

Ontario
Human Rights
Commission

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November 8, 2021

Brian D. Lawson
Chair of the Governing Council
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University of Toronto
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Trevor Young
Acting Vice-President & Provost
Office of the Vice-President & Provost
University of Toronto
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Dear Mr. Lawson and Mr. Young:

Re: *University Mandated Leave of Absence Policy review*

I hope this letter finds you well. I am writing about the current review of the University of Toronto's *University Mandated Leave of Absence Policy* (UMLAP).

As you may be aware, the Ontario Human Rights Commission (OHRC) raised concerns with the UMLAP several times before it was approved by the Governing Council, both in writing and in meetings with University of Toronto staff.

The OHRC expressed concerns that the treatment of students contemplated in the UMLAP may result in discrimination based on mental health disability contrary to the *Human Rights Code* (Code). These concerns included the UMLAP falling short of meeting the duty to accommodate under the Code, not being consistent with the OHRC's *Policy on ableism and discrimination based on disability*, and the UMLAP appearing to allow the university to immediately put the student on leave and withdraw essential services (housing, health and counselling services) at a time when the student is in crisis and most in need of support.

While later versions of the policy addressed some of the OHRC's early concerns, the OHRC continued to have concerns with the final version. Following its release on May 17, 2018, former chief commissioner Renu Mandhane sent an email to former provost Cheryl Regehr, outlining the OHRC's continuing concerns with the UMLAP. These included that the threshold relating to risk of harm to the student, others or the

educational experience, does not require objective evidence of risk, or measures to accommodate and reduce the risk before assessing whether the threshold is met. The OHRC also expressed concern the UMLAP continues to allow the university to withdraw essential services (housing, health and counselling services) from students who pose a serious risk of harm to themselves, without considering the student's circumstances or the university's duty to accommodate under the *Code* before the leave is initiated. These concerns were not addressed in the final version of the UMLAP that was approved by the Governing Council on June 27, 2018.

On September 27, 2021, Professor Donald Ainslie commented on the OHRC's concerns, stating "there was a period where the Ontario Human Rights Commission had concerns about the policy, but those concerns were addressed in the revised policy that was eventually passed in 2018." This statement is not accurate, as the OHRC continued to have concerns with the revised version of the UMLAP, which was ultimately approved.

The OHRC understands that a review of the UMLAP is currently underway, in accordance with paragraph 79 of the UMLAP: "The Provost undertakes to review the policy in the third academic year of its operation, and to report to the Governing Council about that review." The OHRC has been following the progress of this review. We understand it is being conducted internally, led by Professor Donald Ainslie, Chair of the Department of Philosophy and Varsha Patel, Assistant Dean of Student Success and Career Support at the University of Toronto Scarborough, and has included several town hall sessions with students. The OHRC has reviewed the Presidential & Provostial Task Force on Student Mental Health final report and recommendations, which contained a recommendation to "Improve understanding of and ensure robust review of the University-Mandated Leave of Absence Policy." We also reviewed the Administrative Response to this report which stated:

We will work to improve understanding of the University-Mandated Leave of Absence Policy, and we will ensure that the Policy is reviewed robustly through the means provided in its section on Annual Reporting and Periodic Review. Our efforts will emphasize the compassionate intent of the Policy, clarify its scope and processes, and address common misconceptions about its implementation, while reiterating the University's strict adherence to legislation on privacy and the protection of personal health information.

The OHRC is pleased that the university states it intends to robustly review the UMLAP. However, the current review lacks several key components to ensure it is both robust and does not breach the rights of students. The focus of the review also appears to be on students misunderstanding the UMLAP and a consequent need for better communication to students, instead of on whether the UMLAP complies with the university's obligations under the *Code*.

