



## HUMAN RIGHTS

#2-08

- **Discrimination**
- **Harassment**

<b>Approved by:</b>	Board of Governors
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<b>Administrator Responsible:</b>	Associate Vice President, People, Equity & Inclusion

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### POLICY<sup>1</sup>

North Island College is committed to providing a working and learning environment that promotes a climate of understanding and mutual respect where all are equal in dignity and human rights.

**Discrimination and harassment undermine this commitment and are serious offenses that may be subject to a range of disciplinary measures, including, where appropriate, dismissal in the case of an employee and suspension in the case of a student.**

### PURPOSE

1. The objectives of this policy are:
  - to prevent discrimination and harassment on grounds protected by the B.C. Human Rights Code;
  - to provide procedures for handling complaints;
  - to establish the grounds for corrective measures and/or discipline; and
  - to ensure that all members of the **college community** are aware of their responsibilities under this policy and the B.C. Human Rights Code.
2. The College will ensure that this policy and its procedures are interpreted, administered and applied in a fair, **reasonable**, unbiased and timely manner.
3. It is recognized that **academic freedom** is an important value of North Island College. This policy will be interpreted in light of our commitment to this value.

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<sup>1</sup> Readers are encouraged to review the policy definitions included in this document. Words or phrases with definitions are highlighted in bold the first time they appear in the policy.

## GUIDELINES

### 1. Scope of Complaints

- 1.1 Under this policy, a **complaint** of discrimination or harassment may only be made by a member of the college community against another member of the college community. Such a complaint must pertain to **college-related activities**.
- 1.2 A complaint may be made by a **complainant** even if they have not objected directly to the conduct or comment in question.
- 1.3 Contractors, their employees and agents, volunteers and visitors to the College are also expected to conduct themselves in any college-related activity in a manner consistent with this policy. Allegations of discrimination and harassment, including **sexual 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 the campus or centre.
- 1.4 This policy will not be applied in such a way as to:
  - a) detract from the rights and obligations of those in supervisory roles to manage and discipline employees in accordance with collective agreements or generally accepted managerial practices;
  - b) detract from the rights and obligations of Faculty to educate students in accordance with generally accepted instructional practices; or
  - c) interfere with normally acceptable social or personal relationships among members of the college community.

### 2. Use of Information

- 2.1 Information gathered with respect to discrimination or harassment complaints will be received and maintained in confidence to the greatest extent possible. However, either party may discuss the case in confidence with their supervisor, a support person, and/or a representative of their **constituency organization**.
- 2.2 Confidentiality is not the same as anonymity. For a complaint to go forward to mediation and/or investigation, the identity of the complainant and the details of the complaint must be released to the **respondent** and to those involved in the application of complaint resolution procedures under this policy.
- 2.3 Information gathered will not be disclosed other than as required by law or as deemed appropriate by the President consistent with the requirements of the law.

- 2.4 The office of record for all records documenting cases under this policy is the division of Human Resources.

### **3. Complaint Resolution**

- 3.1 Individuals who believe that they have been subject to discrimination or harassment are expected to first inform the respondent that the behaviours are unwelcome and inappropriate and ask that they cease. It is recognized that in some situations personal, direct communication with the respondent may not be possible or safe.
- 3.2 If a direct approach to the respondent does not stop the discrimination or harassment, an individual may seek resolution as follows:
- a) First, the individual will discuss their complaint with a **Human Rights Advisor** who will determine if the complaint is within the scope of the policy. The advisor may also work with the complainant and the respondent, separately or together, to try and achieve a mutually acceptable resolution of the complaint;
  - b) If the complaint is not resolved with the assistance of the Human Rights Advisor, the advisor will conduct an initial **fact-finding** and recommend to the **responsible administrator** whether or not a complaint should proceed further;
  - c) If the responsible administrator accepts that the complaint is appropriately handled under this policy, the parties may mutually agree to a process of **mediation**;
  - d) If there is no mediation or the mediation is unsuccessful, the complaint may be referred to an **investigator**;
  - e) On receiving an investigator's report, the President will decide if the policy has been violated and what corrective measures will be implemented.
- 3.3 No one shall suffer reprisal or retaliation for bringing forward a complaint or concern about discrimination or harassment.
- 3.4 Administrators are expected to deal expeditiously with any allegations of harassment or discrimination or of retaliation.
- 3.5 The responsible administrator may take immediate measures to preserve safety, morale and/or maintain operations while a situation is being resolved. Such measures will be precautionary, not disciplinary.
- 3.6 A complainant will be informed of internal avenues for redress or resolution. Complainants who decide to pursue redress or resolution under other internal college procedures (e.g., grievance procedures under a collective agreement) may not use the investigation procedure set out in this policy.

**4. Complaint Resolution Procedure - Human Rights Advisor**

- 4.1 Any member of the college community who believes that they may have experienced discrimination or harassment must first discuss the matter with a Human Rights Advisor.
- 4.2 A complainant may bring a complaint to a Human Rights Advisor normally within sixty (60) calendar days of the last alleged incident of discrimination or harassment.
- 4.3 The advisor will review the matter with the complainant and provide information and advice about discrimination/harassment, the Human Rights Policy, and complaint resolution procedures.
- 4.4 With the permission of the complainant, the advisor may seek to resolve the issue informally through education and/or discussion with the respondent in order to seek a mutually acceptable resolution that is consistent with the intent of the policy.
- 4.5 Any resolution agreed to at this stage will not result in formal disciplinary action. The advisor will document the complaint and the resolution.
- 4.6 Where informal resolution has not occurred or has not been successful, the Human Rights Advisor will conduct the initial fact-finding of a complaint.
- 4.7 Following the fact-finding, the advisor may recommend to the responsible administrator not to proceed with a complaint when, in the advisor's opinion:
  - a) the Human Rights Policy has not been violated and there is no reasonable basis to justify the complaint proceeding;
  - b) the issue is more appropriately dealt with under another policy or procedure; or
  - c) the complaint is frivolous, vexatious, or malicious.
- 4.8 If the responsible administrator does not accept the complaint, the responsible administrator will provide the complainant with the reasons for their decision. The decision can be appealed to the President.
- 4.9 Frivolous, vexatious, or malicious complaints may be considered a violation of this policy and subject to disciplinary action.

**5. Complaint Resolution Procedure – Mediation**

- 5.1 If the complaint is found to be within the scope of the policy and has not been resolved informally, the complainant and respondent may mutually agree to a mediation process.
- 5.2 Normally, mediation will begin within three (3) weeks of the request for a **mediator**.
- 5.3 A mediated resolution of the complaint results in a written agreement signed by both parties setting out the terms of the resolution. If a proposed resolution involves the College, the College must also agree to the resolution.
- 5.4 Where mediation is unsuccessful the mediator will record this fact.

**6. Complaint Resolution Procedure - Investigation**

- 6.1 Either party may make a written request for an investigation to the President. Such a request must be submitted within twenty-one (21) calendar days after a decision by the responsible administrator to accept a complaint or at the conclusion of an unsuccessful mediation process. The President may waive this time limit in exceptional circumstances.
- 6.2 The investigation will normally commence within fourteen (14) calendar days of its authorization and will normally be completed within a further fourteen (14) calendar days. The investigator may apply for an extension of these time limits.
- 6.3 The investigator will prepare a report on the facts of the case, disputed and undisputed, and include an opinion on whether or not there has been a violation of the policy. The investigator may also be asked to make recommendations for resolving the complaint. The report normally will be submitted to the President within fourteen (14) calendar days of completing the investigation.

**7. Complaint Resolution Procedure - Decision Following Investigation**

- 7.1 On receiving the report of the investigator, the President will determine whether or not the policy has been violated. The decision, with reasons, will be communicated to both parties and to the responsible administrators within fourteen (14) calendar days of receipt of the investigator's report.

- 7.2 If the complainant or respondent does not agree with the decision of the President, either party may appeal to the Board of Governors within twenty-eight (28) calendar days of receipt of the President's decision. The decision of the Board of Governors is final.

## **8. Corrective Measures**

- 8.1 In cases where it is determined that the discrimination or harassment provisions of this policy have been breached, the President may determine that corrective measures, such as changes in existing policies, procedures and practices, need to be put in place to order to avoid repetition of the breach.
- 8.2 In cases where it is determined that there has not been a violation of the policy, the College will, if requested to do so by the respondent, issue a statement that there was no violation of the policy by the respondent.

