

**SIR SANDFORD FLEMING COLLEGE
POLICY MANUAL**

POLICY NUMBER: 3-311	APPROVED BY: Board of Governors
DATE APPROVED: June 23, 2010 #2	SUPERSEDES: Original Policy 3-311: “Harassment /Discrimination Prevention” (March 2009) and related Addendum (July 1995)
RESPECTFUL WORKING AND LEARNING ENVIRONMENT	

Sir Sandford Fleming College is committed to fostering a diverse and inclusive working and learning environment that is free from any form of harassment, discrimination and bullying as enshrined in the Ontario Human Rights Code (OHRC), the Accessibility for Ontarians with Disabilities Act 2005 (AODA) and its related Standards/Regulations, the Pay Equity Act, the Employment Standards Act, 2000 (ESA), the Occupational Health & Safety Act (OHSA), and the Charter of Rights and Freedoms. Issues related to violent or threatening behaviour are addressed through the College’s Violence Prevention Policy (#4-420).

For purposes of this policy, the term “Workplace Harassment” will include any form of harassment, bullying, or psychological harassment. When the terms “harassment and discrimination” are used, the term covers “workplace harassment” and “discrimination”, and all definitions contained in Appendix A which forms part of this policy.

1.0 PRINCIPLES OF THE POLICY

The College endorses its legal and social responsibility to provide a working and learning environment free from workplace harassment and discrimination.

The College acknowledges that groups/individuals covered under this policy have a right to full participation in employment and education and confirms it is committed to the goal of eliminating discriminatory barriers where and if they exist.

The College recognizes that achieving equity in employment and education requires institutional support, pro-active educational programming, effective complaints procedures, cooperation from every member of the college community, and informed leadership at every level of the institution.

Management staff at all levels have a legal obligation to act expeditiously upon information concerning incidents of workplace harassment and discrimination.

The College recognizes its obligation to ensure that this policy and the procedures are fair and applied fairly. Both complainants and respondent are to be treated fairly and given equal opportunity to present their version of events, while preserving the dignity, privacy and self-respect of all persons involved.

The College has a high regard for, and will strive to ensure, confidentiality as a top priority throughout complaint processes subject to disclosure obligations required by law.

2.0 PROHIBITED GROUNDS

This policy and the complaint procedures will include coverage of harassment and discrimination for all of the following grounds as defined in the Ontario Human Rights Code:

The Ontario Human Rights Code prohibits discrimination or harassment based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, disability, age, marital status, family status, and record of offenses.

The Code requires that a person who has the authority to prevent or discourage harassment and discrimination may be held responsible for failing to do so. All persons in positions of authority have a particular legal duty to be alert to signs of harassment and discrimination in the workplace and/or educational environment. They must take action to address any incidents of which they are aware or ought reasonably to have been aware. This also applies to faculty because of their unique role as managers/facilitators of the learning environment. Decisions made by courts and human rights tribunals in recent years have emphasized this responsibility.

3.0 DEFINITIONS AND EXAMPLES

No policy can provide a full description and definition of every behaviour that fall within the meaning of workplace harassment and discrimination. This policy encompasses harassment and discrimination based upon every prohibited ground under the OHRC as well as non-human rights definitions of harassment and bullying as outlined in the OHSAA (Bill 168) and the collective agreements for both academic and support staff employees.

This policy will include coverage of:

3.1 Workplace Harassment

3.2 Harassment – Based upon Prohibited Grounds in the OHRC

- a) Sexual Harassment
- b) Racial Harassment
- c) Gender/Sexual Orientation Harassment
- d) Disability Harassment

3.3 Discrimination – Based upon Prohibited Grounds in the OHRC

- a) Direct
- b) Indirect or Adverse Impact
- c) Systemic

3.4 Negative Environment

3.5 Hate/Discriminatory Material

3.6 Bullying

3.7 Psychological Harassment

Appendix A provides definitions for each of the areas above and lists examples of behaviours that may help to identify those issues that would be covered under this policy. