

<b>Procedure Title:</b>	Harassment and Discrimination Prevention and Response Procedure
<b>Procedure ID:</b>	#OP 3-311
<b>Manual Classification:</b>	Human Resources
<b>Linked to Policy:</b>	#3-311
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<b>Contact for Procedure Interpretation:</b>	Executive Vice President, Human Resources and Organizational Development

## 1.0 – Purpose

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Harassment and discrimination are unacceptable and will not be tolerated. Fleming College is committed to preventing harassment and discrimination and creating a safe space for everyone in our College community. The College is expected to be a safe and positive space where members of the College community feel able to work, learn and express themselves in an environment free from harassment and discrimination.

This operating procedure sets out the College’s response protocols with respect to Complaints of harassment and/or discrimination. These protocols may also apply in the absence of a formal Complaint where a concern of harassment and/or discrimination is raised which triggers the College’s obligations under law.

The objectives of this procedure are to ensure that:

- complaints of harassment and/or discrimination are taken seriously and the rights of those who make such reports and/or seek support are respected;
- responses to complaints of harassment and/or discrimination are conducted with procedural fairness and in a timely manner;
- the College holds individuals who are found through an investigation to have committed an act of harassment and/or discrimination accountable; and
- the College is in compliance with the Ontario Human Rights Code (“the Code”), the Occupational Health and Safety Act (“OHSA”), collective agreement provisions, and any other relevant legislation, policies, and procedures.

## 2.0 – Definitions and Acronyms

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All definitions in this Policy include, but are not limited to, the definitions articulated in the *Ontario Human Rights Code* and the *Occupational Health and Safety Act*.

**Accommodation:** A special arrangement that the College provides to Community

Members who have needs related to a *Human Rights Code*-ground (see “Protected Grounds”) to ensure that they have the same opportunities and benefits as their peers.

**Duty to Accommodate:** The College has a legal duty to accommodate Code-identified needs up to the point of undue hardship. The process of finding an appropriate accommodation is a shared one (between the College and the person seeking accommodation) that is grounded in respect for the individual’s dignity, recognition of unique needs, and maximization of the individual’s integration and full participation.

**College Community:** Any person who studies, teaches, conducts research at, or works at the College is a member of the College community (“Community Member”). This includes employees, contractors, members of the Board of Governors, volunteers, visitors, guest speakers, and any other person acting on behalf of or at the request of the College.

**College-Initiated Complaint:** In some situations, a College Member may raise concerns about harassment and/or discrimination informally, for example, during a conversation with Human Resources, a Student Rights and Responsibilities employee, or a manager. Where such concerns are raised, it may trigger the College’s legal obligations to initiate a response under this Policy even where a formal Complaint is not submitted. This is called a “College-Initiated Complaint.”

**Complainant:** An individual who files a Complaint alleging a violation of this Policy.

**Complaint:** A Complaint is a formal verbal or written statement wherein the Complainant alleges that they have experienced, witnessed or are otherwise aware of harassment and/or discrimination (including failure to accommodate (above)) where the behaviour in question would, if substantiated, be in violation of this Policy.

**Disability:** This term covers a broad range of conditions. “Disability” includes present and past conditions as well as those which are anticipated and perceived. A “disability” can be “invisible”; it may be temporary, permanent or sporadic. The *Human Rights Code* defines “disability” as follows:

- a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- b) a condition of mental impairment or a developmental disability,
- c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- d) a mental disorder, or
- e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”).

**Discrimination:** An intentional or unintentional action, decision, or impact that results in an adverse impact on an individual or group based, in whole or in part, on a characteristic protected by the Ontario *Human Rights Code* (i.e. “Protected Ground”). Discrimination can also result when people make stereotypical assumptions about a person based on a

“Protected Ground” instead of individually assessing them based on their unique merits, capacities and circumstances. Discrimination can take on many different forms.

Discrimination can involve actions, decisions or practices that are discriminatory on their face (“**direct discrimination**”). For example:

- A registrar who is reviewing applications is told to screen out applicants who have Asian-sounding names. This is direct discrimination based on race and related grounds.
- A department adopts a policy of not hiring women who plan to start families. This is direct discrimination based on sex and family status.

Discrimination can also involve actions, decision or practices that appear neutral, but disadvantage certain groups of people based on one or more *Code*-protected grounds (“**constructive discrimination**”). For example:

- A faculty member schedules a major exam for Friday noon. This scheduling may adversely impact Muslim students whose faith requires to attend a congregational prayer at this time. This is “constructive discrimination” based on “creed” (i.e. religion).
- The dorms on campus have a strict “no pets allowed” policy. This policy may adversely impact a student who is blind and who requires a guide dog to assist them in their daily life. This is “constructive discrimination” based on “disability.”

