

Non-Academic Misconduct Policy

CATEGORY: 3003 People & Culture/Diversity &Equity	APPROVAL DATE: November 9, 2022
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APPROVAL: Board of Governors	
SPONSOR: Vice-Provost, Students & International	
CONTACT: Vice-Provost, Students & International	
PREVIOUS VERSIONS: Non-Academic Misconduct Policy, 1994, 1998, 2004, June 1, 2009 Approved March 2010	

RELATED POLICIES

Policy on Prevention and Response to Sexual and Gender-Based Violence Response to Violent or Threatening Behaviour Policy
Respectful Work & Learning Environment Policy
Policy on Academic Accommodations for Students with Disabilities
Acceptable Use of Information Technology
Fit for Duty Policy

STATEMENT OF COMMITMENT

1. The University is dedicated to ensuring an environment conducive to effective teaching and learning. As a consequence, the University affirms the dignity, worth and autonomy of all of its community members. Any action by any Member of the University Community which is not consistent with these principles is unacceptable.
2. 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.
3. 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.

4. 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.
5. The University is 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 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.
6. The purpose of this Policy is to bring together in a single document the basic rules and principles developed by the University regarding student conduct. This Policy is intended to guide students regarding behaviour which the University considers to be appropriate, to outline procedures to respond to inappropriate behaviour and to indicate the possible corrective action, including sanctions, for such behaviour. In applying this Policy, 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.
7. It is intended that this Policy be understood and applied in a manner conducive to ensuring that students participate fully in the opportunities afforded to them by virtue of their membership in the University community.
8. In implementing this Policy 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 ("OHS"), 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") and Student Accessibility Services ("SAS") for advice and guidance as necessary.

APPLICATION AND SCOPE

9. This Policy applies to all students of the University engaged in University-related activities. 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.
10. The University reserves the right to determine if a matter should be addressed under this Policy regardless of the actions of external agencies, such as the police, and may use information provided by such agencies.

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]

11. Definitions of certain terms can be found starting at paragraph 86 of this Policy.

PROHIBITED CONDUCT

12. **Non-Academic Misconduct:** Non-academic misconduct violates generally accepted standards of behaviour, the law and/or University policies, procedures and regulations related to non-academic behaviour. Any conduct on the part of a student that has, or might reasonably be seen to have, an adverse effect on the reputation or the proper functioning of the University, or the health, safety, rights or property of the University, its members or visitors, is subject to corrective action, including sanctions, under this Policy.

Without limiting the generality of the foregoing, the following are specific examples of prohibited conduct. *This list is illustrative only and is not intended to define misconduct in exhaustive or exclusive terms.*

13. **Alcohol and Drug Use** includes possession, use, distribution or trafficking of drugs, alcohol and/or harmful substances in contravention of provincial laws or the policies of the University, or contravention of the University's Fit for Duty Policy.
14. **Bullying** means 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.
15. **Contravention of University Policies, Procedures or Regulations or other laws,** including:
- (a) Violation of published University policies, rules, procedures or regulations;
 - (b) Contravention of any provision of the *Criminal Code* or any other federal or provincial statute or municipal by-law;
 - (c) Aiding or encouraging others in the commission of an act prohibited under this Policy or attempting to commit an act prohibited under this Policy;
 - (d) Failure to comply with any sanction imposed by the University for misconduct under this Policy; and
 - (e) Any other conduct that has, or might reasonably be seen to have, an adverse effect on the reputation or the proper functioning of the University, or the health safety, rights or property of the University, its members or visitors.
16. **Disruptive Behaviour:** Conduct that materially and substantially interferes with or obstructs teaching, learning and work in the context of the University environment. By action, threat, written material, or by any means whatsoever, disrupting or obstructing any University activities, or other authorized activities on University property, or the right of another person to carry on their legitimate activities, or to speak or to associate with others. University activities include, but are not limited to teaching, research, studying, administration and meetings.

