

SIR SANDFORD FLEMING COLLEGE

POLICY MANUAL

POLICY NO. 3-311	APPROVED BY: Board of Governors
DATE APPROVED: February 4, 1998 #1	SUPERSEDES:
Reviewed and Revised: March 25, 2009 #3	• 94-05
SUBJECT: HARASSMENT/DISCRIMINATION PREVENTION	

Sir Sandford Fleming College is committed to fostering a work and study environment that is free from discrimination and harassment as enshrined in established provincial and federal statutes. These include, but are not limited to the: Ontario Human Rights Code, Accessibility for Ontarians with Disabilities Act (2005) and its related Standards Regulations, Pay Equity Act, Employment Standards Act, and Charter of Rights and Freedoms. These statutes comprise a complex legislative scheme designed to protect the right of every person in Ontario to be free from harassment and discrimination.

The Ontario Human Rights Code prohibits discrimination or harassment based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, disability, age, marital status, family status, and record of offenses.

The Code requires that a person who has the authority to prevent or discourage harassment and discrimination may be held responsible for failing to do so. All persons in positions of authority have a particular legal duty to be alert to signs of harassment and discrimination in the workplace and/or educational environment. They must take action to address any incidents of which they are aware or ought reasonably to have been aware. This also applies to faculty because of their unique role as managers/facilitators of the learning environment. Decisions made by courts and human rights tribunals in recent years have emphasized this responsibility.

Sir Sandford Fleming College recognizes that a harassment and discrimination free work and study environment is essential to effective business practices in today's global market and that the maintenance of such an environment is its legal and social responsibility. Such an environment allows all employees and students to develop to their potential and fosters excellence in educational endeavours for students, staff, faculty and the community.

1.0 OBJECTIVES OF THE POLICY

This policy is designed to accomplish the following objectives:

To provide the principles and mandatory requirements essential to creating a work and learning environment that is free from discrimination and harassment.

To maintain, through proactive measures and enforcement, such a work and learning environment.

To identify College responsibilities for the maintenance of such a work and study environment.

To provide a mechanism for resolving harassment and discrimination incidents which provides procedural fairness for all persons involved.

2.0 PRINCIPLES OF THE POLICY

The College endorses its legal responsibility to provide a work and learning environment free from discrimination and harassment.

The College acknowledges that it has a social responsibility to enhance the development of values, attitudes, knowledge and practices that foster excellence, fairness and respect among its students, staff, faculty, governing bodies and community; to ensure access and participation in all aspects of college life; and not to condone harassment or discrimination.

The College acknowledges that groups/individuals covered under this policy have a right to full participation in employment and education and confirms it is committed to the goal of eliminating discriminatory barriers where and if they exist.

The College recognizes that achieving equity in employment and education requires institutional support, pro-active educational programming, effective complaints procedures, cooperation from every member of the college community, and informed leadership at every level of the institution.

Management staff at all levels have a legal obligation to act expeditiously upon information concerning incidents of discrimination and harassment.

The complainant and respondent are to be treated fairly and given equal opportunity to present their version of events, while preserving the dignity, privacy and self-respect of all persons involved.

The College has a high regard for, and will strive to ensure, confidentiality as a top priority throughout mediation/complaint processes subject to disclosure obligations required by law.

This policy applies both on and off campus to all members of the college community in the pursuit of College duties, or while engaged in College related activities as defined elsewhere in this policy.

The College recognizes the need to resource the implementation of equity policies, procedures and guidelines.

It is the policy of Sir Sandford Fleming College to endorse and apply the principles of the Ontario Human Rights Code and the Accessibility for Ontarians with Disabilities Act (2005).

The Code provides that special programs put in place to address discrimination are not discriminatory. The term "special program" includes any program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of prohibited discrimination.

3.0 PROHIBITED GROUNDS

This policy and the complaint procedures will include coverage of harassment and discrimination for all of the following grounds as defined in the Ontario Human Rights Code:

- race
- ancestry
- place of origin
- colour
- ethnic origin (including language, dialect, or accent)
- citizenship
- creed

- sex
- sexual orientation
- disability
- age (18-65 for employment purposes)
- marital status
- family status
- record of offenses (provincial or pardoned federal - employment only)

These will be referred to in this policy and the complaint procedures as the "prohibited grounds".

3.1 DEFINITIONS AND EXAMPLES

(a) Harassment may be one or a series of vexatious comment(s) or conduct related to one or more of the prohibited grounds that is known or ought reasonably to be known to be unwelcome/unwanted, offensive, intimidating, hostile, derogatory, or inappropriate.

This may include, but is not limited to: gestures, remarks, jokes, taunting, innuendo, display of offensive materials, offensive graffiti, threats, verbal or physical assault, academic penalties, stalking, slurs, shunning or exclusion related to the prohibited grounds.

Types of Harassment include:

Sexual Harassment may be one or a series of comment(s) or conduct of a gender-related or sexual nature that is known or ought reasonably to be known to be unwelcome/unwanted, offensive, intimidating, hostile, derogatory, or inappropriate.

This may include, but is not limited to: demeaning gestures, remarks and jokes, slurs, taunting, innuendo based on gender; unwanted physical contact, leering, inappropriate comments about clothing, physical characteristics or activities, unwanted questions or comments about one's private life, the display of sexually offensive material, solicitation, unwanted attention; implied or expressed promise of reward or benefit in return for sexual favours; implied or expressed threat or act of reprisal if sexual favours are not given; sexual assault. (Sexual assault is an offense under the Criminal Code, to be referred to appropriate authorities. The College will take appropriate steps to meet its mandate to provide a safe environment.)

Racial Harassment may be one or a series of comment(s) or conduct of a racial nature that is known or ought reasonably be known to be unwelcome/unwanted, offensive, intimidating, hostile, derogatory or inappropriate.

