

<b>Procedure Title:</b>	Harassment and Discrimination Prevention and Response Procedure
<b>Policy ID:</b>	#OP 3-311
<b>Manual Classification:</b>	Section 3 – Human Resources
<b>Linked to Policy:</b>	#3-311
<b>Approved by Senior Management Team:</b>	May 5, 2021
<b>Revision Date(s):</b>	Original: June 2, 2015 Revisions: November 5, 2016; May 5, 2021
<b>Effective Date:</b>	June 1, 2021
<b>Next Procedure Review Date:</b>	May 2024
<b>Contacts for Procedure Interpretation:</b>	Vice President, OEHR Sr. Consultant, Organizational Development Director, Employee & Labour Relations

## 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.

Nothing in the Policy or this procedure prevents a Community Member from exercising their right to pursue recourse through alternative processes that may be available to them, including filing a complaint with the Human Rights Tribunal of Ontario, initiating a grievance, or commencing a legal action.

## **2.0 – Definitions**

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All definitions in this Procedure include, but are not limited to, the definitions articulated in the *Ontario Human Rights Code* and the *Occupational Health and Safety Act*, and are found in the Harassment and Discrimination Prevention and Response Policy (#3-311).

## **3.0 - Procedure**

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### **3.1 - 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.

### **3.2 - Raising Concerns**

There may be situations where a College Member raises a concern about 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 of 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/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.

### **3.3– 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.

### **3.4 - 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**

(i) 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. 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.

(ii) 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:

- a) What happened – a description of the events or situation
- b) When – dates and times of the events or incidents
- c) Where the event(s) or incident(s) occurred
- d) 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.”)

(iii) Intake

When a Complaint is received, an appropriately qualified College administrator will assess it to:

- Ensure that it relates to allegations which, if true, would constitute 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” (3.3.)) 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.

(iv) 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.

(v) 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.

### **3.5 - Investigation Process**

#### **a) Appropriate in the Circumstances**

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.

#### **b) 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.

#### **c) 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 VP, OEHR to determine next steps.

**d) Investigation Report**

- (i) 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
- (ii) 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. Witnesses are not entitled to any communication of investigation outcomes.
- (iii) Either party (Complainant or Respondent) may appeal the outcome of an investigation, in writing, to the President with a copy to the VP, OEHR, within ten (10) College working days of being advised of the outcome of the investigation in writing. The appeal must provide evidence of either:
- a. Procedural unfairness and/or investigator bias; or
  - b. 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.

- (iv) The complete investigation report is submitted to the VP, OEHR and to the senior executive in the Respondent's reporting line, or their designate, if appropriate.

### **3.5 - 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 VP, OEHR 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:

- 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 to a 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,

### **4.0- Records and Reporting**

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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 VP, OEHR, 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.

## **5.0 – Confidentiality**

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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.

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

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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:

1. Complainants
2. Witnesses
3. Advisors
4. Representatives of complainants and witnesses
5. Investigators
6. 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.

## **7.0 – 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 Vice-President, OEHR or other College staff, as appropriate. Other than these provisions, the Policy and this procedure will apply.

## **8.0 – 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.

## **9.0 – 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*

## **9.0 – History of Amendments & Reviews**

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Approved by ELT June 2, 2015

Full review undertaken, approved by ELT November 5, 2016

Full review undertaken, approved by SMT May 5, 2021