

SECTION: Human Resources
TOPIC: Human Rights Policy
EFFECTIVE: January 1, 2002

C.N.C. NO.: HR 5017
REF: 1693
REVISED:

PURPOSE:

To fulfill the College's responsibility under British Columbia's Human Rights Code by establishing human rights education and procedural guidelines to handle complaints, resolve problems, and remedy situations when harassment or discrimination occur.

POLICY:

All members of the College community have the responsibility to respect the rights of others. The College does not condone and will not tolerate discrimination or harassment which undermines the dignity, self-esteem or productivity of any student or employee.

The College considers any form of harassment or discrimination of any member of the College community to be a serious violation of that individual's fundamental rights. Violation of an individual's rights is a serious offence which may be subject to a range of resolutions including mediated settlement or, in certain circumstances, disciplinary measures up to and including dismissal or expulsion.

Increased awareness through education and training is the key to eliminating incidents of harassment and discrimination. The College encourages awareness and training on harassment and human rights issues, as well as education as a component of complaint resolution.

APPLIES TO:

All members of the College community. Complaints of harassment or discrimination must pertain to College-related activities. The application of this Policy shall be modified by the terms of collective agreements. This Policy and procedures will not interfere with the rights and obligations specified in the current collective agreements between the College and the unions.

DEFINITIONS:

Definitions are provided at the end of this document.

PRINCIPLES:

- a) All members of the College community are responsible for ensuring that the College's working and learning environment is free from harassment and discrimination. The College bears the primary responsibility for maintaining a working and learning environment free from harassment and discrimination by providing education that promotes understanding and awareness of harassment and human rights issues throughout the College community.
- b) In the College community, power differences exist between or among administrators, faculty, staff, and students. Where one person has implied or explicit power or authority over another, there is an increased responsibility for the individual in a position of power to ensure harassment or discrimination does not arise.
- c) The paramount goal of the complaint process is to provide a fair and confidential process that permits both the complainant and the respondent to present their cases.

- d) Any member of the College community has a right to bring forward a complaint of harassment or discrimination. All members of the College community will be treated equitably under this Policy. All matters arising under this Policy will be dealt with in a fair, unbiased and timely manner.
- e) This Policy will be interpreted, administered, and applied in conformity with the principles of procedural fairness. In particular:
 - i) A complainant has a right to seek action.
 - ii) A respondent has a right to know the allegations and to be given an opportunity to answer them.
 - iii) Both parties have the right to a fair and timely process of resolution.
 - iv) Both parties have the right to be accompanied by a representative of their choice.
- f) Those responsible for interpreting, administering, and applying this Policy will use a “reasonable person” standard.
- g) Interference with the conduct of an investigation or retaliation against a complainant or witness, whether the complaint was substantiated or unsubstantiated, may itself be an incident of harassment and may result in disciplinary action by the College.
- h) A complaint which is considered vexatious in nature and made in bad faith may itself be considered to be an incident of harassment and may result in disciplinary action by the College.
- i) Any College student or employee who has witnessed harassment or discrimination of another College student or employee may, with the written consent of the individual who was harassed or discriminated against, initiate a complaint on behalf of the person.
- j) Efforts at informal resolution will normally be made first in dealing with a complaint.
- k) The College has a responsibility to deal objectively, impartially and confidentially with all parties.
- l) Allegations of harassment or discrimination often involve the disclosure of sensitive personal information. Confidentiality is required so that those who allege they have been harassed or discriminated against will feel free to come forward. Confidentiality is also required so that the reputations and interests of those accused of harassment or discrimination are protected. However, either party may discuss the case in confidence with his/her supervisor, support person, and/or union or association representative. Limitations on confidentiality include subpoena by courts, child abuse and neglect laws, or perception of risk to individuals that necessitates action. Any person breaching confidentiality may be subject to disciplinary action by the College.
- m) Because disclosures are made in confidence and often involve disclosure of personal information, the College will take the position that disclosure should not occur pursuant to an application under the *Freedom of Information and Protection of Privacy Act*.

TIMING:

Every effort should be made by all parties to deal with the complaint process in a timely manner.

To ensure that information may be gathered in an accurate and timely way, complaints should be made no later than six months after the alleged harassment or discrimination. The College may waive this requirement, if circumstances warrant.

PROCEDURES: The Human Rights Procedures will uphold this policy.

DEFINITIONS:

Discrimination: Any action, whether intentional or not, but based on the prohibited grounds set out in the *Human Rights Code* of British Columbia which has the effect of imposing burdens, obligations or disadvantages on an individual or groups not imposed on others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society and includes harassment.

