

ADMINISTRATIVE OPERATING PROCEDURE

Harassment and Discrimination Prevention	
Procedure ID:	#3-311 OP
Approved by Executive Leaders Team:	<i>Original:</i> June 2015
Revision Date(s):	November 2016
Effective Date:	Replaces June 2015
Next Review Date:	2017
Monitoring Responsibility:	Human Resources Consultant/Human Rights Officer
Linked to a College Policy:	#3-311 <i>Harassment and Discrimination Prevention</i>

Policy Statement

Fleming College is committed to fostering a working and learning environment that is free from harassment and discrimination and one where all individuals are treated with respect and dignity.

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

Definitions/Acronyms

Workplace Harassment: Under the Ontario Occupational Health & Safety Act, Workplace Harassment means,

- a) Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or
- b) Workplace Sexual Harassment;

Within this policy, this definition will include any form of harassment, bullying, or psychological harassment including harassment on any protected ground in human rights legislation.

Workplace Sexual Harassment: Under the Ontario Occupational Health & Safety Act, Workplace Harassment means,

- a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- b) 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 worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome;

Subsection 1 (4) A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

Additionally, the Ontario Human Rights Code states:

Sexual harassment Harassment because of sex in workplaces

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or

her employer or agent of the employer or by another employee. R.S.O. 1990, c. H.19, s. 7 (2); 2012, c. 7, s. 6 (2).

Sexual solicitation by a person in position to confer benefit, etc.

(3) Every person has a right to be free from,

- (a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- (b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person. R.S.O. 1990, c. H.19, s. 7 (3).

Prohibited Grounds of Discrimination: The Ontario Human Rights Code prohibits discrimination or harassment in employment based upon citizenship, race, place of origin, ethnic origin, colour, ancestry, disability, age, creed (religion), sex (including pregnancy), sexual orientation, marital status, family status, record of offenses, gender identity and gender expression.

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

Further definitions and examples are contained in Appendix A.

Operating Procedure

Complaints

An investigation will be conducted into incidents and complaints of workplace harassment, (including sexual harassment), discrimination, or harassment that is appropriate in the circumstances. Such complaints will be investigated according to the procedures described in Appendix C.

The complaint process in Appendix C will be used to investigate complaints against or involving employees under College Policy #3-343, *Sexual Violence Prevention*.

Program Awareness of the Policy and this Procedure

The College will ensure awareness of the Policy and this Procedure by:

1. Making both documents available to any existing and new member of the College. Both documents will be posted on the Human Resources website. Alternative formats will be made available upon request to the Human Rights Officer.
2. Providing information and instruction to all employees, ensuring those persons with managing, supervising, and leadership responsibilities are aware of their obligations under the policy and are able to implement its requirements. This training will discuss recognizing what constitutes workplace harassment and discrimination, the resolution process, complaint procedures and mechanisms available under the policy.

3. Reviewing the training program to ensure that it adequately implements the Policy. This will be done at least annually or when any gaps or deficiencies are identified as a result of an investigation and will be maintained in consultation with the JH&SC.

Related Documents

This procedure may at times contain references to the following policies and legislation:

- 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 & 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 & Regulations
- Ontario Employment Standards Act, 2000
- Ontario Pay Equity Act, R.S.O. 1997
- Academic Employees Collective Agreement
- Support Staff Collective Agreement
- College Policy#6-601, *Information and Communications Technology Appropriate Use Policy*
- 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, *Student Rights and Responsibilities*

Appendices

Appendix A: *Further Definitions and Examples*

Appendix B: *Additional Related Information*

Appendix C: *Complaint Reporting and Resolution Process*

Appendix D: *Academic Contact Information for Students*

Appendix E: *Investigating / Resolving Complaints Made Against the President / Board of Governors*

History of Amendments/Reviews:

Section(s)	Date	Comments
Full review	June 2015	New format, updated language • ELT approval of operating procedure (June 2, 2015)
Full review	August – October 2016	• ELT approval of operating procedure (November 15, 2016)

Appendix A to Operating Procedure 3-311 OP: *Further Definitions and Examples*

Definitions and Examples

No policy can provide a full description and definition of every behaviour that falls within the meaning of workplace harassment, sexual harassment, and discrimination. This policy encompasses harassment and discrimination based upon every prohibited ground under the OHRC as well as non-human rights definitions of harassment and bullying as outlined in the OHSA (Bills 168 and 132) and the collective agreements for both academic and support staff employees

Complaints by students regarding harassment or discrimination on the basis of any prohibited ground under the Ontario Human Rights Code may be addressed within this policy. Students who wish to make complaints regarding bullying against other students that is not on the basis of any prohibited ground are referred to the Student Rights and Responsibilities Policy (# 5-506) for investigation and resolution.

Workplace Harassment, as defined within the Policy, includes the following terms:

1. **Bullying (Harassment):** refers to any vexatious behavior that is known, or ought reasonably to be known, to be unwelcome and that:
 - Adversely affects an employee's dignity, or psychological or physical integrity by making them feel threatened, humiliated, vulnerable, and/or undermines the recipient's self-confidence and/or reduces the recipient's feelings of self-esteem and self-worth and/or
 - Takes the form of repeated conduct such as persistent, offensive, abusive, intimidating or insulting behavior, abuse of power and/or unfair punitive sanctions which could reasonably be regarded as intending to intimidate, offend, degrade or humiliate, and/or
 - Results in a harmful working environment.