17. **False Information, I.D. Cards, Identification** includes furnishing false information and forging, altering or misusing any document, record, card or instrument of identification.
18. **Harassment** means a course of comments or conduct that are 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 may occur by electronic device, communication and/or social media. Harassment targeting a person's sexuality, gender identity or gender expression is considered a form of sexual violence and may be dealt with pursuant to the University's policy on Prevention & Response to Sexual and Gender-based Violence.
19. **Improper Possession or Use of Dangerous Objects and Substances** includes the storage, possession or use of firearms, explosive substances, weapons, flammable solvents, biohazardous or volatile or other poisonous materials, except in areas formally designated for that purpose by authorized University personnel and/or approved by a University Faculty member. Articles of faith, including a Kirpan, are not a dangerous object or weapon within the meaning of this Policy.
20. **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, suspension or expulsion.
21. **Misconduct Against Persons and Dangerous Activity includes:**
 - (a) Harassment, intimidation, threats, bullying, robbery or extortion and any other conduct that threatens or endangers the health or safety of any person, such as a threat of harm on another person;
 - (b) Knowingly (which includes when one should reasonably have known) creating a condition that endangers the health, safety or well-being of any person;
 - (c) Coercing, enticing or inciting a person to commit an act that is humiliating or demeaning to that person or to others; and
 - (d) Distribution of hate-material and/or hate-motivated violence.
22. **Misconduct Involving Property:**
 - (a) Entry and/or presence on any premises of the University contrary to University policies, procedures or regulations, or without express or implied authority, or contrary to an express instruction or direction from an authorized University personnel;
 - (b) Misappropriation, damage, unauthorized possession, defacement and/or destruction of premises or property of the University, or the property of others;
 - (c) Use of University facilities, equipment or services contrary to express instruction or without proper authority and misuse of University supplies and documents,

including equipment, library and computer resources, keys, records, transcripts and permits; and

- (d) Tampering with emergency telephones, fire protection equipment or emergency facilities (e.g., fire bells, fire extinguishers, fire hoses), disconnecting or blocking fire alarms, setting unauthorized fires or raising a false fire alarm and blocking or wedging open fire and smoke doors on corridors or stairways.
23. **Misuse of Electronic Devices, Communications and Social Media** means the intentional use of an electronic device, communication or social media, such as, but not limited to, all features of a telephone, a mobile phone, digital camera, emails, web-based communication sites and print materials, such as flyers, University newspapers and brochures, that negatively impacts on the well-being of another person or is directed at an individual(s) causing fear or distress and/or harm to another person's body, feelings, self-esteem or reputation.
24. **Physical Assault** is the intentional application of force, directly or indirectly, in any degree at all, to a person without the person's consent.
25. **Physical Assault Causing Bodily Harm** physical assault is the intentional application of force, in any degree at all, to a person without that person's consent. Bodily harm refers to any hurt or injury that is more than merely transient or trifling in nature which interferes with the health or comfort of the person and includes, but is not limited to, injuries that receive medical attention. Any cut that requires stitches or any broken or fractured bone should be considered a serious injury. Serious injury could also include multiple minor injuries.
26. **Possession and/or use of a weapon**, including a firearm, to cause or threaten bodily harm. Articles of faith, including a Kirpan, are not a dangerous object or weapon within the meaning of this Policy.
27. **Robbery** occurs where a person uses violence or threats of violence to steal money or other property from another person.
28. **Sexual Assault** is a crime as defined in the Criminal Code and is also a form of Sexual Violence.
29. **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.
30. **Stalking** is a form of harassment and may also be an act of sexual violence within the meaning of the University's Policy on Prevention and Response to Sexual and Gender-based Violence. It includes conduct which is known or ought to be known to be unwelcome, including circumstances in which a person follows, waits for, repeatedly contacts or sends unwanted gifts to another person.

31. **Reprisal** is negative treatment towards an individual bringing forward a complaint, providing information related to a complaint, or assisting a complainant or respondent in the resolution of a complaint.

CONFIDENTIALITY AND PRIVACY

32. To ensure a fair process, protect against reprisals, maintain a healthy learning environment and ensure the integrity of investigations, complainants and respondents are advised not to discuss complaints under this Policy with anyone who is not necessary to the process of addressing a complaint, investigating a complaint or taking corrective action, or who is acting as their support person or representative. 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.
33. Employees of the University who receive a concern or complaint of Non-Academic Misconduct or who are involved in addressing the complaint, investigating the complaint or taking corrective action will keep the information confidential to the extent possible.
34. The University will make reasonable efforts to maintain confidentiality when it becomes aware of a concern or complaint of Non-Academic Misconduct and will limit the sharing of information about individuals to those persons who need to know for the purposes of, or those consistent with, addressing, investigating or taking corrective action with respect to the Non-Academic Misconduct.

