

## ADMINISTRATIVE OPERATING PROCEDURE

Harassment and Discrimination Prevention	
<b>Procedure ID:</b>	#3-311 OP
<b>Approved by:</b>	Executive Leaders Team <span style="float: right;">June 16, 2015</span>
<b>Effective Date:</b>	June 25, 2015
<b>Next Review Date:</b>	2018
<b>Monitoring Responsibility:</b>	Human Resources / Human Rights Officer
<b>Linked to a College Policy:</b>	<input checked="" type="checkbox"/> Yes # 3-311 <i>Harassment &amp; Discrimination Prevention</i> <input type="checkbox"/> No

### Policy Statement

Sir Sandford 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:** the Occupational Health & Safety Act defines Workplace Harassment as “*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*”. 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.

**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

1. Workplace harassment complaints will be reported according to the procedures described in Appendix C.
2. 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.

3. The Complainant has the right to withdraw the complaint at any time during the process up to the conclusion of the formal appeal process. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. This policy is supplemented by procedures which provide a mechanism to receive and resolve workplace harassment and discrimination complaints within the College's obligations and rights under the Ontario Human Rights Code and the Occupational Health & Safety Act. The College acknowledges that it is not a court of law or a quasi-judicial system.
9. **Awareness of the Policy and this Procedure:** The College will ensure awareness of the Policy and this Procedure by:
  - 9.1. Making the policy available to any existing and new member of the College. The full document will be posted on the Human Resources website. Alternative formats will be made available upon request to the Human Rights Officer.
  - 9.2. Providing training 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.

## Related Documents

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

- The Canadian Charter of Rights and Freedoms.
- Ontario Human Rights Code, R.S.O. 1990
- Ontario Occupational Health & Safety Act, R.S.O. 1990
- 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 Assault and Sexual Violence*
- Administrative Operating Procedure #3-343 OP, *Sexual Assault and Sexual Violence Protocol*
- 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*

## 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*

## Summary of Amendments/Reviews and Revisions:

Section(s)	Date	Comments
Full review	June 2, 2015	New format; updated language

## 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 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 (Bill 168) 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:** refers to persistent, offensive, abusive, intimidating or insulting behavior, abuse of power and/or unfair punitive sanctions which makes the recipient feel upset, threatened, humiliated and/or vulnerable, which undermines the recipient's self-confidence and/or reduces the recipient's feelings of self-esteem and self-worth, and which may cause the recipient to suffer stress. Bullying 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, and/or
  - Takes the form of repeated conduct 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

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 action 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.

Personal harassment and bullying will not be condoned under the guise of strong management, when employees are not treated with dignity and respect.

2. **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.

This may include, but is not limited to gestures, remarks, jokes, taunting, innuendo, display of offensive materials, offensive graffiti, threats, verbal or physical assault, academic penalties, stalking, slurs, shunning or exclusion related to the prohibited grounds.

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) **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.

This may include, but is not limited to:

- demeaning gestures, remarks and jokes, slurs, taunting, innuendo based on gender
- unwanted physical contact, leering, inappropriate comments about clothing, physical characteristics or activities, unwanted questions or comments about one's private life
- the production, display or distribution of pornographic or other sexually offensive or derogatory pictures of material
- unwanted requests for sexual favours
- implied or expressed promise of reward or benefit in return for sexual favours
- pressing an individual to accept unwelcome invitations, including repeated telephone calls, letters, emails or other electronic communications including social media
- deliberate physical contact to which the individual has not consented or had the opportunity to object to, unnecessary or inappropriate touching and/or offensive gestures

- 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 through the Sexual Assault and Sexual Violence Policy #3-343.)

**(b) 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:

- physical assault or unwelcome physical contact
- 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
- 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 group on the basis of race, colour, and ethnic origin).

**(c) Gender/Sexual Orientation Harassment** 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. This form of human rights harassment often stems from homophobia and heterosexism. 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.

Some examples of this form of harassment include:

- "gay-bashing" or physical violence, including sexual violence
- 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.

**(d) 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.

3. **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.

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** 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, 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 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 Sir Sandford 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. Prevention and Education

This policy promotes a proactive approach that includes education, prevention and complaint resolution. The College is committed to promoting widespread understanding about what constitutes workplace harassment and discrimination, and why, in its many forms, it is so harmful to its victims and dysfunctional to the institution.

1. **Awareness of the Policy:** The College will ensure awareness of this policy by:
  - Making the policy available to any existing and new member of the College. The document will be posted on the Human Resources website. Additional formats will be available upon request to the Human Rights Officer.
  - Providing training to all employees, ensuring those persons with managing, supervising, and leadership responsibilities are aware of their obligations under the policy. The training will cover what constitutes workplace harassment and discrimination, the resolution process, complaint procedures and mechanisms available under the Policy.
  - Conducting awareness events.

### 2. Coverage

**2.1 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.

**2.2 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 and will support the resolution of workplace harassment and discrimination issues once they are made aware of an incident.

