

Procedure #	HR100P1
Approved by:	Vice President Human Resources
Approval Date:	October 7, 2013
Replaces Procedure Dated:	June 22, 1995, June 22, 2009, January 15, 2013
Admin. Contact(s):	Director of the Centre for Human Rights, Equity & Diversity
Review Date:	October 7, 2014

Human Rights Complaint Resolution Procedures

Purpose:

The procedures outline the step by step process involved in resolving human rights complaints for all complainants (employees or students) and the responsibility of Humber staff in the resolution process.

This document is available in alternate format on request.

Definitions:

See Appendix A

Procedures:

1. Complaints

1.1 Step 1 – Addressing the Issue (Informal Process)

- a) If an individual feels that they are experiencing unwanted behaviour which would fall within this procedure, the individual should make an effort, if possible, to advise the person who is the source of the behaviour, either verbally or in writing, that the conduct is unwelcome.
- b) The individual may contact the Director for the Centre for Human Rights, Equity & Diversity (DHR), Ext. 4425 for information about the process. Alternatively, they may speak to a "contact" person (See Section 1.2). The DHR does not play an advisory role to either the complainant or respondent except to the limited extent of providing information about this process.
- c) The individual should keep a detailed record of the behaviour experienced including date(s), time(s), location(s) and witness(es). This information may be of assistance when/if the concern is pursued.

1.2 Step 2 – Reporting

- a) If the behaviour continues and/or the individual is unable or unwilling to approach the person who is the source of the perceived problem, the individual should contact one

of the following for advice and assistance. The name(s) of respondent(s) need not be disclosed at this stage:

- Student: If the complainant is a student, they should speak to a "contact" person - i.e.: the Program Co-ordinator, the Associate Dean, a nurse or a counselor in Student Services, or the DHR.

If the complaint is deemed as a Human Rights complaint, the contact person or complainant will report the complaint to the DHR. If the complaint is deemed not to be a Human Rights complaint, the complainant will be informed of other College procedures that apply.

- Employee: If the complainant is an employee, they should contact his/her Supervisor or Manager.

If the complaint is deemed as a Human Rights complaint, the contact person or the complainant will consult with the DHR. If the complaint is deemed not to be a Human Rights complaint, the complainant will be informed of other College procedures that apply. Employees covered by a Collective Agreement, are entitled to be accompanied by union representation.

- b) It is strongly recommended that if the respondent or the complainant is a student whose academic success may be adversely affected by a delay in the complaint process, that they immediately report using this procedure. In these cases, it is suggested that the complainant report the incident to the DHR within five (5) working days of its occurrence or knowledge of its occurrence.

A complaint must be brought within six months of the occurrence of the event(s). The DHR may extend this deadline in cases where the DHR determines that there is a reasonable explanation for the delay in reporting and that the delay would not prejudice the respondent or preclude them from being able to adequately respond to the complaint. The DHR may also extend reporting deadlines in special circumstances such as:

- the investigation of systemic discrimination complaints;
- serious infractions of the law or College policies, procedures or practices;
- a complaint being investigated by an external agency.

1.3. Step 3 - Mediation

- a) Mediation can often lead to successful resolution of a complaint. The DHR 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.
- b) If the respondent has not yet been informed of the complaint, the DHR will now advise the respondent of the complaint and of the complainant's request for a mediated resolution. The DHR will also provide information to the respondent about the process.
- c) Once there is agreement on proceeding with mediation, the DHR will

recommend a mediator. Mediators may be members of the College community including the DHR trained in mediation skills or the DHR may contract external mediators. Both the complainant and the respondent must agree on the mediator. If the parties fail to agree on a mediator, the complaint procedure will proceed directly to Step 4.

- d) 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" and "off-the-record" unless the parties specifically agree to the contrary, provided that any settlement reached will be on the record and will be disclosed to the DHR.
- e) Mediation is terminated when:
 - The complainant and respondent reach a mutual agreement to resolve the complaint.
 - The complainant or the respondent decides not to pursue mediation any further.
 - The mediator recommends that the complaint proceed to the next step.

