

 Policies and Procedures		Number: 6010	Title: Human Rights, Harassment, & Discrimination	
		Replaces	B6000.1	
		Effective:	2016-06-01	Next review:
Executive Responsibility:	Administrative Responsibility:	Recommended by Policy Review Committee	2016-05-18	
President	Director of Human Resources	Recommended/Approved by Education Council	N/A	
		Approved by President	2016-06-06	

A. **PURPOSE**

This policy fulfills the following purposes:

1. to prevent discrimination, bullying and harassment, and
2. to provide procedures to handle complaints, to resolve problems and to remedy situations when discrimination, bullying or harassment occurs.

B. **SCOPE / LIMITS**

This policy is applicable to all Selkirk students and employees requiring assistance in addressing situations of discrimination, bullying or harassment. This policy will be of application where the complaint could not be brought under the provisions of a relevant collective agreement. Where a complaint could be brought under the terms of a collective agreement under which a Complainant is covered, the collective agreement procedures will apply unless both the Complainant and Respondent, subject to the approval of the Union (PPWC) and College, mutually agree to use this Policy.

In addition to the relevant collective agreement procedures regarding discrimination and harassment, the Informal Procedures (section E3) of this policy are available to SCFA and BCGEU members.

Contractors, their employees and agents, and visitors to the College also are expected to conduct themselves in any College-related activity in a manner consistent with this policy. Allegations of discrimination, bullying or harassment against such persons will be dealt with by the College as potential breaches of contract and/or may result in suspension of College privileges such as access to any one or more of the campuses.

This policy is not intended to infringe upon the ability of instructors to discuss discrimination, bullying, harassment, sexism and sexuality, religion or any other controversial issue openly and academically without bias.

This Policy is not intended to infringe upon the ability of administrators to exercise their management functions appropriately, or the ability of instructors to fulfil their instructional role including the evaluation or discipline of a student according to Policy 8610: *Admissions and Standards Overview*.

C. PRINCIPLES

Selkirk College is committed to providing a learning and working environment which respects the dignity, diversity and fair treatment of all members of the College community and which ensures freedom from discrimination, bullying and harassment. Discrimination, bullying and harassment violate fundamental rights and human dignity. This policy addresses discrimination, bullying and harassment which relate to duties or activities at Selkirk College, or during College-approved activities in the community. In giving its employees authority over students, other employees or visitors, the College expects that these employees will exercise their authority in a professional manner, will respect the principles of the policy and will facilitate the resolution of complaints in accordance with the procedures set out herein.

The College considers discrimination, bullying and harassment to be serious offences subject to a range of corrective or disciplinary responses, up to and including suspension or dismissal. Each member of the College community is encouraged to take responsibility for his/her own behaviour, and to respond directly whenever possible to the behaviour of another person that might offend him/her. If mutual resolution is not practical or possible, this policy is a vehicle for conflict resolution. Members of the College community are expected to uphold the integrity of the policy and abide by its provisions in a responsible and reasonable manner.

D. DEFINITIONS

See Appendix I for a further list of definitions.

1. Discrimination

- a. Discrimination is defined as the denial to an individual of opportunity, service, accommodation or facility because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age, political beliefs or criminal conviction of the individual, except where there is a bona fide educational or professional requirement.
- b. discrimination also includes refusing to employ or to continue to employ a person, or refusing to provide an opportunity or benefit with respect to employment or any term or condition of employment because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age, political beliefs or criminal conviction unrelated to the employment or to the intended employment of that person, except where there is a bona fide occupational requirement.
- c. Prohibited grounds of discrimination will be based on the most current British Columbia *Human Rights Code*.

2. Bullying and Harassment

- a. Bullying and harassment include any inappropriate conduct or comment by a person who knew or reasonably ought to have known would cause a person to be humiliated or intimidated; or any other form of unwelcome verbal or physical behaviour which, by a reasonable person's standard, would be expected to cause humiliation to an employee or a group of employees and has the purpose of creating an intimidating, hostile or offensive work environment.
- b. As it applies to students, bullying and harassment include conduct or comment that has the purpose or effect of creating an intimidating, hostile or offensive learning environment. Bullying and harassment exclude any reasonable action taken by an instructor relating to management of the classroom and assignment of course work.

- c. Bullying and harassment may occur between people of the same or different status or gender.
- d. Bullying and harassment may occur during one incident or over a series of incidents which when taken alone would not necessarily constitute harassment.
- e. Bullying and harassment may include repeated exposure of offensive material, computer pornography and racist or sexist graffiti. Such materials are not permitted on College property or at College functions.
- f. Harassment does not include the legitimate exercise of authority by anyone employed by Selkirk College. Not all inappropriate, offensive or disrespectful conduct is bullying and harassment.

3. Sexual Harassment

- a. Sexual harassment is defined as unwelcome or unwanted sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature made by a person or a group who knows or ought reasonably to know that such attention or solicitation is unwanted and inappropriate. Sexual harassment can include, but is not limited to, the following:
 - i. when submission to or rejection of such conduct is used as the basis for academic or employment decisions affecting that student or employee;
 - ii. when submission to such conduct is made either explicitly or implicitly as a term or condition of educational progress or employment; or
 - iii. when such conduct has the effect or purpose of unreasonably interfering with a student's academic performance or an employee's work performance.
- b. Sexually harassing behaviour can be psychological or physical and can include, but is not limited to, the following:
 - i. suggestive or demeaning remarks, jokes or other types of verbal abuse of a sexual or sexist nature directed at an individual or group;
 - ii. graphic or suggestive comments about an individual's appearance; or
 - iii. unnecessary touching or offensive gestures, including leering.

4. Human Resources Delegate

- a. The policy and its procedures will be administered by a Human Resources Delegate as identified by the Human Resources Department.
- b. The responsibilities Human Resources Delegate shall include:
 - i. leading the effort to educate the College community about matters of discrimination, personal harassment and sexual harassment;
 - ii. handling complaints of bullying, discrimination, personal harassment and sexual harassment cases;
 - iii. determining whether a complaint meets the spirit and scope of this policy and sufficient grounds are evident to proceed;
 - iv. resolving complaints on an informal basis with the participants, where appropriate;
 - v. determining whether a request for an external investigator is clearly unfounded, frivolous or vexatious or is to be forwarded notwithstanding the Complainant withdrawing a complaint;

- vi. establishing a list of qualified external investigators;
- vii. maintaining confidential records and verbal confidentiality. Information will only be disclosed to the extent necessary to effectively carry out these procedures;
- viii. issuing an annual report which only identifies the types of cases and the status of their resolution with no identifying information; and
- ix. notifying individuals that their rights under a collective agreement can be addressed by their union representative.

c. The Human Resources Delegate is not an advocate for either the Complainant or Respondent.

5. External Investigators

- a. An External Investigator is an impartial individual who will review and assess complaints of discrimination, bullying, personal harassment or sexual harassment according to the procedures outlined herein.
- b. External Investigators shall have training and/or experience in investigating complaints of harassment and/or discrimination. External Investigators must understand both the policy, and the general legal framework surrounding the principles of natural justice and due process. Within this framework, the role of the External Investigator is to gather, review and assess evidence relating to complaints under this policy.
- c. An External Investigator will also:
 - i. adhere to principles of natural justice and due process ;
 - ii. provide individuals with the opportunity to respond in a timely manner to allegations of discrimination, bullying, personal harassment or sexual harassment; and
 - iii. where appropriate, recommend a course of action to the President.

6. Confidentiality

- a. All parties to a complaint, including any witnesses and representatives and officials designated by this policy will adhere to the principle of confidentiality so that those who may have experienced discrimination, bullying or harassment will feel free to come forward and the reputations of individuals will be protected throughout the process. All parties to a complaint, including any witnesses and representatives and officials designated by this policy will keep all information obtained as a result of their involvement in this process in strict confidence. This does not preclude a Complainant or Respondent from discussing the case with his/her advocate.
- b. Confidentiality must be distinguished from anonymity. An individual accused of an offense must be informed of the allegations unless the Human Resources Delegate concludes that there are reasonable grounds to believe that the disclosure of the identity of the Complainant could compromise the safety of any person, or could threaten the integrity of the investigative process in which case the disclosure of the Complainant's identity may be delayed for a reasonable time period. Normally, the identity of a Complainant will be disclosed to the individual accused, and to other individuals on a need-to-know basis. Individuals who come forward to initiate a complaint must, in normal circumstances, be prepared to be identified to the Respondent.
- c. The breach of confidentiality undermines the provision of due process and thus proves a disservice to both the Complainant and Respondent. The breach of confidentiality may be subject to remedial or disciplinary action by the President.

7. Records

- a. The Human Resources Delegate shall consider all information as “supplied in confidence” and shall retain any confidential notes or other written information about the complaint. Two years after the closing of the case, the file will be destroyed. Only statistical data will be kept after the two-year period.
- b. No written records will be placed on the student or personnel file of either party except where remedial or disciplinary action is required. This may be recorded permanently in the student or personnel file, subject to any collective agreement provisions respecting time limits for removal of records.
- c. For educational purposes, the Human Resources Delegate may discuss cases and their resolutions without any identifying information.

8. Due Process and Natural Justice

- a. The College will deal with allegations in accordance with this policy. All parties to the complaint will be provided with a copy of this policy.
- b. The fairest way to ensure due process and natural justice is:
 - i. to inform the Respondent of the name of the Complainant and the nature of the complaint, in normal circumstances, subject to the exceptions set out in section D6 of this policy, so that they can give a full answer to the allegations; and
 - ii. to provide protection for the Complainant, if necessary. This may involve non-disclosure of the Complainant.
- c. Retaliation or threat of retaliation at any stage will be considered a serious offence by the College. Preventive, interim, remedial and/or disciplinary measures will be taken by the President.
- d. Any person who actively obstructs the application of these procedures may be subject to disciplinary action. Seeking other avenues of resolution does not constitute obstruction.

9. Safety, Legal Liability, Law Enforcement

- a. When issues of safety, legal liability or law enforcement are involved, it may be necessary for the President to authorize immediate measures while a situation is being resolved, investigated or decided. Such measures should not be viewed as judgement of the credibility of the Complainant or Respondent.
- b. The VP College Services will be notified about issues of safety, legal liability or law enforcement.

10. Unfounded, Frivolous or Vexatious Complaints

- a. A complaint is considered to be vexatious if it is deliberately or maliciously invented in order to damage the reputation of the Respondent. A vexatious complaint is not to be confused with a complaint made in good faith where it is determined that no discrimination, bullying, personal harassment or sexual harassment occurred.
- b. The person(s) responsible for a complaint made without plausible foundation may be subject to

disciplinary action as outlined in section E5 of this policy.

11. Remedies

- a. Remedies attempt to redress any harm or injustice suffered. The objective of a remedy is to restore, as much as possible, the injured party to that status which would have been enjoyed had the discriminating, bullying, or harassing behaviour not taken place. See section E5.

12. Access to Alternative Procedures of Resolution

- a. All members of the College community, notwithstanding this policy, have the right to seek advice and services of the B.C. Human Rights Commission Tribunal or from their Union or Association. Where a Complainant wishes to pursue a particular complaint through a procedure other than as set out in this policy, the complaint procedures under this policy may not be accessed at the same time.

E. PROCEDURES

Also See Appendix II, Diagram for Resolution of Human Rights Complaints.

1. Initial Consultation

- a. Any member of the College community may consult with the Human Resources Delegate to discuss situations which may or may not be bullying, harassment and/or discrimination. Initial consultation with the Complainant's supervisor may be recommended. In the case of student personal harassment issues with an instructor, the student will be asked to first attempt to resolve the concern with or without the help of an advocate by speaking directly with the instructor, the School Chair or the Dean.
- b. The Human Resources Delegate shall inform the Complainant of the procedures of this policy; the provision of a copy of this policy will fulfil this requirement.
- c. Following the consultation, the Complainant shall indicate whether they elect to:
 - i. take no further action under this policy,
 - ii. proceed to file a complaint,
 - iii. proceed to attempt mutual resolution,
 - iv. take action pursuant through supervision,
 - v. take other legal action or,
 - vi. seek redress through other Selkirk College policies or procedures.
- d. Notwithstanding the Complainant withdrawing a complaint prior to the formal investigation, the Human Resources Delegate may forward the complaint for investigation by an External Investigator where there is, in the opinion of the Human Resources Delegate, clear evidence of unacceptable behaviour.
- e. Any statement of allegations received in writing will be considered a request to initiate a complaint.
- f. If the Complainant notifies both the Human Resources Delegate and a supervisor, and the issue is resolved satisfactorily, there will be no further action under this policy.

2. Initiating the Complaint

- a. A written request for action through this policy along with a statement of allegations (as described in E.2.c, below) will be submitted by the Complainant to the Human Resources Delegate within six months of the date of the last alleged incident of discrimination, bullying or harassment.
 - b. The Human Resources Delegate may waive the six-month time limit where it is determined that there are reasonable grounds to do so. The decision of the Human Resources Delegate to either decline or allow an extension of the time limit may be appealed to the President by either the Respondent or the Complainant.
 - c. The statement of allegation will contain full particulars (e.g., dates, times, places, names of individuals involved in the incident(s) and names of any witnesses) of the facts surrounding the complaint and the remedy desired. For verbal statements, the Human Resources Delegate will make notes about the complaint, which will be checked by the Complainant.
 - d. The Human Resources Delegate will review the statement of allegations to determine if the complaint meets the spirit and scope of this Policy and if there appear to be sufficient grounds to proceed with the complaint. If necessary, the complaint may be discussed with the Respondent for fact-finding purposes only, subject to section D.6.b.
 - e. Subject to Section D.6.b, the Human Resources Delegate may discuss the complaint with the alleged Respondent to try to reach a mutually acceptable solution without recourse to formal procedures. The Respondent shall be advised of his/her right to representation.
 - f. The Human Resources Delegate may dismiss the complaint if the conditions under E.2.d are not met. This decision may be appealed to the President by the Complainant or Respondent.
3. Informal Procedures
- a. The Complainant and Respondent shall be advised of his/her right to representation.
 - b. The Human Resources Delegate shall seek a resolution of issues by mutual agreement of the Complainant and the Respondent, through an informal resolution process acceptable to both parties, which may include but is not limited to facilitation, negotiation and/or mediation. The Human Resources Delegate has no punitive power.
 - c. Normally the Complainant and Respondent will be encouraged to seek an informal resolution. If the informal procedures fail to arrive at a mutually acceptable resolution, either party may request a formal procedure through the Human Resources delegate, who will in turn request this of the President. This request normally will be made within fourteen calendar days of the cessation of the informal procedures. A request by a Respondent for a formal procedure must be accompanied by a written statement which would also indicate the grounds upon which the investigation is requested.
 - d. All parties involved are to make every effort to conclude informal proceedings within 30 working days.
 - e. SCFA and BCGEU members proceeding beyond the Informal stage must utilize the provisions contained in the most recent common agreement.
4. Formal Procedure
- a. Where the Human Resources Delegate decides that there is sufficient cause to proceed with the appointment of an External Investigator, the President will be notified and the Human Resources

Delegate will select an External Investigator to conduct a formal investigation.

- b. The Human Resources Delegate may decline to appoint an External Investigator in circumstances where he/she believes that such a request, or the allegations on which it rests, are clearly without sufficient grounds, frivolous or vexatious. The Complainant or the Respondent may appeal that decision to the President.
- c. The Human Resources Delegate shall, as soon as practicable, forward a copy of the request for a formal investigation to the External Investigator, together with such other materials and information as the Human Resources Delegate deems necessary. Where more than one complaint has been brought forward against the same individual, the complaints, where appropriate, may be investigated by the same External Investigator.
- d. The opposing party shall immediately receive written notice of the request filed by the Complainant or Respondent which formed the basis for the decision. That person shall then have ten working days to submit a written response to the Human Resources Delegate. The Human Resources Delegate shall immediately forward that response to the other party and to the External Investigator.
- e. After receipt of the complaint, and the response from the opposing party, the External Investigator shall, as soon as practicable, begin an investigation of the complaint. The investigation shall be completed as soon as is practicable. Where appropriate, the Investigator may attempt to resolve the matter through informal discussions with the parties involved.
- f. All investigations conducted under this Policy shall be conducted in accordance with the principles of natural justice and procedural fairness. However, the procedures and practices to be followed during the investigation shall be at the sole discretion of the External Investigator, who will not be constrained by the strict rules of procedure and evidence.
- g. The External Investigator shall provide both the Complainant and the Respondent with the opportunity to be heard.
- h. Both parties may be accompanied by a representative or support person at any meeting with the Investigator. If the Complainant or Respondent fails or declines, without reasonable excuse, to meet with the External Investigator, the Investigator may, without further notice, proceed with the investigation without hearing from this individual, or may dismiss the complaint. Such absence will be noted in the External Investigator's report.
- i. Throughout the investigation, the burden of proof shall be on the Complainant. After concluding their investigation, the External Investigator shall provide to the President a written report outlining the Investigator's findings of fact, along with the External Investigator's recommendations for remedy or resolution, and may include a recommendation for a penalty.

5. Remedies and Discipline

- a. The President may provide a remedy for the Complainant, impose a sanction or discipline upon the Respondent, or exonerate the Respondent. Considerations affecting administrative action will include, but are not limited to:
 - i. the severity of the discrimination, bullying and/or harassment;
 - ii. whether the discrimination, bullying and/or harassment was intentional or unintentional;
 - iii. whether the offence was an isolated incident or involved repeated incidents; and
 - iv. any mitigating or aggravating circumstances.
- b. The President may order any remedy deemed just and appropriate under the circumstances. Remedies may include, but are not limited to: an apology; counselling; increased safety

measures; review of academic standing; upgrading or retraining; job or program transfer; monetary compensation for lost wages or other damages; and, offers of employment or reinstatement.

- c. The President may order any disciplinary action deemed just and appropriate under the circumstances. Disciplinary action will vary according to the seriousness of the offense and may include, but is not limited to: a reprimand and warning; an apology; human rights training; a behavioural contract; monitoring behaviour; counselling; a transfer; disclosure of the person's name where it is clearly in the public interest to do so; suspension; termination.
 - d. Where a complaint is found to be trivial, vexatious or without merit, the President may provide a remedy for the Respondent and discipline for the Complainant.
 - e. Where an employee covered by a collective agreement between the SCFA, BCGEU or the PPWC and the College is disciplined, the disciplinary action taken may be challenged through the appropriate grievance procedures in the relevant collective agreement.
6. Interpretation
- a. Questions or interpretation of this Policy shall be referred to the Human Resources Department.

Other relevant policies:

6000 Standards of Employee Conduct and Conflict of Interest

6400 Violence in the Workplace

8400 Student Appeals

3400 Student Code of Conduct-Rights and Responsibilities

Key words:

human rights, relevant collective agreement

APPENDIX I

List of Definitions

Administrator	-	refers to a person employed by Selkirk College in an administrative capacity.
Working Days	-	days that the College is officially open (Monday-Friday unless there is a holiday).
College Community	-	includes the College's students (see definition below), faculty, staff, administrators, board members and visitors.
Complainant	-	refers to a person who alleges that she/he has been discriminated against, personally harassed or sexually harassed.
External Investigator	-	refers to qualified impartial person(s) who lead the investigation of a human rights complaint where a formal investigation has been requested.
Formal Investigation	-	process of resolution which uses External Investigator(s) to investigate a complaint, and to make recommendations regarding the appropriate remedies and/or penalties.
Human Resources Delegate	-	refers to an impartial person as identified by the HR Director (or designate) who will facilitate the process outlined in this Policy.
Informal Procedures	-	process to resolve the human rights concern, and intended to provide a confidential, non-confrontational corrective measure which focuses on resolution satisfactory to both parties.
Natural Justice	-	refers to the application of fundamental fairness in the administration of laws and decisions, and in the rules adhered to by tribunals and courts.
President	-	the President of Selkirk College which includes the President's designate.
Respondent	-	refers to a person who is alleged to have engaged in discrimination, harassment or sexual harassment contrary to this Policy.
Student	-	refers to a person who is registered as a student at Selkirk College, and students at Selkirk College in a practicum.
Vexatious Complaint	-	a complaint without reasonable or probable cause for purposes of annoyance or oppression, or one made in bad faith.

Diagram for Resolution of Human Rights Complaints