Examples include, but are not limited to:

- berating/belittling an employee or an individual
- unreasonably questioning an individual's abilities, skills, or decision making when not related to an appropriate evaluation of performance
- excluding or isolating a person by making others avoid him/her
- ignoring a person in the workplace or classroom
- making repeated unwarranted criticism
- undermining or deliberately impeding a person's work
- spreading malicious rumours or gossip
- making physical gestures intended to intimidate, offend, degrade or humiliate an employee or an individual
- making comments that are threatening, degrading, or defamatory, or using abusive language whether verbally or written, including voice mail, email, on-line chats and comments posted on websites or social media).
- making a person perform useless, humiliating or demeaning tasks that are not reasonably expected to be part of that person's employment
- unreasonably ceasing to give a person work on an on-going basis

The definition of bullying / workplace harassment refers to persistent behaviour or a course of comment or conduct. Notwithstanding this, in some exceptional circumstances one single incident can constitute Workplace Harassment when it is demonstrated that it is severe and has a significant and lasting impact on the complainant.

Bullying or harassment does not include differences of opinion or minor disagreements between co-employees, or an occasional raised voice or argument. It does not include reasonable actions taken by the College or a manager relating to the management and direction of workers in the workplace, or other reasonable actions by the College, a manager, by the Union or its representatives, by students, employees, individuals or by groups.

Examples of such reasonable actions include but are not limited to:

- the transfer, demotion, discipline, counsel or dismissal of an employee in a reasonable manner;
- a decision, based on reasonable grounds and facts, not to promote or grant another benefit in connection with an employee's employment or performance;
- the legitimate right and responsibility of managers to conduct on-going evaluation of employee performance at work, which may result in reasonable changes to a person's assignment as a result of an evaluation;
- the legitimate right of Union members and officials to reasonably conduct grievance investigations, file grievances, conduct inspections, lawfully picket and, without limiting the aforementioned, generally conduct Union business in a reasonable manner;
- the legitimate right and responsibility of employees to correct inappropriate student behavior and maintain order in the work environment in a reasonable manner;
- respectfully expressing disagreement or reasonably stating a contrary point of view;
- the legitimate exercise of freedom of thought and inquiry, and expression.

Bullying and Harassment will not be condoned under the guise of strong management when employees are not treated with dignity and respect.

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

Sexual harassment may include but is not limited to:

- invading personal space
- using language that puts someone down and/or comments toward women (or men, in some cases), sex-specific derogatory names
- making gender-related comments about someone's physical characteristics or mannerisms
- making comments or treating someone badly because they don't conform with sex-role stereotypes
- showing or sending pornography, sexual pictures or cartoons, sexually explicit graffiti, or other sexual images (including on-line)
- sexual jokes, including passing around written sexual jokes (for example, by e-mail)
- rough and vulgar humour or language related to gender
- using sexual or gender-related comment or conduct to bully someone
- spreading sexual rumours (including on-line)
- making suggestive or offensive comments or hints about members of a specific gender
- bragging about sexual prowess
- demanding dates or sexual favours
- making an employee dress in a sexualized or gender-specific way
- acting paternally in a way that someone thinks undermines their self-respect or position of responsibility

- demeaning gestures, remarks and jokes, slurs, taunting, or innuendo unwanted physical contact, leering, inappropriate comments about clothing, physical characteristics or activities
- unwanted questions or comments about one's private life, sexual orientation, marital or family status
- the production, display or distribution of pornographic or other sexually offensive or derogatory pictures of material
- solicitation of, or implied or expressed promise of reward or benefit in return for sexual favours
- pressing an individual to accept unwelcome invitations or sexual propositions, including repeated telephone calls, letters, emails or other electronic communications including social media
- implied or expressed threat or act of reprisal if sexual favours are not given
- Sexual Assault. (Sexual Assault is an offense under section 271 of the Criminal Code of Canada and will be responded to in accordance with College Policy #3-343, *Sexual Violence Prevention* and College Policy #4-420, *Violence Prevention*.)
- Gender/Sexual Orientation Harassment (defined below)

3. **Harassment Based upon Prohibited Grounds in the Ontario Human Rights Code:** may be one or a series of vexatious comment(s) or conduct related to one or more of the prohibited grounds that is known or ought reasonably to be known to be unwelcome/unwanted, offensive, intimidating, hostile, derogatory, or inappropriate. Such harassment may be based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, gender identification, sexual orientation, age, marital status, family status, disability, record of offences (in employment only), and receipt of public assistance (in accommodation only) as defined by the Ontario Human Rights Code.

In addition to the above, the following denotes examples of harassment based upon Prohibited Ground in the Ontario Human Rights Code which may occur:

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

This may include but is not limited to:

- verbal abuse, threats, derogatory name-calling, racist slurs, insults and/or jokes
- ridicule of an individual on racial or cultural grounds
- comments which imply that race impairs the person's ability
- exclusion from normal workplace interactions or social events
- unfair allocation of work and/or responsibilities
- racist graffiti, insignia, objects or pictures or display and/or publication of racist material
- physical assault or unwelcome physical contact (Assault is an offense under the Criminal Code of Canada and will be responded to in accordance with the Violence Prevention Policy # 4-420)
- inciting others to commit any of the above (sections 318 and 319 of the Criminal Code of Canada explicitly prohibit acts inciting hatred or violence towards any identifiable group on the basis of colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability.).