Where an otherwise neutral actions, decision or practice has the potential to adversely impact someone with a *Code*-related need, this need should be accommodated to the point of undue hardship. For example, the exam in the example above should be rescheduled to a different day or time. In the latter example, an exception to the policy should be made for students who require service animals for disability-related needs.

Discrimination can also occur when patterns of behaviour, policies or practices become part of the social or administrative structure of an organization and create a position of relative disadvantage for people identified by Protected Grounds (“**systemic discrimination**”). For example:

- A particular department prefers to hire new staff through word-of-mouth rather than formal postings. The department is largely comprised of White males whose professional circles and connections tend to also be White male-dominant. This means that new hires tend to be from this demographic group as well.
- Because of deeply but unconsciously-held stereotypes, the career counseling office tends to steer Black students into non-academic programs.

Discrimination may take obvious forms, or it may happen in very subtle ways. A *Code*-protected ground needs only to be a factor in an action, decision or practice for it to be discriminatory – it does not have to be the main or only factor. For example:

- A security guard stops a Black student in the campus store whom he suspects has stolen a textbook. The student’s race need only be a factor in the security guard’s decision to stop them – it does not need to be the only factor – for it to be considered discrimination.

Harassment and failure to accommodate a *Code*-related need are also types of “discrimination” under this Policy and the Ontario *Human Rights Code*.

**Harassment:** A course of vexatious (i.e. offensive, embarrassing, humiliating or demeaning) comment or conduct that is known, or ought reasonably to be known, to be unwelcome. As the term “course” implies, harassment typically involves a series of incidents but, in some cases, a single incident that is serious enough may be found to constitute harassment under this Policy.

Behaviour can constitute harassment under this Policy, the *Ontario Human Rights Code* and the *Occupational Health and Safety Act* even if a person does not explicitly object to it or, in some cases, appears to be going along with it.

Harassment can be related to a particular *Human Rights Code* protected ground (e.g. racial harassment, age-based harassment, etc.) or not. Where the harassment is unrelated to a *Code* identity it is sometimes called “workplace harassment” (employment context only), “psychological harassment” or “personal harassment.” Examples of harassment include:

- Making remarks, jokes or innuendos that demean, ridicule, intimidate, or offend by spoken word or email, or gestures.
- Bullying behaviours.
- Displaying or circulating offensive pictures or materials in print or electronic form.
- Repeated offensive or intimidating phone calls or e-mails.
- Spreading malicious rumours, gossip, or innuendo.
- Excluding or isolating someone socially.
- Intruding on a person's privacy by pestering, spying or stalking.
- Yelling or using profanity.
- Criticizing a person persistently or constantly.
- Belittling a person's opinions.
- Tampering with a person's personal belongings or work equipment.

Harassment is not a reasonable action taken by an employer, supervisor or faculty member relating to the instruction, management and direction of employees or students.

**Sexual Harassment:** Harassment that is related to sex, sexual orientation, gender identity and/or gender expression (sometimes called “gender-based harassment.”) Sexual harassment also includes making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the person being solicited and the person making the solicitation knows or ought reasonably to know that the solicitation or advance is unwelcome.

Examples include:

- Gender-related comments about a person’s physical characteristics, mannerisms or conforming to sex-role stereotypes
- Paternalism based on gender which a person feels undermines their self-respect or position of responsibility
- Unwelcome physical contact
- Suggestive or offensive remarks or innuendoes about members of a specific gender
- Propositions of physical intimacy

- Gender-related verbal abuse, threats, or taunting
- Leering or inappropriate staring
- Bragging about sexual prowess or questions or discussions about sexual activities
- Offensive jokes or comments of a sexual nature
- Rough and vulgar humour or language related to gender
- Display of sexually offensive pictures, graffiti or other materials including through electronic means
- Demands for hugs, dates or sexual favours
- Invading personal space
- Verbally abusing, threatening or taunting someone based on gender or sexual orientation

In some cases, there may be overlap between “Sexual Harassment” and “Sexual Violence.” For more information, please consult #3-343 Sexual Violence Prevention Policy and associated operating procedure.

**Poisoned Environment:** A hostile, threatening or intimidating environment due to harassing and/or discriminatory comments or conduct that tend to demean a person or group, even if not directed at a specific individual. In some cases, a poisoned environment may result from a serious single incident, comment or action.