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

- a) If/when the complainant decides to proceed to Step 4, they will submit a written statement outlining the specific details of the complaint to the DHR. The complainant shall be informed that they will be identified to the respondent, if this has not already happened, and their statements shared with the respondent.
- b) The DHR will advise the respondent of the complaint and provide the respondent with a copy of the complaint. The respondent may provide a written response (or reasonable alternative) to the DHR within a maximum of five (5) working days of receiving the written complaint (or such longer period of time as the DHR may determine if circumstances justify an extension). If the respondent declines to provide a written response, they shall provide an oral response to the DHR or designate. In this event, the respondent will review and correct the notes made of the interview and will sign the corrected notes to verify their accuracy. This response will be shared with the complainant.
- c) In exceptional cases, the DHR may defer informing the respondent of the complaint, for up to six months (6) following the events which gave rise to the complaint, pending further investigation under special circumstances such as: lack of clarity about the nature of the complaint; concern for the safety, well-being, employment or academic status of the parties involved; or if the complaint appears to be unclear, unfounded, vexatious or made in bad faith.
- d) If the respondent fails to provide a written response or a reasonable alternative within a maximum of five (5) working days, the DHR will take such action as the DHR feels is appropriate at that time.
- e) The DHR or designate will complete the investigation before any serious sanction (beyond a warning, or a temporary removal of the respondent from the workplace/classroom/campus pending the completion of the investigation) is applied

to a respondent (or a complainant). The investigation of a complaint will normally include meeting with the complainant, respondent and witnesses, collecting and preparing documentation such as a report of the complaint incident signed by the complainant, the respondent's reply, witness statements or records of interviews, etcetera. The DHR will review the facts disclosed by the investigation with the complainant and respondent prior to making any final findings; and submit a report to the Director Human Resources responsible within 15 working days from the beginning of the investigation or as soon thereafter or as reasonably possible.

1.5. Step 5 – The Final Decision

- a) The Director Human Resources responsible will review the report findings and make a decision. The Director Human Resources will make a submission to the respondent and claimant within 10 working days of receiving a copy of the DHR's report, along with the Director Human Resources' decision.
- b) The parties will be informed of the decision at this time. This decision may be appealed, in writing, within 10 working days, to the President or designate. If either party appeals, a copy of the submission will be given to the opposing party to allow an opportunity to respond in writing within five (5) working days.
- c) The President or designate shall review the investigation report, the Director Human Resources' decision, the appeal submission and response. If the President 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 President or designate. Otherwise, the President or the designee will make a final decision based on the investigator's report, the appeal submission and the response.
- d) At the appeal hearing, the parties will be given the opportunity to state their positions. They may also present any relevant evidence, not already provided through the investigative process that may inform the hearing of the events in question. The President or designate may ask for information to be provided by anyone they feel may provide helpful information and may adjourn the hearing to permit this to occur. Cross-examination will not be permitted at the hearing, except in exceptional circumstances as determined by the President or designate. The procedure at this hearing is intended to be informal and consequently, lawyers will not be normally permitted to represent either party at the hearing, although each party may bring one support person. The President or designate will determine the procedure to be followed at the hearing. A final decision will be made following this hearing.
- e) The President or designate, will provide a written decision with reasons to the parties as soon as reasonably possible. The parties will also be informed of any remedial action that will be taken, if appropriate. This decision is final and cannot be appealed

2. Record Retention

2.1 Notes, records or documents (whether handwritten, typed, electronic or otherwise), created during the course of the investigation by the investigator will be dated and signed and included in the investigation file along with any evidence collected.

2.2 All notes, along with the signed resolution agreement if applicable, will be submitted to the DHR upon resolution of the complaint.

- 2.3 All information will be treated confidentially, in accordance with the Freedom of Information and Protection of Privacy Act. Records of all complaints will be maintained and secured by the DHR separately from other employee and student records or files.
- 2.4 The DHR 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.
- 2.5 The DHR will prepare and submit statistical reports to the College 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.

3. Timelines

Timelines set out in this procedure are subject to extension by the College official who is the prime decision maker in the step in which the extension is requested. However, extensions will be granted only in circumstances where the request for the extension is made in good faith and for extenuating circumstances and where there would be no prejudice to the other party or the College.

