

Human Resources

Procedure #4-134

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ONTARIO HUMAN RIGHTS COMPLAINT RESOLUTION PROCEDURE

PURPOSE:

The Complaint Resolution Procedure has been developed to resolve, under the principle of fairness, complaints about the behaviour of College community members, which violates the Ontario Human Rights Code.

RATIONALE:

Georgian College is committed to creating and maintaining an enabling environment for students and employees. Georgian College values positive and supportive interaction among all members of the College community.

All members of the College community have the right to learn and work in a facilitative environment. Freedom to learn and work depends upon appropriate opportunities and conditions in the classroom, in the office, on the campus and in the community. All College community members should exercise their freedom with responsibility. In developing responsible conduct, the College believes that, in most cases, counselling, guidance, example and admonition are more effective than discipline.

SCOPE & LEGAL OBLIGATIONS:

This Complaint Resolution Procedure governs the behaviour under the Ontario Human Rights Code of all members of the Georgian

College community (see Appendix A). All College community members are subject to this Procedure while they are on any College campus, off campus on College business and/or while participating in College events.

Georgian College upholds the position of the Ontario Human Rights Code which states that it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination on certain prohibited grounds. The Code provides that every person has the right to equal treatment in the provision of services, accommodation, matters of contract, employment, and membership in trade unions and professional associations.

Accordingly, Georgian College must provide services and employment without discrimination on any prohibited ground.

Students and employees have the right to study and work in an environment free from harassment and discrimination related to any of the grounds prohibited by the Ontario Human Rights Code including race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, record of offences, mental or physical handicap.

If this procedure is not the appropriate means of resolving an issue (i.e. the issue does not fit any of the criteria above), the complainant will be referred to a more appropriate area for assistance.

For example;

- students with academic concerns should be referred to their program co-ordinators, Academic Director, or the Registrar's Office;
- students who relate problems in their personal life or who seek academic guidance should be referred to a counsellor in Student Services;
- staff experiencing problems with their workload, conflicts with supervisors regarding terms and conditions of their employment, difficulties with their employment status, pay, benefits, hours of work, etc. should be referred to a manager in their own area, to a union representative, or to Human Resource Services;
- staff concerned about the job performance of other staff are referred to the area manager or to Human Resource Services;
- staff who disagree with a performance appraisal from their supervisor should be referred to the supervisor's manager, or a union representative, or a Human Resource Consultant;
- students or employees who are concerned about property, facilities or health and safety issues are referred to Physical Resources;
- students or staff seeking information about or help from external agencies should be referred to the appropriate source;
- staff requesting assistance under the Employee Assistance Plan should be referred to the appropriate resource materials or to a Human Resource Consultant, or Manager Benefits;
- students on work experiences should be referred to their co-op Consultant, program co-ordinator or Academic Director.

Following the College's Human Rights Complaint Resolution Procedure does not preclude exercising other legal avenues including:

The Ontario Human Rights Commission: All persons may approach the Human Rights Commission, subject to provisions set out in the Code, at any time. Complaints under the Ontario Human Rights Code should be filed within six months of the occurrence, although the complaint may be filed later than six months if there is a reasonable excuse for the delay and there is no prejudice to the respondent.

The Criminal Code of Canada: An individual can report the incident to the police and take action under the Criminal Code of Canada. Examples include cases of physical assault, sexual assault, pornography, sexual exploitation or the threatened use of force or intimidation.

Freedom of Information and Protection of Privacy Act: All information collected under this Procedure will be treated in a manner consistent with the Freedom of Information and Protection of Privacy Act. Any questions concerning the use of this information may be directed to the Freedom of Information co-ordinator in Human Resource Services.

Collective Agreements/Administrative Terms and Conditions of Employment/Academic Practices and Procedures: These documents provide guidelines on working conditions for College employee groups and contain information related to issues of discrimination. Copies are available through Human Resource Services.