**Protected Grounds:** The Ontario *Human Rights Code* (and the associated Policy) prohibits discrimination and harassment based on the following personal characteristics (i.e. grounds), or any combination thereof:

- Age
- Creed (religion)
- Sex (including pregnancy and breastfeeding)
- Sexual orientation
- Gender identity
- Gender expression
- Family status (such as being in a parent-child relationship)
- Marital status (including married, single, widowed, divorced, separated or living in a conjugal relationship outside of marriage, whether in a same-sex or opposite-sex relationship)
- Disability (including mental, physical, developmental or learning disabilities)
- Race
- Ancestry
- Place of origin
- Ethnic origin
- Citizenship
- Colour
- Record of offences (criminal conviction for a provincial offence, or for an offence for which a pardon has been received)

This Policy also prohibits harassment or discrimination on the basis of association or relationship with a person identified by one of the above grounds and based on a perception that one or more of the above grounds applies. For the complete definition of each ground, visit: <http://www.ohrc.on.ca/en/ontario-human-rights-code>.

**Hate:** Individual or group actions, attitudes, practices, language or behaviours which reflect the harmful historical ideologies of discrimination, prejudice, bias, stereotypes or inequitable treatment of protected groups.

**Anti-Semitism:** The perception of Jewish people, which may be expressed as hatred or blame, stereotypes, myths such as denial of the Holocaust and other genocidal campaigns, and conspiracy theories. Manifestations of antisemitism are directed toward Jewish individuals and/or their property, Jewish community institutions and religious facilities.

**Islamophobia:** Includes racism, stereotypes, prejudice, fear or acts of hostility directed towards individual Muslims or followers of Islam. In addition to individual acts of discrimination and racial profiling, Islamophobia can lead to viewing and treating Muslims as a more significant security threat on an institutional, systemic and societal level.

**Racism:** Individual or group actions, attitudes, practices, language or behaviours which reflect the harmful historical ideologies of discrimination, prejudice, bias, stereotypes or inequitable treatment people on the basis of their membership in a particular racial or ethnic group typically one that is a minority or [marginalized](#).

#### **Anti-Asian Racism**

The unique experiences of people of Asian descent based upon race-based stereotypes or assumptions of ethnicity and nationality. The term Asian includes a wide variety of cultures, ethnicities and experiences. Asian people may experience systemic racism, disadvantage and unequal treatment based upon perceptions such as, but not limited to the “Yellow Peril”, a “Perpetual Foreigner”, “Model Minority” or “Gendered Exotification”.

#### **Anti-Black Racism**

The unique experiences of people of African descent of racism, discrimination and prejudice are rooted in the unique history and experience of enslavement. Anti-Black racism is manifested in the legacy of the current social, economic, and political marginalization of African Canadians in society, such as the lack of opportunities, lower socio-economic status, higher unemployment, significant poverty rates and overrepresentation in the criminal justice system. The term Black includes a wide variety of cultures, ethnicities and experiences.

#### **Anti-Indigenous Racism**

The unique experiences of Indigenous peoples rooted in histories of colonialism and ethnocide. It includes ideas and practices that establish, maintain, and perpetuate power imbalances, systemic barriers, and inequitable outcomes that stem from the legacy of colonial policies and practices in Canada that continue today. Systemic anti-Indigenous racism is evident in discriminatory federal policies such as the Indian Act and the residential school system. It is also manifests in the overrepresentation of Indigenous peoples in provincial criminal justice and child welfare systems, as well as inequitable outcomes in education, well-being, and health. The term Indigenous is an umbrella term to describe a wide range of identities such as Indigenous, Inuit, Metis, First Nations, Status and Non-Status Indians and Aboriginal People.

**Respondent:** An individual about whom a Complaint pertaining to one or multiple allegation(s) of harassment and/or discrimination have been initiated (i.e. an individual who is alleged to have engaged in harassment and/or discrimination).

**Student Conduct and Accountability Specialist:** An individual responsible for enforcement of

the Student Rights and Responsibilities Policy (SR&R) and Sexual Violence Prevention Policy (SVP), as well as to investigate formal complaints involving students that may potentially breach or violate the Harassment and Discrimination policy.

**Supervisor:** An individual who is formally responsible for a workplace and/or an employee.

### **3.0 – Guiding Principles**

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This Procedure, along with the associated Policy (#3-311), sets the College’s policy and response procedure with respect to racism, hate, harassment and/or discrimination. The objectives of the two policy instruments are:

- to enable proactive education and communication to prevent racism, hate, harassment and/or discrimination;
- to ensure that reports of racism, hate, harassment and/or discrimination are taken seriously and that those who report racism, hate, harassment and/or discrimination have their rights respected and are provided with support;
- that the College has an investigation process that protects the rights of individuals;
- that the College holds individuals who have committed an act of racism, hate, harassment and/or discrimination accountable; and
- that the College is in compliance with the *Ontario Human Rights Code* (“the Code”), the *Occupational Health and Safety Act* (“OHS”), collective agreement provisions, and any other relevant legislation, policies, and procedures.