4. Use of Another Forum by the Complainant

In the event that the complainant decides to pursue their complaint in another forum (e.g. Human Rights Commission or Tribunal, grievance or court), the College may decide, in its discretion, to terminate or suspend the processing of the complaint under this Policy at any point thereafter.

References:

Humber's Human Rights Policy

[The Ontario Human Rights Code](#)

[The Freedom of Information and Protection of Privacy Act](#)

Appendices:

Appendix A Definitions

Appendix B Consequences of Policy Violation Redress and Sanctions/Corrective Action

Appendix C Role of the Director, Centre for Human Rights, Equity & Diversity

APPENDIX A**Definitions**

Accessibility: Is an integral part of usability for people with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises. The purpose of the *Ontario with Disability Act, 2005*, (AODA) is to ensure that people with disabilities can move around from place to place, go shopping, attend school, visit their doctors or get a job without facing barriers that people without disabilities would not face.

Balance of Probabilities: The standard is met if the proposition is more likely to be true than not true. Effectively, the standard is satisfied if there is greater than 50% chance that the proposition is true. Simply stated as "more probable than not", this is the standard that must be met in order to demonstrate that there has been a contravention of this policy.

Discrimination: Every employee, student or person in receipt of services from the College has the right to equal treatment, without discrimination on the basis of any ground set out in the *Ontario Human Rights Code, 1962*. Direct discrimination occurs when an individual is subjected to differential treatment as a result of their identification by a prohibited ground of discrimination or their association with a group who are identified by a prohibited ground of discrimination. Some examples of direct discrimination are:

- refusal to provide goods, services or facilities to persons because of membership in a protected group;
- refusal to work with or teach someone because of membership in a protected group.

Harassment: Harassment is defined by the *Ontario Human Rights Code, 1962*, as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome (Section 10 (1) (f)). The College interprets this to include any behaviour that is known or ought reasonably to be known to the perpetrator to be offensive, embarrassing or humiliating to other individuals. Such conduct may include visual representations, electronic messages, written messages, verbal and/or physical conduct, and may relate to any of the grounds of discrimination prohibited by the *Ontario Human Rights Code, 1962*, or other malicious grounds. Some examples of harassment are:

- unwelcome remarks, jokes, slurs innuendoes or taunting;
- hazing, stalking or shunning;
- the repeated mistreatment of one employee, targeted by one or more employees with a malicious mix of humiliation, intimidation and sabotage of performance (bullying);
- displaying derogatory or offensive pictures, graffiti or materials either through printed copy or personal computer;
- verbal abuse;
- insulting gestures or practical jokes which cause embarrassment or awkwardness;
- unauthorized and/or unnecessary physical contact;
- An impassioned, collective campaign by co-workers to exclude, punish and humiliate a targeted worker.

For the purposes of this policy, “harassment” also includes personal/psychological harassment.

Note: Harassment does not occur where a supervisor gives legitimate directions or instructions to an employee in the course of employment or conducts performance reviews in accordance with the college's normal procedures.

Personal/Psychological Harassment: Behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee's dignity or psychological or physical integrity and that result in a harmful work environment for the employee. It includes and is not limited to behaviours defined as bullying, mobbing, victimization, emotional abuse, psychological abuse, and psychological violence. A single serious incident of such behaviour that has a lasting harmful effect may constitute psychological harassment. It must be demonstrated that this behaviour affects the person's dignity or physical or psychological integrity and that it results in a harmful work environment for the employee.

Poisoned Learning, Living and Working Environment: Occurs when conduct and/or comments related to one or more prohibited grounds of discrimination under the Code unreasonably interferes with an individual's ability to work and/or learn by creating an intimidating, hostile, offensive or threatening environment. Depending on the impact of the comments or conduct on the individual, one instance may be sufficient to create a poisoned environment for an individual or a group. A poisoned environment can create unequal conditions of employment for the person or persons affected by it. It can interfere with an individual's learning and/or work performance and cause emotional or psychological stress not experienced by other individuals.

An individual does not have to be the person targeted by the comments to experience a poisoned environment. A person who is subjected to overhearing racial slurs or sexually or racially offensive jokes, or viewing racially offensive cartoons or sexually explicit, suggestive or demeaning pictures may view the behaviour as poisoning the environment.