The OHRC remains concerned that the UMLAP does not require objective evidence of risk, or the involvement of medical professionals when assessing whether the risk of

harm threshold is met. Also, in “urgent situations” it allows the university to withdraw services from a student who is in crisis and most in need of support and temporarily dispense with procedural safeguards, including providing accommodations to the student. That is why it is essential that the university conduct a proper review of the UMLAP to address the human rights concerns that the OHRC and others have raised. A proper review should consider the policy as written and its implementation and impact on students, and should include the following elements:

External review

The UMLAP and its implementation should be reviewed by a person with expertise in mental health and human rights. The external review should include a review of the circumstances in every case where the UMLAP was considered and/or applied, including an objective assessment of whether:

- The threshold was met and appropriate procedures were followed
- Accommodation was available to the student before and after the policy was invoked
- Services such as housing and access to campus health were maintained
- The university involved the police and if so, whether it was appropriate to do so in the circumstances.

The external review should also look at the process and conditions for re-entry.

The OHRC notes the importance of independent review in evaluating human rights compliance. For example, the OHRC’s *Policy on accessible education for students with disabilities* notes: “To bring about real organizational change, the education institution will also need to engage in regular, independent monitoring and evaluation.”

For conducting reviews of policies the OHRC states:

An internal review committee can be appointed for the purposes of conducting ongoing evaluation. However, the use of independent consultants or outside expertise can be particularly helpful in conducting this type of review and reporting back to senior management.

A review, evaluation and revision of an organization or institution’s vision statement and policy should occur on a periodic basis, with input from those affected by it. It is also prudent to conduct a review of situations in which complaints have been raised under the policy, how they were handled and where improvements can be made (See the OHRC’s *Policy and guidelines on racism and racial discrimination*).

Also, settlements and orders by the Human Rights Tribunal of Ontario in cases that raise systemic or public-interest concerns often require the involvement of an external expert to ensure *Code* compliance.

Given the concerns raised with the UMLAP by the OHRC and students, it is critical that the process include review by an independent external expert, and that the review consider the actual impact on students' human rights, not just their perception of the policy.

Intersectional issues

The review should also include an assessment of the UMLAP's impact on students who identify with intersecting protected grounds under the *Code*. It should examine the demographics of students who were subjected to the UMLAP if that can be ascertained, and consider whether students with intersecting *Code* grounds experienced any additional adverse impacts from applying the UMLAP. For example, racialized or international students with a mental health disability may experience additional stigma within their communities and/or consequences to their immigration study permits, and may be uniquely affected if the university involves the police.

Accessibility Services

A significant concern is whether students have meaningful access to accommodation to the point of undue hardship before and while they are subjected to the UMLAP. The review should examine the relationship between the UMLAP and Accessibility Services, as well as other supports available to students such as mental health services offered through Health and Wellness. The review should evaluate whether, based on the current availability levels of these services, students have meaningful access to accommodation to the point of undue hardship before the UMLAP is invoked. The review should look at potential barriers to accessing accommodation such as onerous documentation requirements, privacy issues and delays in meeting with accessibility advisors, and ensure compliance with the requirements set out in [*With learning in mind*](#), the OHRC's **inquiry report on systemic barriers to academic accommodation for post-secondary students with mental health disabilities**.

Student involvement

Students, and student organizations, must have an adequate opportunity to be involved in the review process. To facilitate a transparent consultation process with students, the university should provide the information they need to be able to provide meaningful input, and make any reports by reviewers publicly available, with identifying information redacted. Student organizations should be informed of the timing of the steps in the process, and be given an opportunity to address the University Affairs Board and the Governing Council when it is considering the review of the UMLAP.

The OHRC acknowledges that the university's review of the UMLAP is currently underway and that additions to the review process may take more time. We urge the university to take the time to make sure it conducts a proper review, which includes the components in this letter, to identify and address human rights concerns that may arise from the UMLAP and its implementation. The OHRC asks that it be informed of the

status of the review, including when it will be before the University Affairs Board and the Governing Council.

I look forward to receiving a response to this letter. Please contact me directly if you wish to discuss this further. Consistent with our mandate to report on the state of human rights in the province, and in the interest of transparency and accountability, the OHRC will make this letter public.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia DeGuire', is written over a light grey grid background.

