



Policy:	O-5.10
Approved By:	Board of Governors
Approval Date:	June 23, 2003
Amendment Date:	
Policy Holder:	Exec. Dir. Human Resources

HUMAN RIGHTS

Purpose / Rationale

Camosun College is committed to providing a working and learning environment that is free of discrimination, supportive of academic achievement, and one that upholds the dignity, self-esteem and fair treatment of all members of the College Community. The College seeks to create a climate that encourages and values each person's contribution to the development and well being of the community.

Scope / Limits

1. This policy applies to all members of the College Community. The College Community includes the College's Board of Governors, committees, societies, unions and associations, employees, students, contractors, providers of service or research, visitors, guests, and applicants for employment.
2. This policy applies to allegations and incidents of discrimination or harassment in the College's employment, educational, business or other dealings. In order for this policy to apply to incidents occurring off campus, there must be a connection to the College and a potential for an adverse impact on work or study.
3. All complaints must be made within three months of the last alleged incident. In exceptional circumstances, a complaint filed beyond the three-month limitation may be pursued under this policy with the approval of the Executive Director, Human Resources, or in the case of students, the Vice President responsible.
4. This policy does not prevent an individual from pursuing action through alternate resolution procedures including legal action; however there is no entitlement to duplication of process. This means that:
 - a) No action will proceed under this policy if the complaint has already been dealt with through some other process.
 - b) If a complainant makes a complaint under this policy and also pursues the complaint through some other process, proceedings conducted under this policy may be adjourned or terminated as appropriate.
5. This policy is subject to the *Human Rights Code*, the *Freedom of Information and Protection of Privacy Act*, and laws of general application.
6. This policy and its procedures will not interfere with the rights and obligations specified in the current collective agreements between the College and its unions.

7. Nothing in this policy limits the rights of faculty to academic freedom in teaching, research, or in the evaluation of student performance.
8. Nothing in this policy limits the right of an individual to seek legal advice and/or legal representation in the complaint process.

Principles

1. Camosun College will not tolerate discrimination or harassment.
2. All members of the College community share responsibility for creating and maintaining a working and learning environment free from discrimination and harassment. This means not engaging in, allowing, condoning or ignoring behavior contrary to this policy.
3. College supervisory personnel bear the primary responsibility for maintaining a working and learning environment free from discrimination and harassment. They are expected to act on this responsibility whenever necessary, whether or not they are in receipt of a complaint.
4. Those responsible for interpreting, administering, and applying this policy will do so objectively, giving equal regard to the rights of both the complainant and respondent.
5. All members of the College community have a right to bring forward a complaint of discrimination or harassment in instances where they have reason to believe discrimination or harassment has occurred.
6. Complaints that are trivial, frivolous, vexatious, or made in bad faith will result in the College taking action against the complainant.
7. The respondent has the right to know the allegations made against her or him, by whom the allegations are made, and to be given an opportunity to respond to the allegations made.
8. The respondent and the complainant have the right to a fair and timely process of resolution.
9. In appropriate circumstances, the College may direct that a complaint be investigated and/or determined by an external party.

Confidentiality

1. The College and those involved in the complaint process on its behalf will maintain confidentiality throughout the complaint process to the extent possible under the circumstances. Personal information pertaining to a complaint will not be disclosed except as required by law.
2. Failure to maintain confidentiality may result in the College taking disciplinary action.
3. If the College determines that the safety of an individual is at risk the procedures and rights outlined in this policy, including confidentiality, may be set aside.
4. With the exception of letters of discipline or censure, all records related to the complaint in any way will be held in the strictest confidence in a file separate from an employee's personnel file or a student's file either in Human Resources or in the Registrar's Office.

A. DEFINITIONS

1. Discrimination

- a) As it applies to College students, discrimination is defined as the denial of any service, facility, or opportunity that is customarily available to the public on the grounds of: race, colour, ancestry, place of origin, political belief, religion, marital status, family status, sexual orientation, physical or mental disability, gender, or criminal or summary conviction unrelated to the educational program except where there is a bona fide and reasonable justification.
- b) As it applies to College employees and applicants for employment, discrimination is defined as refusing to employ or to continue to employ a person, or refusing to provide an opportunity, benefit with respect to employment, or any term or condition of employment, on the grounds of: race, colour, ancestry, place of origin, political belief, religion, marital status, family status, sexual orientation, physical or mental disability, gender or criminal or summary conviction unrelated to employment or intended employment except where there is a bona fide occupational requirement.