### **4.0 – Scope**

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It is the responsibility of all members of the College community to uphold the principles of this Procedure.

This Operating Procedure and related Policy will apply in cases concerning students, employees, contractors and third-party service providers as well as governors, volunteers, visitors of Fleming College or others occurring:

1. Within or affecting people or property within the physical boundaries of the College;
2. On or affecting all College owned or controlled property;
3. Using computer and telephone systems, and College and private vehicles being used for College business or for travelling between work and study locations;
4. At College-sponsored events, including while on placement, co-op or College related trips;
5. With respect to secondary school students involved in dual credit programs and/or attendees of summer camps and similar programs for children and young people;
6. In cyberspace, off-campus or outside normal school and/or working hours which are likely to have an impact on the working, living and/or learning environment at the College.

This Operating Procedure and related Policy also apply to incidents brought forward under the Student Rights & Responsibilities Policy (#5-506) and/or the Sexual Violence Prevention Policy

(#3-343) when the Respondent is an employee of the College. Students who wish to make reports regarding inappropriate behaviour by students other than on the basis of any prohibited ground under the Ontario Human Rights Code are referred to College Policy #5-506, *Student Rights and Responsibilities*. Issues related to other violent or threatening behaviour are addressed through College Policy #4-420, *Violence Prevention*.

Where more than one policy applies due to the mixed nature of the incidents brought forward, the incident should be referred to [humanrights@flamingcollege.ca](mailto:humanrights@flamingcollege.ca) for triage.

## **5.0 – Operating Procedure**

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### **5.1 – Seeking Advice & Information**

Every member of the College community who believes they may have witnessed or been subjected to or is otherwise aware of discrimination and/or harassment, is encouraged to seek advice and information on the Policy and procedure, and their options, from their supervisor, manager, Human Resources, or in the case of students, the Office of Student Rights and Responsibilities.

Anyone providing such advice and information to a member of the College community is required to:

- have sufficient training to be able to provide the advice and information;
- maintain a neutral position and may not act as an advocate for the organization, the person seeking advice, or any other party;
- ensure all information is kept strictly confidential unless they are required to disclose the information under a legal obligation; and is
- prohibited from investigating reports of harassment and/or discrimination involving the individual to whom they have provided advice and information.

### **5.2 – Raising Concerns**

There may be situations where a College Member raises a concern about racism, hate, harassment and/or discrimination through, for example, a conversation with Human Resources, a Student Rights and Responsibilities employee, a manager, in an exit interview, in a workplace assessment, or class evaluation, but does not file a formal Complaint. In these cases, depending on the nature and seriousness of the allegation, the College may have an obligation under law to respond, and possibly investigate, the concerns regardless of whether a formal Complaint is made or if the person raising the concerns wants the College to respond and investigate.

In those situations, even if the person who raised the concern elects not to file a Complaint, they may still be asked to participate in an investigation process as initiated by the College (a “College-Initiated Complaint”). Throughout the investigation, the person who raised concerns will be referred to as a “witness”; they are entitled to the same information as other “witnesses” in the investigation process.



### **5.3 – Timeliness**

Complaints of incidents more than twelve months following the most recent incident will be dealt with under the Policy only after the College assesses whether the passage of time negatively impacts procedural fairness. The College may extend timelines under exceptional circumstances, such as in the case of a systemic discrimination complaint, or in the event of a serious allegation of an infraction of law or College Policies, procedures and practices.

### **5.4 – Options to Resolve a Complaint**

Members of the College community who feel there has been a violation of the Policy have three options available to them, depending on the nature of the concern: early resolution, informal resolution, and formal resolution.

#### **a) Early Resolution**

The College encourages all members of the College community, whenever possible, to inform the individual that their behaviour is unwelcome and must stop immediately. The College recognizes that this step may not be accessible and/or appropriate for everyone and/or under all circumstances, for example, where there is an imbalance of power between the parties, a reasonable fear of reprisal, or health and safety concerns. Participation in this process is voluntary.

Where this step is not accessible and/or appropriate, the Community Member who is experiencing the behaviour in question is encouraged to seek the College's support under this procedure as a first step.

Supervisors, managers, Student Rights and Responsibilities, and/or Human Resources representatives with the appropriate training and skills may assist the parties to resolve the issue, if requested to do so.

#### **b) Informal Resolution**

Informal resolutions are those that seek to resolve a concern without an investigation process. They may include but are not limited to: clarification of the issue(s), facilitated conversations, coaching, reconciliation, workplace restoration, other restorative processes (including culturally appropriate Indigenous practices), and mediation.