Harassment: Any behaviour based on a prohibited ground of discrimination and includes:

1. Promise of a reward for complying with a sexually oriented request;
2. Reprisal or threat of reprisal, directed at a person's employment or studies for refusing to comply with a sexually oriented request.
3. Denial of opportunity, or threat to deny an opportunity, for refusing to comply with a sexually oriented request; and,
4. Behaviour which has the purpose or effect of creating an intimidating or hostile learning or work environment and is related to prohibited grounds of discrimination.

The provisions of the *Human Rights Code* establishing the applicable prohibited grounds of discrimination will apply, as amended from time to time.

HUMAN RIGHTS PROCEDURES:

1. Consultation

- a) A person who believes that she/he may have been subjected to harassment or discrimination should, if reasonable and comfortable, attempt to address her/his problem directly with the individual concerned or consult with a counselor, a supervisor, Human Resources, or a union or association representative.
- b) The Human Rights Officer at the College of New Caledonia is the Director of Human Resources, or designate.
- c) The Human Rights Officer will provide the complainant and the respondent with a copy of the procedures governing the Human Rights Policy.
- d) The Human Rights Officer may suggest that the concern could more appropriately be dealt with, initially or completely, under another policy or procedure. The use of this Policy shall be suspended should the complainant decide to pursue resolution under other internal college procedures (e.g. grade appeal, student conduct) or through other forums (e.g. criminal proceedings).
- e) If the complainant chooses to proceed under the Human Rights Policy, the Human Rights Officer will listen to the complainant's concerns to understand the origins of the problem, the current situation, and the impact on the complainant. The Human Rights Officer, with the complainant, will proceed to review this Policy and the options available for addressing a concern.
- f) All complaints must be in writing, and must contain details of the alleged discrimination, including the name of the respondent, particulars of the incident(s), date, time and place of the incident(s), where possible, the names of any witnesses, and must be dated and signed.
- g) The Human Rights Officer may reject a complaint on the grounds that it is frivolous, vexatious, malicious, lies outside the jurisdiction of the Policy, or is beyond the time limits for laying a complaint. The Human Rights Officer will inform the complainant of the reasons for this decision.
- h) If the complainant decides to proceed under the Human Rights Policy, the Human Rights Officer will advise the respondent that a complaint has been made and outline the nature of the complaint within two working days.
- i) If the complainant chooses not to take further action or not to proceed under this Policy at the time, the Human Rights Officer may not continue to act on this concern.
- j) A complainant may file a complaint through this Policy, and upon completion seek resolution external to the College. However, if there is a settlement resulting from pursuit of an external option first, she/he cannot file a complaint under this Policy.

- k) Complaints of harassment and discrimination may be resolved by:
 - i) informal resolution;
 - ii) mediation;
 - iii) investigation

2. Interim Measures

It may be necessary for interim measures to be taken while a complaint is being resolved, investigated or decided. Such measures will be precautionary, not disciplinary. Interim measures will be initiated by the Human Rights Officer in consultation with the complainant and respondent, and when necessary with the responsible administrator and other relevant parties (e.g. the Human Resources department, unions or associations).

3. Informal Resolution

- a) The Human Rights Officer may, with the assent of the complainant and respondent, attempt to resolve the complaint informally.
- b) If an informal resolution is acceptable to the complainant and the respondent, the Human Rights Officer will make note of any agreement reached. The Human Rights Officer will prepare a written summary of the agreement and distribute this summary to both the complainant and the respondent. If another individual is involved and has a role to play in the resolution, the specifics of the agreement may be discussed with that person.
- c) If informal resolution procedures are not successful, then the complainant has the option of either withdrawing the complaint or requesting that either mediation or investigation procedures be initiated.

4. Mediation

- a) Mediation is a voluntary process for both the complainant and the respondent and will be offered to both. All communications made by the complainant and the respondent during mediation are made on a without prejudice basis.
- b) In mediation, the complainant and the respondent attempt to resolve the issue that led to the complaint. Either party may make a request for resolution through mediation to the Human Rights Officer who will convey the request to the other party.
- c) If a complainant elects mediation, then the complaint must be formally filed, in writing, with the Human Rights Officer.
- d) If the complainant elects a mediated resolution, the Human Rights Officer shall forward within two (2) working days a copy of the complaint and the request for mediation to the respondent. The respondent shall reply in writing within ten (10) working days of the complaint being received.