1. GENERAL PRINCIPLES & RESPONSIBILITIES

1.1 To protect the learning/working environment and the rights of individuals, the College will enforce the right of its members to equal treatment without discrimination as provided for by The Ontario Human Rights Code. The College may sanction any member of the College community whose behaviour violates the Ontario Human Rights Code.

1.2 Every College community member has the right to express legitimate concerns about human rights violations they are experiencing in their work or education at Georgian College without fear of reprisal. Anyone who attempts reprisal or threatens reprisal against a person who initiates a complaint and participates in proceedings under this Procedure may be subject to disciplinary action.

1.3 Under The Ontario Human Rights Code, the College must take reasonable steps to ensure an environment free from harassment and discrimination (which includes any behaviour contrary to The

Ontario Human Rights Code) including informing and educating members of the College community about discrimination and harassment.

1.4 This Procedure is part of the College's general strategy to educate its members about human rights and equity issues, and the College's process to resolve human rights complaints. Sanctioning individuals is less effective in preventing human rights violations than education equity initiatives and human rights training to assist all members of the College community to promote and maintain a positive environment.

1.5 Under The Ontario Human Rights Code and this Procedure, members of the College community have the following responsibilities:

- to foster a climate of understanding and mutual respect for the dignity and rights of each individual by providing equal treatment in the areas described in The Ontario Human Rights Code.
- to learn Georgian College's policies, procedures and practices for dealing with human rights issues to fulfill their personal obligations.
- to prevent, report and discourage discrimination and harassment by others.

1.6 College community members are liable for any discriminatory acts which they commit, directly, or indirectly.

1.7 The College recognizes that accusations in a complaint action are a serious matter that can cause considerable stress and grief. Accusations must be founded in serious concerns. Anyone who makes a vexatious complaint (see Appendix B) will be subject to disciplinary action under this Procedure.

1.8 The College believes that most complaints by students and employees can be effectively managed within their academic area or department. Accordingly, members of the College community are encouraged, whenever possible, to resolve issues directly with the person who is the subject of their concern. If local resolution is not possible or unsuccessful, the complainant should follow the resolution process described in this Procedure.

1.9 The College President or designee has the right to take action or direct procedures which diverge from sections of this Procedure when the safety of College community members is at risk or the violation is deemed to be so serious that it is imperative that immediate action be taken.

1.10 Although the College's Ontario Human Rights Complaint Resolution Procedure is written in the language of an individual complaint, group complaints may be brought under this Procedure.

1.11 Given the sensitive nature of a complaint, all parties concerned will make every attempt throughout the resolution of the complaint to respect the confidential nature of the information to the fullest extent possible subject to the obligations of the College in dealing with the complaint, including its legal obligations under the Ontario Human Rights Code and The Freedom of Information and Protection of Privacy Act.

1.12 Complaints relating to multiple issues covered by this Procedure and other College procedures and practices can be processed concurrently. The Complaint Consultant will inform complainants of their options for handling their concerns and which College procedures and practices are appropriate processes for them to use to seek resolution for each issue.

1.13 The Complaint Consultant is available to provide information, in confidence, to all College community members on the application and scope of the College's Human Rights Complaint Resolution Procedure and to clarify all options available for resolving issues.

1.14 In the event a complainant decides not to pursue his/her complaint through the process provided for in this procedure, the College may determine, nevertheless, that the matter should be pursued. The Complaint Consultant may use this procedure on behalf of the College to ensure a safe, effective learning and work environment for members of the College community if the allegation is very serious, is one of a series of complaints against a respondent or is indicative of a poisoned environment.

1.15 The College recognizes that its members of the College community may be subjected to harassment by others with whom the College conducts business. In these circumstances, the College acknowledges its responsibility to support and assist anyone subjected to such harassment.