Among other things, informal resolutions may be appropriate to address single incidents of unwelcome comment or conduct which are non-serious in nature, disagreements and misunderstandings which would not, if substantiated, constitute a breach of the Policy.

Where a person with concerns elects to proceed via "Informal Resolution," they can withdraw from the process at any point and submit a formal Complaint.

#### **c) Formal Resolution**

Any member of the College community may report a potential violation of the Policy to a supervisor, manager, or Human Resources representative, or in the case of students, to the Office of Student Rights & Responsibilities.

Every College community member has the right to report an incident of racism, hate, harassment and/discrimination anonymously. While the College will make every effort to investigate the report and address any claims brought forward, the anonymous nature of some reports may limit the College's ability to take action on the reported complaint. In the event that the alleged policy violation cannot or should not be resolved through early or informal resolution – that is, where a formal investigation process is required:

- Human Resources will lead the process for all Complaints made by employees and where an employee is the Respondent (the person who is alleged to have engaged in the behaviour in question). Where a student is involved in a Complaint made by or against an employee, the Office of Student Rights and Responsibilities will assist.
- Student Rights and Responsibilities will lead the process where a student makes a Complaint about another student.

The steps for initiating a formal resolution are as follows:

**(i) Written Complaint**

Where a formal resolution is required, the individual raising the concern is encouraged to file a formal Complaint and to do so in writing, if possible, indicating:

- What happened – a description of the events or situation
- When – dates and times of the events or incidents
- Where the event(s) or incident(s) occurred
- Who saw it happen – names of witnesses

Where needed, the College will provide assistance in creating the written complaint. A written Complaint may also be submitted via email to [humanrights@flamingcollege.ca](mailto:humanrights@flamingcollege.ca).

Where the person raising the concern is not willing to submit a formal Complaint or to participate in the process as a Complainant, the College may elect to pursue the concerns raised as a "College-Initiated Complaint" (i.e. the College initiates its own investigation based on the information provided by the person who raised the concerns, who will then be considered to be a "witness.")

**(ii) Intake**

When a Complaint is received, an appropriately qualified College administrator will respond within 30 days outlining the process/next steps and an estimated timeline for the issue to be addressed, no longer than 12 months from the time the complaint was received.

The administrator will assess the Complaint to:

- Ensure that it relates to allegations which, if true, would constitute racism, hate, harassment and/or discrimination under the Policy;

- Refer the Complaint elsewhere if it is outside of this Policy’s jurisdiction (e.g. relates to a Conflict of Interest breach – not harassment and/or discrimination);
- Liaise with other offices where appropriate and where there is an overlap of issues (e.g. Complaint includes allegations of sexual harassment and sexual violence).
- Ensure that it is timely (see “Timeliness” (5.3.)) and, if it is not, assess whether it would be appropriate (i.e. procedurally fair) to proceed.
  - Determine the scope of the investigation.
  - Determine if an investigation would be appropriate in the circumstances.

### **(iii) Temporary Measures**

When submitting a Complaint or at any stage of the process, an individual may request the College implement temporary measures or steps to ensure they feel safe during the formal resolution process. The College may implement temporary measures to protect the parties or witnesses (in limited cases) at any stage of the process even without a request. Introducing temporary measures does not mean a finding has been made. Temporary measures can include things like temporary changes in reporting relationships, paid leaves, restrictions on direct and/or indirect contact between individuals, restrictions on attendance at meetings and other events, or, if appropriate, administrative leave pending the outcome of the investigation. Temporary measures are identified as required on a case-by- case basis and reflect the principle that an individual is not penalized for making a complaint or otherwise participating in the investigation process.

### **(iv) Right to Withdraw a Complaint/Right to Investigate**

An individual has the right to withdraw a Complaint at any stage of the process. However, the College may continue to act on the issue(s) identified in the Complaint by, for example, pursuing the matter as a “College-Initiated Complaint”, in order to comply with its obligations under the Policy and/or its other legal obligations.

## **5.5 – Investigation Process**

Once the Complaint has been assessed, it will be referred for an investigation that is “appropriate in the circumstances”. An appropriate investigation is one which is timely, fair, and which would address all relevant issues.

What is “appropriate under the circumstances” may vary from case-to-case depending on the seriousness of the allegations involved and their relative complexity.

### **a) Appointment of an Investigator**

The College will appoint an Investigator. The College may use trained internal personnel to conduct an investigation or may choose to use an external third- party in the event of a conflict of interest, lack of sufficient internal resources, a complaint which if substantiated is likely to result in the most severe consequences for the Respondent(s), a systemic discrimination complaint, or a complaint involving a Vice President, the President, or a member of the Board of Governors.

