

<b>ALGONQUIN COLLEGE DIRECTIVE</b>	<b>NO. OF PAGES</b> 6	<b>DIRECTIVE NO.</b> A8
	<b>ORIGINATOR</b> Employment Equity Coordinator	
	<b>APPROVED BY</b> Board of Governors	
<b>TITLE</b> <b>HARASSMENT/DISCRIMINATION</b>	<b>EFFECTIVE DATE</b> 1995.10.10	<b>REPLACES</b> 1988.11.02

## **POLICY**

The Preamble of the Ontario Human Rights Code states, in part:

"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 that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province..."

It is the policy of Algonquin College that every member of the college community can expect a work/learning environment free from harassment and discrimination. Toward this end, the College will not tolerate harassment and discrimination.

Algonquin College is committed to take whatever action is necessary to prevent behaviour which results in discrimination and/or harassment of any member of the college community, as defined in this policy and the Ontario Human Rights Code, either by the employer, by another employee, by the agent of the employer or by another student.

The College recognizes its responsibility to deal quickly, fairly and effectively with allegations of harassment/discrimination.

This policy applies both on and off campus to all members of the college community in the pursuit of college duties or while engaged in college related activities.

## **ACADEMIC FREEDOM**

Where applicable, college programs, and teaching/promotional materials should foster a teaching/learning environment which promotes understanding of social diversity.

Teaching materials and methods which may lead to evidence of discriminatory biases and stereotypes are to be used exclusively for the purpose of illustration, in a positive way, in order that students become open-minded, discerning and analytical thinkers, aware of historical and current values, attitudes and behaviours.

This policy is not intended to inhibit the rights and freedoms as stated in the College's Rights and Responsibilities document.

## **SCOPE**

This policy will include coverage of:

### **1. Harassment**

- 1.1 Sexual Harassment
- 1.2 Racial Harassment
- 1.3 Gender/Sexual Orientation Harassment
- 1.4 Disability Harassment

### **2. Discrimination**

- 2.1 Direct
- 2.2 Indirect or because of Association
- 2.3 Systemic

### **3. Negative Environment**

for all of the following grounds: race, ancestry, place of origin, colour, ethnic origin (including language, dialect or accent), citizenship, creed, sex, sexual orientation, mental or physical disability, age, marital status, family status, record of provincial offenses or pardoned federal offenses, union membership, and political affiliation. These categories are known as the "PROHIBITED GROUNDS". The College reserves the right to rely on the provisions of section 14 of the Ontario Human Rights Code.

### **1. HARASSMENT**

means one or a series of vexatious comment(s) or conduct related to one or more of the prohibited grounds that is known or ought reasonably to be known to be unwelcome/unwanted, offensive, intimidating, derogatory or hostile.

This may include, but is not limited to: gestures, remarks, jokes, taunting, innuendo, display of offensive materials, offensive graffiti, threats, verbal or physical assault, academic penalties, stalking, slurs, shunning or exclusion related to the prohibited grounds.

**1.1 Sexual Harassment**

means one or a series of comment(s) or conduct of a gender-related or sexual nature that is known or might reasonably be known to be unwelcome/unwanted, offensive, intimidating, or hostile.

This may include but is not limited to: demeaning gestures, remarks and jokes, slurs, taunting, innuendo based on gender, unwanted physical contact, leering, unwelcome comments about clothing, physical characteristics or activities, unwanted questions or comments about one's private life, sexual orientation, marital or family status, the display of sexually offensive material, solicitation, unwanted attention, implied or expressed promise of reward or benefit in return for sexual favours, implied or expressed threat or act of reprisal if sexual favours are not given. (Sexual assault is an offense under the Criminal Code).

**1.2 Racial Harassment**

means one or a series of comment(s) or conduct of a racial nature that is known or might reasonably be known to be unwelcome/unwanted, offensive, intimidating, hostile, or derogatory.

This may include, but is not limited to: demeaning remarks based on race, jokes about race or ethnicity, inappropriate displays of racial stereotypes, racial/ethnic slurs, inappropriate comments about cultural differences (e.g. clothing/dress, accent) unwanted questions or comments about one's private life. (Physical assault is an offense under the Criminal Code).

**1.3 Gender/Sexual Orientation Harassment**

may consist of offensive comments and/or actions, and/or exclusion from that to which a person(s) would otherwise have a right or privilege, which demean and belittle an individual(s) and/or cause personal humiliation on the basis of gender and/or sexual orientation.

**1.4 Disability Harassment**

may consist of offensive comments and/or actions, and/or exclusion from that to which a person(s) would otherwise have a right or privilege, which demean or belittle an individual(s) and/or cause personal humiliation on the basis of a disability.

**2. DISCRIMINATION**

is one or a series of action(s) or behaviour(s) based on a prohibited ground that results in the unfavourable or differential treatment which negatively affects or could negatively affect the employment status of an employee or the status of a student.

**2.1 Direct Discrimination**

carried out by a person acting on his or her own behalf.

**2.2 Indirect Discrimination**

carried out through another person or because of association (on the basis of association or dealings with a person or persons identified by a prohibited ground of discrimination).

**2.3 Systemic Discrimination**

policies, practices, procedures, displays, materials, actions or inactions, that appear neutral, but have an adverse impact associated with one of the prohibited grounds. This may include, but is not limited to, stereotypical portrayal of groups/individuals in materials, attendance policies that do not reasonably accommodate religious responsibilities, and course selection and/or job posting criteria that are not bona fide.

Where, as a result of a college investigation, systemic bias is determined within any college policy, procedure and/or practice, the positive actions may include amendments, revisions or elimination of existing college policy, procedure or practice.

**3. NEGATIVE ENVIRONMENT**

is a comment or a series of comments or is conduct that create(s) a negative environment for individuals or groups based on a prohibited ground. The comment or conduct must be of a significant nature or degree or have the effect of creating a climate in which harassment/discrimination are perceived to be tolerated. A person does not have to be a direct target to be adversely affected. This may include, but is not limited to, exposure to graffiti, signs, cartoons, remarks, exclusion and/or adverse treatment.

**RESPONSIBILITY**

All employees and students of the College are responsible for maintaining and promoting an environment that is free of discrimination and harassment and for reporting any incident/s that they believe to be a breach of this policy.

Managers have specific responsibilities to ensure that harassment and discrimination are not allowed, condoned or ignored.

The College, through the Human Resources Department, is responsible for communicating this policy to full time and part time employees, students, clients and/or contractors of the college community.

**REPRISAL**

Every individual has the right to file a complaint of discrimination or harassment, participate or cooperate in an investigation, provide information relevant to the complaint or act in any role under the policy and/or procedures, without fear of retaliation or reprisal. Breach of confidentiality, retaliation or reprisal will be addressed under the policy.

**PROTECTION OF INDIVIDUAL PRIVACY**

All aspects of an investigation and Board of Appeal (e.g. conversations, documents, identities of the parties) are protected by the Freedom of Information and Protection of Individual Privacy Act. Personal information in the custody of the College shall be protected by the requirements of the Ontario Freedom of Information and Privacy Act.

Parties to a complaint are advised to refrain from discussing the complaint except as provided under these procedures. All discussions of a complaint are to be kept as confidential as possible.

**CONSEQUENCES OF POLICY VIOLATION**

Consequences are determined with respect to the severity of the breach and the relationship of the respondent(s) to the College. Where it is substantiated that a violation of the policy has occurred, the College may take disciplinary action including, but not restricted to, the following:

**Warning**

A written notification that continuation or repetition of conduct found to be in violation of the college's policy on Discrimination and Harassment will be cause for further disciplinary action up to and including dismissal or expulsion.

**Behavioural Contract**

An agreement between the College and the individual(s) which specifies certain behaviour and with which the parties must comply. If the contract is broken, further action will be taken.

**Transfer/Demotion**

Where an individual is assigned to a different job/campus/location/program/class.

**Suspension**

A written notification of exclusion from attending work or class for a specific period of time. Suspension may include being barred from a campus and from property belonging to the College.

**Dismissal/expulsion**

Termination of student or employee status.

**Contracts**

Cancelling and/or barring contractors from future bids.

Nothing in this policy precludes an individual from exercising his/her rights within a collective agreement, the justice system, or the Ontario Human Rights Code.

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*(original signed by)*  
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President

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*(original signed by)*  
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Chair, Board of Governors

## **PROCEDURES RELATING TO ALLEGATIONS OF HARASSMENT/DISCRIMINATION**

### **A. GENERAL**

The goal of the procedures is to take all reasonable steps to ensure that the College maintains a learning/working environment free of harassment and discrimination in accordance with college policy.

A complaint must be filed within 6 months of the circumstances giving rise to the complaint, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

Where evidence suggests that a violation of the college policy on Discrimination and Harassment poses a threat to the college community or any member thereof, the College may suspend the alleged violator(s). Where an alleged violator is an employee of the College, suspension shall be with pay, benefits, and without loss of employment status until such time as an investigation can be completed. Where an alleged violator is not an employee of the College, he/she may be denied access to college property.

The policy anticipates an active and supportive role of OPSEU local 415 and OPSEU local 416, which represent Algonquin College bargaining unit employees. All union employees are encouraged to seek the assistance and advice of their union representatives prior to engaging in, or at any time throughout, the complaint process. All union employees have the right to be represented by their respective unions at any stage in the overall process. Where the union is representing a member in the complaint process, it will play a key role in any mediation or conciliation efforts and active participation by the union in the monitoring phase will be critical.

Administrative staff may seek support and guidance from their Administrative Staff Association at any time throughout the complaint resolution process.

Any person filing a complaint that is found to be mischievous, vexatious or in bad faith, will be deemed to be in violation of the policy and will be subject to sanctions under the policy.

**AS STATED IN THE POLICY, PROTECTION OF INDIVIDUAL PRIVACY AND MAINTENANCE OF CONFIDENTIALITY ARE BASIC PRINCIPLES UNDERLYING ALL PARTS OF THE PROCEDURE, EXCEPT IN INSTANCES WHERE IT IS DETERMINED BY THE COLLEGE THAT THE SAFETY OF AN INDIVIDUAL OR THE COMMUNITY AT LARGE IS AT RISK.**

## B. DISPUTE RESOLUTION PROCESS

**Employees and students of the College who experience harassment/discrimination should first attempt to make it known to the individual(s) responsible that the behaviour is offensive, contrary to law and the college's policy and request that it stop.**

The College recognizes that in some situations this may be difficult or inappropriate, or the individual may have told the respondent(s) to stop but the behaviour continues. In this case, the employee or student should take immediate action as outlined below.

Employees, students and visitors who are on campus have recourse to **two external** methods of dealing with a discrimination or harassment complaint. These are:

- making a complaint directly to the Ontario Human Rights Commission (related to prohibited grounds covered by the Code);
- seeking the assistance of the Ontario/Federal Courts at one's own expense.

There are **two** ways for an employee or a student to deal **internally** with a complaint under this policy:

- **using the informal resolution process**
- **using the formal resolution process**

The pursuit of a complaint under the internal complaint mechanism does not preclude pursuit of other avenues of redress such as the Ontario Human Rights Commission, collective agreements, the Ombudsman of Ontario (for Colleges), Occupational Health and Safety Act, Workers Compensation Act, and the criminal justice system in cases of physical or sexual assault, criminal threats or the promotion of hatred.

Where an alternative means to address the complaint is chosen during the course of an internal dispute resolution process, the investigation will be terminated and the file closed.

A complainant may, at his or her discretion, decide to withdraw a complaint at any point in the procedure. The College may be required to take action in order to comply with its legal obligations under the Ontario Human Rights Code.

**Filing a Complaint:** employee/employee, employee/student

In instances where an employee wishes to file a complaint of discrimination or harassment, the person should seek the assistance of one of the following **contact persons**:

- Chair/Manager/Director
- Union Representative, if appropriate
- Employment Equity Coordinator
- Counsellor
- Ombudsperson

## **Filing a Complaint:** student/student, student/employee

In instances where a student wishes to file a complaint of discrimination or harassment, the person should seek the assistance of one of the following contact persons:

- Chair or Director
- Ombudsperson
- Counsellor

Where a complaint is brought to an individual who is not a contact person, that individual is responsible to ensure that it is reported to one of the above.

### **1. Filing A Complaint: Informal Resolution Process Using A Contact Person**

When a complaint is brought to a contact person, the contact person

- **advises** the complainant of their rights under the college policy and the Ontario Human Rights Code
- **provides** the person with a copy of the college policy on Harassment and Discrimination and **explains** the complaint procedure
- **may attempt** to resolve the complaint at the request of the complainant, within fifteen (15) working days of the receipt of the complaint, at an informal level. **(In cases where a conflict of interests or roles arises, as in the case of counsellors who provide a supportive role, the complaint may be referred to the Chair or the Director, Human Resources for resolution or referral.)**
- **completes** the complaint form without reporting the names of those involved
- **sends** completed form to the Employment Equity Coordinator for monitoring and record-keeping.

**If the complaint is NOT resolved satisfactorily during this process, then the complainant may request a formal resolution using the Formal Resolution Process within five (5) working days.**

**Note: Although the informal approach and resolutions are encouraged, employees and students are not required to engage in this step and may choose to request formal resolution immediately. In that case, the complaint must be filed within 6 months of the incident giving rise to the complaint.**

Employees who are covered by a collective agreement can exercise their rights to file a grievance at any time during the course of the investigation and should seek the assistance or advice of their union steward/representative.

**A settlement of the issue(s) is appropriate at any time during the process and may be proposed by any of the parties. Mediation, through an appointed mediator is always an option for resolution, but must be agreed to by both parties.**

During the course of these meetings, both parties have the right to, and may wish to be accompanied throughout the process by a person of their choice.

## 2. **Formal Resolution Process: Filing A Complaint**

**In this case**, the complainant

- **prepares** a detailed, signed statement (with assistance from the contact person if needed) describing the incident(s), when, where and how the discrimination or harassment is deemed to have occurred
- **names** any witnesses
- **files** complaint with the Director, Human Resources.

The Director, Human Resources, taking into consideration the circumstances of the case, may notify the appropriate chair/manager/director that a complaint has been filed and may refer it back to the chair/manager/director for investigation or assign the Employment Equity Coordinator to the case. **A formal complaint MUST be received in writing, documented and a file opened by the investigator.**

### **Investigation of Complaint: Formal Resolution Process**

The **Employment Equity Coordinator**

- **notifies** the respondent of the complaint (with a copy of the complaint statement)
- **provides** the respondent with a copy of the college policy on Harassment/Discrimination
- **requests** a written response from the respondent within 10 working days that will be shown to the complainant
- **meets** separately with the complainant(s) and the respondent(s) to discuss and clarify the details of the reported incident(s) and, where appropriate, to identify steps they may have taken so far to attempt to resolve the matter
- **may attempt** to resolve complaint by proposing an early settlement or through an appointed mediator
- **completes** complaint form for monitoring and record-keeping requirements.

This approach allows the parties to resolve the matter upon mutual agreement without further investigation.

If the complaint is resolved at this point, a summary report outlining the circumstances giving rise to the complaint identifies the resolution that has been achieved and is signed by both parties.

**IF NO RESOLUTION IS REACHED OR IF THE PARTIES FOREGO THE MEDIATION/RESOLUTION PROCESS, THE FORMAL RESOLUTION WILL CONTINUE WITH THE FOLLOWING STEPS.**

The Director, Human Resources, may appoint a designated investigator to the case.

### **The investigator:**

- **may request** notes from previous informal actions and resolutions
- **interviews** any witnesses named by both parties and takes a written signed statement(s)
- **submits** within 10 working days from the beginning of the investigation, a written report of the findings of the investigation to the Director, Human Resources
- **sends** copies of the report to all parties involved
- **completes** complaint form
- **sends** completed form to the Employment Equity Coordinator for monitoring and record-keeping requirements.

### **Resolution**

The Director, Human Resources

- . **reviews** the findings of the investigation
- . **determines** whether findings support or do not support the complaint
- . **submits** the decision on the findings with a recommendation to all parties within five (5) working days after the receipt of the findings of the investigation
- . **sends** a report and resolution achieved to the chair/director (student) or chair/manager/director (employee)
- . **files** a report for monitoring and reporting requirements with the Employment Equity Coordinator.