LIMITS OF CONFIDENTIALITY

35. When the University becomes aware of Non-Academic Misconduct it may be obliged to investigate or follow up as appropriate even in the absence of a complaint. Confidentiality cannot be maintained where information needs to be shared in order to address and investigate 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, the Code and/or OHSA.
36. Confidentiality also cannot be maintained in situations which the evidence of a contravention of the Non-Academic Misconduct 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.

AVAILABLE SUPPORTS

37. Supports, services and/or accommodations appropriate in the circumstances are available to Members of the University Community. 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.

38. Counselling support from the Student Wellness Centre and/or the community is available to any student involved in a complaint process under a University policy and can be accessed through the Student Wellness Centre. This includes student complainants and respondents. Counsellors can provide confidential support in respect of the emotional and mental health impacts of the incident and/or the process. Counsellors can also coordinate accommodations students may require while 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 are **not** responsible for taking complaints and/or providing advice with respect to this Policy and its processes.

EMERGENCY MEASURES

39. If the Vice-Provost, Students & International, in consultation with the Triage Team pursuant to the Response to Violent or Threatening Behaviour Policy, determines that the presence at the University of a student poses a risk to safety or security of any Member of the University Community or other persons or the continued presence of the student would be disruptive, they may impose an immediate suspension of up to 10 business days with the approval of the Vice-President, Academic & Provost. The student will be notified of the decision to invoke an immediate suspension.
40. If, after further investigation, it is determined by the Vice-Provost, Students & International, in consultation with the Triage Team, that the student continues to pose a risk to the safety or security of any Member of the University Community or other persons or the continued presence of the student would be disruptive, Vice-Provost, Students & International may suspend a student for more than 10 business days to a maximum of 60 business days with the approval of the Vice-President, Academic & Provost.
41. Where a student has been charged under the Criminal Code, the maximum number of days may be extended to take into account the scheduling of criminal proceedings, depending on the nature and severity of the offence with which the student is charged.
42. Alternatively, campus and/or behavioural restrictions short of full suspension may be applied in lieu of suspension.

FILING A COMPLAINT

43. All Members of the University Community who believe they have witnessed or been subjected to an act of Non-Academic Misconduct, 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 the Non-Academic Misconduct Policy.
44. All Members of the University Community can consult with the Dean of Students in respect of a concern or complaint of Non-Academic Misconduct. An employee or student may also choose to consult with their immediate supervisor or union representative (employees) or another member of University administration, including a Chair, Dean or Associate Dean (students).

45. All academic administrators are to bring concerns about misconduct which falls within this Policy to the Dean of Students. The Dean of Students may, as appropriate, consult with a Chair or Associate Chair of a student's program in order to achieve a resolution where appropriate.
46. A complainant must normally file a complaint within 4 months of the date of the misconduct. Complaints must be filed with the Vice-Provost, Students & International. 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 Vice-Provost, Students & International.
47. The complaint must set out the name of the complainant (as applicable), 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.
48. The complaint must be in writing. If a complainant is unable to set out the complaint in writing due to a disability related restriction, they may contact the Dean of Students, who will arrange for accommodation to be provided.
49. 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. 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 the Non-Academic Misconduct Policy or other related policies.
50. The Vice-Provost, Students & International, in consultation with the Dean of Students, will consider and determine whether the nature of a Complaint requires the activation of the Triage Team pursuant to the Response to Violent or Threatening Behaviour Policy and will immediately notify the Director, Safety, Security & Campus Operations when such a determination is made.
51. The Vice-Provost, Students & International, in consultation with the Dean of Students, will determine whether the complaint falls within the definition of Non-academic Misconduct as outlined in section 9-27. If the complaint is determined to fall within the scope of the policy, resolution options will be explored with the complainant. If the complaint is determined not to fall within the scope of the policy, the complainant will be provided an explanation.

COMPLAINT RESOLUTION OPTIONS

52. The Dean of Students will provide information about the resolution options available under this Policy and related policies and procedures 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.

53. Resolution options are available to the parties at any stage in the complaint process provided that all parties, including, but not limited to, the complainant, the respondent, the Dean and/or the Vice-Provost, Students & International on behalf of the University, consent to voluntarily participate in a resolution option. The resolution process can be ended at any time if any or all of the complainant, the respondent, the Dean and/or the Vice-Provost, Students & International wishes to proceed with an investigation of a complaint.
54. The University can, however, resolve a complaint, with or without the agreement of the complainant, at any stage in the complaint process in circumstances which it considers such a resolution appropriate.
55. At any point in the complaint, resolution or restorative resolution process the Dean of Students or the Vice-Provost, Students & International may determine that the nature of a concern or complaint requires the activation of the Triage Team pursuant to the Response to Violent or Threatening Behaviour Policy and will immediately notify the Director, Safety, Security & Campus Operations when such a determination is made.

Communicate Directly (Self-Managed)

56. 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, colleague or the Students' Union. This process does not require documentation and no records will be kept in the individuals' student or personnel file.
57. 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 proceed to request an investigation into the complaint.

Request Assistance from the Dean of Students

58. 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 this process is to seek assistance from the Dean of Students to address the concern by way of facilitated conversations. Participation in these facilitated conversations is voluntary.
59. The Dean of Students may support the parties to address the concern by clarifying expectations under the Non-Academic Misconduct Policy, restoring the learning environment and addressing issues and concerns of Non-Academic Misconduct. Where information emerges in this process indicating a breach of the Non-Academic Misconduct Policy, the Dean of Students may take appropriate action to remedy and prevent further acts of Non-Academic Misconduct.
60. Following a resolution of the concern, the Dean of Students 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. No record of the resolution will be kept in the individuals' student or personnel file.

Restorative Resolution

61. Restorative Resolution services are provided as a resolution option that is facilitated by the University and 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.
62. 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 Dean of Students will determine whether a Restorative Resolution process can be conducted ensuring safety of all parties and the community. In cases involving an Indigenous student, the Dean of Students may consult with an Elder/Knowledge Keeper. A Restorative Resolution process may or may not result in additional restorative actions, depending on the outcome.
63. 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.
64. 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

65. 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 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.
66. 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

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

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 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.

INVESTIGATION OF A COMPLAINT

67. A request for investigation may be initiated by any Member of the University Community or by the Director, Safety, Security & Campus Operations on behalf of the University. Complaints pursuant to this Policy should be provided to the Vice- Provost, Students & International.
68. The complainant and the respondent have the right to be accompanied by a support person at any point during the investigation process. 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 authorized University personnel (e.g. including as an accommodation within the meaning of the Code).
69. The complainant and the respondent 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.
70. After an investigation has been initiated, if it has not been resolved through the Resolution Options, the Vice-Provost, Students & International may choose to meet with the complainant at their discretion and shall notify the respondent that an investigation has been initiated under this Policy. The Vice-Provost, Students & International will provide the respondent with particulars of the complaint and a copy of this Policy, normally within 10 working days of receiving the complaint.
71. The Vice-Provost, Students & International will advise the respondent of a date, time and place for a meeting with the Vice-Provost, Students & International. At the meeting the Vice-Provost, Students & International will:
 - (a) review the procedures for dealing with Non-Academic Misconduct, including the respondent's right to appeal a sanction;
 - (b) explain the nature of the complaint and permit the respondent to review any materials relied upon in support of the allegation;
 - (c) outline the range of corrective action, including sanctions, recommended in cases on Non-Academic Misconduct, including potential corrective action in the present case, should the complaint be substantiated; and
 - (d) provide the respondent with the opportunity to respond to the complaint and the potential corrective action.

72. If the respondent fails to respond to the Vice-Provost, Students & International's request or to appear at the meeting with the Vice-Provost, Students & International, the Vice-Provost, Students & International may proceed with their investigation in the respondent's absence, including the imposition of corrective action, including sanctions.
73. The Vice-Provost, Students & International may request any additional information that they deem necessary, including by interviewing witnesses and receiving written or oral submissions. The respondent will be advised of all relevant information and afforded a full opportunity to respond.
74. If the Vice-Provost, Students & International's investigation results in a finding that an offence of Non-Academic Misconduct has been committed, the Vice-Provost will provide a summary of the Investigation to the Dean of the Faculty in which the Respondent is registered for Disposition and Sanctions as outlined in Appendix A.
75. If a Respondent's relationship with the University ends and they are no longer at or with the University, the investigation process in this Policy may be suspended. However, the University retains the right to proceed with the process, even in situations where the respondent's relationship to the University is temporarily or permanently severed. If the respondent returns and once again becomes a Member of the University Community, the investigation process may resume and/or sanctions resulting from the process may be instigated at that point. A respondent's temporary leave of absence from the University or a temporary break in their relationship with the University does not prevent a resumption of the complaint process when such leave has ended or when the relationship between the University and the respondent resumes.