1.16 The College, in partnership with OPSEU Local 349, OPSEU Local 350, OCASA Local (Ontario Colleges Administrative Staff Association), and SAC (Student Administrative Council), agrees that violations of human rights will not be tolerated at Georgian College. Therefore, conduct contrary to these objectives will be subject to disciplinary measures appropriate to the seriousness of the violation and subject to the provisions of applicable collective agreements, terms and conditions of employment, and College policies, procedures, and practices.

1.17 The College is responsible for the costs of administering this Procedure and processing complaints but not for any legal costs incurred personally by the complainant or the respondent.

1.18 In general, the Complaint Consultant will only investigate complaints concerning incidents that occurred within the last 6 months.

1.19 The final decision about an allegation that a violation of human rights, as prescribed by this procedure, has occurred, will be based upon a balance of probabilities (see Appendix B).

2. RESOLUTION PROCESS

2.1 STEP 1

2.1.1 If an individual feels that s/he is experiencing unwanted behaviour which would fall within the definitions of this procedure, the individual should make an effort to advise the person who is the source of the behaviour, either verbally or in writing, that his/her conduct is unwelcome.

2.1.2 The individual may contact the Complaint Consultant, Ext. 2200 for information about the process. Alternatively, s/he may speak to a "contact" person. (See Section 2.2.1).

2.1.3 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.

2.2 STEP 2

2.2.1 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:

- if the complainant is a student, s/he should speak to a "contact" person - ie: the Program Co-ordinator, the Academic Director, Program Manager, or a counsellor in Student Services.
- If the complaint is deemed to be a Human Rights complaint, the contact person will consult with the Complaint Consultant. Alternatively, the complainant may choose to contact the Complaint Consultant directly.
- If the complaint is deemed not be to a Human Rights complaint, the complainant will be informed of other College procedures that apply (see Scope and Legal Obligations).
- if the complainant is an employee, s/he should contact his/ her Supervisor or Manager or Union Steward.
- If the complaint is deemed to be a Human Rights complaint, the contact person will consult with the Complaint Consultant. Alternatively, the complainant may choose to contact the Complaint Consultant directly.
- If the complaint is deemed not be to a Human Rights complaint, the complainant will be informed of other College procedures that apply (see Scope and Legal Obligations).

2.2.2 Timely reporting of the incident(s) is essential. The complainant must report the incident as soon as reasonably possible in the circumstances following the occurrence of the event(s) which give rise to the complaint or the complainant becoming aware of the occurrence of the event(s).

Immediate reporting through this procedure is strongly recommended if the respondent or the complainant is a student whose academic success may be adversely affected by a delay in the complaint process. In these cases, it is suggested the complainant report the incident to the Complaint Consultant within five working days of its occurrence or knowledge of its occurrence.

In any case, a complaint must be brought within six months of the occurrence of the event(s). The Complaint Consultant may extend this deadline in cases where the Complaint Consultant determines that there is a reasonable excuse for the delay in reporting and that the delay would not prejudice the respondent or preclude him/her from being able to adequately respond to the complaint. The Complaint Consultant 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, or a complaint being investigated by an external agency.

2.2.3 If the Complaint Consultant determines that his/her involvement is required at this time, the contact person will refer the complainant to the Complaint Consultant.

If the Complaint Consultant determines that his/her involvement is not required at this time, the Complaint Consultant will provide advice and counsel to the contact person and monitor the situation as appropriate.

2.2.4 The Complaint Consultant or the contact person will:

- review this procedure and The Ontario Human Rights Code with the complainant;
- advise 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 2.3)
- the option of submitting a written statement of complaint which should contain an account of the incident(s), including date(s) and time(s), the name(s) of the respondent(s), the name(s) of the witness(es), if any, and be signed and dated by the complainant. Failure to provide a written statement of complaint does not preclude the contact person or Complaint Consultant from working with the complainant and respondent to reach a resolution;
- the availability of counselling and other support services; eg. 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;
- 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.

