

Human Rights Policy

Purpose

To fulfill the College's responsibility under British Columbia's *Human Rights Code* by establishing human rights education and procedural guidelines to handle complaints, to resolve problems, and to remedy situations when harassment or discrimination occurs.

Policy

All members of the College community have the responsibility to respect the rights of others. The College does not condone and will not tolerate discrimination or harassment, including sexual and personal harassment, which undermines the dignity, self-esteem or productivity of any student or employee.

The College considers any form of harassment or discrimination of any member of the College community to be a serious violation of that individual's fundamental rights. Violation of an individual's rights is a serious offence which may be subject to a range of resolutions including mediated settlement or, in certain circumstances, disciplinary measures up to and including dismissal or expulsion.

Increased awareness through education and training is the key to eliminating incidents of harassment and discrimination. The College encourages awareness and training on harassment and human rights issues, as well as education as a component of complaint resolution.

Applies to

All members of the College community. Complaints of harassment or discrimination must pertain to College-related activities.

Definitions

Definitions are provided at the end of this document.

Responsibility

All members of the College community are responsible for ensuring that the College's working and learning environment is free from harassment and discrimination. College administrators and supervisory personnel bear the primary responsibility for maintaining a working and learning environment free from harassment and discrimination. They are expected to act on this responsibility whenever necessary, whether or not they are in receipt of a complaint.

The expertise of the College's Human Rights Coordinator is available to all members of the College community. The Human Rights Coordinator provides education that promotes understanding and awareness of harassment and human rights issues throughout the College community. The Human Rights Coordinator also provides confidential advisory services regarding harassment and human rights issues and is responsible for the introduction and operation of the Human Rights Policy.

Principles

- a) The College must take all necessary actions to ensure the working and learning environment is safe and free from harassment and discrimination.
- b) In the College community, power differences exist between or among administrators, faculty, staff, and students. Where one person has implied or explicit power or authority over another, there is an increased responsibility for the individual in a position of power to ensure harassment or discrimination does not arise.
- c) The paramount goal of the complaint process is to provide a fair and confidential process that permits both the complainant and the respondent to present their cases.
- d) All members of the College community will be treated equitably under this Policy. All matters arising under this Policy will be dealt with in a fair, unbiased and timely manner.

e) This Policy will be interpreted, administered, and applied in conformity with the principles of procedural fairness and natural justice. In particular:

- (i) A complainant has a right to seek action.
- (ii) A respondent has a right to know the allegations and to be given an opportunity to answer them.
- (iii) Both parties have the right to a fair and timely process of resolution.

f) Those responsible for interpreting, administering, and applying this Policy will use a “reasonable person” standard.

g) Any member of the College community has a right to bring forward a complaint of harassment or discrimination. Interference with the conduct of an investigation or retaliation against a complainant or witness, whether the complaint was substantiated or unsubstantiated, may itself be an incident of harassment and may result in disciplinary action by the College.

h) A complaint which is considered vexatious in nature and made in bad faith may itself be considered to be an incident of harassment and may result in disciplinary action by the College.

i) Any College student or employee who has witnessed harassment or discrimination of another College student or employee may, with the written consent of the individual who was harassed or discriminated against, initiate a complaint on behalf of the person.

j) The Human Rights Coordinator deals objectively, impartially and confidentially with all parties. The Human Rights Coordinator is neither a counsellor nor an advocate, and will make referrals for these services.

k) All parties are encouraged to meet with the Human Rights Coordinator, with a representative of their choice present, if desired, to ensure that both the complainant and the respondent are provided with consistent procedural information.

l) Efforts at informal resolution will normally be made first in dealing with a complaint.