### 3. Specific Roles and Responsibilities

#### 3.1 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.

### **3.2 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.

### **3.3 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

### **3.4 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.

## **4. Records**

The Human Rights Officer will maintain a confidential file pertaining 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 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 the letter 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 Process

- a) 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, complain to the Ministry of Labour, or access the grievance procedures outlined in their collective agreements and the terms and conditions of their employment.
- b) The complainant has the right to withdraw the complaint at any time during the process up to the conclusion of the formal appeal process. 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.
- 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) 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.
- e) 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.
- f) 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.
- g) This policy is supplemented by procedures which provide a mechanism to receive and resolve workplace harassment and discrimination complaints within the College's obligations and rights under the Ontario Human Rights Code and the Occupational Health & Safety Act. The College acknowledges that it is not a court of law or a quasi-judicial system.
- h) Confidentiality: Throughout the complaint and fact finding process the College will treat all information as confidential except where a disclosure is required in order to investigate and/or resolve a complaint under this policy, and subject to the Freedom of Information and Personal Information Protection and Electronic Documents Acts and the requirement to disclose information or give evidence as required by law, such as grievance arbitrations, Human Rights Tribunal proceedings, Occupational Health & Safety disclosure requirements, and judicial proceedings.
- 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 Appendix B to investigate the complaint.
- k) **Time Lines:** A complaint 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 Executive Officer and communicated to all parties involved.
- l) **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.
- m) **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.

## **2. 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) or the Human Rights Officer. Additionally, students may also speak with their Student Administrative Council (Sutherland), the Student Association (Frost) or the Diversity Coordinator.

## **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.

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

## **How to Make a Complaint**

The Complaint Reporting and Resolution Process consists of two steps:

### **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 Dean (or their delegate) then investigates the allegation(s) and makes a determination using a balance of probabilities as to whether there has been a contravention of this Policy. 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 Academic Chair for the school, a Dean or Chair from another school, the Human Rights Officer or a Human Resources Consultant.

### **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 including relevant details such as the nature of the

specific offensive behaviour / language, dates, times, and names of witnesses as well as the requested outcome from the report. If a student is unaware who is Dean for their program they should consult Appendix D. Students who are unsure as to which Dean to approach should speak with their own Dean or Academic Chair.

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 and to obtain a satisfactory resolution. 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.
3. 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.
4. 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.

### **Determination and Judgement**

1. Having considered all information provided, the Investigator will make a determination based on the "balance of probabilities" which means that it is either more likely or not likely that workplace harassment or discrimination occurred as defined within this Policy.
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. The results of the meeting(s) will be communicated to the complainant, the respondent, and the Human Rights Officer orally and in writing within ten (10) working days of the meeting.
5. 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.

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 seven (7) business days.
4. 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.

##### **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)
- 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 the Student Rights and Responsibilities Policy (#5-506). These may include:

- Apology
- Written Reprimand
- Restitution or Fines
- Temporary Dismissal
- Restricted access to a physical area of the College and/or property
- 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.

## **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.

## **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***

<b>Program / Campus</b>	<b>Dean / Principal</b>	<b>Office Location</b>	<b>Phone</b>	<b>Email</b>
<b>Cobourg Campus</b>	Deborah Clifford	Cobourg 305	905-372-6865	<a href="mailto:deborah.clifford@flamingcollege.ca">deborah.clifford@flamingcollege.ca</a>
<b>Haliburton Campus</b>	Sandra Dupret	Haliburton Campus	705-457-1680	<a href="mailto:sandra.dupret@flamingcollege.ca">sandra.dupret@flamingcollege.ca</a>
<b>School of Business</b>	Maxine Mann	B3130	705-749-5530 Ext 1257	<a href="mailto:maxine.mann@flamingcollege.ca">maxine.mann@flamingcollege.ca</a>
<b>School of Environmental &amp; Natural Resource Sciences</b>	Linda Skilton	Frost 289A	705-749-5530 Ext 3216	<a href="mailto:linda.skilton@flamingcollege.ca">linda.skilton@flamingcollege.ca</a>
<b>School of General Arts &amp; Sciences</b>	Judith Limkilde	B3327	705-749-5530 Ext 1407	<a href="mailto:judith.limkilde@flamingcollege.ca">judith.limkilde@flamingcollege.ca</a>
<b>School of Health &amp; Wellness</b>	Carol Kelsey	A2146.1	705-749-5530 Ext 1251	<a href="mailto:carol.kelsey@flamingcollege.ca">carol.kelsey@flamingcollege.ca</a>
<b>School of Justice &amp; Community Development</b>	Carol Kelsey	A2146.1	705-749-5530 Ext 1251	<a href="mailto:carol.kelsey@flamingcollege.ca">carol.kelsey@flamingcollege.ca</a>
<b>School of Trades &amp; Technology</b>	Maxine Mann	B3130	705-749-5530 Ext 1257	<a href="mailto:maxine.mann@flamingcollege.ca">maxine.mann@flamingcollege.ca</a>

## **Appendix D 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.