2. Harassment

- a) Harassment is defined as any remarks, behavior or communication which are known, or ought reasonably to be known, to be unwelcome based on race, colour, ancestry, place of origin, political belief, religion, marital status, family status, sexual orientation, physical or mental disability, gender, or age, which cause offence or humiliation to any person and
 - i) submission to the conduct is made explicitly or implicitly a term or condition of employment or the learning environment; or
 - ii) submission to or rejection of the conduct is used as a basis for employment or educational decisions; or
 - iii) the conduct has the purpose or effect of interfering with work or educational performance; or;
 - iv) the conduct creates an intimidating, hostile or offensive educational or working environment.
- b) Single acts of sufficient severity may constitute harassment.

3. Sexual Harassment

- a) Sexual harassment is defined as one or a series of comments or conduct of a sexual nature that is known or ought reasonably to be known to be unwelcome, offensive, intimidating, hostile, or inappropriate. Sexual harassment includes, but is not limited to:
 - i) unwelcome sexual remarks, jokes, including innuendo or taunting about a person's body, attire, gender, or sexual orientation;
 - ii) unwelcome or inappropriate physical contact such as touching, kissing, patting, hugging, or pinching;
 - iii) unwelcome enquiries or comments about a person's personal life of a sexual nature or sexual preference, or persistent requests for a date;

- iv) leering, whistling, or other suggestive or insulting sounds;
 - v) posting or displaying sexually oriented materials;
 - vi) requests or demands for sexual favours which include, or strongly imply, promises of rewards for complying and/or threats of punishment for refusal.
- b) Single acts of sufficient severity may constitute sexual harassment.

4. Criminal Harassment

Criminal Harassment, or “stalking”, is a federal offence and generally consists of repeated, unwanted contact or actions carried out over a period of time. These actions cause victims to reasonably fear for their safety but do not necessarily result in physical injury. These actions may, however, be precursors to subsequent violent acts.

While criminal harassment falls outside the scope of this policy, the College is committed to full cooperation with all levels of law enforcement agencies to create an environment free from criminal harassment.

B. GENERAL GUIDELINES REGARDING THE COMPLAINT PROCESS

1. In all instances the parties are encouraged to work toward a mutually satisfactory solution to a complaint. In appropriate circumstances the College will assist in this process through the appointment of a mediator agreed to by the parties.
2. Any person involved in the complaint process may seek the assistance of and be represented by her or his union and/or be accompanied by another person of her or his choosing during all proceedings.
3. Either party to a complaint may object to the participation of a person administering this policy on the grounds that the person has a conflict of interest or where there is a reasonable apprehension of bias. Objections to the participation of a person will be made to the Executive Director of Human Resources or his or her designate.
4. Interference with the conduct of an investigation or retaliation or threats of retaliation against any person involved in any way in the complaint process may result in disciplinary action by the College.
5. The College may continue to act on the issue identified in a complaint if it is in the best interests of the College community.

C. GUIDELINES FOR COMPLAINT RESOLUTION

1. Making a Complaint

- a) All complaints under this policy shall be submitted in writing using the Complaint Form. (See link.)
- b) Where an employee is named as the respondent, the complaint must be submitted to the Employee Relations Manager.
- c) When a student is named as the respondent, the complaint must be submitted to the School Administrator responsible for overseeing the student’s conduct or to College

Safety in instances where the student's School or Department is unclear. Whenever possible College Safety will identify the respondent, determine the school or department where they are registered, and forward the complaint to the School Administrator responsible.

2. Receipt of Complaint

- a) The Employee Relations Manager or the Department/School Administrator responsible will acknowledge receipt of the complaint in writing and within ten (10) working days will inform the complainant whether the complaint will be pursued under this policy, and, if not, the reasons why.
- b) In cases where an allegation is made by a student against a College employee, the Department/School Administrator responsible will consult with the Executive Director, Human Resources, to determine if the complaint will be pursued.

3. If it is determined that the complaint *will* be pursued under this policy

- a) The Employee Relations Manager or Department/School Administrator will provide a copy of the complaint to the respondent, and advise the respondent that she or he is required to provide the Employee Relations Manager or Department/School Administrator with a written response to the complaint within ten (10) working days.
- b) The Employee Relations Manager or the Department/School Administrator responsible will also provide the respondent with a copy of this policy and advise the respondent of his/her rights and responsibilities.
- c) Where the complainant or the respondent is a member of a bargaining unit, the Employee Relations Manager or Department/School Administrator responsible will also advise that person of her or his right to bargaining unit representation.
- d) Upon receipt of the respondent's response to the complaint and within ten (10) working days, the Employee Relations Manager or the Department/School Administrator responsible will provide a copy of the respondent's response to the complainant.

4. If it is determined that the complaint *will not* be pursued

- a) The Employee Relations Manager or the Department/School Administrator responsible will inform the respondent in writing that a complaint has been made but will not be pursued further under this policy.
- b) The information provided will include the reasons for not pursuing the complaint and a statement that no response to the complaint is required. If the respondent is an employee, the College will, at the employee's request, record the disposition of the complaint in the employee's personnel file

5. Meeting with Complainant and Respondent

- a) The Employee Relations Manager or the Department/School Administrator responsible will meet with the complainant and respondent separately to clarify the details of their submissions where necessary and to identify the steps that have been taken to attempt to resolve the matter.
- b) In all instances, the Employee Relations Manager or the Department/School Administrator responsible will work towards a mutually satisfactory solution to the complaint and where appropriate may with the approval of the parties appoint a mediator to assist the parties come to a mutually satisfactory resolution to the

complaint.

6. Appointment of an Investigator

- a) The Employee Relations Manager or the Department/School Administrator responsible may appoint an Investigator to engage in a determination of facts. The investigation shall commence within ten (10) working days of the appointment.
- b) The Investigator will, wherever possible, submit a written report to the Employee Relations Manager or the Department/School Administrator responsible within fifteen working (15) days from the beginning of the investigation.
- c) In conducting an investigation, and as appropriate, the Investigator will:
 - i) interview the complainant and the respondent;
 - ii) interview witnesses if any; and
 - iii) gather all available relevant evidence using legally permissible means.
- d) The investigator's report will not be introduced as evidence in any arbitration or other legal proceeding. This does not prevent the parties from reaching an Agreed to Statement of Facts based upon the facts in the report for submission at arbitration.

1. Determination of Findings For an Employee Respondent

- a) A statement of findings will be provided by the Employee Relations Manager to the complainant and respondent which may:
 - i) make a findings of facts;
 - ii) decide if, on the facts, it has been determined that an incident of discrimination or harassment has occurred;
 - iii) dismiss the complaint;
 - iv) make recommendations to the College regarding what, if any, further action should be taken.
- b) If it is determined that the respondent has not discriminated or harassed the complainant, the complaint will be dismissed.
- c) If it is determined that the respondent has harassed or discriminated against the complainant, appropriate disciplinary action may be taken by the College, up to and including dismissal. Bargaining Unit members have the right to grieve disciplinary action taken, if any, in accordance with the applicable Collective Agreement.

2. Determination of Findings For a Student Respondent

- a) A statement of findings will be provided by the Department/School Administrator to the complainant and respondent which may:
 - i) make findings of fact;
 - ii) decide if, on the facts, an incident of discrimination or harassment has occurred;
 - iii) dismiss the complaint;
 - iv) make recommendations to the College regarding what, if any, further action should be taken.

- b) If it is determined that the respondent has not discriminated against or harassed the complainant, the complaint will be dismissed, and a copy of the statement of findings will be provided to the complainant and the respondent.
- c) If it is determined that the respondent has discriminated against or harassed the complainant, appropriate disciplinary action will be taken by the College, up to and including suspension from the College (see link to Student Conduct Policy). A copy of the statement of findings will be placed on the respondent's file.

D. THIRD PARTY DETERMINATION

1. College Employees

- a) If either party to a complaint is dissatisfied with the decision of the Employee Relations Manager, she or he may have the case referred to third party arbitrator appointed by mutual agreement of the parties.
- b) The arbitrator will hear the case on its merits and determine whether discrimination or harassment has occurred and what, if any, remedial action is justified in the circumstances.
- c) The decision of the Arbitrator shall be final and binding on all parties involved.

2. College Students

- a) If either party to a complaint is dissatisfied with the decision of the Department/School Administrator responsible, she or he may appeal the decision through processes outlined in the Student Appeal Policy. (See link.)

E. POLICY ADMINISTRATION

Costs

Camosun College will be responsible for the costs of the administration of this policy. If it is determined that a complaint is fraudulent, vexatious, or frivolous, the College reserves the right to seek indemnification from the complainant for costs incurred in pursuing the complaint.

F. LEGISLATIVE REFERENCES

Canadian Charter of Rights and Freedoms

Human Rights Code RSBC 1996 c.210, Part 1

Civil Rights Protection Act RSBC 1996 c.49

Multiculturalism Act RSBC 1996 c.321

College and Institutes Act RSBC 1996 c.52 s.26

Criminal Code of Canada Consolidated Statutes and Regulations 1993 c. -46 s.264

G. COLLECTIVE AGREEMENT REFERENCES

CCFA Collective Agreement / Articles 33, 34

Faculty Common Agreement / Article 2

CUPE Collective Agreement / Articles 2, 4 and Letter of Agreement (Jan/01)

CUPE/CCSS Collective Agreement / Article 6

H. LINKS TO RELATED POLICIES

[E-2.4 Student Appeals](#)

[E-2.5 Student Conduct](#)

[O-6.1 Freedom of Information and Protection of Privacy](#)