(b) Gender-Based Harassment is a form of both Workplace Harassment and Sexual or Human Rights Harassment which often stems from homophobia and heterosexism. Gender-based harassment is any behaviour that polices and reinforces traditional heterosexual gender

norms. It is often used to get people to follow traditional sex stereotypes (dominant males, subservient females). It is also used as a bullying tactic, often between members of the same sex.

It may consist of offensive comments and/or actions, and/or exclusion from that to which a person(s) would otherwise have a right or privilege, which demean and belittle an individual(s) and/or cause personal humiliation on the basis of gender and/or sexual orientation. Homophobia means harassing, prejudicial treatment of, or negative attitudes about, lesbian, gay, bisexual, trans-identified, transgendered, inter-sexed, two-spirited, or queer persons and those perceived to be of these sexual orientations or gender identities.

Homophobia includes a range of feelings and behaviours from discomfort and fear to disgust, hatred and violence. Heterosexism is based on societal values that dictate that everyone is, or should be, heterosexual.

In addition to the examples from Sexual Harassment, Section 2 above, further examples of Gender-Based Harassment may include:

- making derogatory comments, innuendos, insults, slurs, jokes or threats about sexual orientation or sexual practice, including voice mail, email, online chat or posted on a website
- silencing talk of sexual or gender diversity
- forcing people to “come out” or to “stay in the closet” (disclose or hide their sexual orientation)
- linking homosexuality with pedophilia (child abuse)
- defacing notices, posters or property with homophobic graffiti
- removing or defacing notices, posters, postcards, or other property of the Fleming Association of Queers (FAQ) or other awareness initiatives on campus
- rejecting or excluding individuals or groups because of their sexual orientation or gender identity.
- physical violence, including sexual violence (Assault and Sexual Violence are offenses under the Criminal Code of Canada and will be responded to in accordance with College Policy #3-343, *Sexual Violence Prevention* and College Policy #4-420, *Violence Prevention*)
- inciting others to commit any of the above (sections 318 and 319 of the Criminal Code of Canada explicitly prohibit acts inciting hatred or violence towards any identifiable group on the basis of colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability.).

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

Discrimination Based upon Prohibited Grounds in the Ontario Human Rights Code may be one or a series of action(s) or behaviours(s) based on a prohibited ground that results in the unfavourable or differential treatment which negatively affects the employment status of an employee or academic status of a student, or the provision of a College service.

This may include, but is not limited to, the refusal to provide goods, services or facilities, exclusion from employment or employment benefits, unequal treatment in employment, exclusion of support

persons or service animals for disabled persons, and/or refusal to work with, teach, or study with someone based on a prohibited ground of discrimination.

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

Types of discrimination that are prohibited under the Ontario Human Rights Code include:

- a) **Direct Discrimination** refers to differential treatment which negatively affects an employee or student and which is directly related to a prohibited ground of discrimination. Such differential treatment need not be intentional or overt to constitute direct discrimination.
- b) **Indirect or Adverse Impact Discrimination** occurs where a requirement, qualification or factor which appears neutral results in the exclusion, restriction or preference of a person because of his or her membership in a group identified by a prohibited ground of discrimination.
- c) **Systemic Discrimination** includes policies, practices, procedures, displays, materials, actions or inactions that appear neutral, but have an adverse impact associated with one of the prohibited grounds. This may include, but is not limited to, negative stereotypical portrayal of groups/individuals in materials, attendance policies that do not reasonably accommodate religious responsibilities, and course selection and/or job posting criteria that are not bona fide. Where, as a result of a College investigation, systemic bias is determined within any college policy, procedure and/or practice, the positive actions may include amendments, revisions or elimination of existing College policy, procedure or practice.

Additional Definitions

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

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

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

Disability: as set out in the Ontario Human Rights Code, means,

- 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.

Vexatious complaint or complaints made in bad faith: A complaint made in bad faith is one that is known by the complainant to be false and/or one in which a complaint is made for a purpose other than gaining a satisfactory remedy. A vexatious complaint is one that is instituted maliciously and without probable cause and/or one which is not based on reasonable factual ground but is merely vindictive. In determining whether a complaint is vexatious or made in bad faith, the knowledge and intention of the complainant will be considered. If the complainant is merely bringing the complaint to annoy or embarrass the respondent and knows that there is no discrimination or harassment per se, then it can be said that the complaint is vexatious or made in bad faith.

Appendix B to Operating Procedure 3-311 OP: *Additional Related Information*

1. Coverage

1.1 External Relationships: Visitors, contractors, and/or suppliers of services who attend a Sir Sandford Fleming College campus location will be subject to complaints if they engage in prohibited or inappropriate conduct as defined in this policy. All contractual relationships entered into by the College will be governed by a standard contract compliance clause stating that contractors must comply with all current legislation and relevant College policies. Breach of the clause may result in penalties, cancellation or debarment if a contractor is found in violation of the College's policy or government statutes.