RECORDING OF NON-ACADEMIC MISCONDUCT

76. A record of corrective action, including sanction(s) other than suspension and expulsion, will be placed in a confidential file in the office of the Vice-Provost, Students & International. Notations of suspension, expulsion or other academic restrictions are recorded in the student's official student record in the Office of the Registrar.
77. Records of all Committee decisions, including the corrective action imposed, will be maintained as part of the confidential hearing file by Vice-Provost, Students & International for a period of not less than 1 year. No other copies or files are to be maintained by Deans, faculty or others involved in the process of addressing, investigating and hearing allegations of student Non-Academic Misconduct.

LIABILITY

78. 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

79. Students are expected to know and conduct themselves in a manner consistent with generally accepted standards of behaviour, in accordance with the law, this Policy and all other applicable University policies, procedures and regulations. Students are also

responsible for knowing their rights and responsibilities, including their responsibility to:

- (a) Conduct themselves in an appropriate manner and treat others fairly and with dignity and respect at all times;
 - (b) Be cognizant of the fact that working and learning can best be accomplished in a climate of understanding and mutual respect;
 - (c) Establish and maintain a respectful environment by demonstrating respect for others and by not condoning and/or engaging in conduct that is inconsistent with the law, this Policy and all other applicable University policies, procedures and regulations;
 - (d) Actively and respectfully participate in University-related activities;
 - (e) Think, speak, write, create, study, learn, pursue social, cultural and other interests and associate 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
 - (f) Cooperate fully in any investigation under the Non-Academic Misconduct Procedure.
80. The Dean of Students is responsible for providing intake, information about this Policy, outlining options and coordinating appropriate supports for all parties involved in a Complaint under this policy. The Dean of Students coordinates resolution options up to, but not including, Investigation and Sanctions.
81. The Vice-Provost, Students & International is responsible for the overall administration of this Policy, conducts Investigations where requested and/or appropriate. The Vice-Provost, Students & International presents the results of the Investigation to the appropriate Dean and/or the Senate Student Appeals Committee for disposition and sanctions

ADMINISTRATION OF THIS POLICY

82. The Vice-Provost, Students & International is responsible for the review and implementation of this Policy. This Policy will be reviewed at least once every 5 years.
83. The Vice-Provost, Students & International and the Dean of Students may delegate any of their duties or powers under this Policy to an appropriate designate.
84. Amendments made to this Policy require the approval of the Board of Governors.
85. A copy of this Policy as approved and amended will be posted on the University's website.

DEFINITIONS

86. **Access to Facilities and Services** is governed by regulations that are necessary for the safety and security of students. The University understands its obligation to provide

adequate access to persons with disabilities and to remove barriers identified in the University's Accessibility Plan.

87. **Appeals** means that students have the right to appeal a sanction(s) imposed by the Dean of a Faculty which may result in a hearing by the Senate Student Appeals Committee.
88. **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 a complaint resolution option or investigation pursuant to this Policy hold all information confidential except to facilitate a complaint 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.
89. **Electronic Device, Communications and Social Media** include communications by email, text, social media (e.g. on social networking sites such as Twitter, Instagram, Snapchat and Facebook) and any other electronic means.
90. **Explosive Substance** includes anything that is used to create an explosive device or is capable of causing an explosion.
91. **Extortion** using threats, accusations, violence or threats of violence to induce any person to do anything or cause anything to be done.
92. **Firearm** any barreled weapon from which any shot, bullet or other projectile can be discharged and that is capable of causing serious bodily injury or death to a person.
93. **Hate Material** includes online posts on any online platform, literature, leaflets, posters and graffiti that is distributed to Members of the University Community, including that is sent by or posted to an electronic device, communication and/or social media, to incite violence or hatred against an identifiable group and/or their property. The incitement of hatred or bias-motivated incidents against an identifiable group may include persons distinguished by their race, national or ethnic origin, language, colour, religion, sex, gender identity, gender expression, age, mental or physical disability, sexual orientation or other similar factor.
94. **Investigation:** An investigation is a fact-finding inquiry that is appropriate in the circumstances and that is consistent with the requirements of this Policy.
95. **Members of the University Community** include students, faculty, post-doctoral fellows, contractors and employees of the University.
96. **Student** means 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.