m) Allegations of harassment or discrimination often involve the disclosure of sensitive personal information. Confidentiality is required so that those who allege they have been harassed or discriminated against will feel free to come forward. Confidentiality is also required so that the reputations and interests of those accused of harassment or discrimination are protected. However, either party may discuss the case in confidence with her/his supervisor, support person, and/or union or association representative. Limitations on confidentiality include subpoena by courts, child abuse and neglect laws, or perception of risk to individuals that necessitates action. Any person breaching confidentiality may be subject to disciplinary action by the College.

n) Because disclosures to the Human Rights Coordinator, an investigator and/or the President are made in confidence and often involve disclosure of personal information, the College will refuse to disclose such personal information pursuant to an application under the *Freedom of Information and Protection of Privacy Act*.

o) Either party to a complaint may object to the participation of a person administering this policy on grounds that the person has a conflict of interest or if there is a reasonable apprehension of bias.

p) The application of this Policy may be modified, as is reasonably necessary, by the terms of existing College policies and collective agreements which supersede College policies.

q) This Policy and procedures will not interfere with the rights and obligations specified in the current collective agreements between the College and unions.

Timing

Every effort should be made by all parties to deal with the complaint process in a timely manner.

To ensure that information may be gathered in an accurate and timely way, complaints should be made no later than six months after the last alleged harassment or discrimination. The Human Rights Coordinator may waive this requirement, if in her/his opinion, circumstances warrant.

Procedures

1. *Consultation*

a) A person who believes that she/he may have been subjected to harassment or discrimination should, if reasonable and comfortable, attempt to address her/his problem directly with the individual concerned or consult with the College's Human Rights Coordinator, with a supervisor, with Human Resources, or a union or association representative.

b) The Human Rights Coordinator will listen to the complainant's concerns to understand the origins of the problem, the current situation, and the impact on the complainant. The Human Rights Coordinator, with the complainant, will proceed to review this Policy and the options available for addressing a concern.

c) The Human Rights Coordinator may suggest that the concern could more appropriately be dealt with, initially or completely, under another policy or procedure. Complainants who decide to pursue resolution under other internal college procedures (e.g. grade appeal, standards of student conduct, and student grievance policies) may not use this Policy. (*see Appendix A*)

d) The Human Rights Coordinator may reject a complaint on the grounds that it is frivolous, vexatious, malicious, lies outside the jurisdiction of this Policy, or is beyond the time limits for laying a complaint. The Human Rights Coordinator will inform the complainant of the reasons for this decision.

e) If the complainant chooses not to take further action or not to proceed under this Policy at the time, the Human Rights Coordinator will not continue to act on this concern.

f) If the complainant chooses a remedy or procedure external to

this Policy, the Human Rights Coordinator will not continue to act on this concern. (*see Appendix A*)

g) A complainant may take a complaint through this Policy, and upon completion seek resolution external to the College. However, if there is a settlement resulting from pursuit of an external option first, she/he cannot file a complaint under this Policy.

2. Interim Measures

It may be necessary that interim measures be taken while a complaint is being resolved, investigated or decided. Such measures will be precautionary, not disciplinary. Interim measures will be initiated by the Human Rights Coordinator in consultation with the complainant and respondent, and when necessary with the responsible administrator and other relevant parties (e.g. the Human Resources department, unions or associations).

3. Informal Resolution

- a) The Human Rights Coordinator may, with the approval of the complainant and respondent, attempt to resolve the complaint informally.
- b) If an informal resolution is acceptable to the complainant and the respondent, the Human Rights Coordinator will make note of any agreement reached. If requested by either the complainant or the respondent, the Human Rights Coordinator will prepare a written summary of the agreement and distribute this summary to both the complainant and respondent. If another individual is involved and has a role to play in the resolution, the specifics of the agreement may be discussed with that person.
- c) If informal resolution procedures are not successful, then the complainant has the option of either withdrawing the complaint or requesting that either mediation or investigation procedures be initiated.