Some examples of poisoning the environment are:

- displaying graffiti, signs, pictures or cartoons which would qualify as prohibited harassment, either through print or computers;
- making derogatory remarks about a particular gender or sexual orientation, race or religion in the classroom or the workplace.

Prohibited Grounds: The protected grounds include:

- In employment, race, disability, place of origin, age, family status, gender, ethnic origin, citizenship, colour, sexual orientation, religion/creed, marital status, receipt of public assistance, record of offences (i.e. pardoned federal offences or record of provincial offences) as these terms are interpreted in the *Ontario Human Rights Code, 1962*.
- in the provision of services, race, ancestry, place of origin, colour, ethnic origin, citizenship, religious creed, sex, age, marital status, family status, disability, sexual orientation, same sex partnership status, as these terms are interpreted under the *Ontario Human Rights Code, 1962*.

The extent of the protection from discrimination on the grounds of receipt of public assistance or pardoned federal offences or record of offences shall be that as provided by the Code.

Racial/Ethnocultural/Religious Harassment: Is prohibited by the Code and generally involves written, verbal and/or physical actions which express negative attitudes, derogation, and/or hate for a person or group of persons based on their race, ancestry, place of origin, colour, ethnic origin, citizenship or creed. Racial/ethnocultural/religious harassment may include, but is not limited to, the following behaviours:

- demeaning comments, unwelcome remarks, jokes, innuendoes or taunting about a person's or group of persons' race, ancestry, place of origin, colour, ethnic origin, citizenship, creed;
- displaying of racist, derogatory or offensive pictures or sexually explicit materials, either through printed copy or personal computer;
- denial of normal co-operation with an employee or student because of that individual's racial or ethnic background;
- insulting gestures or practical jokes based on racial or ethnic grounds which cause embarrassment or awkwardness;
- demeaning remarks about a racial/cultural group in the presence of any individual (not necessarily a member of the group mentioned) that creates a poisoned work/learning environment.
- using pejorative names based on race or ethnic origin

Sexual Harassment: Is prohibited by the code and may be based on gender (including transgendered persons) or may involve the use of overt sexual language or sexual innuendo which makes an individual feel uncomfortable. Sexual harassment includes, but is not limited to, the following:

- any deliberate and unsolicited sexual comment, suggestion or physical contact that creates an uncomfortable learning/working environment for the recipient and is made by a person who knows or ought reasonably to know that such action is unwelcome;
- a sexual advance or solicitation made by a person where the person making the advance or solicitation knows or ought reasonably to know that it is unwelcome;
- a reprisal or 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;
- unwelcome remarks, jokes, and sexual innuendoes or taunting about a person's body, attire, sex, personal or social life;
- practical jokes of a sexual nature which cause awkwardness or embarrassment;
- displaying and/or distributing pornographic pictures or other offensive material of a sexual nature, either through printed copy or personal computer;
- leering (suggestive staring) or other gestures;
- unnecessary physical contact such as touching, patting or pinching;
- expressions of gender bias which may include remarks that are discriminatory, degrading or derogatory and create a poisoned work environment;
- requests for sexual favours; and/or
- sexual assault.

NOTE:¹ Relationships between consenting adults which are voluntary and based on mutual attraction do not constitute sexual harassment unless one of the parties has communicated to the other that he/she wishes the relationship to end and the other thereafter engages in conduct which is harassing in nature.

NOTE:² In romantic and sexual relationships between faculty members and students or between supervisors and employees or students, a power differential may exist. Abuse of that power differential creates a negative environment for work and study and casts doubt on the validity of the consent to such relationships. Such relationships could be construed as a Breach of Trust in one's employment with the College as a faculty member or supervisor, the student-teacher relationship being a professional one, which involves a significant issue of trust in regards to both the institution and students. Sexual intimacy between faculty and student

removes all professional boundaries between them and creates a perception of bias in the eyes of the institution, faculty and other students, thus distorting and damaging the learning environment.