97. **Threat** means the expression of intent to cause physical or mental harm. Such an expression constitutes a threat without regard to whether the person communicating the threat has the ability to carry it out, and without regard to whether the threat is made on a present, conditional or future basis. In determining whether the conduct constitutes a threat, including whether the action caused a reasonable apprehension of harm, the University will consider the totality of the circumstances.
98. **Triage Team** is an internal team that is convened to assess risk related to behaviour on a case-by-case basis (incident based only) and to make recommendations for remedial risk management strategies, either through established University policies or to be escalated to the Threat Assessment Team for further assessment. The Triage Team includes, but is not limited to, the Vice-Provost, Students & International, the Dean of Students, the Director, Safety, Security & Campus Operations, and a culturally-specific designate, if necessary.
99. **Threat of Harm** is a knowing and willful statement or course of conduct that would cause a reasonable person to believe that they are under threat of death or serious bodily injury. A course of conduct is any series of acts over a period of time, however short, that evidences a continuity of purpose, such as following or stalking an individual to/from work/campus, telephone calls, correspondence or contact by any means.
100. **Weapon** means anything used, designed to be used or intended for use in causing death or injury to any person or for the purpose of threatening or intimidating any person. Articles of faith, including a Kirpan, are not a weapon within the meaning of this Policy.

APPENDIX A: DISPOSITION AND SANCTIONS

DISPOSITION BY THE DEAN OF THE FACULTY

1. The Vice-Provost, Students & International will provide a summary of the Investigation Report to the Dean of the Faculty in which the student is registered (Art, Design, Arts & Science or Graduate Studies) for decision.
2. The Dean will review the relevant information including the response of the respondent and decide whether or not an act of Non-Academic Misconduct has been substantiated in breach of this Policy. In advance of making this decision, the Dean will, where appropriate, consult with a resource collective comprised of Indigenous members of our community, which may include the Advisor to the Provost, Indigenous Knowledge, Practices and Production, and/or Elders.
3. If the Dean determines that an act of Non-Academic Misconduct has been substantiated in breach of this Policy, the Dean will determine the appropriate sanction. The Dean will inform the respondent of their decision with written reasons and will inform the respondent of the corrective action, including sanctions, to be imposed. The Dean will make best efforts to do so within 10 business days of their decision.
4. Corrective action, including sanctions, that may be imposed by a Dean include:
 - (a) a reprimand;
 - (b) an apology and/or statement of regret to the person making the complaint;
 - (c) an apology and/or statement of regret to a larger community (e.g. team, classmates);
 - (d) educative requirements, such as community service, reflective essay, or research on a specified topic;
 - (e) restrictions on behaviour, including disqualification from or ineligibility to participate in awards, leadership positions or employment;
 - (f) a requirement for restitution rectification or the payment of damages for the replacement of stolen or damaged property;
 - (g) a recommend that the parties participate in a Restorative Resolution process;
 - (h) denial of access to specified services, activities or facilities for a period of up to one year; and/or
 - (i) Disciplinary probation which is an order that is designed to permit the students to attend classes. It will normally limit campus activities and may include specific terms and conditions. A student who is on disciplinary probation is subject to suspension or expulsion if there are any further breaches of the law, the Non-Academic Misconduct Policy or other University policies, procedures or regulations.
5. In determining the appropriate corrective action, including a sanction, the Dean will consider all applicable mitigating factors, including whether there is an intersection between the Non-Academic 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 Non-Academic Misconduct. In considering the mitigating factors the Dean may consult with

ODESI or the SAS for advice and guidance as necessary.

