



# THE DISCRIMINATION & HARASSMENT PREVENTION PROCEDURE - COMPLAINTS AGAINST EMPLOYEES

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## **PROCEDURE STATEMENT:**

This procedure outlines the process for dealing with complaints from members of the College community of discrimination and harassment by an employee.

## **DEFINITIONS:**

See Harassment and Discrimination Prevention Policy for definitions.

## **RESPONSIBILITIES:**

Responsibilities defined under this Policy guide the prevention and/or resolution of complaints of harassment and/or discrimination by one or more persons against one or more employees are outlined below:

### **College Employees:**

- to review, understand, and adhere to this Policy and its procedures;
- to identify or discourage discrimination and harassment;
- to promptly report incidents of harassment or discrimination;
- to cooperate in the investigation and/or resolution of complaints pursuant to this Policy

### **Managers:**

- must know and understand this policy and its procedures;
- act immediately on observations of discrimination and/or harassment. Managers may be found culpable if aware of an incident but fail to take any action to resolve or address it;
- assess the severity of the complaint in consultation with the Human Resources Business Partner to determine the appropriate process to follow. (Early Resolution vs Formal complaint)
- respond immediately to allegations of harassment or discrimination in a manner that is commensurate with the nature and severity of the alleged complaint;

- inform complainants about filing a formal complaint if the Informal Resolution stage is not successful.
- provides a copy of the policy and procedures to the complainant, respondent, and any other parties involved
- provide complainants with a copy of the Harassment & Discrimination Complaint Form.
- support implementation of the outcome of an investigation, where appropriate

**Human Resources:**

- review this Policy to enhance its effectiveness and ensure that it is consistent with the Ontario Human Rights Code, the College's collective agreements, Terms and Conditions of Employment for Administrative Staff, and other legislative requirements;
- facilitate training and education of employees with respect to this policy;
- ensure this policy is available in the Human Resources Policies and Procedures section of the College Website.

**Human Resources Business Partner or Director, Employee and Labour Relations - Human Resources Department:**

- provides advice and assistance to Managers on handling complaints filed under the Early Resolution process;
- receives and handles formal complaints and determines the appropriate next steps;
- provides a copy of the Policy and Procedures to the complainant, respondent, and any other parties involved;
- provides a copy of the Complaint form to complainants;
- appoints arms-length investigators to complete the information gathering related to the complaint which may include conducting interviews and gathering relevant records as per the Investigation Protocol;
- ensure the Investigation Protocol is adhered to
- provide the resolution to the respondent and advise the complainant that the investigation has concluded;
- support the implementation of sanctions as appropriate and any implications associated with the outcome of the investigation;
- maintain confidential records as per the policy

**Student Rights & Responsibility Office**

- When the student reports a complaint to the office, Student Rights & Responsibilities will;
  - provide students with a copy of the Policy and Procedures;
  - inform students of the appropriate manager, Chair, etc., to contact to initiate the complaint process;
  - provide student complainants with a copy of the H&D Complaint form.

### **Appointed Decision Makers from Senior Administration**

- will review the investigation report and decide on an appropriate resolution and/or sanction

### **PROCEDURE:**

The following stages suggest an orderly way to approach the resolution of harassment or discrimination problems. While it is strongly recommended that the stages outlined below be followed in sequence, depending upon your situation, you may decide that it is not possible to use the informal resolution part of this procedure. At that point you may decide to proceed directly to Stage Three, formal complaint. Please note that timely reporting of concerning behavior could have an impact on the investigation and remedies available.

### **Stage One – Informal Resolution**

Recognizing that it is in the best interests of all parties to resolve harassment and discrimination conflicts, if you believe that you are being harassed you should, when possible, as the initial step towards its resolution, discuss the complaint with the person whose action gave rise to the complaint. Clearly and directly describe the behaviour that is bothering you, its impact on you and ask the other person to stop. If you are concerned about talking to the other person, consider writing them an email about what is bothering you. Remember, there are times when the person causing the problem is not fully aware of the impact of their actions. A copy of the email should be retained.

If you require assistance in approaching the person who is the source of the unwelcome behaviour, if you are unsure of what to say or do, or if after talking to this person, the offensive behaviour continues, you should discuss the situation, in confidence, with the following:

#### **Employees:**

- the person who is the source of the behaviour that it is unwelcome (in person or in writing), or;
- their immediate manager, or;
- the Human Resources Business Partner, Director, Employee & Labour Relations, AVP, Human Resources.

#### **Students:**

- the person who is the source of the behaviour that it is unwelcome (in person or in writing), or;
- the employee's manager, or;
- the Student Rights and Responsibilities Office if unsure of or uncomfortable with approaching the person or their manager.

The College representative to whom you have gone will either give you advice and/or assistance. You will be given information regarding the policy and procedure including:

- your right to file a formal written complaint
- the availability of the Employee Assistance Program (full-time employees only)
- the availability of Counselling Services (Full-time students only)
- the importance of contacting campus security if you believe that your safety is at risk or threatened
- the time limits which apply to filing a formal complaint
- the options available to address a complaint, including facilitated discussion between the parties involved

This individual will gather pertinent information including:

- the name and location of the respondent
- the nature of the complaint
- the time and date of the complaint
- and your requested proposed remedy

The College representative, in consultation with Human Resources, will advise you regarding whether it seems, on the face of the information provided, that the complaint falls within the jurisdiction of the policy.