## **9. Discipline**

- 9.1 Where there is a finding of discrimination or harassment by a member of the college community, the responsible administrator for the respondent will recommend appropriate discipline to the President.
- 9.2 Where the respondent is covered by a collective agreement, any discipline imposed will be consistent with the terms of that agreement.
- 9.3 Where the respondent is a student, the provisions of the Student Conduct Policy will apply.
- 9.4 If the respondent is not covered by a collective agreement and is not a student, "Progressive Discipline: Misconduct or Inappropriate Behaviour Policy #2-12" will apply.
- 9.5 If the President finds that the complaint was frivolous, vexatious, or malicious, the President may consider disciplinary action against the complainant.
- 9.6 Each party will be informed of the final decision on discipline. The decision and the report of the investigator will be placed in the appropriate personnel file or student file of the party found to have violated the policy.

## **10. Reporting**

- 10.1 The Chair of the Respectful College Environment Committee is responsible for ensuring that an annual report on complaints received under the Human Rights Policy is prepared and distributed throughout the college community.

10.2 As confidentiality is a vital component of this policy, the annual reports will not provide names or statistics that may identify the parties to a complaint of discrimination or harassment.

## 11. Education

Education and increased awareness are the keys to eliminating incidents of discrimination and harassment. North Island College will develop and implement an information and education program for all members of the college community.

## 12. Respectful College Environment Committee

A Respectful College Environment Committee will be established to monitor the effectiveness of the Human Rights Policy and to make recommendations on the continued development of policy, procedure and education/awareness programs.

## 13. Interpretation

Questions of interpretation or application of this policy shall be referred to the President, whose decision shall be final.

### Definitions:

Academic Freedom<sup>2</sup>: Refers to the freedom to examine, question, teach and learn. It involves the right to investigate, speculate, critically analyze and comment without regard to prescribed doctrine. The frank discussion of controversial ideas and the study and teaching of material with controversial content do not constitute discrimination.

Academic freedom carries with it the duty to base learning, teaching and research on an honest search for knowledge.

Academic freedom cannot be used as a reason to promote or engage in discrimination and/or harassment.

College Community: All students (applicants and registrants) and employees of the College.<sup>3</sup>

College Environment: Includes all North Island College premises and any off-campus/centre sites utilized by NIC for instruction, delivery of educational services, practicums, co-op or work experience placements and/or environments in which the employee is working as part

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<sup>2</sup> Definition based, in part, on language in the NICFA – NIC collective agreement.

<sup>3</sup> For guidelines with respect to contractors, volunteers, visitors to the College and other users of the College premises, see Section 1.3.

of his/her responsibilities or the student is placed as part of the course or program in which he/she is registered.

College-Related Activity: Any type of activity operated under college auspices at any location. All activities at the college campuses or centers are college-related unless they are within the exclusive control of constituency organizations or an organization/group external to the College.

Complainant: Any member of the college community who believes they have experienced discrimination or harassment and seeks recourse pursuant to this policy.

Complaint: A statement of facts alleged by a complainant seeking recourse pursuant to this policy.<sup>4</sup>

Constituency Organizations: Canadian Union of Public Employees (CUPE) Local 3479; North Island College Faculty Association (NICFA); North Island Students' Association (NISA); Exempt Administrators.

Discrimination<sup>5</sup>: Refers to intentional or unintentional differential treatment for which there is no *bona fide* and reasonable justification. Such discrimination imposes burdens, obligations or disadvantages on specific individuals or groups as defined by the [B.C. Human Rights Code](#). In other words, it is the impact of the behaviour – not the intention behind it – that determines if the behaviour is discriminatory.

Currently, the grounds\* of discrimination prohibited by the Code include age, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, and, in the case of employment, unrelated criminal convictions.

Any program or activity that aims to improve conditions of disadvantaged groups or individuals is not discrimination.

Fact-Finding: An inquiry process designed to find information or ascertain facts pertaining to an allegation.