1.2 Student Work Placements: Students completing work placements are covered by the relevant occupational health and safety and workplace harassment policies of the individual placement agency while they are on placement. Placement coordinators should ensure that students are aware of applicable policies during the student's introduction and orientation to the placement. College representatives will engage in discussions with the student(s) and agency as appropriate and will support the resolution of workplace harassment and discrimination issues once they are made aware of an incident.

2. Specific Roles and Responsibilities

2.1 Supervisors and Management

Supervisors and Managers represent the College, and as such it is their key responsibility to create a positive, respectful working environment free from Workplace Harassment and discrimination. Supervisors and managers are required to:

- Comply with this Policy and refrain from any acts of harassment or discrimination
- Be familiar with the requirements of this policies and the signs of workplace harassment
- Ensure, as much as reasonably practical, that no employees are subjected to Workplace Harassment. Take allegations of violence or harassment seriously and follow-up appropriately.
- Take corrective action with anyone under their direction who subjects employees to harassment.
- Attend training and information sessions provided by the College to reduce incidents of harassment and discrimination
- Set a good example and maintain a high standard of conduct in all dealings with others.

2.2 Employees

Every employee contributes to the creation of a safe and healthy work environment by demonstrating professional, respectful and appropriate conduct at work. All employees must accept as a personal responsibility their own role in eliminating the risk of Workplace Harassment in the day-to-day activities of their own work. Therefore, employees are required to:

- Comply with this Policy and refrain from any acts of harassment or discrimination
- Work together in a professional manner and resolve issues in a respectful manner
- Report to their immediate supervisor any incidents they experience or witness.
- Attend training and information sessions provided by the College to reduce incidents of harassment and discrimination
- Co-operate with investigators or other authorities as required during any investigation related to this Policy
- Set a good example and maintain a high standard of conduct in all dealings with others.

Additionally, faculty members are reminded that because of their unique role as managers / facilitators of the learning environment they as they are in a position of authority and have a

particular legal duty to be alert to signs of harassment and discrimination in the educational environment. Faculty members must take action to address any incidents of which they are aware or ought reasonably to have been aware.

2.3 Students

Like employees, students are expected to demonstrate respectful and appropriate conduct in the classroom. Students must accept as a personal responsibility their own role in eliminating the risk of harassment and bullying. Students are expected to:

- Comply with this Policy and refrain from any acts of harassment or discrimination
- Work with each other and College staff in a professional manner and to resolve issues in a respectful manner
- Report any incidents of bullying or harassment that they experience or witness.
- Co-operate with investigators or other authorities as required during any investigation related to this Policy

2.4 The College Human Rights Officer

The College's Human Rights Officer administers this Policy. They provide consultation and support to managers and individuals with regards to this Policy and its application. They identify and support training opportunities throughout the College and provide summary data to stakeholders as requested. The Human Rights Officer may assist with or assume an investigation upon request from a supervisor, manager, or Dean, or from the Vice President, Human Resources and Student Services. Such a request may occur where there are or could be concerns expressed with regards to objectivity or a conflict of interest.

3. Record Keeping

The Human Rights Officer will maintain a confidential file including all records relating to each internal investigation complaint for the current calendar year plus seven (7) years following the conclusion of the internal investigation complaint process, after which time the contents of the file will be destroyed.

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

Statistical information on the number, nature and type of complaints will be kept and reports filed annually by the Human Rights Officer. Annual reports will be distributed to the Joint Health and Safety Committee, Vice-President of Human Resources and Student Services, the College President, and the Executive Leadership Team.

Where an investigation results in disciplinary action, this information will be placed in the respondent's personnel file or student file. Where the complaint has not been substantiated, no reference will be placed in the personnel or student file of either party. When an individual has lodged a complaint that is later found to have been trivial, frivolous, vexatious or made in bad faith, and discipline has been imposed, a letter regarding the same will be placed in his/her personnel file or student file.

Once each year, an individual may appeal to the Vice President, Human Resources and Student Services to have a disciplinary letter resulting from an investigation through this policy on file removed, a decision on which is at the discretion of the College.

Appendix C to Operating Procedure 3-311 OP: *Complaint Reporting and Resolution Process*