This may include but is not limited to: demeaning remarks based on race, jokes about race or ethnicity, inappropriate displays of racial stereotypes, racial/ethnic slurs, inappropriate comments about cultural differences (e.g. clothing/dress, accent), unwanted questions or comments about one's private life, physical assault.

Gender/Sexual Orientation Harassment may also consist of offensive comments and/or actions, and/or exclusion from that to which a person(s) would otherwise have a right or privilege, which demean and belittle an individual(s) and/or cause personal humiliation on the basis of gender and/or sexual orientation.

Disabled Harassment may also consist of offensive comments and/or actions, and/or exclusion from that to which a person(s) would otherwise have a right or privilege, which demean and belittle an individual(s) and/or cause personal humiliation on the basis of a handicap.

(b) Discrimination may be one or a series of action(s) or behaviour(s) based on a prohibited ground that results in the unfavourable or differential treatment which negatively affects the employment status of an employee or academic status of a student.

This may include, but is not limited to, the refusal to provide goods, services or facilities, exclusion from employment or employment benefits, unequal treatment in employment, exclusion of support persons or service animals for disabled persons, and/or refusal to work with, teach, or study with someone based on a prohibited ground of discrimination.

There are two types of discrimination which are prohibited under the Ontario Human Rights Code: Direct Discrimination and Indirect or Adverse Impact Discrimination.

Direct Discrimination: Direct discrimination refers to differential treatment which negatively affects an employee or student and which is directly related to a prohibited ground of discrimination. Such differential treatment need not be intentional or overt to constitute direct discrimination.

Indirect or Adverse Impact Discrimination: Indirect or adverse impact discrimination occurs where a requirement, qualification or factor which appears neutral results in the exclusion, restriction or preference of a person because of his or her membership in a group identified by a prohibited ground of discrimination.

Action(s) or behaviour(s) which are consistent with or permitted by the Ontario Human Rights Code shall not constitute discrimination for the purposes of this Policy.

(c) Negative Environment: One or a series of comments or conduct that creates a negative environment for individuals or groups and are related to the prohibited grounds. The comment or conduct has the effect of "poisoning" the work or study environment. A complainant does not have to be a direct target to be adversely affected by a negative environment. It includes conduct or comment that creates and maintains an offensive, hostile, or intimidating climate for study or work.

Examples include exposure to graffiti, signs, cartoons, remarks, exclusion, adverse treatment related to one or more of the prohibited grounds.

(d) Hate/Discriminatory Material: It is an offense under the Criminal Code of Canada to publish, display, transmit, or distribute before the public or direct to an individual, or cause to be published, displayed, transmitted or distributed within Sir Sandford Fleming College or through the use of College resources, with the intent of inciting others to discriminate, any notice, sign, symbol, emblem or other representation that expresses or implies discrimination or an intention to discriminate. In addition, it is a violation of the Ontario Human Rights Code to publish or display before the public, or cause the publication or display before the public, of any notice, sign, symbol, emblem or other similar representation that indicates the intention of the person to discriminate, or is intended by the person to incite discrimination, contrary to the Code.

4.0 DEVELOPMENT AND USE OF EDUCATIONAL/PROMOTIONAL MATERIAL

Curriculum and teaching methodology should reflect the diversity and changing nature of racial, cultural and religious groups. The impact on society of gender, social class, age, disability, sexual orientation and geographic origin should also be reflected in the curriculum.

Teaching materials that may contain discriminatory bias and stereotypes should be used exclusively in a critical context in order that students become open-minded, discerning and analytical thinkers, aware of historical and current values, attitudes and behaviours. It is the responsibility of the faculty member to advise students of the purpose for and context within which such materials are used.

All College programs should strive for a teaching environment which includes rather than excludes, promoting understanding and respect for all students and staff.

College promotional materials will portray and acknowledge the diversity of Canadian Society.

4.1 ACADEMIC FREEDOM

This policy is not intended to inhibit academic freedom, but all faculty in exercising this freedom must respect the human rights, dignity and integrity of their colleagues and students within our academic and learning environment.

5.0 COVERAGE

This policy, within the work/study environment, will apply to:

- full-time, part-time, contract, temporary, casual, partial load, and sessional employees;
- full-time and part-time students/clients;
- members of the Board of Governors;
- members of permanent advisory and ad hoc committees of the College;
- members of unions, societies and associations which have a direct relationship with Sir Sandford Fleming College;
- contractors who provide products/services or research;
- visitors or guests who have no ongoing connection to the institution but are on campus;
- individuals who are directly connected to any joint College initiatives.

5.1 This policy and the complaint procedures will apply in cases concerning the actions of College employees and students:

- a) occurring within or affecting people or property within the physical boundaries of the College;
- b) occurring on or affecting College owned or controlled property, including student residences;
- c) occurring with the use of computer and telephone systems, and college and private vehicles being used for college business or for travelling between work and study locations;
- d) at a College-sponsored event.

For the purposes of this policy, the words "College-sponsored event" shall be broadly construed and will include events sponsored by the Student Administrative Council (Sutherland), the Student Association (Frost), and other bodies affiliated with the College.

Incidents occurring off campus which have no or little likelihood of any impact on the work/study environment at the College would be pursued through the regular Human Rights Commission processes or other processes.

5.2 EXTERNAL RELATIONSHIPS

Visitors, contractors, and/or suppliers of services who attend a Sir Sandford Fleming College campus location will be subject to complaints if they engage in prohibited conduct. All contractual relationships entered into by the College will be governed by a standard contract compliance clause stating that contractors must comply with the Ontario Human Rights Code and relevant College policies. Breach of the clause may result in penalties, cancellation or debarment if a contractor is found in violation of the College's policy or the Ontario Human Rights Code.

Students completing work placements are covered by this policy and the Ontario Human Rights Code. Work placement agencies will be made aware of this policy through the Student Work Placement Contract and a Harassment & Discrimination Prevention Policy pamphlet which will be included in the package of information sent to agencies. If an incident occurs, College representatives will engage in discussions with the student(s) and agency to resolve the issue.

6.0 REPRISAL

Subject to Section 6.0 of the Procedures - Malicious/Fraudulent Complaints, every individual has the right to file a complaint of discrimination or harassment, participate or cooperate in an investigation, provide information relevant to the complaint, in any role under the policy and/or procedures, without fear of retaliation or reprisal. Retaliation or reprisals will be treated as harassment and/or discrimination.

7.0 PREVENTION & EDUCATION

This policy promotes a proactive approach that includes education, prevention and complaint resolution. The College is committed to promoting widespread understanding about what constitutes harassment and discrimination and why, in its many forms, it is so harmful to its victims and dysfunctional to the institution.

This policy forms the basis of a framework from which will be developed and implemented equity policy and procedures in the following areas:

- Gender Neutral Language;
- Employment Equity (revision);
- Disability Accommodation;
- Anti-Racism;
- Education Equity;
- Aboriginal Education.

7.1 AWARENESS OF THE POLICY

The College will ensure awareness of this policy by:

- Making a copy of the policy available to any existing and new member of the College. Locations where the full document can be accessed will be posted in high profile locations on each campus, as well as in electronic format and other formats that are available at the College.
- Providing training to persons with managing, supervising, and leadership responsibilities. The training will cover what constitutes harassment and discrimination, the resolution process, complaint procedures and mechanisms available under the Policy.
- Conducting ongoing awareness campaigns.

8.0 COMPLAINT PROCESS

This policy applies in instances where there is the potential to adversely impact on a person's work or study performance or create a poisoned work or study environment. Incidents occurring off campus which have no or little likelihood of any impact on the work/study environment at the institution will be pursued through other processes.

Criminal matters occurring on college campuses will be referred to the police in accordance with established security procedures. The College will also take any appropriate steps to meet its mandate to provide a safe environment.

In any situation, this policy does not preclude a complainant from initiating an alternative complaint procedure, for example, to use the criminal process (if the action warrants), launch a civil lawsuit, complain to the Ontario Human Rights Commission, or (if a unionized employee) access the grievance procedures outlined in the two collective agreements.

Because the intent of these procedures is educational and preventative rather than punitive, the process may stop at any step. The complainant has the right to withdraw the complaint at any time during the process up to the conclusion of the formal appeal process. The complainant must

understand that withdrawal of the complaint will result in discontinuation of the investigation, and will be taken to mean that the complainant has abandoned his/her claim that harassment or discrimination has occurred.

In appropriate cases, the College retains the right to proceed with the complaint even after a complainant has withdrawn from the process. The complainant must understand that the College may decide to take action in order to fulfill its responsibility to provide a safe environment. All information, evidence and circumstances will be carefully considered when deciding upon a course of action where there is a complaint.

In appropriate circumstances (e.g., where personal safety is at risk or a strongly negative environment exists), the College can take immediate interim measures (e.g., separating the complainant and respondent) to stabilize the situation before the complaint process is initiated or concluded. Where such measures are taken, a time frame for review of the situation will be established.

A complainant or respondent may choose to seek legal advice at her/his own expense. However, legal counsel cannot participate in proceedings under this procedure. Complainants and respondents may bring a college representative of his/her choice (e.g., union member, student representative, parent/guardian, college counsellor) to any meetings throughout the proceedings.

This policy is supplemented by procedures which provide a mechanism to receive and resolve harassment and discrimination complaints within the College's obligations and rights under the Ontario Human Rights Code. The College acknowledges that it is not a court of law or a quasi-judicial system.

8.1 CONFIDENTIALITY

Throughout the complaint and fact finding process the College will treat all information as confidential except where a disclosure is required in order to investigate and/or resolve a complaint under this policy, and subject to the Freedom of Information and Protection of Privacy Act and the requirement to disclose information or give evidence as required by law, such as grievance arbitrations, Ontario Human Rights Commission proceedings, and judicial proceedings.

8.2 COLLEGE'S OBLIGATION TO ACT

The Ontario Human Rights Code requires that a person who has the authority to prevent or discourage harassment may be held responsible for failing to do so. All college members in positions of authority have a particular duty to deal with incidents of harassment or discrimination when they know of or ought reasonably to have known of the incident.

In order to comply with its legal obligation under the Ontario Human Rights Code, the College may, under appropriate circumstances, initiate a complaint procedure without a request to do so from a complainant. As well, where appropriate, the College may choose to continue with a procedure even after a complainant has decided to terminate the process.

8.3 COMPLAINTS PROCESSES

The College will provide both informal and formal means by which individuals may choose to address an issue falling within this policy. These complaint processes are identified in the procedures accompanying this policy.

Harassment & Discrimination Prevention - Complaint Procedures

1.0 Overview of Complaints Processes

Under these procedures, a complaint may be addressed using informal processes (options 1 and 2), formal mediation, and/or formal investigation.

A complaint must be filed within six (6) months of the circumstances giving rise to the complaint, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. Substantial prejudice, as defined by the Ontario Human Rights Commission, exists where it can be shown that proceeding with the complaint will deprive the respondent of an essential right such as the right to a complete defence (e.g., the destruction of material evidence by unforeseen event such as fire, flooding, etc.; death or significant incapacity of material witnesses). The passage of time or inconvenience in finding witnesses or locating documents do not amount to substantial prejudice.

Two or more complaints alleging a violation engaged in by the same person, or having facts in common, may be dealt with in the same proceeding.

A person who is the subject of a complaint made under these procedures and who has reason to believe that the complaint is vexatious, in bad faith, or itself a form of harassment, has the right to file a complaint.

An overview of the complaints processes follows:

Informal Process - Option 1 (Discussion)

- Initiate a discussion with the person giving rise to the complaint; and/or
- Approach a Harassment & Discrimination Advisor (H&D Advisor) for information and/or assistance in discussing the issue with the person giving rise to the complaint.

Informal Process - Option 2 (Fact-Finding)

- For employees, notify the person to whom the respondent reports. For students, notify the Dean of the respondent's program.

Formal Mediation

- Either party may request mediation. Both parties must agree to mediation before it can proceed.

Formal Investigation

- Submit a written request to the Human Rights Officer to initiate a formal investigation. This process is available when the complainant is dissatisfied with the results of informal processes or mediation or when, due to the severity or seriousness of the allegations, it appears that the complaint should be addressed from the onset through formal investigation.

Systemic Discrimination / Issues of Public Interest

In the event that a College policy, procedure or practice is the subject of a complaint based on the prohibited grounds of discrimination, the complaint is to be brought to the attention, orally or in writing, to the College Administrator who is responsible for that policy, procedure or practice. The Administrator will engage in discussion, informal fact-finding, or formal investigation, whichever applies depending on the form and substance of the complaint, and will follow the principles and timelines of the applicable process described in section 2.1, 2.2 or 2.4.

2.0 Informal Process

2.1 Option 1: Discussion

The goal of this process is to address incidents in a respectful and timely manner that is as close to the source of the complaint as possible and appropriate. Therefore, a person who has, or believes s/he has, a complaint under the Code or under this policy may choose to initiate a discussion with the person whose behaviour gives rise to the complaint. This action gives the individual an opportunity to inform the offending party of the nature of the distress experienced, the remedy requested, and to give him or her an opportunity to respond to the complaint.

The complainant should keep a record of occurrences, including dates, names of witnesses, times and details.

The College recognizes that power differentials may exist in some disputes making it difficult for the complainant to initiate a discussion with the respondent. An individual may choose to approach a College Harassment and Discrimination Advisor (H&D Advisors) for information. Harassment and Discrimination Advisors are available to assist complainants and respondents to maximize the opportunity to resolve the conflict.

The role of H&D Advisors includes but is not limited to the following:

- provide the individual with a copy of the College's policy and procedures on Harassment and Discrimination;
- if appropriate, provide information about various ways to resolve the problem and avoid future occurrences;
- inform complainants and respondents of options;
- inform complainants and respondents of appropriate time-lines;
- accompany individuals in meetings or discussions if requested.

Note: It is not the role of the H & D Advisor to advise whether or not harassment or discrimination has occurred.

Harassment and Discrimination Advisors include, but are not limited to:

For Employees:

Designated Members, Diversity Committee
College Counsellors
Health Nurses
Union Stewards
Supervisors (or designates)
Human Resources Consultants
Human Rights Officer.

For Students:

College Counsellors
Health Nurses
Student Advisors
Designated members of the Student
Administrative Council (Sutherland Campus)
and the Student Association (Frost Campus)
Staff at College-owned Residences
Deans and Supervisors (or designates)
Designated Members, Diversity Committee
Human Rights Officer

The complainant can decide to do nothing more than meet with an H&D Advisor and no further action will be taken if the complainant does not wish to proceed beyond informal consultation. However, under appropriate circumstances, the College reserves the right to take action (within the context of its existing policies and procedures) that it deems appropriate on the basis of information received, to meet its mandate to provide a safe working and learning environment.

Any complainant or respondent is encouraged, but not required, to meet with a College counsellor to explore the situation in its fullest context.

Statistical information such as the type of harassment/discrimination reported will be recorded in an

anonymous manner and sent to the Human Rights Officer.

2.2 Option 2: Fact-Finding

If the complainant is not satisfied with the outcome of discussions at Option 1, or if s/he does not wish to utilize this step, s/he may proceed to Option 2 - Fact-Finding.

If the Respondent is an Employee:

The complainant initiates a fact-finding process by notifying the supervisor (the person to whom the respondent/employee reports or, if appropriate, the person at the next level of supervision) orally or in writing with the following details:

- the nature and substance of the complaint;
- all relevant details including dates, times, and names of witnesses;
- requested outcome.

Within five (5) working days of receiving the complaint, the supervisor meets with the complainant and the respondent, separately or together, to attempt to obtain a satisfactory resolution. The supervisor will share details of the complaint with the respondent, including a copy of a written complaint if one exists.

The complainant and the respondent will be strongly encouraged to be accompanied by a third party in a supportive capacity. This may be a Union member. A third party may not speak on behalf of the complainant or respondent.

The supervisor may request the production of documents or information from the complainant, respondent, witnesses or other resources that is relevant to the fact-finding process.

Having considered all information provided, the supervisor will make a determination based on the "balance of probabilities" which means that it is either more likely or not likely that harassment or discrimination occurred. Should the complaint be substantiated, the supervisor will make a determination of appropriate sanctions/ remedies as applicable (see section 5.0). Should the complaint not be substantiated, the supervisor will determine whether the complaint is proven to be malicious or fraudulent (see section 6.0).

The results of the meeting(s) will be communicated to both the complainant and the respondent, orally or in writing, within ten (10) working days of the meeting.

Where, as a result of an informal fact-finding process, systemic bias is determined within any College policy, procedure and/or practice, the supervisor will recommend actions to the Human Right Officer which may include amendments, revisions or elimination of existing College policies, procedures or practices.

The supervisor will forward statistical documentation regarding the outcome of the informal resolution to the Human Rights Officer within ten (10) working days.

Timelines may be extended if delays are incurred in good faith. This decision will be made by the supervisor and communicated to all parties involved.

The supervisor may appoint a designate to carry out his/her responsibilities under this procedure.

If the Respondent is a Student:

The complainant initiates a fact-finding process by notifying the Dean of the respondent student's Program, orally or in writing, with the following details:

- the nature of the complaint;

- all relevant details including dates, times, and names of witnesses;
- requested outcome.

Within five (5) working days of receiving the complaint, the Dean meets with both the complainant and the respondent, separately or together, to attempt to obtain a satisfactory resolution. The Dean will share details of the complaint with the respondent, including a copy of a written complaint if one exists.

Both the complainant and the respondent will be strongly encouraged to be accompanied by a third party in a supportive capacity. A third party may not speak on behalf of the complainant or respondent.

The Dean may request the production of documents or information from the complainant, respondent, witnesses or other resources that is relevant to the fact-finding process.

Having considered information provided by the complainant and respondent, the Dean will make a determination based on the "balance of probabilities" which means that it is either more likely or not likely that harassment or discrimination occurred. Should the complaint be substantiated, the Dean will make a determination of appropriate sanctions/remedies as applicable (see section 5.0). Should the complaint not be substantiated, the Dean will determine whether the complaint is proven to be malicious or fraudulent (see section 6.0).

The Dean will communicate the results of the meeting(s) to both the complainant and the respondent, orally or in writing, within ten (10) working days of the meeting.

Where, as a result of an informal fact-finding process, systemic bias is determined within any College policy, procedure and/or practice, the Dean will recommend actions to the Human Right Officer which may include amendments, revisions or elimination of existing College policies, procedures or practices.

The Dean will forward statistical documentation regarding the results of the resolution to the Human Rights Officer within ten (10) working days.

Timelines may be extended if delays are incurred in good faith. This decision will be made by the Dean and communicated to all parties involved.

The Dean may appoint a designate to carry out his/her responsibilities under this procedure.

3.0 Formal Mediation

Mediation is a process whereby a third party (the mediator) acts in a conflict resolution capacity between the opposing sides in a dispute with the goal of resolving the dispute.

Formal mediation will be provided by designated and trained mediators. Mediation may be requested through the Human Rights Officer.

Either party may at the outset request mediation and if the other agrees, mediation will proceed prior to any further administrative action.

Either party may request mediation at any time up to the conclusion of an investigation and the complaint may proceed to mediation if the parties agree.

The College will make available training sessions in the techniques of mediation to members of the community willing to assist in resolving disputes. An attempt will be made to recruit mediators from all

constituencies so that, in any case, it will be possible to find a neutral, impartial and mutually acceptable person to mediate.

If both parties agree to mediation, the Human Rights Officer will refer them to a mutually acceptable mediator who will receive copies of the written complaint and any written response. The mediation will normally be concluded within (20) twenty working days of the receipt of the case by the mediator.

If the mediation results in a mutually acceptable agreement, a copy of the agreement will be forwarded to the Human Rights Officer. If the complainant and respondent so agree, it may be made available to an investigator in the case of any future formal process. The agreement will be treated as confidential.

If the mediation does not result in an agreement, the complainant may choose to initiate informal options or a formal investigation within (5) five working days of the conclusion of the attempt to reach an agreement.

4.0 Formal Process

If the complainant is not satisfied with the results of informal processes, formal mediation, or for bona fide reasons does not wish to use these processes, s/he may request a formal investigation into the matter. This can be done by submitting a written request to the Human Rights Officer. This written request should be made as soon as possible, and must be within six (6) months of the last incident. Complaints submitted after this time period will be considered on an individual basis to ensure no substantial prejudice will result to any party affected by the delay. Substantial prejudice, as defined by the Ontario Human Rights Commission, exists where it can be shown that proceeding with the complaint will deprive the respondent of an essential right such as the right to a complete defence (e.g., the destruction of material evidence by unforeseen event such as fire, flooding, etc.; death or significant incapacity of material witnesses). The passage of time or inconvenience in finding witnesses or locating documents do not amount to substantial prejudice.

The written request must indicate the nature of the complaint, identifying times, dates, and places; the name(s) of the party or parties; and the names of any supporting witnesses. It must be signed and dated by the complainant and witnessed by the Human Rights Officer. The complainant must understand that s/he will be required to speak further on this matter, and that the person complained against will be given a copy of the complaint.

Once the Human Rights Officer has determined that the complaint falls under the jurisdiction of this policy, s/he will pass on the complaint to the Executive Officer of the respondent's division (eg. Vice President Academic, Vice President, Executive Director) for investigation.

The Vice President, Human and Strategic Development and the College President shall be notified by the Human Rights Officer of all formal investigations and informed of the progress, results and solution.

4.1 The Investigation Process

The Human Rights Officer will meet with the respondent to review the process and provide a copy of the written complaint.

The Executive Officer in consultation with the Human Rights Officer shall contract with an investigator who is external to the College community. If the Executive Officer is the named Respondent, the President shall select the investigator. If the President is the named Respondent, the complaint will be directed to the Vice President, Human Resources & Strategic Development, who will follow the procedure outlined in the Addendum: Investigating/Resolving Complaints Made Against the President/Board of Governors.

The selection criteria for the external investigator are as follows:

The investigator will have training and experience in what constitutes harassment & discrimination, the Ontario Human Rights Code, dispute resolution, and effective investigation procedures. S/he will also have received orientation to the College's Harassment and Discrimination Prevention Policy and its complaint procedures. The investigator will investigate the complaint in the following manner:

- The investigation will be limited to what is within the jurisdiction of this policy.
- The investigator will determine who will be interviewed.
- The respondent will be given a full and fair opportunity to respond to the complaint orally and in writing.
- The investigator reserves the right to refer the complaint back to the Human Rights Officer if a resolution is possible.

The investigator may request the production of documents that may be relevant to the investigation.

Both the complainant and the respondent will have the right and responsibility to provide all information as accurately and promptly as possible, including dates, times, location of allegations and any other information that would assist in the investigation.

The Human Rights Officer will be in communication with the investigator, the complainant, and the respondent until the process is concluded. The complainant and respondent will be informed on an on-going basis of the status of the investigation, but not of details of the interviews.

During the investigation, both the complainant and the respondent will be strongly encouraged to be accompanied by a third party in a supportive capacity. This may be a Union member. Should the complainant or respondent choose to acquire legal advice throughout the process, this is done at his/her own expense. Third parties cannot speak on behalf of parties to the complaint nor disrupt the proceedings.

The investigator will make every effort to complete the investigation of a human rights complaint within thirty (30) working days of receipt of the complaint. If it is necessary to exceed 30 days, this decision will be made by the Executive Officer and the complainant and respondent will be informed as soon as possible of the revised time line.

At the conclusion of the investigation, the investigator will write a draft report stating whether or not the complaint is substantiated based on the balance of probabilities (which means that it is either more likely or not likely that the incident(s) of harassment or discrimination occurred). This is consistent with the burden of proof required by civil law and is different from the "beyond a reasonable doubt" burden required by criminal law.

The investigator will provide a copy of the draft report to the complainant and the respondent who will have five (5) working days to notify the investigator, in writing, of any errors or omissions in the report, or in the description of the facts or allegations provided by each of them to the investigator.

The investigator will make any further enquiries or amendments, if required, in order to prepare the final written report. The written report will be submitted confidentially to:

- the complainant;
- the respondent;
- the Executive Officer of the respondent's division (e.g. Vice President Academic, Vice President, Executive Director);
- the College President;
- the Vice President, Human Resources & Strategic Development;
- the Human Rights Officer.

The Executive Officer/President reserves the right to receive the report. The investigator's notes and transcripts (if applicable) will be turned over to the College.

If a complaint is found to be substantiated, the Executive Officer/President will determine appropriate remedies/sanctions as applicable (see section 5.0). If a complaint is not substantiated, the Executive Officer/President will determine whether the complaint is proven to be malicious or fraudulent (see section 6.0). The results of the Executive Officer's/President's determination will be communicated in writing to the complainant and the respondent, under an obligation of confidentiality, within ten (10) working days of receipt of the investigator's report.

Where, as a result of a formal investigation, systemic bias is determined within any College policy, procedure and/or practice, the Executive Officer/President will prescribe actions which may include amendments, revisions or elimination of existing College policies, procedures or practices.

4.2 Time Lines

Time lines may be extended if delays are incurred in good faith and will not result in substantial prejudice. Substantial prejudice, as defined by the Ontario Human Rights Commission, exists where it can be shown that proceeding with the complaint will deprive the respondent of an essential right such as the right to a complete defence (e.g., the destruction of material evidence by unforeseen event such as fire, flooding, etc.; death or significant incapacity of material witnesses). The passage of time or inconvenience in finding witnesses or locating documents do not amount to substantial prejudice.

This decision will be made by the Executive Officer and communicated to all parties involved.

5.0 Remedies and Sanctions

Remedies are intended to restore the complainant to the position s/he would have experienced had the incident not occurred. Remedies for a complainant who is an employee may include offers of employment or reinstatement; or monetary compensation. For students, remedies may include transfer, review of academic standing, provision of learning support services, or adjustment/reimbursement of tuition fees. College counsellors will provide students and employees with supportive counselling.

Sanctions exist to:

- provide the message that violations of this Policy and the Ontario Human Rights Code will be taken seriously;
- provide consequences for inappropriate behaviours;
- educate people who are unaware that their behaviour is offensive.

Where sanctions are taken against an employee, a range of progressive sanctions are possible which conform to generally accepted standards of employee discipline and the two collective agreements.

Potential sanctions as a result of an informal fact-finding process or a formal investigation include but are not limited to:

Verbal Warning/Reprimand: An instruction to a member of the College community requiring that s/he cease or change the behaviour giving rise to the complaint.

Written Warning/Reprimand: A written notice to a member of the College community requiring s/he cease or change the behaviour complained of.

Probation: An agreement which will permit a student to continue to attend classes and placements,

and continue her/his association with the College. Normally it will limit college activities and may include specific terms and conditions.

Behavioural Contract: This is a written agreement between a member of the College community and the College. It will specify conditions which must be met and adhered to in return for the right to:

- maintain or resume employment duties;
- gain readmission to class or a placement;
- participate in a College approved activity;
- or resume a desired relationship with the College.

Loss of Privileges: A denial of specified privileges for a stated period of time.

Suspension: A written order to leave a building, class, placement situation, job/work assignment, or other areas of a College campus for a stated or indefinite period of time.

Expulsion: A written order which terminates a student's relationship with the College. The official record will read: Involuntary withdrawal-Student Misconduct.

Dismissal: Employment is terminated.

The following criteria will be considered in determining the appropriate level of sanction:

- The seriousness/severity of the incident(s);
- The reliability of evidence;
- Remedies sought by the complainant; and
- The documented history of the respondent (or the complainant in the case of malicious/fraudulent complaints) regarding related issues or incidents.

6.0 Malicious/Fraudulent Complaints

The College will take disciplinary action in situations where complaints are proven to be malicious or fraudulent. Discipline will be consistent with the two collective agreements, the Student Rights and Responsibilities Policy, and Section 5.0 of these procedures, as they apply.

A person who is the subject of a complaint made under these procedures and who has reason to believe that the complaint is vexatious, in bad faith, or itself a form of harassment, has the right to file a complaint.

7.0 Appeals

Either the complainant or respondent, if dissatisfied with the results or outcome of an informal fact-finding process or formal investigation, may appeal the matter in writing within fifteen (15) working days of receiving a decision.

The results of an informal fact-finding process would be appealed to the Vice President Academic (if the respondent is a student) or next level Supervisor (if the respondent is an employee).

The results of a formal investigation would be appealed to the President or the Vice President, Human Resources & Strategic Development.

The Vice President Academic/next level Supervisor/President/Vice President will ensure that all aspects of the findings are reviewed and that a final decision is communicated within fifteen (15) working days of receipt of the appeal.