The Investigator must not be the alleged harasser and must not be under direct control of the alleged harasser. The Investigator must be competent and trained in investigations and able to conduct an objective investigation.

## **b) Investigation Process**

The steps in an investigation may vary depending on what is “appropriate in the circumstances.”

### **(i) Interviews**

The investigator will meet with and conduct one or more thorough interviews with the:

- Complainant
- Respondent
- Witnesses (including, the person who raised the concerns where the investigation is in response to a “College-Initiated Complaint” who potentially have knowledge relevant to the event(s) in question.
- The target of the harassment and/or discrimination (where this person is different from the Complainant or the witness who raised the concerns leading to the “College-Initiated Complaint”).

All interviews must be conducted separately. The Respondent must be given the opportunity to respond to the specific allegations (as provided to them prior to the interview date).

### **(ii) Timelines**

Simple and straightforward investigations (e.g. involving one Complainant, one Respondent, very few allegations, witnesses and documents) should be entirely completed within 90 calendar days. More complicated investigations (e.g. involving multiple Complainants and/or Respondents, multiple allegations, witnesses and documents) and those where exceptional circumstances exist will require more time.

### **(iii) Communication**

The investigator will provide the Complaint(s) and Respondent(s) with regular updates on the investigation’s progress.

### **(iv) Respondent Interview**

The Respondent will be advised of the Complaint at the outset of the investigation process. They will receive a detailed list of allegations once the investigator has met with the Complainant and/or others with first-hand knowledge of the incidents alleged. This should be provided to the Respondent a minimum of three College working days in advance of their meeting with the investigator. In most cases, the Respondent will be provided with the name(s) of the Complainant(s).

### **(v) Other Evidence**

Both the Complainant and the Respondent have the right to produce any relevant documentation, evidence, or other information, and identify witnesses to the investigator in

response to any allegation(s).

The Investigator will impartially collect and review evidence and interview those witnesses they deem relevant in relation to the Complaint.

**(vi) Community Member Obligation**

All Community members are expected to meet with an investigator if requested to do so and to participate in good faith.

**(vii) Support Persons**

Anyone participating in an investigation under this procedure may be accompanied by a support person for emotional / moral support. The support person cannot be an individual who may have relevant information to share regarding the Complaint and the investigation itself, and who may be called upon as a witness during the investigation. The support person may not offer information or opinions during the interview, speak for or advocate on behalf of the individual being interviewed, or behave in a disruptive manner. Should any of these circumstances occur, the investigator may reschedule the interview and require the interviewee to have an alternative support person accompany them to the rescheduled interview. The individual being interviewed may choose to continue the interview without a support person, but will not be required to do so.

**(viii) Confidentiality**

All those who meet with an investigator, including any support persons, are required to keep confidential the following:

- The fact that a Complaint was made (or initiated by the College)
- The fact of the investigation and any knowledge or speculation on parties involved in the investigation
- The fact that they have been asked to meet with an investigator
- The substance of their conversations with the investigator (i.e. the investigator's questions and their answers)

People who are asked to participate in the investigation process must refrain from asking others about their own participation in the investigation (e.g. if they have been contacted by the investigator). Failure to maintain confidentiality during this process could compromise the integrity of the investigation and could constitute a breach of the Policy which could be subject to sanction/disciplinary consequences.

For their part, the investigator will not disclose identifying information unless it is necessary to conduct the investigation.

**(ix) Determination**

The investigator will, having reviewed all of the evidence, determine, on a balance of probabilities, whether the incidents in question took place as alleged. If the allegations are "substantiated," the investigator will assess whether or not a violation(s) of the Policy occurred.

### **(x) Frivolous, Vexatious, Bad Faith Complaints**

If during the course of the investigation the investigator believes the Complaint is frivolous (it does not have any serious purpose or value; is of little or no weight, worth, or importance), or is vexatious (instituted without sufficient grounds and only to cause annoyance) or was made in bad faith (purposely to annoy, embarrass, harass or harm), the Investigator will consult with the Executive Vice President, Human Resources and Organizational Development to determine next steps.

### **d) Investigation Report**

The investigator will prepare a confidential report which typically includes the following information:

- The nature of the Complaint, including the protected ground(s) involved (where applicable) and the specific allegations.
- The Complainant(s)
- The Respondent(s)
- The Witness(es)
- An overview of the investigator's mandate and scope
- An overview of the investigator's process, including, steps taken, relevant dates
- An assessment of credibility and/or reliability, where appropriate
- Evidence gathered as part of the investigation (i.e. interviews, documents)
- Findings of fact, based a balance of probabilities, as to whether or not the allegations are substantiated
- An analysis with respect to whether the substantiated allegation(s) meet the threshold of a Policy violation and/or an; and
- (If applicable), whether or not unsubstantiated allegations were made in bad faith

An appropriately qualified College administrator provides both the Complainant and the Respondent with a summary of findings including, for each allegation, whether it was substantiated or unsubstantiated, determined to violate the Policy or not, or determined to be in bad faith. It will also outline the appeals mechanism. Witnesses are not entitled to any communication of investigation outcomes.

Either party (Complainant or Respondent) may appeal the outcome of an investigation, in writing, to the President with a copy to the Executive Vice President, Human Resources and Organizational Development, within ten (10) College working days of being advised of the outcome of the investigation in writing. The appeal must provide evidence of either:

- Procedural unfairness and/or investigator bias; or
- New information or extenuating circumstances not available or known at the time of the investigation (excluding information previously intentionally withheld).

The decision to accept an appeal will be communicated to affected parties in either case and within ten (10) working days of receipt of the appeal.

Appeal decisions are final.

The complete investigation report is submitted to the Executive Vice President, Human Resources and Organizational Development and to the senior executive in the Respondent's reporting line, or their designate, if appropriate.

## **5.6 – Outcomes of an Investigation**

### **a) Consequences for Policy Violation**

If the investigation determines that the Harassment and Discrimination Prevention and Response Policy has been violated, the Executive Vice President, Human Resources and Organizational Development and the Vice President/Senior Management Team member of the employee found to have violated the Policy will determine the appropriate consequences for the individual.

Policy violations include:

- Racism, hate, harassment and/or discrimination as defined in the Policy and relevant legislation on which the Policy is based
- Complaints found to be frivolous, vexatious, or made in bad faith
- Reprisals, retribution, or threat of either/both in relation to a Complaint
- Breaches of confidentiality related

Complaint Consequences may include but are not limited to:

- An apology
- Counselling
- Education and training
- Verbal or written reprimand
- Behaviour Contract
- Restorative Justice Practices
- Community Service
- Restitution or Fines
- Suspension or Expulsion
- Removal or transfer from residence
- Transfer
- Suspension without pay (with the approval of the President)
- Termination of employment (with the approval of the President)

In determining the appropriate proportional consequences, the College will take into account the nature of the violation of the Policy, its severity, whether an individual has previously violated the Policy or any other College Policy, the degree to which the individual has taken accountability for and indicated understanding and remorse for their actions, the impact of the Policy violation on the victim(s) and others, as well as the reputation of the College itself, along with any extenuating circumstances.

### **Regulatory/Professional Licensing Bodies**

When a member of the College is functioning in a capacity that requires registration in a professional association (that is, social worker, nurse, etc.) and a finding has been made

against them, if the College deems at its sole discretion that it is required to report the incident by a regulatory / professional licensing body, a report will be filed and the relevant findings will be communicated to the professional licensing body.

#### **b) Broader Implications – Removal of Barriers, Education**

The College is committed to preventing harassment and discrimination and creating an inclusive and welcoming environment for all. If a Complaint (whether it is substantiated or unsubstantiated) reveals any broader issues that the organization should address, the College will take steps to do so. This could include, for example, removal of specific barriers identified in the workplace or a need for further training on particular human rights issues.

#### **c) College Community Restoration**

The College will undertake a timely and appropriate restoration activity with any group, team or department adversely affected by a complaint process or investigation, regardless of findings. The College may use internal or external facilitation and support and, where appropriate, will solicit input from affected parties and/or individuals with both expertise and lived experience as members of groups affected by protected grounds, particularly in regard to Indigenous restorative/healing processes.

### **5.7 – Record Keeping**

Pursuant to the Freedom of Information and Protection of Privacy Act (FIPPA), the College will maintain secured, confidential records relating to each process brought forward under the Harassment and Discrimination Prevention and Response Policy, including internal and external investigations, and informal resolution options. Records will be maintained for seven (7) years from the date of resolution, then destroyed. In the event of a recurrence, if the resolution is breached, or if there is an external action (for example, an application to the Human Rights Tribunal of Ontario or a court case), the seven-year period will be extended as required.

Access to files will be determined at the discretion of the Executive Vice President, Human Resources and Organizational Development, or as may be required by law or another proceeding. Access by third parties to any records collected or created during the course of the investigation will be in accordance with FIPPA. The College will protect personal information contained in such records in the manner and to the extent required by FIPPA.

Statistical information on the number, nature and type of complaints will be kept and reports made to the Senior Management Team annually.

### **5.8 – Confidentiality**

The College is committed to ensuring an environment and culture of confidentiality where people feel safe to report and seek support for their concerns. Complainants, Respondents, witnesses, and support persons must keep the details of any case confidential, in order to preserve the integrity of the decision-making, resolution, and investigative processes.

Information relating to a complaint will be kept confidential to the extent possible. During the course of the investigation, information will be disclosed to the extent necessary to properly conduct the investigation and as may be required by this policy and the law. In doing so, the College will ensure compliance with FIPPA.



### **a) Limits of Confidentiality**

There are limits or exceptions to confidentiality during the resolution process(es). Confidentiality cannot be maintained when:

- An individual is at risk of life-threatening self-harm
- An individual is at risk of harming others
- There is an assessed risk to the safety of the College and/or the broader community
- Disclosure is required by law
- Disclosure is required as part of a proceeding or alternate process

### **b) Breach of Confidentiality**

Breaches of confidentiality can impact the integrity of resolution process and are therefore considered a violation of the Policy to be addressed immediately.

Breaches of confidentiality may be subject to sanctions, up to and including dismissal for just cause, depending on severity and impact.

## **5.9 – No Reprisal, Retaliation or Threats**

Persons who make a complaint, as well as anyone else who is involved, should not face negative consequences for taking part in the complaint process. In other words, they should be free from reprisal, retaliation, or threat of either.

Protection from reprisal covers:

- Complainants
- Witnesses
- Advisors
- Representatives of complainants and witnesses
- Investigators
- Decision makers/management.

A person who believes that they have been subjected to reprisal, retaliation, or threats is able to file a complaint under this procedure. Any allegation of reprisal, retaliation, or threat related to a Complaint and/or a resolution process under the Policy and this procedure will be subject to investigation and, if substantiated, will be subject to sanctions up to and including summary dismissal for cause, depending on the severity and impact.

## **5.10 – Complaints Involving the College President or Board of Governors Member**

In recognition of the imbalance of power when a College Community member makes a Complaint involving the College President or a member of the Board of Governors, all such Complaints are to be made in writing to the Board Chair or their designate, and all investigations arising from such Complaints will be carried out by an external Investigator appointed by the Board. The Board may request such support and assistance as is required from the Executive Vice President, Human Resources and Organizational Development or other College staff, as appropriate. Other than these provisions, the Policy and this procedure will apply.

## 5.11 Diversion from Procedure

Where appropriate and compatible with the College's obligations under law, the College President or their designate may take action which diverges from this procedure when there is reasonable cause to believe that:

- a) The safety of a Community member is at risk; and/or
- b) A potential violation of the Policy is deemed so serious that it is imperative immediate action be taken; and/or
- c) Other forms of action will be necessary to ensure the College meets its legal obligations.

A confidential written rationale for the diversion from procedure will be maintained on file.

## 6.0 – Related Documents

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- College Policy #3-311, *Harassment and Discrimination Prevention and Response Policy*
- The *Canadian Charter of Rights and Freedoms*
- The *Criminal Code* of Canada
- Ontario *Human Rights Code*, R.S.O. 1990
- Ontario Human Rights Commission Policy on Competing Human Rights
- Ontario Human Rights Commission Policy on Preventing Sexual and Gender-Based Harassment
- Ontario *Occupational Health and Safety Act*, R.S.O. 1990
- Ontario Ministry of Labour Code of Practice to Address Workplace Harassment Under Ontario's *Occupational Health and Safety Act*
- *The Accessibility for Ontarians with Disabilities Act*, 2005 and its related Standards and Regulations
- Ontario *Employment Standards Act*, 2000
- Ontario *Pay Equity Act*, R.S.O. 1997
- Ontario *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31
- Academic Employees Collective Agreement
- Support Staff Collective Agreement
- College Policy #3-343, *Sexual Violence Prevention*
- Administrative Operating Procedure #3-343 OP, *Sexual Violence Prevention*
- College Policy #4-412, *Safety*
- College Policy #4-420, *Violence Prevention*
- Administrative Operating Procedure #4-420 OP, *Violence Prevention*
- College Policy #5-506, *Student Rights and Responsibilities*
- Administrative Operating Procedure #5-506 OP, *Student Rights and Responsibilities*

## 7.0 – History of Amendments & Reviews

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<b>Date Approved</b>	<b>Approved By</b>	<b>List of Approved Amendments / Review</b>
June 2, 2015	ELT	NEW
November 5, 2016	ELT	Full review.
May 5, 2021	SMT	Full review.
February 6, 2025	SMT	Full review, updated for Bill 166 compliance.