4. Mediation

a) Mediation is a voluntary process for both the complainant and the respondent. It will be offered to both the complainant and respondent. All communications made by the complainant and the respondent during mediation are made on a without prejudice basis.

b) In mediation, the complainant and the respondent attempt to resolve the issue that led to the complaint. Either party may make a request for resolution through mediation to the Human Rights Coordinator who will convey the request to the other party.

c) The Human Rights Coordinator will assist with the selection of a mediator and receive agreement from the complainant and the respondent on the choice of the mediator. If either the complainant or respondent are members of a union, the Human Rights Coordinator will notify the union and reach agreement on the selection of the mediator prior to proceeding.

d) The mediator will inform the complainant and the respondent of the format of the mediation.

e) A mediated resolution of the complaint results in a written agreement setting out the terms of the resolution. The written agreement is provided to the complainant and the respondent. If the proposed resolution involves another individual, the specifics of the resolution are discussed with that person.

f) When a written agreement has been signed by the complainant and the respondent, the complaint will be considered resolved.

5. Investigation

a) Investigation is intended to be used in cases where the alleged harassment and/or discrimination may have had a serious impact on the complainant or respondent, where the case is important to the goals of the College, or where the respondent has refused to participate in earlier efforts to deal with the complaint.

b) A written request for an investigation may be made to the Human Rights Coordinator.

c) The request for an investigation will contain a full account of the alleged harassment or discrimination, including:

- (i) the name of the complainant and the respondent;
- (ii) the details of the incident complained of, including dates, places, names of individuals involved or witnessing the incident and any other relevant information; and
- (iii) the date and signature.

d) The Human Rights Coordinator may request that a responsible administrator assume the role of complainant in a case in order to initiate an investigation or continue an investigation. This request may occur despite the original complainant and respondent having reached a resolution through informal procedures or mediation, or the original complainant having decided to withdraw the complaint. This provision is normally reserved for cases involving a respondent who has previously been the subject of substantiated complaints of harassment or discrimination and/or the original complainant is unwilling to proceed and the allegation is very serious. This provision also enables the College to comply with its obligations to ensure an environment free from harassment and discrimination.

e) The Human Rights Coordinator will notify the respondent of the request for formal investigation, and provide a copy of the written request including the details of the allegations.

f) The respondent may, or may not, respond in writing to the allegations. The respondent may wish to offer her/his perspectives regarding the allegations, and/or present a proposal for resolution. This response is to be delivered to the Human Rights Coordinator.

g) If the respondent does submit a response, the Human Rights Coordinator will review this response with the complainant. The complainant can accept the written response as a resolution, propose a counter-resolution to be presented back to the respondent, or ask to proceed with the investigation.

h) If the respondent does not submit a response, the investigation process will proceed.

i) A neutral, independent investigator from outside the College, will be appointed. If either the complainant or respondent are members of a union, the College and the union will agree upon the selection of the investigator.

j) The investigator will apply appropriate procedures and practices to investigate and conduct interviews properly and confidentially, within the framework of natural justice. This will include each party's right to know and respond to all allegations. All potential witnesses may be interviewed by the investigator, and the complainant and respondent will be provided an opportunity to respond to all relevant information provided by witnesses.

k) The investigator will determine the facts of the incident.

l) Upon completion of the process, the investigator will provide the College President with a written report containing:

- (i) the complainant's allegations;
- (ii) the respondent's responses to the allegations;
- (iii) the investigation process, witnesses interviewed, summary of witnesses' statements, and list and copies of documents and other evidence collected;
- (iv) articulation of the issues and analysis of the information in relation to those issues;
- (v) summary/conclusion.

6. Decision

a) Upon receipt of the investigator's report, the College President may request further information or make a decision as to the actions to be taken by the College.

b) The investigator's report, the College President's decision and reasons for the decision will be made in writing, and copies will be provided to:

- (i) the complainant;
- (ii) the respondent;
- (iii) the Human Rights Coordinator; and
- (iv) the union or association, where a union or association is representing either a complainant or respondent.