1. Principles of the Complaint Reporting and Resolution Process

- a) This complaint process will be used to investigate complaints against or involving employees under College Policy #3-343, *Sexual Violence Prevention*.
- b) In accordance with the Ontario Occupational Health & Safety Act (OHSA), the College will conduct an investigation into incidents and complaints that is timely, fair, and appropriate in the circumstances. Two or more complaints alleging a violation engaged in by the same person, or having facts in common, may be dealt with in the same proceeding.
- c) In appropriate circumstances (e.g. where personal safety is at risk or a strongly negative environment exists), the College will take immediate interim measures to stabilize the situation before the complaint process is initiated or concluded. Where such measures are taken, a time frame for review of the situation will be established.
- d) This policy does not preclude a Complainant from initiating an alternative complaint procedure, for example, to use the criminal process (if the action warrants), launch a civil lawsuit, complain to the Human Rights Tribunal of Ontario, the Ministry of Labour, or to access the grievance procedures outlined in their collective agreements and the terms and conditions of their employment. The College acknowledges that it is not a court of law or a quasi-judicial system.
- e) A complainant or respondent may choose to seek legal advice at her/his own expense. However, legal counsel cannot participate in proceedings under this policy. Complainants and respondents may bring a college representative of his/her choice (e.g. union member, student representative, parent/guardian, college counsellor) to any meetings throughout the proceedings for support.
- f) The Complainant has the right to withdraw the complaint at any time during the process up to the conclusion of the formal appeal process. Regardless, the College may determine that it is appropriate to continue the investigation. The Complainant must understand that withdrawal of the complaint will most likely result in discontinuation of the investigation, and will be taken to mean that the complainant has abandoned his/her claim that workplace harassment or discrimination has occurred.
- g) A person who is the subject of a complaint made under these procedures and who has reason to believe that the complaint is vexatious, in bad faith, or itself a form of harassment, has the right to file a complaint.
- h) **Confidentiality:** In accordance with the OHSA, information obtained about an incident or complaint of Workplace Harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigation or taking corrective action with respect to the incident or complaint, or is otherwise required by law such as grievance arbitrations, Human Rights Tribunal proceedings, Occupational Health & Safety disclosure requirements, and judicial proceedings. Such disclosures may also be subject to the Freedom of Information and Personal Information Protection and Electronic Documents Acts. Where appropriate, information obtained about the incident or complaint may be disclosed and reviewed with the Dean of the school(s) involved in the complaint prior to any corrective action being taken.
- i) **The College's Obligation to Act:** The Ontario Human Rights Code and the Occupational Health & Safety Act requires that a person who has the authority to prevent or discourage workplace harassment or discrimination may be held responsible for failing to do so. All College members in

positions of authority have a particular duty to take reasonable steps to deal with incidents of workplace harassment or discrimination when they know of or ought reasonably to have known of the incident.

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

- j) **Incidents of Harassment Not Resulting in Complaints:** Members of the College Community who witness incidents of harassment which do not result in complaints on the part of the victim are still required to report this harassment to the respondent's supervisor or Dean following the complaint reporting procedures below. The College will follow the complaint process in this Procedure to investigate the complaint.
- k) **Incidents of Harassment When the Harasser is Unknown:** In circumstances where the harasser is unknown such as cyber-harassment the College will make reasonable and appropriate efforts to protect the individual and to end the harassment. This may include notifications to external agencies and/or law enforcement.
- l) **Time Lines:** A complaint under this Policy must be filed within six (6) months of the circumstances giving rise to the complaint, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. Substantial prejudice, as defined by the Human Rights Tribunal of Ontario exists where it can be shown that proceeding with the complaint will deprive the respondent of an essential right such as the right to a complete defense (e.g. the destruction of material evidence by unforeseen event such as fire, flooding, etc.; death or significant incapacity of material witnesses). The passage of time or inconvenience in finding witnesses or locating documents does not amount to substantial prejudice. This decision as to whether or not any delay was incurred in good faith will be made by the Vice President, Human Resources and Student Services and communicated to all parties involved.
- m) **Systemic Discrimination:** In the event that a College policy, procedure or practice is the subject of a complaint based on the prohibited grounds of discrimination, the complaint is to be brought to the attention, orally or in writing, to the College Administrator who is responsible for that policy, procedure or practice. The Administrator will engage in discussion or internal investigation / informal fact-finding investigation, whichever applies depending on the form and substance of the complaint, and will follow the principles and timelines of the applicable process described above.
- n) **Anonymity:** Individuals are reminded of their responsibility to cooperate with a bullying or harassment investigation under this policy. Those who may be reluctant to provide information relevant to an investigation for fear of reprisal or retribution are reminded that the College will in no way permit or tolerate any such form of intimidation or retaliation. Information received anonymously by the College with respect to an investigation will be reviewed but may or may not be taken under consideration. Potential conflicts with regards to anonymity may be reviewed by the Vice President, Human Resources and Student Services. Such requests for anonymity may be reviewed based upon the level of the investigation and the severity of the accusations.

Competing Human Rights: The College may engage in a competing human rights analysis as it deems appropriate using the Ontario Human Rights Commission's Policy on Competing Human Rights as its reference document.

2. About Making a Complaint Under This Policy

Individuals who may have been subjected to harassment are advised to make notes of the offensive behaviour, the date and time that it happened, what was done about it, and who may have witnessed the incident(s).

Speak Up About Harassment and Discrimination

Whenever possible, students and employees are encouraged to attempt to resolve conflicts directly. Employees and students of the College who experience workplace harassment or discrimination should first attempt to make it known to the individual(s) responsible that the behaviour is offensive, contrary both to law and to the College's policy and request that it stops.

Complaints Against Contractors and Third-Party Service Providers

Members of the College community who wish to make complaints against contractors and third-party service providers are requested to speak with the respondent individual's supervisor. The College will support members of the College community in having their complaint properly investigated and resolved. For assistance in this regard please contact the Human Rights Officer.

Supports for Individuals Considering Making a Complaint

Employees or students who are considering whether or not to make a complaint and who have questions about the complaint process may speak with their Union representative (if applicable), joint health and safety committee member, or the Human Rights Officer. Additionally, students may also speak with their Student Administrative Council (Sutherland), the Student Association (Frost) or the Human Rights Officer.