Systemic Discrimination (Indirect Discrimination): Describes a type of discrimination that occurs indirectly as a result of the application of a factor, requirement or qualification (which includes any policies, practices, procedures, actions or inactions) that does not directly discriminate, but has the effect of negatively impacting or giving preference to a group identified on a protected ground under the *Ontario Human Rights Code, 1962*. However, the Code also provides that a factor, requirement or qualification that would otherwise be found to be indirect discrimination will be permitted if it is reasonable and bona fide in the circumstances and cannot be accommodated without undue hardship. Some examples of indirect discrimination are:

- imposition of minimum height or weight requirements as a precondition where such requirements are not necessary for the performance of a job
- failure to provide reasonable access to buildings and premises for employees or students with disabilities
- an exam schedule that conflicts with an important religious holiday. The exam may have been scheduled without thinking about the religious holiday--without any intent of violating a group's religious rights. In this case, the schedule is discriminatory because of its adverse effect on a particular religious group. Since an alternate day can be scheduled for a student whose religious observance would be interfered with, accommodation without undue hardship is possible.

Without Prejudice (Off the record): The course of mediation and/or conversations will not to be tendered as evidence in court.

Workplace/Learning Environment: Wherever an employee or student attends for the purpose of work or study involving activities sanctioned by the College, including a virtual or cyberspace environment.

APPENDIX B**Consequences of Policy Violation Redress and Sanctions/Corrective Action**

Documented and substantiated complaints or complaints found to be made maliciously or vexatiously may result in discipline of an employee or a student. In the event that the College makes a finding of discrimination or harassment, it has the right to determine sanctions to be imposed. Determination of appropriate discipline will be made in the context of the seriousness of the violation and the student's or employee's history with the College, along with a consideration of the deterrent effect of such discipline on the person being disciplined and on the College community.

Redress:

In redressing a victim of discrimination or harassment, the College will take into account the individual circumstances of the victim in each case and will devise an appropriate remedy. Redress may include, but is not limited to, remedies such as:

- increased safety surveillance
- receipt of written apology
- cessation of offending behaviour
- offer of a course
- review of academic standing and/or marking
- ongoing counseling
- restore person to position they would have been in had the harassment or discrimination not occurred
- offers of employment or reinstatement

Sanctions/Corrective Action:

Disciplinary action/sanctions will take into account the severity of the breach of the Policy and on the individual circumstances of the respondent. Corrective actions or sanctions may include, but are not limited to, the following:

- non-disciplinary counseling/education/correction
- reprimand and warning (verbal or written)
- section, job or program transfer
- requirement to provide an apology to the victim (verbal or written)
- behavioral contract which specifies certain behaviour with which the party must comply
- transfer
- demotion
- suspension
- dismissal (i.e. termination or expulsion)
- barring contractors from future bids
- no trespass notice

If the complaint is related to work, all discipline will conform to generally acceptable standards of employee discipline and, in the case of employees represented by the Union, be consistent with the Collective Agreement in force at the time.

APPENDIX C**Role of Director of the Centre for Human Rights, Equity & Diversity (DHR)**

The role of the DHR is to:

1. promote awareness in the College Community of the Human Rights Policy and procedure and its implementation
2. provide information (to any member of the College Community) and act as a College resource on matters related to the Human Rights Policy, the complaints procedure and The Ontario Human Rights Code
3. identify areas in College policies and practices which are impacted by the Human Rights
4. Policy and procedure and recommend changes to those in conflict with the Policy
5. ensure members of the College Community involved in the Human Rights complaints procedure are provided with appropriate training
6. ensure reports relating to harassment and discrimination are developed and filed, as appropriate
7. recommend future initiatives that need to be undertaken to achieve the purpose of the Policy

The DHR will be available to inform the complainant of:

- Rights and obligations under The Freedom of Information and Protection of Privacy Act
- The options for informal resolution of the complaint which may include mediation (see section 4. Human Rights Policy)
- The availability of counseling and other support services; e.g. Police, crisis centres, etc.
- The right to withdraw from any further action in connection with the complaint at any stage of the investigation, even though the College may continue to investigate the complaint
- The DHR does not act as an advisor to or advocate for a complainant or respondent
- Other avenues of recourse such as the right to file a complaint with the Ontario Human Rights Commission or, where applicable, under the Criminal Code of Canada.