name of a complainant or a respondent or the circumstances related to the complaint will not be disclosed unless it is necessary to the process of resolution, counseling, investigation, disposition, to take corrective/disciplinary action, is required by law, in the case of serious threat to life or property, or in the case of a workplace Violence Incident Report that is sent to the Workplace Safety and Health Committee.

All files relating to complaints shall be maintained in a secure place. Files relating to complaints handled through informal resolution shall be accessible only to the CRA, and may not be released without the written consent of both the complainant and the respondent unless otherwise required by law.

Information given in confidence to the Administrative Officer or CRA by either the complainant or the respondent may not be used as evidence in any formal disciplinary proceedings unless otherwise required by law.

Files relating to cases referred to formal resolution shall be accessible only to the President and the Investigator.

- b) Intentional or unnecessary breaches of confidentiality by any person may be subject to disciplinary action by the President.

3.6 General

- a) Notwithstanding the above processes, complainants and respondents shall maintain their right to take any action available to them either through collective agreements, courts of law, the Manitoba Human Rights Commission, or the Workplace Safety and Health Division of the Manitoba Labour and Immigration.
- b) This Policy is not intended to discourage or prevent a complainant from exercising any other legal right pursuant to his/her respective collective agreement or any other law.
- c) All processes in this policy document shall be pursued with due regard to the principles of natural justice and due process of law and in accordance with the respective collective agreements in effect between the University and its bargaining units.
- d) Brandon University recognizes that as an academic and free community, it must uphold its fundamental commitments to academic freedom and to freedom of expression and association. Therefore, it will maintain a respectful environment in which students and teaching and non-teaching staff can engage in free enquiry and open discussion of all issues.
- e) Wherever the singular is used in this Policy, the plural may be applied where applicable.

3.7 Third Party Respondents

- a) Customers, volunteers, guests, contractors or their workers, or other people invited to the University might engage or participate in unacceptable behaviour towards a member of the University community. The University may have limited ability to investigate or control their behaviour. However, the University shall take reasonably practicable action to stop or reduce the risk to its members of being treated inappropriately by third parties. This action may include, but is not limited to:
 - i. posting this Policy in locations visible to third parties, and/or
 - ii. requiring certain customers, volunteers, guests or contractors and their workers to accept and meet the terms of this Policy. This could include removing individuals, who participate in inappropriate behaviour, from the University, and
 - iii. involving legal authorities

- b) Where a customer, volunteer, guest or contractor has been asked to stop treating a University member inappropriately and does not, members of the University community are authorized to:
- i. end telephone conversations;
 - ii. decline service;
 - iii. ask the individual to leave the University, and/or;
 - iv. Involve the appropriate administrative officer, and/or
 - v. involve the appropriate legal authority.

APPENDIX "A"

Violence Incident Report

This form must be completed for all incidents of workplace violence or attempted workplace violence and submitted to the Brandon University President or designate **within 24 hours of receiving report of incident**. A copy will be provided to the Workplace Safety & Health Committee where required.

Name of Complainant / Victim: _____ Phone: _____

Address: _____

Summary of incident: (include location of incident, names of persons involved and potential witnesses, dates, times)

Employee Signature: _____ Date: _____

Medical help required? Yes _____ No _____ Provided Yes _____ No _____

List All Departments Notified: _____ When? _____ How? _____ By Whom? _____

Any other faculty/staff/students notified? Yes _____ No _____ How? _____

Any others identified as "at risk" during the incident? _____ If yes, notified when? _____ How? _____
By Whom? _____

Review Relevant Campus Policies as applicable:

- Workplace Safety and Health Policy
- Suspension of University Activities Policy
- Emergency Procedures Handbook
- University Security Policy
- Workplace Hazard Identification and Control Procedures
- Working Alone Policy
- Violent Intruder Procedures

Crisis counseling offered? Yes _____ No _____

Reviewed confidentiality and privacy issues? Yes _____ No _____

Workers Compensation applicable? Yes _____ No _____

Investigation conducted? Yes _____ No _____ When? _____ By Whom? _____

Workplace Safety and Health Committee contacted? Yes___ No___ When?___ By Whom?___

Brandon Police Service contacted? Yes _____ No _____

Action Taken:

Future Action Required:

Any Future Risk Identified? Yes___ No___

Steps to Eliminate / Minimize Any Future Risk:

If future injuries/traumas develop, please update this report as soon as reasonably possible.

CRA or President or Designate Signature: _____ Date: _____

APPENDIX "B"

Injury Report Form

Person reporting _____ Date _____

Name of Person(s) involved: _____

Date of injury _____ Time of injury _____

Explanation of injury (who, what, when, where, nature of injury)

Action taken (by whom and when)

Name of person completing Report _____

Title of person completing Report _____

Work location and phone number _____

Signature _____ Date of Report _____

CONFIDENTIAL

Agreement of Resolution

Name of Complainant _____

Name of Respondent _____

Statement of terms:

Remedies:

This Agreement is confidential and will not be disclosed, unless required by law.

(Signature of Complainant)

(Date)

(Signature of Respondent)

(Date)