6. If the respondent confirms the findings and accepts the corrective action, and if the sanction does not involve suspension or expulsion from the University, the Dean will implement the corrective action, a notation of which will be made and sent to the Vice- Provost, Students & International to be kept in the respondent's student file. If the recommended sanction resulting from the allegation is suspension or expulsion, the matter shall be referred to the Senate Student Appeals Committee.
7. In exceptional circumstances which a respondent is incapable or unwilling to participate autonomously in the proceedings pursuant to this Procedure to address their Non-Academic Misconduct, the Dean may recommend a voluntary withdrawal of the respondent from the University for a period of up to 2 academic years and may impose conditions for reactivation of the respondent's status as a student. This recommendation must be made in consultation with the Vice-Provost, Students & International and with the approval of the Vice-President, Academic & Provost. The Dean, the Vice-Provost, Students & International and the Vice-President, Academic & Provost may consult with ODESI and/or the SAS for advice and guidance as necessary.
8. If the Dean determines that an act of Non-Academic Misconduct has **not** been substantiated in breach of this Procedure, the Dean will inform the respondent of their decision with written reasons. The Dean will make best efforts to do so within 10 business days of their decision.
9. If the respondent disagrees with the findings or does not accept the corrective action, a request may be made to the Vice-Provost, Students & International to convene an appeal. The respondent has 10 business days to request an appeal from the date of receiving the Dean's reasons in writing. The grounds for appeal are:
 - (a) The disposition by the Dean was grossly disproportionate to their factual determinations;
 - (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; and/or
 - (c) The disposition or findings upon which the disposition is based, are contrary to law.
10. The appeal will be referred to the Committee, which will first determine whether there are grounds for an appeal and, if so, they will proceed to hear the appeal. If there are not grounds for an appeal, the respondent will be notified in writing of the Committee's conclusion.
11. The complainant will be advised of the outcome of the disposition by the Dean, or if the matter is proceeding to a hearing, but will not be advised of the specific sanction imposed, if any.

THE HEARING BEFORE THE SENATE STUDENT APPEALS COMMITTEE

12. The Committee hears appeals and referrals by Deans for recommendations of suspension or expulsion under this Procedure. All appeals and referrals to the Committee will proceed in accordance with the Senate Student Appeals Committee By-Laws.
13. The Committee's decision is final.

APPENDIX B: SUPPORTS & SERVICES AVAILABLE TO STUDENTS

Dean of Students Office

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. The Dean of Students can be reached at jrobinson@ocadu.ca.

Student Wellness Centre

www.ocadu.ca/swc

The Student Wellness Centre is OCAD U's one stop shop 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.

Indigenous Student Centre

www.ocadu.ca/services/indigenous-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, and their support network, in navigating University policies and processes and provide referrals to community resources.

International Student Support

www.ocadu.ca/services/international-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.

OCAD SU Advocacy Services

advocate@ocadsu.org

The OCAD Student Union Advocate provides advice; advocacy, and support services to all students at OCAD U. The Advocate is a confidential service that can provide students with support and guidance when dealing with difficult situations on campus.

A comprehensive list of community health resources and crisis supports is available on the [Student Wellness website](#).

Community Resources for Indigenous Students

Aboriginal Legal Services

<https://aboriginallegal.ca>

The mission of ALS is to strengthen the capacity of the Aboriginal community and its citizens to deal with justice issues and provide Aboriginal controlled and culturally based justice alternatives. The Legal Clinic serves people in a variety of areas including: Housing, ODSP/OW, Indian Act Matters, Canada Pension, Disability, Police Complaints, Criminal Injuries Compensation, and Human Rights. Referrals to Lawyers on other matters including criminal and family law can be arranged.

Human Rights Legal Support Centre - Indigenous Services Team

<https://www.hrlsc.on.ca/>

The HRLSC provides legal advice and assistance to individuals who have experienced discrimination in communities across Ontario. The HRLSC recognizes the particular history and disadvantage of

Ontario's First Nations, Inuit and Métis peoples. The HRLSC established an Indigenous Services and Outreach Committee and has implemented culturally appropriate service guidelines in order to increase usage of the human rights system by Indigenous peoples.

Toronto Aboriginal Peacekeeping Unit

<https://torontopolice.on.ca/community/aboriginal.php>

The Aboriginal Peacekeeping Unit works proactively to improve access for Indigenous community members in Toronto to policing services. Over the years, members of the unit have established a rapport with the community and a two-way educational process by which the community learns about policing services and officers become better informed on Aboriginal customs, traditions, values, historic events, and modes of behaviour. The Aboriginal Peacekeeping Unit combines aspects of traditional peacekeeping with community policing. The unit ensures that lines of open communications are established and maintained.