- e) The Human Rights Officer will assist with the selection of a mediator and receive agreement from the complainant and the respondent on the choice of the mediator. If either the complainant or respondent are members of a union, the Human Rights Officer will notify the union and reach agreement on the selection of the mediator prior to proceeding.
- f) If a mediator is appointed then the mediator shall have ten (10) working days from the time of accepting the invitation to mediate the complaint to effect a resolution that is acceptable to both parties. If the parties agree in writing, the ten (10) day period to conclude a resolution by mediation may be extended.
- g) A mediated resolution of the complaint results in a written agreement setting out the terms of the resolution. The written agreement is provided to the complainant and the respondent. If the proposed resolution involves another individual, the specifics of the resolution are discussed with that person.
- h) When a written agreement has been signed by the complainant and the respondent, the complaint will be considered resolved.

5. Investigation

- a) Investigation is intended to be used in cases where the alleged harassment and/or discrimination may have had a serious impact on the complainant or respondent, where the case is important to the goals of the College, where the respondent has refused to participate in earlier efforts to deal with the complaint, or where either the complainant or respondent do not agree to mediation.
- b) A request for an investigation must be made in writing and attached to a copy of the original complaint.
- c) The Human Rights Officer may request that an administrator assume the role of complainant in a case in order to initiate an investigation or continue an investigation. This request may occur despite the original complainant and respondent having reached a resolution through informal procedures or mediation, or the original complainant deciding to withdraw the complaint. This provision is normally reserved for cases involving a respondent who has previously been the subject of substantiated complaints of harassment or discrimination and/or the original complainant is unwilling to proceed and the allegation is very serious. This provision also enables the College to comply with its obligations to ensure an environment free from harassment and discrimination.
- e) The Human Rights Officer will notify the respondent of the request for formal investigation, and provide a copy of the written request including the details of the allegations.
- f) The respondent may, or may not, respond in writing to the allegations. The respondent

may wish to offer her/his perspectives regarding the allegations, and/or present a proposal for resolution. This response is to be delivered to the Human Rights Officer.

- g) If the respondent does submit a written response, the Human Rights Officer will review this response with the complainant. The complainant can accept the written response as a resolution, propose a counter-resolution to be presented back to the respondent, or ask to proceed with the investigation.
- h) If the respondent does not submit a written response, the investigation process will proceed.
- i) A neutral, independent investigator from outside the College, will be appointed within 10 days. If either the complainant or respondent are members of a union, the College and the union(s) will agree upon the selection of the investigator.
- j) The investigator will apply appropriate procedures and practices to investigate and conduct interviews properly and confidentially, within the framework of natural justice. This will include each party's right to know and respond to all allegations. All potential witnesses may be interviewed by the investigator, and the complainant and respondent will be provided an opportunity to respond to all relevant information provided by the witnesses.
- k) The investigator will determine the facts of the incident.
- l) Upon completion of the process, the investigator will provide the Human Rights Officer with a written report containing:
 - i) the complainant's allegations;
 - ii) the respondent's responses to the allegations;
 - iii) the investigation process, witnesses interviewed, summary of witnesses' statements, and list and copies of documents and other evidence collected;
 - iv) articulation of the issues and analysis of the information in relation to those issues;
 - v) summary / conclusion.

6. Decision

- a) Upon receipt of the investigator's report, the Human Rights Officer may request further information or make a recommendation as to the actions to be taken by the College. This recommendation must be approved by the President and/or College Board, as appropriate.
- b) The investigator's report, the Human Rights Officer's decision and reasons for the decision will be made in writing, and copies will be provided to:
 - i) the complainant;
 - ii) the respondent;
 - iii) the Human Rights Officer; and

- iv) the union or association, where a union or association is representing either a complainant or respondent.

7. Appeals

Nothing in the Policy or these procedures limits the rights of an individual disciplined under this Policy and these procedures to avail him/herself of existing avenues of appeal in any Collective Agreement, the *College and Institute Act*, the *British Columbia Human Rights Code*, or from initiating any other proceedings in law.

Where the complainant or respondent believes that the Human Rights Officer has not followed the procedures or principles as outlined in this policy she/he may appeal directly to the College's Vice-President Academic. The appeal will not be accepted if the decision has been made by the College President.

8. Records

All active records, reports or documents generated as a result of a complaint, will be kept in confidence and secured by the College's Human Rights Officer.

All recorded personal information will be treated as "supplied in confidence" for the purposes of compliance with the *Freedom of Information and Protection of Privacy Act*.

9. Interpretation

In order to accomplish the purposes of this Policy and these procedures, wherever the singular is used in this Policy and these procedures, it may be construed as if the plural had been used and wherever the plural is used, it may be construed as if the singular had been used.

10. Amendments

No changes will be made to this Policy or these procedures without first receiving advice from the College's Advisory Committee on Human Rights.

11. Review

A review of this Policy and these procedures is ongoing.