It may be determined, in consultation with Human Resources that an alternative dispute resolution mechanism is in order. If you and the respondent are agreeable such a mechanism will be put in place.

### **Stage Two- Formal Complaint**

Failing resolution of the complaint through informal means, you may submit a formal complaint in writing. The formal complaint must be submitted to Human Resources on the Discrimination & Harassment Complaint Form. Within five business days of receipt of a written complaint, Human Resources shall acknowledge receipt of the complaint in writing, informing you whether, on a matter of jurisdiction, the complaint will be pursued under this policy, and, if not, the reasons for not pursuing the complaint,

- (i) If it has been determined that the complaint will be pursued under this policy, Human Resources will inform the respondent in writing of the complaint, provide a summary of the complaint, and give the respondent an opportunity to respond to the allegations in a scheduled meeting. Human Resources will provide the respondent with a copy of this policy, as well as inform the respondent of their rights and responsibilities therein, including the right to have a representative and the importance of confidentiality and threat of reprisal.

If, after the clarification of the submissions from the parties, the complaint has not been resolved, Human Resources shall facilitate the appointment of an investigator by Conestoga. In certain circumstances, determined by Human Resources, an investigation team composed of not more than two individuals unrelated to the complaint may be appointed. The investigation shall commence within ten days of this appointment.

The investigator may:

- interview the complainant and the respondent
- interview witnesses suggested by the parties
- interview other witnesses who may provide useful information for the investigation
- gather evidence
- request written statements
- submit, within 30 calendar days from the beginning of the investigation, a written report of the findings of the investigation to the Appointed Decision Makers.

If required, the investigator may request an extension of this time frame. The parties must be informed if further time to complete the investigation is required.

#### **Investigation Report/Decision Making Meeting**

The Director, Employee & Labour Relations or Human Resources will review the investigation report to ensure that it meets the necessary standards of thoroughness and analysis. If required, the investigator will provide the necessary additions to the report. Within five days of receipt of the final report Human Resources shall send a summary of it to the appointed Decision Makers.

#### **NOTES:**

Complaints which are found to be trivial, frivolous, vexatious or made in bad faith may result in action by Conestoga against the complainant. The severity of the action will be determined based on the seriousness and impact of the complaint.

If a person, in good faith, files a harassment complaint that is not supported by evidence gathered during an investigation, that complaint will be dismissed and no record of it will be placed on file.

If the investigation report advises that the complaint does not fall within the jurisdiction of this policy, the complaint may then be dismissed by Conestoga. The Director Employee & Labour Relations or the Associate Vice President, Human Resources will review the investigator's advice and if they concur, the parties will be informed of the dismissal at this time. If it is felt that the investigation process should continue, they will direct the investigator to continue.

#### **Determining Redress and Sanctions**

It is most important to recognize that human rights are restorative rather than punitive in nature. When determining appropriate disciplinary action and corrective measures, the

Decision Makers shall consult, where appropriate, with Human Resources and supervisory staff and shall consider factors such as:

- nature of the harassment or discrimination;
- whether the harassment or discrimination was an isolated incident or part of an ongoing pattern;
- the nature of the relationship between complainant and respondent;
- whether the respondent had been involved in previous discrimination or harassment incidents;
- whether the respondent admitted responsibility and expressed a willingness to change;
- whether the respondent retaliated against the complainant
- the impact of the discrimination or harassment on the complainant
- the type of sanction requested by the complainant.

**PROCEDURE ADMINISTRATION:**

**Costs:** Conestoga shall be responsible for the costs of the administration of this policy including the costs of any mediation services. All parties retaining legal or any other assistance shall be solely responsible for the cost involved.

**Records:**

Investigation documents will be stored in a confidential file in Human Resources, in a location separate from the employee's HR file.

Disciplinary Record Documentation regarding substantiated acts of harassment will be maintained in an employee's file.

**Policy Review:** This policy/procedure will be reviewed at least every three years, thus ensuring that it addresses the concerns of the Conestoga community, is updated, and adheres to any legislative changes. In the case of a significant revision of the Ontario Human Rights Code, or as a result of finding that a procedure contained in the policy is either contrary to legal practices or inoperable, the policy may be reviewed and revised when appropriate.

**Accommodation:** Conestoga is committed to providing accommodations where needed and requested throughout the complaint process. If you require access to accommodations, please identify this need either to the college representative from whom you've sought support, or directly to Human Resources or the Student Rights and Responsibilities Office.

**REFERENCES:**

Note related policies, procedures, forms, legislation, Ministry or other directives that are pertinent and support the policy. If a procedure or a form is web based, a hyperlink should be provided.

**REVISION LOG:**

11/18/2020            Academic Forum

11/25/2020            Academic Coordinating Committee