7. Appeals

Nothing in the Policy or these procedures limits the rights of an individual disciplined under this Policy and these procedures to avail herself/himself of existing avenues of appeal in any Collective Agreement, the *College and Institute Act*, the British Columbia *Human Rights Code*, or from initiating any other proceedings in law.

Where the complainant or respondent believes that the Human Rights Coordinator has not followed the procedures or principles as outlined in this policy she/he may appeal directly to the College's Vice- President, Education and Education Support Services. Appeals are to be in writing stating the reasons for the appeal.

Appeals to the College's Vice- President, Education and Education Support Services will not be accepted if the decision has been made by the College President.

8. Records

All active records, reports or documents generated as a result of a complaint, will be kept in confidence and secured by the College's Human Rights Coordinator. In the event the Human Rights Coordinator's position is vacant,

- (i) active files will be transferred to the Vice-President, Education and Education Support Services so the case can be continued;
- (ii) closed files will remain secured in the Human Rights Coordinator's locked cabinet.

The Human Rights Coordinator and the solicitor for the College are the only holders of keys for the Human Rights Coordinator's locked cabinets.

All records are kept in compliance with the retention periods as specified by the *Freedom of Information and Protection of Privacy Act*.

All recorded personal information will be treated as "supplied in confidence" for the purposes of compliance with the *Freedom of Information and Protection of Privacy Act*.

9. Interpretation

In order to accomplish the purposes of this Policy and these procedures, wherever the singular is used in this Policy and these procedures, it may be construed as if the plural had been used and wherever the plural is used, it may be construed as if the singular had been used.

10. Amendments

No changes will be made to this Policy or these procedures without first receiving advice from the College's Advisory Committee on Human Rights.

11. Review

A review of this Policy will be ongoing.

Definitions

advocate: Person who speaks for and/or pleads the cause of another.

complainant: Person who seeks recourse according to this Policy as someone who believes she/he has experienced harassment or discrimination. The College may also be a complainant.

complaint: A statement by a complainant seeking recourse according to this Policy.

confidentiality: Subject to the College being required to provide information to any external authority or court and subject to a resolution of an incident of harassment or discrimination which requires disclosing certain information, all parties involved in a complaint will make every effort to keep confidential any information concerning an allegation or incident of harassment or discrimination. Confidentiality, however, must be distinguished from anonymity.

counsellor: The position of counsellor at VCC is a professional designation that requires a minimum of a Master's Degree in Counselling Psychology or a closely related discipline. The position is subject to the collective agreement between the College and the VCC Faculty Association.

A counsellor may be requested to provide personal support or skills instruction to any student or employee. The counsellor may also refer students or employees to more appropriate external resources as required. The counsellor does not act as an advocate for either the complainant or respondent in a human rights complaint or investigation.

discrimination: To be treated differently/unjustly because you are a member of a certain group. Discrimination imposes burdens or obligations on an individual or group that serves no College-related function. (See the definition of harassment for a listing of the grounds protected against discrimination by British Columbia's *Human Rights Code*.)

Freedom of Information and Protection of Privacy Act (FOIPOP): The purpose of this legislation is to make public bodies more accountable to the public and to protect personal privacy.

frivolous: Lacking importance or significance; superficial; trivial; petty.

harassment: Any behaviour that satisfies one or more of the following definitions of harassment.

harassment based on a prohibited ground of discrimination - Behaviour directed towards another person or persons:

- a. which is abusive or demeaning; and
- b. includes a direct or indirect reference to a prohibited ground of discrimination under British Columbia's *Human Rights Code*;
- c. would be viewed by a reasonable person experiencing the behaviour as an interference with her/his participation in a College-related activity; and
- d. that is known or ought reasonably to be known to be unwelcome.

Harassment may occur during:

- a. one incident; or
- b. a series of incidents of which any one incident, considered in isolation, may not constitute harassment.