Patricia DeGuire
Chief Commissioner

cc: Meric S. Gertler, President, University of Toronto
Timothy Harlick, Secretary, University Affairs Board
Hon. Doug Downey, Attorney General
OHRC Commissioners



November 16, 2021

Chief Commissioner Patricia DeGuire
Ontario Human Rights Commission
180 Dundas Street West, 9th Floor
Toronto, ON M7A 2G5

Dear Chief Commissioner DeGuire,

Re: *University-Mandated Leave of Absence Policy* review

I am writing on behalf of the University administration with respect to your letter of November 8, 2021, regarding the University's current review of the *University-Mandated Leave of Absence Policy* (the *Policy*).

The University appreciated the feedback provided by the OHRC during the original drafting and approval of the *Policy*. As part of that process, the University engaged in a robust consultation process and took into consideration comments received from various sources, including students, staff, faculty, experts in postsecondary student mental health, and the OHRC. The University also obtained external expert legal review of the draft *Policy* and our human rights obligations under the *Ontario Human Rights Code*. We believe that the current *Policy* is fully compliant with the *Ontario Human Rights Code* and addresses the concerns raised by the OHRC in January and May 2018.

Prior to its formal approval by University governance, revisions were made to the *Policy* to address concerns raised by the OHRC and to reinforce the principle that the application of the *Policy* remains subject to the duty to accommodate to the point of undue hardship. Accommodation is considered and available throughout the process, including when students are ready to return to their studies.

The University has a duty to protect the health and safety of all members of our community. The *Policy* is intended to provide compassionate and non-punitive options for students who are exhibiting serious and concerning behaviour that threatens their own or others' safety, or results in negative and material impacts on the learning environment of others.

Although the *Policy* is deployed rarely¹, it provides important protections for students – including facilitating the provision of services and supports to enhance opportunities for affected students to be successful in their university education. When the *Policy* is invoked, students’ access to essential supports is not restricted. Rather, the student is assigned a Case Manager and a Student Support Team is established to ensure that the student is fully supported in accessing services and supports, both internal and external to the University, that are appropriate to their individual circumstances. To this end, the University has arranged for tuition refunds, ongoing access to health and wellness services, continuation of health and dental benefits through respective student societies, temporary and long-term housing, and arrangements to maintain academic progress to support students going through this leave process. All Student Support Teams have included a licensed Psychiatrist with expertise in postsecondary student mental health. The University Ombudsperson has reviewed the handling of the cases where the *Policy* has been deployed and has confirmed that they have been handled fairly, with strict adherence to the *Policy*, as well as with compassion².

Outside of the *Policy*, several academic divisions across the University have established voluntary leave policies for international students, providing them an opportunity to take a temporary leave from their studies without compromising their student visas.

The University is committed to the principles of equity and inclusion as foundational values which underpin all of our policies and practices. We recognize the need to ensure that students who identify with multiple intersecting protected grounds under the Ontario Human Rights Code are not adversely impacted by the application of the *Policy*. Due to the small number of students who have been placed on a leave under the *Policy*, we have been unable to release demographic information without the risk of identification. However, as the *Policy* enters its fourth year of existence, we anticipate that we will be able to provide aggregate demographic data moving forward. Since accommodations and consideration under the *Policy* are all approached on an individual basis reflecting the circumstances of the student, intersectional issues can be identified and addressed on a case-by-case basis.

The University is aware that some students and community members continue to have questions and concerns about the scope and application of the *Policy*. As you have noted in your letter, in February 2021, the University launched a review in accordance with paragraph 79 of the *Policy*, which states that “The Provost undertakes to review the policy in the third academic year of its operation, and to report to the Governing Council about that review.” The Reviewers were

¹

	2018-19	2019-20	2020-21	Total
University-Mandated Leaves of Absence	6	1	4	11
Voluntary Leaves	2	0	0	2
Totals	8	1	4	13

Annual Report on the *University-Mandated Leave of Absence Policy* - [2018-2019](#), [2019-2020](#), [2020-2021](#)

Total student enrolment for the University of Toronto for Fall. 2020-2021 was 95,055.

