

Procedure #	HR 100-P
Related Policy Name and #	Human Rights and Harassment Policy HR 100
Approved by:	Jennifer O'Brien
Approval Date:	October 17, 2023
Policy Holder:	Vice President, People(s) and Culture
Administrative Contact:	Chief Legal, Risk and Privacy Officer

Human Rights and Harassment Complaint Resolution Procedure

Purpose:

The Humber College Institute of Technology and Advanced Learning and the University of Guelph-Humber (hereafter referred to as Humber) is committed to fostering a respectful and inclusive culture in which all members of the Humber Community study, work and live free from Discrimination and Harassment. Humber has a legal and moral responsibility and accountability, to ensure that all its members are treated fairly, equitably, and respectfully, in providing a Learning, Working and Living Environment free from Discrimination and Harassment.

This Procedure is guided by the *Ontario Human Rights Code (the "Code")* and the *Occupational Health and Safety Act ("OHSA")* as well as other legislation, policies and collective agreements.

This Procedure outlines the step-by-step process involved in reporting, investigating and resolving Harassment and Discrimination complaints by members of the Humber Community and the responsibilities of Humber Community in all processes. This Procedure works in conjunction with Humber's Human Rights and Harassment Policy ("Policy"). As such, all terms used in this Procedure, will have the same definition as defined in the Policy. Terms that are not defined in the Policy will be defined herein.

This document is available in alternate format on request.

Definitions:

Terminology used in this procedure is defined under the Policy.

Procedures:

1. General

- 1.1. Humber recognizes that any allegation can cause considerable stress and grief to the person who is the subject of the complaint. Allegations must be founded in serious concerns. Anyone who makes a complaint in Bad Faith will be subject to disciplinary action under this Procedure.
- 1.2. Although this Procedure is written in the language of an individual complaint, group complaints may be brought forward for resolution under the Procedure.

- 1.3. In certain instances, Humber may initiate complaints or workplace assessments/reviews when it becomes aware of a concern.
- 1.4. All contractual relationships entered into by Humber for the provision of services shall be governed by a standard contract compliance clause which states that contractors must comply with this Procedure, including co-operating in investigations. Breach of this clause may result in penalties or cancellation of the contract.

2. Complaints and Incidents

2.1. Step 1 – Addressing the Issue (Informal Process)

- 2.1.1. If an individual feels that they are experiencing Discrimination or Harassment as outlined in the Policy, the Complainant should make an effort, if possible, to advise the Respondent, either verbally or in writing, that the conduct is unwelcome.
- 2.1.2. If an individual observes or becomes aware of Discrimination or Harassment as outlined in the Policy, the Complainant should make an effort, if possible, to advise the Respondent, either verbally or in writing, that the conduct is unwelcome.
- 2.1.3. The Complainant may contact Office for Human Rights & Harassment (OHH) Staff for information about this Procedure. OHH Staff do not play an advisory role to either the Complainant or Respondent except to the limited extent of providing information about this Procedure.
- 2.1.4. The Complainant should keep a detailed record of the behaviour including date(s), time(s), location(s) and witness(es). This information may be of assistance when/if the concern is pursued.

2.2. Step 2 – Reporting

- 2.2.1. If the Complainant is unable or unwilling to approach the Respondent, or if Complainant becomes aware that Discrimination or Harassment may be occurring in a possible violation of the Policy, even where the individual is not the subject or target of the behaviour, and/or if the behaviour continues despite steps being taken under Step 1 above, the Complainant should report the behaviour.
- 2.2.2. If a concern involves OHH Staff, it should be reported to the Vice President, People(s) & Culture (VP, P&C)
- 2.2.3. Anyone who receives a complaint or is notified of an incident is expected to report this information to OHH Staff. Note: The name(s) of Respondent(s) need not be disclosed at this stage.
- 2.2.4. Upon receipt of the information about the incident or complaint, OHH Staff will make a determination as to whether the matter reported involves behaviour which is covered by the Policy. If it does, OHH Staff will make a decision as to the appropriate next steps, which may include suggesting informal interventions, mediation, initiating a formal investigation or some other process. If the complaint or incident is deemed not to be covered by the Policy or this Procedure, the Complainant will be informed of the applicable Humber policy or procedure.
- 2.2.5. Employees and Work Study Students covered by a Collective Agreement may be accompanied by union representation at all meetings which take place pursuant to this Procedure.
- 2.2.6. Parties may bring a Support Person, so long as they are not a party to the proceeding i.e., a Witness. Support persons are expected to keep all matters confidential.
- 2.2.7. Timeliness in reporting incidents of Discrimination or Harassment is critical, as a delay in bringing forward such an issue can have a negative impact on student academic success and can also negatively impact the ability of the Humber to

investigate the issue, as evidence may become stale or irretrievable in cases where there is a delay.