8.0 Records

The Human Rights Officer will maintain a confidential file pertaining to each informal complaint for the

current calendar year plus two (2) years following the conclusion of the informal complaint process, after which time the contents of the file will be destroyed.

The Vice President, Human Resources & Strategic Development is responsible for maintaining a confidential central file pertaining to each formal investigation made under this policy and of the resolution of same. Files will be accessible only to the President, the Vice President, Human Resources & Strategic Development and the College's Human Rights Officer, or as may be required by law. Files on formal investigations will be retained for the current calendar year plus seven (7) years following conclusion of the appeal period, after which time the contents of the file will be destroyed.

Statistical information on the number, nature and type of complaints will be kept and reports filed annually by the Human Rights Officer. Annual reports will be distributed to the Diversity Committee, the Vice President of Human Resources & Strategic Development, the College President, the Senior Leaders Team, and the Board of Governors.

Where an investigation results in disciplinary action, this information will be placed in the respondent's personnel file or student file. Where the complaint has not been substantiated, no reference will be placed in the personnel or student file of either party.

When an individual has lodged a complaint with malicious intent or in bad faith, and discipline has been imposed, a letter regarding the same will be placed in his/her personnel file or student file.

Once each year, an individual may appeal to the Executive Officer/President to have the letter on file removed, a decision on which is at the discretion of the College.

9.0 Authority

It is the responsibility of the Vice President, Human Resources & Strategic Development to monitor towards ensuring that these procedures are properly enforced. S/he will assess the policy and procedures every three years, and initiate formal review as required.

S/he draws the authority for this from the Board Policy on "Harassment / Discrimination Prevention" (3-311) dated February 4, 1998 and revised March 25, 2009.

Roles and Responsibilities

College President

Provide leadership and establish expectations for a working and learning environment that is free from discrimination and harassment.

Address any issues of systemic bias within any College policy, procedure and/or practice.

Impose, where necessary, remedies/penalties as a result of any substantiated formal complaint.

Act as final arbiter on appeals.

Diversity Committee

Act as an advisory group to students, staff, College President, Vice President of Human Resources & Strategic Development, Human Rights Officer, and Vice President Academic on educational and employment equity matters related to the prohibited grounds under the Ontario Human Rights Code and this Policy.

Develop and coordinate ongoing educational programming on harassment and discrimination prevention. This includes developing a communications network for equity information and discussion of equity issues.

Arrange appropriate training in complaints procedures and mediation for advisors, investigators and mediators to ensure that they have the skills, knowledge and objectivity required to perform their roles.

Assist in ensuring that all Supervisory staff, Deans, H&D Advisors, Human Resources Consultants, and designated members of the Student Administrative Council (Sutherland Campus) and Student Association (Frost Campus) receive appropriate training on harassment/discrimination prevention and college policies and procedures.

Develop strategies for accessing the resources necessary to attain policy objectives.

Human Rights Officer

Ensure that the Policy has been distributed to the College community and external contacts as mandated in this policy.

Act as a point of contact for all persons responsible for implementing this policy.

Operate as a resource for all members of the College who require general or specific information on harassment and discrimination prevention.

Offer an advisory/information service to all parties involved in an incident that appears to constitute harassment or discrimination.

In consultation with the Executive Officer, contract external investigators as needed.

Act as a resource person to the investigator, monitoring the process to ensure procedural fairness is upheld for all persons involved.

Advise Supervisors and Deans on the factors to be considered when responding to complaints of harassment /discrimination and/or apparent violations of the College's policy that come to his/her attention.

Provide a mechanism that reviews the efficacy of the complaint process, thus turning each experience into a learning opportunity.

Provide a process, whenever appropriate, that addresses the closure needs of those involved in a complaint process.

Collect and maintain statistical information on the number, nature and type of formal and informal complaints, as well as resolutions.

Prepare for distribution an annual report on aggregate statistics of harassment/discrimination at the College as well as proactive strategies/programming implemented by different Centres.

Collaborate with the Diversity Committee to develop human rights educational strategies for the College community.

Harassment and Discrimination Advisors - Human Rights Officer, Human Resources Consultants, Designated Members of the Diversity Committee, College Counsellors, Health Nurses, Union Stewards, Student Advisors, designated members from the Student Administrative Council (Sutherland Campus) or the Student Association (Frost Campus), and Residence staff.

Provide impartial information and guidance about this policy to individuals who request it.

Appropriately refer complainants and respondents to other College resources as needed.

Accompany, when requested, complainant(s)/respondent(s) to meetings during the informal/formal process.

Maintain confidentiality in accordance with this policy.

Forward statistical information to the Human Rights Officer.

College Counsellors

Assist students and college employees who are considering initiating a complaint or who are named as a respondent in a complaint.

Assist the complainant or respondent in reviewing the precipitating event, in all its context, in order to proceed most effectively to reach a satisfactory resolution.

Provide supportive counselling which will include the analysis of circumstances and the discussion of options.

External Investigators

Ensure an impartial investigative process for formal complaints.

Ensure procedural fairness for the complainant and respondent.

Ensure that the complainant and respondent have a fair opportunity to be heard.

Ensure a confidential process as stated in this policy.

Forward a written report to the Executive Officer which includes the following: the findings of the investigation; a determination, based on the balance of probabilities and this policy, as to whether or not the incident occurred; who is responsible for the incident; and if appropriate, any findings which would prove a complaint was fraudulent or made with malicious/vexatious intent.

Vice President, Resources & Strategic Development

Maintain a central confidential file of all formal complaints.

Participate in the direction of equity planning and development.

Recommend remedies and sanctions when a complaint has been substantiated (or proven vexatious).

Act on behalf of the President when required.

Monitor on an ongoing basis the effectiveness of this policy. Undertake a review of this policy and procedures every three years or more often if needed. Where appropriate, implement revisions aimed at ensuring the most effective combination of harassment/discrimination prevention and complaint mechanisms.

Executive Director, Student Services

Ensure that educational resources acquired by the libraries consider the diversity of Canadian Society.

Vice President Academic/Vice Presidents

Ensure ongoing education and communication to prevent harassment and discrimination.

Through learning design processes, develop a comprehensive curriculum design and development model which will include a mechanism for curriculum review and the identification of bias.

Implement the college's harassment and discrimination prevention policy.

Ensure that complaints brought to their attention are effectively and expediently addressed and/or forwarded to the Human Rights Officer/Vice President, Human Resources & Strategic Development.

Carry out remedies and/or penalties to resolve incidents of discrimination/harassment.

All Supervisory Staff / Deans

Establish and maintain a working and learning environment that is free from discrimination and harassment through preventative measures.

Deal with harassment/discrimination incidents that come to their attention even if a complaint has not been filed.

Encourage ongoing discussions of proactive equity initiatives at staff meetings.

Ensure compliance with this policy.

Ensure that staff and faculty are aware of their rights and responsibilities under this policy, the availability of advisory services and the process to investigate and resolve discrimination or harassment complaints.

Ensure that external agencies involved in joint college initiatives such as work/study placements are informed of the College's Harassment and Discrimination policy.

Ensure that no individual who is a party to a complaint is subjected to any form of reprisal.

Address and resolve informal complaints and maintain documentation on the number and nature of complaints and resolutions, as well as provide statistical reports on the same to the Human Rights Officer.

Protect the confidentiality of all parties and witnesses to the greatest degree possible in accordance with this policy.

Ensure that the complainant and respondent have a fair opportunity to be heard.

Impose remedies/penalties in accordance with this policy.

Follow up with complainants and respondents after complaints are resolved in consultation with the Human Rights Officer/Vice President, Human Resources & Strategic Development to ensure the maintenance of a healthy working and learning environment.

Forward statistical information to the Human Rights Officer.

Ensure that the acquisition of educational and employment resources considers the diversity of Canadian society.

Ensure curriculum is reviewed for bias and required corrections are made.

Faculty

Be aware of rights and responsibilities under this policy.

Ensure that any teaching materials which contain discriminatory bias and stereotypes are used exclusively in a critical context, and that students are advised of the purpose for and context within which such materials are used.

Address harassment/discrimination incidents that come to their attention even if a complaint has not been filed.

Develop and maintain proactive strategies to ensure prevention of discrimination and harassment in the classroom.

Forward statistical information to the Human Rights Officer.

Ensure that the acquisition of educational resources considers the diversity of Canadian society.

Ensure that curriculum is reviewed for bias and that required corrections are made accordingly.

Staff

Be aware of rights and responsibilities under this policy.

Refuse to participate in or condone harassment or discrimination.

Students

Be aware of rights and responsibilities under this policy and the Student Rights and Responsibilities Policy.

Refuse to participate in or condone harassment or discrimination.

Registrar

Ensure that every new and returning student receives a copy of the Harassment and Discrimination pamphlet.

Director, Marketing and Student Recruitment

Ensure that College promotional materials acknowledge and portray the diversity of Canadian society.

Purchasing Department

Ensure that all contractual agreements include a clause on coverage under the Harassment and Discrimination Prevention Policy & Procedures.

Staff Development

Coordinate, with the Diversity Committee, equity training and development programs for Administration, Faculty and Staff.

Managers, Residence Life

Be aware of rights and responsibilities under this policy.

Coordinate harassment and discrimination training for residence staff.

Monitor residence activity towards ensuring a safe environment.

Student Administrative Council (Sutherland Campus) and Student Association (Frost Campus)

Be aware of rights and responsibilities under this policy.

Refuse to participate in or condone harassment or discrimination.

Coordinate training for SAC/SA officers and students.

Procedure Addendum to Policy 3-311

Investigating/Resolving Complaints Made Against the President/Board of Governors

This procedure is to be utilized whenever a complaint is made by any member of the College community or by anyone on College property or at a College-sponsored event against the President of the College or external members of the Board of Governors.

The procedure covers complaints of harassment and/or discrimination, violations of the Student Rights and Responsibilities document, or any allegations of physical altercations or violations of safety and security.

This option has been provided in order to address the imbalance of power, or even the perception of imbalance of power, due to the positions held by the respondents.

Procedure

1. If the respondent is the President, a written complaint related to an incident of harassment and/or discrimination, physical altercation or a violation of safety and security, must be submitted to the Board Chair. The submission must outline the details, dates, times and places related to the allegation. If the respondent is a member of the Board of Governors, a written complaint related to the same areas, as above, which outlines details, dates, times, and places must be submitted to the Board Chair or Board Vice-Chair.
2. As soon as the President or a member of the Board of Governors is aware of a complaint or potential complaint (as outlined in #1) against him/her, s/he will report this immediately to the Board Chair or Board Vice-Chair, whichever is most appropriate. The Board Chair will provide a copy of the written complaint to the President/Board member. The Board Chair or Vice-Chair will, as soon as reasonably possible, notify all Board Executive members and inform them of all the known details.
3. With the support of the Board Executive, the Board Chair or Vice-Chair shall, with the assistance of the Vice President, Human Resources & Strategic Development, appoint an independent investigator from a prepared roster of investigators to investigate and make recommendations to the Executive of the Board. The Board Executive will also be responsible for determining the appropriate manner and time to inform the whole Board.
4. After due consideration of the findings and the recommendations, the Board Executive will determine what action, if any, should be taken and as appropriate bring the details to the full Board.
5. The independent investigator shall follow the investigation procedure as generally outlined in the College's Harassment and Discrimination Complaint Procedure.
6. It will be the responsibility of the Vice President, Human Resources & Strategic Development to compile a roster of appropriate independent investigators who may be called upon.

APPROVED by the Board of Governors Executive Committee, July 1995