² [University of Toronto Office of the Ombudsperson 2019-2020 Annual Report](#)

carefully selected for their demonstrated commitment to student engagement, support, and inclusion; their deep knowledge of the complex structure of the University of Toronto; and their current positions which are external to the development or implementation of the *Policy*.

The scope of the review, as outlined on the online consultation website³, includes:

- Analysis of the intended purpose of the *Policy* and the extent to which the *Policy* and its application to date align with that purpose.
- Review of the definition of terms for clarity and consistency.
- Assessment of the steps outlined for invoking the *Policy* for clarity, consistency, and the extent to which they align with the compassionate intent of the *Policy*.
- Consideration of the extent to which the *Policy* is understood by students, staff, and faculty across the University.
- Consideration of any unintended outcomes of the *Policy*.
- Evaluation of the annual reporting and periodic review requirements.

The Reviewers are engaging in a robust consultation process designed to gather input from students, staff, and faculty across the three campuses. To date, the consultation process has included:

- Four virtual town halls that were open to all members of the University community.
- Individual meetings with the five student unions that represent all students at U of T, in addition to several other student organizations.
- Five student-led consultation sessions hosted by the Student Life Innovation Hub.
- Review of data related to the *Policy* previously collected by the Student Life Innovation Hub through consultations that took place as part of the 2019 *Presidential and Provostial Task Force on Student Mental Health*.
- Meetings with staff and faculty across all three campuses, including counselors, physicians, crisis response staff, equity officers, Deans of Students, Registrars, Academic Deans, Principals, mental health experts, and other senior administrators.
- Consultation with the University Ombudsperson.
- An online consultation form, which has been available through the consultation website to all members of the University of Toronto community since the launch of the review, and will remain open until November 30, 2021.

The Reviewers considered research and other materials related to university and college leaves of absence and mental health. They also attended workshops on this issue sponsored by Active Minds, a US non-profit organization “supporting mental health awareness and education for young adults.” We also note that some student organizations/unions submitted their own recommendations to the Reviewers as part of the consultation process.

³ <https://consultations.students.utoronto.ca/review-of-the-university-mandated-leave-of-absence-policy/>

Beginning in mid-November, the Reviewers will be attending a series of University governance meetings across the three campuses to share the themes that have emerged from their consultations and their preliminary recommendations for information and discussion. Each of these governing bodies includes student representation and, as always, students are welcome to submit a request to speak. The process and timeline for the review, including the governance path, have been shared with student unions through multiple channels including at their regularly scheduled meetings with the Vice-Provost, Students. The timeline for the review has been extended twice in response to requests from student societies to ensure they had adequate opportunity to consult their members and submit their feedback.

The key themes and the preliminary recommendations from the review are publicly available on the Governing Council website⁴

At the conclusion of the consultation process in late December, the Reviewers will finalize their recommendations. Following careful consideration of their recommendations, any resulting amendments to the *Policy* are expected to move through the University governance process for ultimate consideration for approval later in the new year. This will provide an additional opportunity for feedback from members of the University community, including students. As we have done in the past, the *Policy* and any proposed amendments will be reviewed by both internal and external legal counsel with expertise in human rights law.

I appreciate you sharing your further questions related to the *Policy*; the University will consider them carefully as we contemplate any possible amendments.

Sincerely,



Trevor Young
Acting Vice-President and Provost

cc: Meric Gertler, President
Brian Lawson, Chair, Governing Council
Timothy Harlick, Secretary, University Affairs Board
Hon. Doug Downey, Attorney General
OHRC Commissioners

⁴ https://governingcouncil.utoronto.ca/system/files/agenda-items/2021115_UTSCcc_06.pdf