



4. Existing and Possible Methods of Redress for Human Rights Complaints at York

[After defining terms, the Committee discusses the need for a general procedure, reviews the existing statement of University expectations, and discusses the procedures currently in place for students when there is an infringement of the University's standard of conduct. The report then seeks to define when an incident of racial intolerance can become a University offence, and it goes on to propose various informal and formal modes of dispute resolution.]

Racism is a significant problem in Canadian society. The Special Parliamentary Committee on Visible Minorities (*Equality Now!*) observed that "as many as 15 per cent of the population exhibit blatantly racist attitudes, while another 20-25 per cent have some racist tendencies." Racism may range from crude name calling to institutional or systemic racism which reduces an individual's or group's life chances. This report focusses upon the more blatant, or intentional, forms of racism such as verbal abuse or harassment.

Clearly not every racial incident should be resolved by recourse to formal procedures, as this would be unnecessary and impractical. In any dispute resolution arrangement the emphasis should be placed on resolving most incidents long before they reach the formal hearing stage, presumably by some form of mediation.

It is expected that generally only the most serious incident, those for example which include elements of apprehended violence, or those which result from a misuse of academic power and cannot be resolved by other means, will require redress through formal mechanisms.

The official University policy towards racial discrimination has been expressed in various statements issued over the years, broadly endorsing the principle of racial equality [see insert]. Unfortunately, deeds have perhaps not always matched the words that express this long-standing concern for the protection of human rights. There has been a marked absence of clear guidelines and procedures to which members of the York community could turn when faced with difficulty. (This became apparent during a 1983 episode where the lack of guidelines and procedures exacerbated an already difficult situation and tended to elevate a

relatively minor case of racial harassment into an explosive confrontation.)

Unlike the area of sexual harassment, currently there are no specific procedures for dealing with allegations of racial harassment at York. Such allegations would be dealt with under the usual non-academic disciplinary procedures.

Under the *York University Act (1965)* section 13(2) (c), the President is accorded the right to regulate non-academic aspects of student life. In practice, the President has delegated his authority to York College Masters, to Deans and to the Provost. Decisions imposed by Masters and Deans are appealable to the Provost, and those of the Provost can be appealed to the President.

[The Report proceeds to review in detail the University's procedures in cases of non-academic discipline, and the procedures that would be employed in cases of alleged human rights offences among and between students. Illustrations are drawn from the 1983 case which involved racial harassment in the York apartments.]

One apparent problem is the diversity of responsibility in cases of discipline. It is often not clear to students to which office complaints should be made. In the 1983 incident, the Special Review Committee found that "access to assistance was not apparent, not utilized or not available . . . because various departments involved did not communicate with one another effectively." In response to this problem, the Committee submits that the lead in the area of sexual harassment should be followed. Investigative and disciplinary power should be centralized, not delegated and diffused, to better ensure an expeditious, fair and efficient process.

Another concern of the Committee is the vagueness of current standards of conduct. The current system has the advantage of flexibility. However, this can lead to confusion and ambiguity, as well as inconsistency. It would be helpful to formulate at least in a broad way the threshold at which racial intolerance becomes a University offence.

A third area in which the Committee found some cause for concern was the fact that investigative and judicial mechanisms are combined in the same officers. This

raises questions as to whether procedures to date are susceptible to complaints of a reasonable apprehension of bias. There is not any evidence or suggestion of actual bias in past decisions; but the nature of the institutional framework at York has left it open to accusations of a reasonable apprehension of bias. With regard to disciplinary decisions, the investigative and decision-making functions should be separated. A consideration of this recommendation is a useful starting-point for any further discussions of reforms to the system. It is submitted that the separation of functions in the process would remove any perception of potential arbitrariness.

Another aspect of the current process meriting discussion is the composition of the disciplinary tribunal. In the past at the level of the University this responsibility has been handled by one person (now usually the Provost). Consideration will be given below as to whether a more representative body is appropriate in the context of issues of racial intolerance.

The need for formulating a broad threshold beyond which racial intolerance becomes a University offence stems primarily from (1) the need for a measure of clarity so as to be fair to those involved, and (2) the need to set guidelines which advisors, investigators and adjudicators may use when involved in a case. The term "University offence" is used in this report to signify a breach of University policy serious enough for the University to investigate and, if necessary, punish. This breach is usually manifested in conduct or acts which have been expressly forbidden by the University and which have a significant connection to it in that they have taken place on University property and have been perpetrated by members of the University community (including students, faculty, administrators and support staff).

The decision to instigate formal procedures over allegations of racial harassment rests with the individual affected. In the future, this individual should have access to a centralized authority similar to the Sexual Harassment Education and Complaint Centre. Part of the proposed authority's duties would consist of advising alleged victims of discrimination of their rights and options. In doing so they should have recourse to a

set of guidelines which describes the type of incident more likely to require adjudication through formal procedures (i.e., a full disciplinary hearing).

In assessing the seriousness of a particular case the coordinator at the centre should have regard to such factors as the duration of the alleged incident (whether the incident is composed of one event or a whole series of events connected over time) as well as the type of incident reported.

Obviously, there are different classes of incidents which merit different responses. Where either physical violence, apprehended violence or discriminatory marking is a major element of a particular complaint, it is more likely that recourse would be made forthwith to formal adjudication. This is especially true where the alleged conduct has been of a persistent nature, recurring often over a relatively short period of time.

If such guidelines are adopted, they should be included as part of a new more comprehensive statement concerning race relations on campus. This statement should state forcefully and clearly that racial intolerance of any kind is not to be tolerated on campus and that those who engage in this kind of activity may well be subject to disciplinary procedures. Efforts should be made so that the information included in the statement accurately reflects any changes in policy and procedures.

In sum, when racist acts or conduct have sufficient connection to the University (in that they take place on campus and are perpetrated by members of the University community) they may be considered university offences. By this it is meant that the University has the right and the responsibility to investigate these incidents, hold hearings, and where necessary, appropriately punish the offenders. This is particularly so when the act or behaviour in question surpasses the thresholds of seriousness described above.

Let us now discuss the forms of dispute resolution most appropriate for dealing with racial incidents at York.

First, as recommended by the Special Review Committee and as earlier incorporated in the University's procedures for sexual harassment, centralized procedures are recommended. As put in the report on sexual harassment, with such an approach,