As of this date, the grounds on which College students and employees are protected against discrimination by British Columbia's *Human Rights Code* are:

- Ancestry
- Colour
- Family status
- Marital status
- Physical or mental disability
- Place of origin (birth place or place of training)
- Race
- Religion
- Sex (gender- either male or female, pregnancy, sexual harassment, and gender identity)
- Sexual orientation (gay men, lesbians, bisexuals, and heterosexuals)

Additional protection related to employment include:

- Age (between the ages of 19 and 65)
- Political belief
- Unrelated criminal convictions

Examples of harassment based on a prohibited ground of discrimination include, but are not limited to:

- derogatory written or verbal communication or gestures, (e.g., name calling, slurs, graffiti, jokes, remarks, taunting, pictures or posters);
- verbal abuse or threats;
- application of stereotypes or generalizations

personal harassment - Behaviour directed towards a specific person or persons:

- a. which serves no legitimate purpose; and
- b. would be considered by a reasonable person to create an intimidating, humiliating, or hostile work or learning environment.

Examples of personal harassment include, but are not limited to:

- threats, bullying, coercion;
- actual or threatened physical assault;
- verbal assault, taunting or ostracizing;
- malicious gestures or actions.

sexual harassment - Behaviour of a sexual nature by a person:

- a. who knows or ought to know that the behaviour is unwanted or unwelcome; and
- b. which interferes with another person's participation in a College-related activity; or
- c. leads to or implies job- or academically-related consequences for the person harassed.

Examples of sexual harassment include, but are not limited to:

- remarks, jokes, innuendoes or other comments regarding someone's body, appearance, physical or sexual characteristics or clothing;
- displaying of sexually offensive or derogatory pictures, cartoons or other material;
- persistent unwelcome or uninvited invitations or requests;
- leering or ogling or other inappropriate gestures;
- inappropriate and unnecessary touching;
- unwelcome questions or sharing of information regarding a person's sexuality, sexual activity or sexual orientation;
- sexual assault.

malicious: A desire to injure another; spiteful.

members of the College community: Anyone at Vancouver Community College, including employees, students and visitors.

procedural fairness and natural justice: A spirit of fairness to all parties will guide the proceedings set forth in this Policy. This includes the complainant's right to seek action, the respondent's right to know the allegations and to be given an opportunity to answer them, and the rights of both parties to a fair and timely process of resolution.

The filing of a formal complaint of harassment or discrimination is the right of every student and employee of the College and may be exercised without fear of reprisal. The fact that a complaint has been filed against an individual will not, in and of itself, constitute grounds for disciplinary action against that individual.

respondent: Person against whom an allegation of harassment or discrimination has been made according to this Policy.

reasonable person standard: Whether or not a reasonable person in roughly the same position as the complainant would judge harassment or discrimination to have occurred as a result of a behaviour or pattern of behaviour.

support person: A person who cares for the emotional needs of the complainant or respondent but who does not speak on their behalf.

vexatious: A cause of trouble or distress; harassing; annoying; irritation

APPENDIX A

Examples of Other Internal and External Options for Resolution:

<u>Internal</u>	Collective Agreements Appeal of Final Grade Policy C.1.2 Student Grievance Procedure Policy D.4.2 Student Standards of Conduct Policy D.4.3
<u>External</u>	B.C. Human Rights Tribunal B.C. Human Rights Coalition Legal Counsel B.C. Ombudsman
<u>Speaking with</u>	Counsellor Instructor Union Representative College Physician Supervisor Assistant Department Head Coordinator Department Head Responsible Administrator

1. Policy Sponsor: Human Rights Coordinator

2. Approvals:

President: _____ Date:

Education Council Chair: _____ Date:

Operations Council Chair: _____ Date:

Board Chair: _____ Date:

3. Amendments:

President: _____ Date:

Education Council Chair: _____ Date:

Operations Council Chair: _____ Date:

Board Chair: _____ Date:

4. Review Date: