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Letter to Vice-President and Provost about Sexual Violence Policy

December 16, 2016

On December 15, 2016, UTFA sent the following letter to Professor Cheryl Regehr, Vice-President and Provost of U of T, about the revised Sexual Violence Policy provided to UTFA on October 31, 2016.

December 15, 2016

Professor Cheryl Regehr
Vice-President and Provost
Simcoe Hall, Room 225
27 King's College Circle
University of Toronto

Email: provost@utoronto.ca

Dear Provost Regehr,

I am writing to acknowledge receipt of the revised Sexual Violence Policy, which was provided to UTFA on October 30, 2016.

As we have previously expressed, UTFA strongly supports the development of a comprehensive policy and program at the University of Toronto to address the problems of sexual violence that affect the university community. In particular, UTFA welcomes the Administration's commitment to provide confidential services and support to complainants of sexual violence, regardless of whether they file a formal report, and to investigate and address incidents of sexual violence in a meaningful way. The Association further recognizes the complexity of the problem of sexual violence, and the challenges of preparing a policy which applies effectively and appropriately to all members of the university community, including students, staff, faculty and librarians.

However, in an effort to improve the proposed policy, on October 11, 2016, UTFA provided to

the Administration detailed comments and suggested revisions to the draft policy. These comments were designed to strengthen the draft policy by, among other things:

- enhancing the clarity of the policy by more clearly defining the scope of its application, as well as key terms;
- ensuring adequate training for individuals who may receive disclosures of sexual violence on how to appropriately support complainants, as well as their obligations under the Policy;
- clarifying and strengthening due process protections, including where interim measures are imposed while an investigation is ongoing;
- ensuring that those appointed to investigate allegations of sexual violence are competent to carry out this significant responsibility and that they do so in a fair, impartial, and timely way; and
- protecting the principle of academic freedom at the University.

The revised policy partially addresses some of these issues. However, UTFA remains concerned that the revised policy fails to address several key concerns outlined in UTFA's October 11, 2016 comments. In particular, the failure to include any statement in the Policy acknowledging the importance of academic freedom, as protected by the Memorandum of Agreement, is particularly problematic.

In UTFA's view, the Sexual Violence Policy should explicitly recognize that academic freedom protects the rights of members of the University community to engage and participate in scholarly debate, discussion and research of subject matters that are controversial, sensitive and uncomfortable. Such debate is part of the special and protected role of universities, and, in accordance with the principles of academic freedom, is not itself sexual violence. UTFA therefore remains very concerned that the failure to expressly acknowledge the protection of academic freedom in the Policy may have a chilling effect on areas of legitimate academic research, teaching, and debate.

Further, the Policy fails to adequately spell out important due process protections for respondents. For example, given the very broad scope of the definition of sexual violence mandated by the Ontario legislature, which captures a wide spectrum of conduct, it is critical that any investigation, interim measure, and ultimate sanction be commensurate to the severity of the alleged incident. Further, any interim measures imposed by the Administration during the course of an investigation must be subject to the grievance procedure in the MOA if the measures affect the terms and conditions of the member's employment. On a related note, in UTFA's experience investigations into allegations of misconduct, including sexual harassment, are often unduly delayed. This can be extremely stressful both for the complainant and respondent, and can further exacerbate the problems created by the imposition of interim measures. Prolonged investigations can also have a stressful and demoralizing impact on other members of the university community who study or work with the complainant and respondent. Time lines should be imposed to ensure that investigators proceed in an expeditious manner, while also respecting procedural fairness.

The Policy is also in conflict with Article 7 of the MOA, which specifically states that complaints of sexual harassment are to be dealt with under the Policy and Procedures: Sexual Harassment. Indeed, the revised Policy fails to explain how the Sexual Violence Policy intersects with other university policies relating to workplace harassment, sexual harassment, and workplace violence, and creates unnecessary confusion.

For these and other reasons, UTFA reserves the right to grieve that the Sexual Violence Policy violates the Memorandum of Agreement, and in particular Articles 1, 2, 5, and 7.

Further, the Sexual Violence Policy was not subject to negotiations with UTFA, despite the fact that significant terms and conditions of employment for faculty and librarians contained in proposed University-wide policies are subject to the "Facilitation/Fact Finding" process described under Article 6, paragraphs 29-39, of the MOA. UTFA reserves the right to bargain revisions to the Policy through the Facilitation/Fact Finding Process in Article 6 of the MOA.

Finally, the Administration has indicated an intention to develop a Companion Guide for the Policy on Sexual Violence. It is UTFA's position that, to the extent that the Companion Guide adds to or modifies the Policy, it is also subject to the Facilitation/Fact Finding Process in Article 6, and therefore subject to negotiation with UTFA.

Sincerely,

Cynthia Messenger
President

File attachments:

Dec. 15-2016 ltr to Cheryl Regehr re Sexual Violence Policy.docx.pdf

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