Indigenous Justice Workers

Indigenous Justice Workers support First Nation, Inuit and Métis individuals who are in conflict with the law. Justice Workers provide support, advocacy as well as culturally based supports and healing. Indigenous individuals above the age of 29+ can reach a Justice Worker through [Aboriginal Legal Services](#). Indigenous individuals between the ages of 16-29 can access a Youth Justice Worker by contacting the [Native Youth Resource Centre](#) at 416-969-8510 ext. 4119.

A comprehensive list of Indigenous community resources is available on the [Indigenous Student Centre website](#).

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

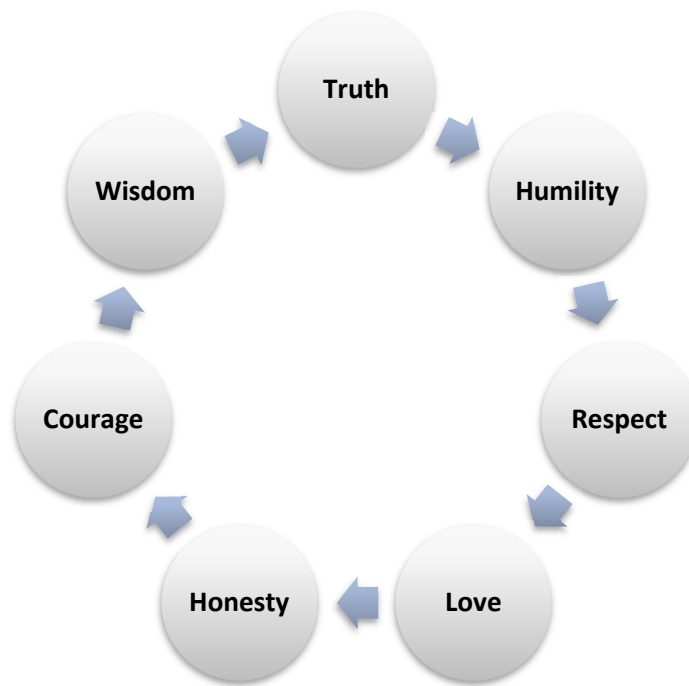
Indigenous concepts of “justice” are generally centered upon the family and reflect a way of life that focuses on relationships and the interconnectedness of all life. Restorative resolution processes generally require engagement from all involved parties and often involve community members (Inclusive), 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 nation(s) of the participants. Fair, neutral, and confidential also apply⁵.

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>

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

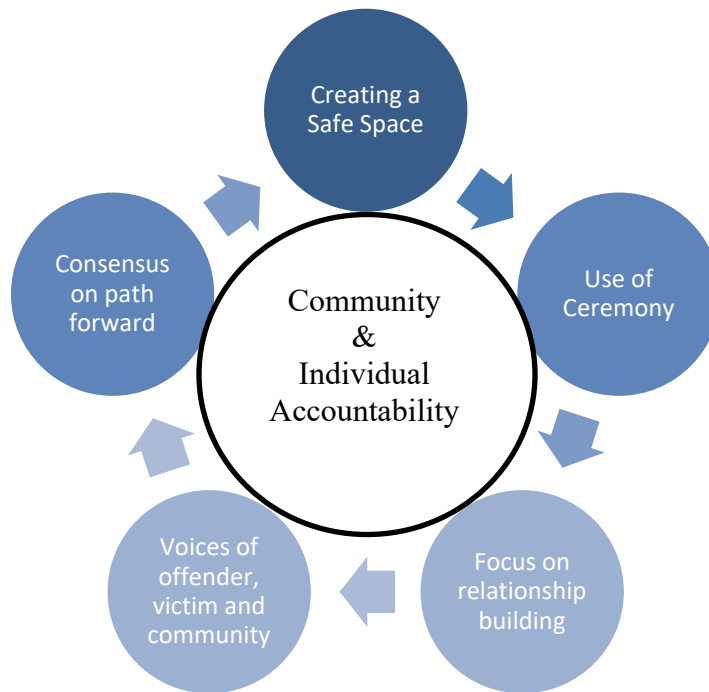


By way of example, the Hodiŋsho:nih/Rotinoŋhson:ni values of Ga'nigohi:yo/Kanikorii (Respect and the Good Mind)⁶ may also be used:

- 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 the Dean of Students and/or an Elder.

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>

NON-ACADEMIC MISCONDUCT POLICY: FLOWCHART