- 2.2.8. It is strongly recommended that all members of the Humber Community report incidents of Discrimination or Harassment within five (5) working days of its occurrence or knowledge of its occurrence. In any event, complaints pursuant to the Policy must be addressed within six (6) months of the occurrence of the event(s), although the OHH, in consultation with the relevant Director, may extend this deadline in cases where the OHH determines that it is appropriate in all the circumstances.
- 2.2.9. The College reserves the right to decide not to proceed with addressing an issue that is brought forward after one (1) calendar year.
- 2.2.10. There is no statutory limit to investigating allegations of sexual violence. Humber will investigate any such allegations when it becomes aware of them.
- 2.2.11. The OHH may extend reporting deadlines in special circumstances such as:
 - 2.2.11.1. the investigation of Systemic Discrimination complaints;
 - 2.2.11.2. serious infractions of the law or Humber policies, procedures or practices;
 - 2.2.11.3. a complaint being investigated by an external agency.
- 2.2.12. The College maintains the right to choose to investigate all information which comes to its attention suggesting that an incident of Discrimination or Harassment pursuant to the Policy has occurred. OHH Staff will decide what form of investigation is appropriate in the circumstances, including a formal investigation, as set out below.
- 2.2.13. The Complainant may withdraw their complaint at any point during this Procedure. In the event that a Complainant decides not to pursue their complaint through the process described in this Procedure, Humber may determine, nevertheless, that the matter should be pursued and, if necessary, addressed. In this event, Humber will determine the process it will use to pursue the matter.
- 2.2.14. In some circumstances a decision may be made not to investigate (e.g., a Frivolous, vexatious complaint, or a failure to establish a *Prima Facie* case). The decision will be communicated in writing, with reasons, to the parties by the appropriate Investigator.

2.3. Step 3 – Mediation

- 2.3.1. Mediation can often lead to successful resolution of a complaint. OHH Staff may recommend mediation to the parties at any stage in the process. Further, the Complainant or Respondent may request mediation; however, both must agree to participate.
- 2.3.2. If the Respondent has not yet been informed of the complaint, the OHH Staff will advise the Respondent of the complaint and of the Complainant's request for a mediated resolution. The OHH Staff will also provide information to the Respondent about the process.
- 2.3.3. Once there is agreement on proceeding with the process of mediation, the Manager (MHR) will recommend a mediator. Mediators will be trained in mediation skills. The MHR may choose an internal or external mediator to conduct the mediation. Both the Complainant and the Respondent must agree on the mediator. If the parties fail to agree on a mediator after reasonable efforts have been made, the complaint procedure will proceed directly to Formal Investigation.
- 2.3.4. The mandate of the mediator is to bring the Complainant and the Respondent together to explore each other's point of view and to assist the parties in reaching a solution. The mediator will not make decisions, recommendations nor act as an advocate for either party. The mediation process will be "without prejudice" unless

the parties specifically agree to the contrary, provided that any settlement reached will be on record and will be disclosed to the OHH.

2.3.5. Mediation is terminated when:

2.3.5.1. The Complainant and Respondent reach a mutual agreement to resolve the complaint; or

2.3.5.2. The Complainant or the Respondent decides not to pursue mediation any further; or

2.3.5.3. The mediator determines that the mediation process has been exhausted.

2.4. Step 4 – Investigating the Complaint (Formal Process)

2.4.1. OHH Staff will determine the most appropriate process to investigate the information which has been received and work towards identifying whether the alleged behaviour has occurred or is occurring.

2.4.2. The MHR will assign an investigator who work at the OHH who must be independent of the issues requiring investigation and who must have the necessary skills and experience to conduct the investigation. The OHH may also decide to hire an external Investigator (investigators who work at the OHH or external investigator will be referred to for the remainder of this Procedure as the “Investigator”) pursuant to the External Investigator Protocol.

2.4.3. The Complainant or the individual who brought forward the information will be expected to meet with the Investigator and be interviewed to provide facts that support the allegations and to provide and help explain the other evidence. The Complainant shall be informed that the information they provide will be treated as confidential, but also will be disclosed (including to the Respondent) as required to protect community members, to investigate, to take corrective action and as otherwise required by law.

2.4.4. The responsibility to provide evidence that supports the allegation lies with the Complainant.

2.4.5. The Investigator will use all available reasonable methods of communication (i.e., email, phone, registered mail) to contact the Complainant and Respondent.