If a student is unaware who the Dean is for their program they should consult Appendix D of this Operating Procedure for clarification. Students who are unsure as to which Dean to approach should speak with their own Dean or Academic Chair.

During the investigation process, the Respondent may choose to be accompanied by a third party in a supportive capacity. This may be a union member (if applicable) or a SA / SAC representative if the Respondent is a student. A third party may not speak on behalf of the complainant but may provide assistance with regards to the process.

Reporting Incidents Where the Employee's Supervisor is the Alleged Harasser

Under this procedure, employees who are considering whether or not to make a complaint about their direct supervisor should ideally make the complaint to their supervisor's supervisor. Should this be impractical or for additional support the employee is asked to please speak with the Human Rights Officer, joint health and safety committee member, or their Union representative (if applicable).

Mediation

Before pursuing an internal investigation, individuals may decide to request mediation. Mediation is a simple, effective and rapid conflict resolution method that brings together only those persons concerned by or involved in the situation. Mediation seeks to put an end to the alleged harassment, discrimination or bullying by finding, with the help of an impartial third party, mutually acceptable solutions for the people concerned. In order for mediation to succeed, participation in the process must take place in a context of good faith.

Individuals may also consider using traditional mediation methods such as talking circles or healing circles.

Mediation may be requested through the Human Rights Officer, and the selection of the mediator must be agreed to by both parties. The mediation will normally be concluded within twenty (20) working days of the receipt of the case by the mediator. The mediator's responsibility will be to

provide a forum for discussion in a neutral setting. The mediator will not impose his/her point of view or that of either of the parties to the process. The mediator will also ensure that the parties have given their free and enlightened consent to any potential settlement that may be reached between them.

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

If the mediation is not a viable option or does not result in an agreement, the complainant may choose to initiate the next investigative step within five (5) working days of the conclusion of the attempt to reach an agreement

3. How to Make a Complaint

Reporting a Complaint

Where possible a written complaint under this Policy is preferred. This may be emailed or a paper copy submitted. The report of the incident or complaint must contain the following information:

- The complainant's name and contact information
- The name of the respondent and their position if known
- The name of any witnesses or those with any relevant information to provide about the incident
- Details of what happened including date(s), frequency, and location(s) of the alleged incidents
- Any documentation that the complainant, witnesses, the respondent or others may have in their possession that are relevant to the complaint

The Complaint Reporting and Resolution Process consists of two steps: an Internal Investigation or Fact-Finding Process, and/or an External Investigation Process.

STEP 1 – Internal Investigation / Fact Finding Process

The Complainant submits a written detailed complaint to the respondent employee's supervisor, or the respondent student's Dean. The supervisor (or their delegate), Dean (or their delegate), along with a second investigator where appropriate will then investigate the allegation(s) and make a determination using a balance of probabilities as to whether there has been a contravention of this Policy. Typically the second investigator will be the Human Rights Officer.

A delegate may be preferable in instances where there is the possibility of perception of a conflict of interest, or an issue of availability. Typical delegates may include the Dean or Academic Chair for the school, a Dean or Academic Chair from another school, another manager, the Human Rights Officer or a Human Resources Consultant. Some investigations, such as those initiated through College Policy #3-343, *Sexual Violence Prevention*, may require consideration that the second investigator reflect a gender balance. Investigations involving students may also require the involvement of an investigator from Student Services.

The Investigative Process

1. The Complainant initiates a fact-finding process by notifying the supervisor of the respondent employee or the Dean of the responding student's school in writing with the

nature and substance of the complaint. This complaint should include relevant details such as the nature of the specific offensive behaviour / language, dates, times, and names of witnesses as well as the requested outcome desired.

2. Within ten (10) working days of receiving the complaint, the supervisor or Dean (the Investigator), or their delegate will meet with both the complainant and the respondent in order to attempt to verify the details of the complaint. The Investigator may request the production of documents or information from the complainant, respondent, witnesses or other resources that is relevant to the fact-finding process. The Investigator will share details of the complaint with the Respondent including a copy of a written complaint. Information provided by the Respondent may be reviewed by the Complainant and vice versa as necessary. Timelines may be extended if delays are experienced in good faith.

Determination and Judgment

1. At the conclusion of the investigation, the Investigator will write an investigation report summarizing the steps taken during the investigation, the complaint, the allegations of the complainant, the response from the respondent, the evidence from witnesses and other evidence gathered. It will set out the findings of fact and come to a conclusion stating whether or not the complaint is substantiated. This conclusion will be based on the balance of probabilities (which means that it is either more likely or not likely that the incident(s) of harassment or discrimination occurred as defined within the Policy). This is consistent with the burden of proof required by civil law and is different from the "beyond a reasonable doubt" burden required by criminal law.
2. Should the complaint be substantiated, the Investigator will make a determination of appropriate sanctions/ remedies as applicable (see Corrective Actions and Protection From Reprisal, Section 3.0).
3. Should the complaint not be substantiated under this Policy, the Investigator will determine whether the complaint is proven to be trivial, frivolous, vexatious or made in bad faith (see Malicious / Fraudulent Complaints, Section 4.0).
4. This investigation report will be provided to the respondent employee's supervisor to take appropriate action where the respondent employee's supervisor has delegated the investigation to another individual or has not otherwise been part of the investigation. This report will be retained in the investigation file maintained by the Human Rights Officer.
5. A separate report summarizing the results of the investigation and any corrective action taken or yet to be taken as a result of the investigation will be communicated to the complainant and the respondent in writing within ten (10) calendar days of the completion of the investigation. .
6. Where, as a result of an Internal Investigation / Fact-finding process, systemic bias is determined within any College policy, procedure and/or practice, the Investigator will recommend actions to the Human Rights Officer which may include amendments, revisions or elimination of existing College policies, procedures or practices.