Harassment: Is a form of discrimination that can include different types of behaviour. All forms of harassment involve behaviour<sup>6</sup> that would be viewed by a reasonable person experiencing or witnessing the behaviour as an interference with his/her participation in a

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<sup>4</sup> The College Handbook on Discrimination and Harassment contains a template of the information required to be included in a complaint.

<sup>5</sup> B.C. v. BCGSEU [1999] 3 S.C.R. 3 [Meiorin](#)

<sup>6</sup> Samples of behaviours that do not constitute discrimination or harassment are contained in the College Handbook on Discrimination and Harassment.

college-related activity and/or creating an environment that is not conducive to work or study. Harassment behaviour is characterized by one or more of the following:

- (a) **Harassment Based on a Prohibited Ground\* of Discrimination**  
Perceived or actual behaviour directed towards another person or persons that includes a direct or implied reference to a prohibited ground of discrimination under the B.C. Human Rights Code.
- (b) **Sexual Harassment**  
Behaviour of a sexual nature by a person who knows, or ought reasonably to know, that the behaviour is unwanted or unwelcome and that leads to or implies job- or academic-related consequences for the person harassed.
- (c) **Personal Harassment**  
Behaviour directed towards a person or persons that serves no legitimate purpose and that involves repeated, non-constructive, intentional and offensive comments or actions designed to offend, abuse, humiliate or bully a person.

Harassment includes, but is not limited to:

- verbal abuse or threats;
- offensive remarks, jokes, innuendoes, or taunting;
- remarks that undermine the work of another member of the college community;
- bullying;
- display of pornographic, racist, or other offensive or derogatory material;
- unwelcome invitations or requests whether direct or indirect;
- unwelcome physical contact such as touching, patting, pinching, or punching; and
- leering, badgering, or intimidating actions.

Harassment may occur during:

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

Human Rights Advisor: An appropriately trained person appointed by the President and trained to advise members of the college community in connection with discrimination and harassment complaints.

Investigator: A professionally qualified person who undertakes a formal examination of all the evidence relating to a complaint of discrimination or harassment that leads to an investigator's report on the facts of the case, disputed and undisputed, including an opinion as to whether or not the Human Rights Policy has been violated.

Mediation: Is a process in which a third-party neutral, whether one mediator or more, acts as a facilitator to assist in resolving a dispute between two or more parties. It is a non-adversarial approach to conflict resolution where the parties generally communicate directly.

Mediator: A person who is professionally qualified to mediate issues of harassment and discrimination. The role of the mediator is to facilitate communication between the parties, assist them in focusing on the real issues of the dispute, and generate options for settlement.

Reasonable: The **reasonable person standard** refers to an assessment of responsibility that takes into account not only what the complainant and respondent actually experienced, knew, or understood about one another or the situation, but also what a reasonable person in each of their circumstances would or ought to have experienced, known, or understood.

Respondent: A person or persons against whom an allegation of discrimination or harassment has been made pursuant to this policy.

Responsible Administrator: The responsible administrators in a particular case are determined by the college positions of the complainant and respondent.<sup>7</sup>

Sexual Harassment: See **Harassment**

### **Cross Reference:**

See also Human Rights Code of B.C.

See also Workers Compensation Act: Occupational Health and Safety Regulation

See also Employment Standards Act

See also Labour Relations Code of B.C.

See also NIC and NICFA Collective Agreement and Common Agreement

See also NIC and CUPE, Local 3479 Collective Agreement

See also Discrimination in Hiring Policy #2-05

See also Student Complaint Resolution Policy #2-09

See also Protection of Employees from Violence in the Workplace Policy #2-10

See also Emergency Response to Inappropriate, Disruptive or Threatening Behaviour Policy #2-11

See also Progressive Discipline: Misconduct of Inappropriate Behaviour Policy #2-12

See also Conflict of Interest – Breach of Trust: Close Personal Relationships Policy #2-13

See also Student Conduct Policy #3-06

See also Access and Accommodation for Students with Disabilities Policy #3-17

See also Student Appeal Policy #4-12

See also Communicating Without Bias Policy #5-03

See also Email Policy #5-04

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<sup>7</sup> The College Handbook on Discrimination and Harassment outlines these organizational relationships in detail.