2.4.6. The Investigator will advise the Respondent of the complaint and provide the Respondent with a written summary of the allegations. This will ordinarily be done at the commencement of the investigation, but may be deferred for good reason. Should the Complainant or Respondent be away from Humber for any reason including leaves of absence and vacations, the Investigator will contact the Respondent to determine their ability to participate in the investigation while they are away from Humber. Respondents have a duty to cooperate with an investigation. The OHH in consultation with the Director of Human Resources will determine how the investigation proceeds if the Complainant or Respondent indicates that they are not available to participate in the investigation.

2.4.7. In exceptional cases only, OHH Staff will not provide the Respondent with the name of the Complainant, such as when there is a credible safety concern.

2.4.8. The Respondent has the opportunity to provide a written response to the Investigator within of five (5) working days unless granted an extension for good reason. The Respondent will be requested to meet with the Investigator to be interviewed about the response.

2.4.9. If a Respondent fails to participate in the investigation process by neither providing a written response nor meeting with the Investigator, the Investigator may nonetheless, proceed with the investigation and make factual findings in the absence of their participation.

- 2.4.10. The Investigator controls their process, and may defer interviewing the Respondent for a reasonable period of time to facilitate the gathering of evidence and may meet with the Respondent more than once.
- 2.4.11. The Investigator will complete the investigation before any sanction (beyond a reminder about the Policy, or a temporary removal of one or both parties from the classroom/workplace/campus pending the completion of the investigation) is applied to either party.
- 2.4.12. The investigation of a complaint will normally include meeting with the Complainant, Respondent and relevant Witnesses, collecting and reviewing documentation such as the report of the incident or complaint, the Respondent's reply, witness statements or records of interviews, and any other relevant documents.
- 2.4.13. During an investigation if the evidence presented is contrary to a Complainant's or Respondent's written or oral statement, the Investigator will ordinarily return to the relevant party and present the new evidence to obtain their response.
- 2.4.14. The Investigator will ensure that the information and documentation collected in the course of the investigation will be kept confidential, including identifying information about any individuals involved, but may disclose information as required to protect community members, to investigate, to take corrective action and as otherwise required by law.
- 2.4.15. The Investigator will make factual findings based on all of the evidence and submit a written report to the MHR or relevant Director, ordinarily within 60 working days from the beginning of the investigation or as soon as reasonably possible.
- 2.4.16. The Investigator's findings as to whether the events being investigated have occurred will be based upon a review of the evidence provided to the Investigator and assessed upon the standard of the Balance of Probabilities.
- 2.4.17. All interviews with the Complainant, Respondent and Witnesses conducted by an internal Investigator will be audiotaped. The Complainant and Respondent will receive draft of the report minus the findings for their review after their meeting with the Investigator.
- 2.4.18. If a Complaint or Respondent provides new and relevant information to the Investigator during or after the findings are delivered the Investigation may be reopened.

2.5. Step 5 – The Final Decision

- 2.5.1. The Investigator will come to a finding as to whether an allegation is substantiated or unsubstantiated and also if the Policy has been violated. They will do this using a Balance of Probabilities.
- 2.5.2. The MHR, relevant Director, or the VP, P&C will review the Investigator's report and findings and make a decision within three (3) working days of receiving the report as to whether the factual findings outlined in the Investigator's report constitute a violation of the Policy (the "Decision"). The Investigator will advise the Complainant and Respondent of the Decision in writing within ten (10) working days of receiving a copy of the decision. If the Investigator is the MHR, the relevant Director will review the findings in the report and make a decision.

Appeal

- 2.5.3. The Decision may be appealed, in writing, within ten (10) working days, by submitting a letter outlining the grounds for appeal to the VP, P&C or such person as the VP, P&C may designate.
- 2.5.4. The following are the only available grounds for appeal:

- 2.5.4.1. that the investigation was conducted in an unfair or biased manner. The party making the appeal must provide information and evidence to support how they think the investigation was conducted in an unfair or biased manner.
- 2.5.4.2. in the case of the Respondent, that the findings of fact contained in the investigation report are insufficient to support the determination that a Policy violation has been established. The Respondent must provide evidence as to how the findings of fact are insufficient to support the determination that a Policy violation has been established.
- 2.5.4.3. in the case of the Complainant, that the findings of fact contained in the investigation report ought to have resulted in the determination that a Policy violation has been established. The Complainant must provide evidence as to how the findings of fact are sufficient to support the determination that a Policy violation has been established.
- 2.5.4.4. a Complainant may also appeal the decision not to deal with their complaint pursuant to this Procedure. In such a case, the Respondent shall not be provided with a copy of the letter of appeal and shall not be entitled to participate in any hearing associated with the appeal.
- 2.5.5. The VP, P&C or designate shall review the Investigator's report, the MHR's Decision, the letter of appeal, and any written responses. The VP, P&C or designate may decide whether a hearing or other method of resolution is appropriate for the appeal.
 - 2.5.5.1. Where the VP, P&C or designate has reason to believe that the appeal can be remedied by an informal resolution, the VP, P&C/designate may ask both the Complainant and the Respondent to engage in an informal resolution process. If the parties agree to informal resolution, the VP, P&C/designate will make efforts to resolve the appeal applying restorative practices.
 - 2.5.5.2. If the VP, P&C or designate decides to hold a hearing, they will advise the parties of a date for an appeal hearing to take place. That hearing will be presided over by the VP, P&C or designate. Otherwise, the VP, P&C or designate will make a final decision based on the written materials referred to herein.
 - 2.5.5.3. .
- 2.5.6. The VP, P&C or designate will provide a written decision to the parties as soon as reasonably possible, but in any event no later than twenty (20) working days of the final day of the appeal hearing or resolution process, other than in exceptional circumstances. The parties will also be informed of any remedial actions to be taken, if appropriate. This decision is final and cannot be appealed.