2.3 STEP 3

2.3.1 Mediation can often lead to successful resolution of a complaint. The Complaint Consultant or contact person may recommend mediation to the parties at any stage in the process. Mediation also may be requested by either the complainant or respondent; however both must agree to participate.

2.3.2 If the respondent has not yet been informed of the complaint, the Complaint Consultant or contact person will, with the approval of the complainant, advise the respondent of the complaint and of the complainant's request for a mediated resolution.

2.3.3 Once there is agreement on proceeding with mediation, the Complaint Consultant will recommend a mediator. Mediators may be college employees and students nominated by their respective constituent groups and trained in mediation skills. External mediators may be contracted by the Complaint Consultant. Both the complainant and the respondent must agree on the mediator.

2.3.4 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 Complaint Consultant. 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.

2.3.5 The Complaint Consultant will arrange for the mediator to meet with the complainant and the respondent within 5 working days (see Appendix B) of the decision to mediate. The process of mediation should conclude within 20 working days of the first meeting unless both parties agree to an extension.

2.3.6 The mediator will keep the Complaint Consultant generally apprised of the progress of the mediation without revealing what any party has disclosed during the mediation, unless the parties both/all agree to the disclosure.

2.3.7 In the event a mediated resolution of the complaint would require the involvement of the College or an official of the College, the mediator may, with the agreement of the parties, contact the Complaint Consultant in order to facilitate the involvement of the appropriate College official for the purposes of the mediation.

2.3.8 The mediator will deliver a signed agreement to the Complaint Consultant within 5 working days of the conclusion of the meetings and will provide interim oral reports as requested by the Complaint Consultant.

2.3.9 Mediation is terminated when:

- The complainant and respondent reach a mutual agreement to resolve the complaint
- The complainant or the respondent decide not to pursue this process any further
- The mediator recommends to the Complaint Consultant that the complaint proceed to an Adjudication Panel.

2.4 STEP 4

2.4.1 If/when the complainant decides to proceed to Step 4, s/he will submit a written complaint statement to the Complaint Consultant. The complainant shall be informed that s/he may be identified to the respondent, if this has not already happened, and his/her statements shared with the respondent.

Note: The Complaint Consultant shall advise the respondent of the substance of a verbal complaint against the respondent where the Complaint Consultant determines that the verbal complaint raises issues which must be pursued by way of investigation.

2.4.2 Within a maximum of 5 working days of receiving the written complaint and with the knowledge of the complainant, the Complaint Consultant will contact the respondent and give the respondent a copy of the written complaint.

The Complaint Consultant will advise respondent of:

- the identity of the complainant and the nature and details of the complaint;
- the Ontario Human Rights Complaint Resolution Procedure and the Ontario Human Rights Code;
- the opportunity to respond in writing within 5 working days and that the response will be shared with the complainant;
- the various courses of action to reach a mutually satisfactory resolution.

2.4.3 Within a maximum of 5 working days of receiving the written complaint, the respondent may provide a written response to the Complaint Consultant (or such longer period of time as the Complaint Consultant may determine if circumstances justify an extension).

2.4.4 Within a maximum of 5 working days of receiving the respondent's written response, the Complaint Consultant will give the complainant a copy of the respondent's reply to the complaint.

2.4.5 In exceptional cases, the Complaint Consultant may defer informing the respondent of the complaint, for up to six months 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.

The Complaint Consultant will decide how and when to proceed weighing the elements of any possible prejudice to the respondent as a result of the delay in advising him/her of the complaint, risk to the complainant, and the College's responsibility to ensure a positive learning and working environment for all members of the College community.

2.4.6 The complainant may decide at any point in the process to take no further action and/or to withdraw the complaint. The Complaint Consultant will then decide whether to take further action on behalf of the College.

2.4.7 If the complaint is resolved at any stage in the process or the complainant decides to take no further action, the Complaint Consultant may terminate the complaint procedure. To record the termination of the complaint procedure, the Complaint Consultant will:

- facilitate the signing of a resolution statement/agreement by both parties, and give copies to the complainant and the respondent, or
- document the decision to terminate the process.