### **Results of Investigations**

#### **a. complaint supported**

If, upon investigation, a complaint is found to be supported, the College may recommend disciplinary action including, but not limited to, reprimand, letter of apology (acknowledging responsibility for the policy violation and regret for the harm caused), education and training, disciplinary measure, academic suspension and/or termination of employment (in the case of an employee) or studies (in the case of a student).

#### **b. complaint unsupported:**

Where the results of the investigation do not support the allegations of harassment/discrimination made by the complainant, the complaint **shall not proceed**.

A complainant or respondent may seek redress of a supported or unsupported complaint, through a Board of Appeal.

## **Receipt and Documentation of the Complaint**

### **Appointing a Mediator**

A complainant or respondent may request mediation at any point in the formal resolution process. In this case, the investigator will request an agreement from the parties to participate in a mediation process.

A mediator agreed on by both parties shall be appointed by the Director, Human Resources within 10 days of receiving consent to the mediation from both parties. Mediators may be chosen from a trained pool within the College or externally if parties cannot agree.

The investigator will provide the mediator with the statements from both parties and the mediation process will begin within 5 working days of the appointment of the mediator, and will be concluded within 15 working days unless both parties agree to an extension.

If the mediation process is successful, and a resolution achieved, a report of the resolution will be filed with the Director, Human Resources within 5 days of completion of the process and copies sent to both parties.

### **File Retention and Disposal**

Upon determination and notification of a support or non-support decision, the file will be closed and retained in the Human Resources Department. All closed files will be retained for a period not less than 5 years from the date of closing.

Closed investigative files will be disposed of in an appropriate manner after the five year period.

### **Reopening of Files**

Request for reopening of a closed file may be made upon written request to the Director, Human Resources under the following circumstances:

1. new and relevant information regarding a closed case
2. new incident of harassment/discrimination post-closure by same respondent
3. reprisal is alleged to have occurred
4. at the request of the Human Rights Commission or under subpoena.

## **C. BOARD OF APPEAL:**

### **Creation of a Board of Appeal:**

Within 10 working days of the formal dispute resolution decision, if the matter is not concluded to the satisfaction of the complainant(s)/respondent(s), the complainant or respondent shall notify, in writing, the Vice President, Student Life and Human Resources that she/he wishes the matter to proceed to a Board of Appeal. The Vice President, Student Life and Human Resources or designate shall appoint a Board of Appeal within five (5) working days of the receipt of the written notice. (If no Board of Appeal is requested, the complaint shall be deemed to be abandoned.)

### **Composition of a Board of Appeal:**

A Board of Appeal will consist of five individuals from the college community: one selected by the complainant(s) who is not legal counsel; one selected by the respondent(s) who is not legal counsel; one from the program or department who is not involved in the dispute and one other person from the college who is not involved in the dispute. The Vice President, Student Life and Human Resources will establish the committee and will appoint a Chair. In the event that either the complainant(s) or respondent(s) does not select persons to the Board, the Vice President, Student Life and Human Resources will appoint persons as necessary to complete a Board of five.

Participants involved in either the informal or the formal complaint resolution procedures cannot serve as members of the Board of Appeal. Members of a Board of Appeal do not act as representatives for any specific party.

### **Participants Involved in an Appeal:**

- the complainant(s)
- the respondent(s)
- any individual who may have knowledge relevant to the investigation.

### **Mandate of the Board of Appeal:**

The Board of Appeal shall meet within 10 working days to:

- **hear the complaint**, individually or collectively from the complainant, respondent, or any other person(s) who may have relevant information about the complaint
- **determine** whether a violation of the college policy on discrimination and harassment has occurred
- **determine** who, if anyone, has violated the policy
- **recommend** an appropriate course of action for the College to take to resolve the complaint

- **submit a confidential report**, through the Chair, of its findings within 15 working days after the date upon which the members of the Board were named, to the President of the College, the parties involved and the Director, Human Resources.

**Investigation Procedure:**

Members of the Board of Appeal will have, for the purposes of their appeal, all documents, statements and other information or materials which the parties to the complaint deem relevant. In addition, the Board may request any further documents or materials which its members require to hear the complaint.

Findings of the Board will be a majority decision and will be presented to the President for consideration and implementation. There will be no further action under this procedure.