Appeal

1. Should either the Complainant or Respondent be dissatisfied with the results or outcome of an the Internal Investigation / Fact-Finding process, they may appeal the matter in writing within fifteen (15) working days of receiving a decision to the Vice President

Academic (if the respondent is a student) or to the Vice President, Human Resources and Student Services (if the respondent is an employee).

2. The Vice-President Academic/ Vice-President Human Resources and Student Services will ensure that all aspects of the findings are reviewed and that a final decision is communicated within fifteen (15) working days of receipt of the appeal.

STEP 2 – External Investigation

If the Complainant is not satisfied with the results of the Internal Investigation / Fact-Finding process and has already appealed the decision, they may request an External Investigation into the matter. The College may also choose to initiate this step at its own discretion.

Initiation of an External Investigation

A request to initiate an External Investigation should be made as soon as possible, and must be within fifteen (15) days of the completion of the Internal Investigation / Fact-Finding Process. This request will proceed as follows:

1. The Complainant submits a written request to the President. This written request must indicate the nature of the original complaint and the grounds for the appeal of the Internal Investigation / Fact Finding Process.
2. The Complainant must understand that they will be required to speak further on this matter, and that the Respondent(s) will be given a copy of the request for initiation of an external investigation.
3. The President will review the complaint and determine whether there are sufficient grounds to initiate an external investigation. If the President is the named Respondent, the request will be directed to the Vice-President, Human Resources and Student Services. They will communicate their decision in writing to the complainant within ten (10) working days. The decision by the President as to whether or not to initiate an External Investigation will be final.

Investigative Process

Once it has been determined that it is appropriate to initiate an External Investigation, the following steps in the investigation process shall occur:

1. The Human Rights Officer will meet with the Respondent to review the process and provide a copy of the written complaint.
2. The Vice President, Human Resources and Student Services in consultation with the Human Rights Officer shall contract with an investigator who is external to the College community. If the Vice President, Human Resources and Student Services is the named Respondent, the President shall select the investigator. If the President is the named Respondent, the complaint will be directed to the Vice-President, Human Resources and Student Services, who will follow the procedure outlined in the Addendum: Investigating/Resolving Complaints Made against the President/Board of Governors (Appendix E).
3. The Investigator will have training and experience in what constitutes workplace harassment and discrimination, the Ontario Human Rights Code, dispute resolution, and effective investigation procedures. They will also have received the College's Harassment and Discrimination Prevention Policy and its complaint procedures. The investigator may

request the production of documents that may be relevant to the investigation. The investigator will investigate the complaint in the following manner:

- The investigation will be limited to what is within the jurisdiction of this policy.
 - The Investigator will determine who will be interviewed.
 - The Respondent will be given a full and fair opportunity to respond to the complaint orally and in writing.
 - The Investigator reserves the right to refer the complaint back to the Human Rights Officer if a resolution is possible.
4. Both the Complainant and the Respondent will have the right and responsibility to provide all information as accurately and promptly as possible, including dates, times, location of allegations and any other information that would assist in the investigation.
 4. The Human Rights Officer will be in communication with the Investigator, the Complainant, and the Respondent until the process is concluded. The Complainant and Respondent will be informed on an on-going basis of the status of the investigation, but not of details of the interviews.
 5. During the investigation, both the Complainant and the Respondent may choose to be accompanied by a third party in a supportive capacity. This may be a union member (if applicable) or a SA / SAC representative if the individual is a student. Should the Complainant or Respondent choose to acquire legal advice throughout the process, this is done at his/her own expense. Third parties cannot speak on behalf of parties to the complaint nor disrupt the proceedings.
 6. The Investigator will make every effort to complete the investigation of a human rights complaint within thirty (30) working days of receipt of the complaint. If it is necessary to exceed 30 days, this decision will be made by the Vice President, Human Resources and Student Services and the complainant and respondent will be informed as soon as possible of the revised time line.
 7. At the conclusion of the investigation, the Investigator will write a draft report stating whether or not the complaint is substantiated based on the balance of probabilities (which means that it is either more likely or not likely that the incident(s) of harassment or discrimination occurred). This is consistent with the burden of proof required by civil law and is different from the "beyond a reasonable doubt" burden required by criminal law.
 8. The Investigator will provide a copy of the draft report to the Complainant and the Respondent who will have five (5) working days to notify the investigator, in writing, of any errors or omissions in the report, or in the description of the facts or allegations provided by each of them to the investigator.

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

- the Complainant;
- the Respondent;
- the executive leader of the respondent's division (e.g. Vice-President Academic, Vice President Finance, Chief Information Officer);
- the College President;
- the Vice-President, Human Resources and Student Services;
- the Human Rights Officer.

The investigator's notes and transcripts (if applicable) will be turned over to the College.