The original statement/agreement, or document will be kept in the confidential file by the Complaint Consultant.

2.4.8 If, in investigating a formal complaint, the Complaint Consultant finds the complaint is without merit, trivial, frivolous, vexatious or made in bad faith, the Complaint Consultant will terminate the process with written notification to the complainant and the respondent, giving reasons for his/her decision. The Complaint Consultant may also recommend, to the appropriate Vice President(s), that sanctions be imposed against the complainant for filing a complaint deemed to be without merit, trivial, frivolous, vexatious or made in bad faith.

2.4.9 The Complaint Consultant will investigate all complaints before adjudication or before any serious sanction (beyond a warning, interim suspension or temporary dismissal) is applied to a respondent (or a complainant). The investigation of a complaint will normally include developing a case plan, 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, etc.; and writing a case analysis/investigative report and presenting it to an Adjudication Panel (if one is called) or the appropriate Vice-President, if action is recommended.

2.4.10 The complainant and the respondent will be advised of the outcome of the investigation and, if the investigative report is to be presented to an Adjudication Panel or the President, each will be given a copy of the investigative report.

2.5 STEP 5

2.5.1 A complainant may request adjudication by a College Adjudication Panel (Panel) if resolution steps 1, 2, 3, and 4 have not resulted in a resolution of the complaint.

2.5.2 The Complaint Consultant may recommend adjudication by a College Adjudication Panel if resolution steps 1, 2, and 3 have resulted in a resolution of the complaint.

The Complaint Consultant may request the Director, Human Resource Services to convene an Adjudication Panel at any time during the process if the results of his/her investigations indicate an immediate serious problem affecting the safety or well-being of College community members or systemic discrimination within the institution. In these cases, the Panel may be asked to recommend immediate and long-term action to ensure a positive working and learning environment at the College.

The Adjudication Panel will convene within 10 working days of the completion of the investigation. Extensions to this time line will be considered under extenuating circumstances.

2.5.3 The Director, Human Resource Services will select three individuals to form a Panel ñ one from the complainant's constituent group, one from the respondent's constituent group and one College designee as Chair.

The role of the Panel is to formally adjudicate a resolution to the complaint. The Panel will have access to all information available concerning the case subject to the Freedom of Information and Protection of Privacy Act.

2.5.4 Before the hearing, the Complaint Consultant will collect statements from the complainant(s) and respondent(s) summarizing their positions, their perceptions of the essential issues of the case, the resolution outcome each desires, and any witnesses or special evidence they wish the Panel to hear or consider.

The Complaint Consultant will communicate any information regarding the scheduling of the Panel to the complainant and the respondent. The Complaint Consultant will provide information to both parties about the adjudication process and the schedule. S/he can also provide information about assistance for them from appropriate sources; the unions, professional administrative staff association, student administrative council, student services or the employee assistance program.

2.5.5 The complainant and respondent may be accompanied by one person of their choice when meeting with the Adjudication Panel. The complainant and respondent are responsible for arranging their own support persons and advising the Complaint Consultant. The Complaint Consultant will provide information to the support persons about the adjudication process, the schedule, and their role.

In consultation with the complainant and respondent, the Complaint Consultant will prepare a list of witnesses who may have relevant evidence to provide to the Adjudication Panel. The Chair of the Panel may permit additional witnesses to be added to this list at the request of either the complainant or respondent or where the Chair is of the view that a witness should be added. The Complaint Consultant will inform witnesses on the list of the adjudication process, the schedule and, generally, the role of witnesses at an Adjudication Panel hearing.

Except for the attendance of persons directed to be in attendance by the Panel, all proceedings will be closed.

2.5.6 The Chair will facilitate the adjudication process, call upon the Complaint Consultant to give a full report on his/her investigation, ask the complainant and respondent to make their statements, ask any witnesses to speak, consider pertinent documents and witness statements, and facilitate discussion among the Panel members.

2.5.7 The Chair will make the final decision, with input from the Complaint Consultant, the complainant, the respondent, and witnesses, based on the balance of probabilities where a violation of behaviour proscribed by this Procedure has occurred.

The Chair decides on a resolution outcome to the complaint, resolution processes, and any sanctions or remedies (see Section 3). If the Chair believes that any steps should be taken, s/he will consult with the appropriate Vice President, and/or the Director, Human Resource Services before s/he writes the decision.

2.5.8 The Chair will write a report to summarize the facts of the case, the panel's findings and his/her final decision. The report will be sent, within 10 working days after adjudication has ended, to the Complaint Consultant and the appropriate senior administrators responsible for ensuring the enforcement of the outcome. The complainant and the respondent will be informed of the final decision. If sanctions are to be applied, the complainant will not be given the specific details.

2.6 STEP 6

2.6.1 Respondents and complainants may only appeal ^(a) alleged procedural mistakes that fundamentally affected the final decision made by the Chair or ^(b) the decision(s) made by the Complaint Consultant in Sections 2.2.2, 2.4.5, 2.4.8 and 2.4.9.

2.6.2 Respondents and complainants have 10 working days from receipt of the Chair's written decision to appeal alleged procedural mistakes.

2.6.3 Appeals will be made in writing to the President. The President or designee will determine if the appeal has merit and will either decide the appeal or remit the matter back to the Chair.

2.6.4 The appellant should be informed in writing of the appeal outcome by the President or designee within 20 working days of receiving the appellant's request.

2.6.5 The appeal decision is final and will be implemented by the College.

3. SANCTIONS AND REMEDIES

3.1 In most cases, the complainant's principal concern is to seek a change in the respondent's behaviour, the department or employee's practice, or the

College procedure at issue. Changes in behaviour, practices and procedures can often be agreed upon by the complainant and the respondent through an informal resolution process or mediation. Similarly, respondents and complainants may agree to remedies without appearing before an Adjudication Panel subject to any necessary agreement by the College to the resolution reached. Sanctions will relate to the seriousness of the breach and the principles of progressive discipline and will be determined by the College.

3.2 Sanctions and remedies may be appropriate in some cases. They may be agreed upon by the complainant and the respondent informally or through mediation or they may be directed by the Chair of the Adjudication Panel.

3.3 If the complaint proceeds to the Adjudication Panel stage, and in the event a determination is made at the end of the hearing by the Chair of the Complaint Adjudication Panel that misconduct occurred, appropriate action will be taken. The Chair of the Complaint Adjudication Panel will consult with the Director, Human Resource Services and/or the appropriate Vice President regarding appropriate sanction.

3.4 The nature and type of sanction(s) depend upon the severity of the incident. Serious infractions are those which may affect the health and/or safety of the individual and other members of the College community, violations of the law and/or repeated minor infractions. Sanction or remedy may include, but is not limited to, an oral or written apology, a written reprimand or warning, interim suspension, temporary dismissal, a behavioural contract, probation, barring from campus, mandatory training/education, transfer, demotion, suspension, dismissal or expulsion. Only the Chair of the Adjudication Panel, the President, Vice Presidents or Director, Human Resources Services can impose severe disciplinary sanctions such as probation, transfer, demotion, suspension, dismissal or expulsion.

3.5 In the event a determination is made at the end of the investigation that no misconduct occurred, then the complainant will be advised of this fact and counselled. If it is determined that the complaint was initiated maliciously, then appropriate action will be taken (see Section 1.7 and Section 2.4.8).

4. RECORD RETENTION

4.1 All handwritten notes/reports, typed notes/reports and computer-generated reports taken by those involved in the investigation will be dated and signed and included in the investigation file.

4.2 All notes, along with the signed resolution agreement if applicable, will be submitted to the Complaint Consultant upon resolution of the complaint.

4.3 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 Complaint Consultant separately from other employee and student records or files.

4.4 The Complaint Consultant 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.

4.5 The Complaint Consultant will prepare and submit statistical reports to the College Planning Committee 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.

APPENDIX A

Behaviours - Ontario Human Rights Code - Definitions

Discrimination

Every member of the College community has the right to equal treatment in employment with the College, or in receipt of services from the College, without discrimination on the basis of any ground set out in The Ontario Human Rights Code.

Direct discrimination occurs when an individual is subjected to differential treatment as a result of his/her identification by a prohibited ground of discrimination or his/her 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;

Note: Discrimination 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.

Systemic Discrimination (Indirect Discrimination)

This term refers to policies, practices, procedures, actions or inactions that appear neutral, but have an adverse impact on a group identified by a prohibited ground of the Ontario Human Rights Code of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, handicap, age, family status, or record of offenses. However, systemic discrimination may be permitted if it is reasonable and bona fide in the circumstances and cannot be accommodated without undue hardship.

Systemic discrimination occurs when a factor, requirement, condition or qualification is imposed, which on its face does not discriminate directly against any protected group, but which has the effect of negatively impacting or giving preference to a group identified on a prohibited ground.

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 event. The exam may have been scheduled without thinking about the religious event--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.

Note: Where the factor, requirement, condition or qualification is reasonable and *bona fide* in the circumstances and cannot be accommodated without undue hardship, the factor, requirement, condition or qualification may be permitted to stand, notwithstanding its discriminatory effect.

Harassment

Harassment is defined by the Ontario Human Rights Code 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.

Some examples of harassment are:

- unwelcome remarks, jokes, slurs, innuendoes or taunting;
- hazing, stalking, or shunning;
- 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.

Sexual Harassment

Sexual harassment may be experienced by women or men. 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, 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;
- 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 Romantic and sexual relationships between faculty members and students or between supervisors and employees or students are ones in which 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 regard 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.

Racial/Ethnocultural Harassment

Racial/ethnocultural harassment may be experienced by women or men. Such harassment 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 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

Poisoned Learning/Work Environment

An enabling learning/working environment is changed to a poisoned one when conduct and/or comments related to the prohibited grounds of discrimination unreasonably interfere with an individual's work and/or learning performance and create an intimidating, hostile, offensive or threatening environment.

Persistent and frequent comments are not necessary prerequisites of poisoning the 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 result in unequal terms and 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, either through print or personal computers;
- making derogatory remarks about women or aboriginal people in the classroom or the workplace.

APPENDIX B

DEFINITIONS

Balance of Probabilities

Balance of probabilities is the standard of proof which must be met by a party who asserts an allegation or fact in a hearing. The party must adduce sufficient relative, probative and credible evidence to establish that it is more likely or probable than not that the allegation or fact which she/he asserts is true.

College Community Members

The College community includes employees; students; members of the Board of Governors or College committees; groups or associations who have a direct relationship to or are under the authority of the institution; visitors and contractors.

Complainants and Respondents

The complainant is the person who makes the complaint. The respondent is the person whose behaviour is complained about, or the manager of the department responsible for the procedure or situation complained about. Any references to "parties" mean both the complainant and the respondent.

Sanctions and Remedies

A sanction or remedy is an intervention, or course of action, deemed to be an appropriate consequence for violations of behaviour under this procedure. Examples of sanctions and remedies are receipt of written apology, restoration of employment position or academic status, behavioural contract, and provision of counselling.

Working Days

All days referred to in this Procedure are typical working days; i.e. Monday through Friday.

Vexatious Complaint

A vexatious complaint is a complaint that is instituted without sufficient grounds so as to purposely annoy, embarrass or harm the respondent.

APPENDIX C

COLLEGE ONTARIO HUMAN RIGHTS COMPLAINT CONSULTANT

Human Resource Services
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Barrie Campus

Ext. 2200