Interim Measures

- 2.5.7. Humber has the right to determine what interim measures should be taken, either at the beginning of the investigation or based on information gathered by the external Investigator during the investigation process.

2.6. Corrective Action

- 2.6.1. Decisions regarding corrective action flowing from the Investigator's report, the Decision and/or any appeal relating to an incident reported or a complaint will be made by Humber's People(s) and Culture department and the Senior Manager of the Faculty or Department.
- 2.6.2. Before a decision on corrective action is made, parties will be given an opportunity to provide any information relevant to the decision to Human Resources Client Services.

2.6.3. The Human Resources Client Services will advise the Complainant and Respondent in writing of any applicable information related to corrective action taken as a result of the incident reported or complaint filed pursuant to the Policy within 10 business days.

2.7. Discretion of the Vice President, People(s) & Culture

2.7.1. The VP, P&C or designate may take action which diverges from the procedure outlined above when they are of the view that:

2.7.1.1. the safety of Humber Community members is at risk;

2.7.1.2. the potential violation of the Policy is deemed to be so serious that it is imperative that immediate action be taken; or

2.7.1.3. other forms of action will be necessary to ensure that Humber meets its legal obligations.

2.8. Record Retention

2.8.1. Notes, records or documents (whether handwritten, typed, electronic or otherwise) created during the course of an internal Humber investigation will be marked as private and confidential, and included in the investigation file along with any evidence collected. The contents of the investigation file, including audio files and notes will not be shared with interviewees.

2.8.2. The investigation file may be subject to subpoena as a result of a legal proceeding.

2.8.3. At the end of mediation or settlement, the signed resolution agreement, if applicable, will be submitted to the MHR.

2.8.4. All information will be treated confidentially, in accordance with the *Freedom of Information and Protection of Privacy Act*. Records of all investigations will be maintained and secured by the OHH.

2.8.5. The OHH will retain these notes in a confidential file for a period of seven (7) years from the date of resolution after which time all records shall be destroyed. If there is a recurrence of the incident, or the resolution is breached, or outside action is taken such as a human rights complaint or court action, the seven (7) year period will be extended as required.

2.8.6. OHH Staff will prepare and submit statistical reports for Humber annually. Copies of the records may also be requested and subject to reproduction under the grievance/arbitration process, federal and/or provincial legislation requirements, and/or legal court action.

2.9. Timelines

2.9.1. All parties involved in complaints resolution procedures are encouraged to participate in a timely manner. Timelines set out in this Procedure are subject to extension by the Humber official who is the prime decision maker; however, extensions will be granted only in circumstances where the request for the extension is made in good faith/without prejudice to the other party or Humber.

2.10. Use of Another Forum by the Complainant

2.10.1. In the event that the Complainant decides to pursue their complaint in another forum (e.g., Human Rights Tribunal, grievance or court), Humber may decide, if appropriate, to terminate or suspend the processing of the complaint under this Policy and Procedure at any point thereafter.

References and Resources:

A Better Way Forward: Ontario's 3-year Anti-Racism Strategic Plan

Criminal Records Act (Canada)

Employment Equity Act

Freedom of Information and Protection of Privacy Act

Canadian Legal Information Institute

Occupational Health and Safety Act

Ontario Human Rights Code

Sexual Violence and Harassment Action Plan Act

The Ontario Human Rights Commission

Understand the law on workplace violence and harassment

Workplace Safety and Insurance Act

Related Policies and Procedures:

Academic Employees Collective Agreement

Accessibility Policy

Accommodation for Employee's with Disabilities Policy

Gender Diversity Policy

Human Rights Complaint Resolution Procedure

Part-Time Support Staff Collective Agreement

Support Staff Collective Agreement