9. If a complaint is found to be substantiated, the Executive Officer, Vice President, Human Resources and Student Services, and the President will determine appropriate remedies/sanctions as applicable (see Corrective Actions and Protection From Reprisal, Section 3.0).

If a complaint is not substantiated, the Executive Officer, Vice President Human Resources and Student Services, and the President will determine whether the complaint is proven to be trivial, frivolous, vexatious or made in bad faith (see Malicious / Fraudulent Complaints, Section 4.0).

The results of this determination will be communicated in writing to the complainant and the respondent by the Vice President, Human Resources and Student Services, under an obligation of confidentiality, within ten (10) working days of receipt of the investigator's report.

10. The results of a determination made through the External Investigation process are final and must be abided by.
11. Where, as a result of a formal investigation, systemic bias is determined within any College policy, procedure and/or practice, the Executive Officer, Vice President, Human Resources and Student Services, and the President will prescribe actions which may include amendments, revisions or elimination of existing College policies, procedures or practices.

3. Corrective Actions and Protection From Reprisal

3.1 Remedies

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

3.2 Sanctions

A substantiated act of workplace harassment or discrimination may be cause for disciplinary action by the College up to and including the possibility of discharge in the case of an employee and other appropriate actions for other groups covered by this policy including the application of penalties or sanctions under the Student Rights and Responsibilities Policy for students.

Remedies and sanctions applied as a result of an investigation initiated through College Policy #3-343, *Sexual Violence Prevention* will take into account the outcome(s) requested by the survivor of the sexual violence.

3.2.1 Corrective Action where the Respondent is an Employee

If Management decides there has been a violation of this Harassment and Discrimination Policy and Procedures by an employee, the following criteria will be considered in determining the appropriate level of sanction:

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

Where sanctions are taken against an employee, a range of progressive sanctions are possible which conform to generally accepted standards of employee discipline and the two collective agreements. Some or all of the following corrective actions may be considered depending on the particular incident and the above factors:

- Apology
- A requirement for additional training
- Referral to an assistance program
- Reassignment or relocation
- Report to a professional body
- Suspension (with or without pay)
- A “last-chance” agreement or behavioural contract
- Termination of employment or contractual relationship
- Legal action

3.2.2 Corrective action where the Respondent is a student

Where the Respondent is a student, sanctions shall be applied through the authority in College Policy #5-506, *Student Rights and Responsibilities*. These may include:

- Apology
- Written Reprimand
- Restitution or Fines
- Temporary Dismissal
- Restricted access to a physical area of the College and/or property
- A “last-chance” agreement or behavioural contract
- Probation
- Suspension
- Expulsion

3.2.3 Corrective Action where the Respondent is neither an Employee nor a Student

If the Respondent is not an employee or a student, the College will take whatever measures are reasonably available to ensure the safety of its’ employees and students including any of the actions listed in 3.2.1 and 3.2.2.

3.3 Protection from Reprisal

Subject to section 4.0 below, every individual has the right to file a complaint of workplace harassment or discrimination, participate or co-operate in an investigation, provide information relevant to the complaint, in any role under the policy and/or procedures, without fear of retaliation or reprisal. Any form of retaliation or reprisals will not be tolerated and will be treated as workplace harassment and/or discrimination. Workers exercising their rights under the Occupational Health and Safety Act to report an incident or participate in a workplace harassment investigation will not be penalized provided that this is done in good faith and subject to Section 4.0 below.

4 Malicious / Fraudulent Complaints

The College will take disciplinary action in situations where complaints are proven to be malicious, fraudulent, trivial, vexatious, or made in bad faith. Discipline will be consistent with the two collective agreements, the Student Rights and Responsibilities Policy, and Section 3.0 of these procedures, as they apply. A person who is the subject of a complaint made under these procedures and who has reason to believe that the complaint is trivial, frivolous, vexatious, in bad faith, or is itself a form of harassment, has the right to file a complaint.

Appendix D to Operating Procedure 3-311 OP: Academic Contact Information for Students

Program / Campus	Dean / Principal	Office Location	Phone	Email
Cobourg Campus	Deborah Clifford	Cobourg 305	905-372-6865	deborah.clifford@flemingcollege.ca
Haliburton Campus	Sandra Dupret	Haliburton Campus	705-457-1680	sandra.dupret@flemingcollege.ca
School of Business	Maxine Mann	B3130	705-749-5530 Ext 1257	maxine.mann@flemingcollege.ca
School of Environmental & Natural Resource Sciences	Linda Skilton	Frost 289A	705-749-5530 Ext 3216	linda.skilton@flemingcollege.ca
School of General Arts & Sciences	Silvana MacDonald	B3327	705-749-5530 Ext 1218	silvana.macdonald@flemingcollege.ca
School of Health & Wellness	Carol Kelsey	A2146.1	705-749-5530 Ext 1251	carol.kelsey@flemingcollege.ca
School of Justice & Community Development	Carol Kelsey	A2146.1	705-749-5530 Ext 1251	carol.kelsey@flemingcollege.ca
School of Trades & Technology	Maxine Mann	B3130	705-749-5530 Ext 1257	maxine.mann@flemingcollege.ca

Appendix E to Operating Procedure 3-311 OP: Investigating/Resolving Complaints Made Against the President/Board of Governors

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

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

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

Procedure

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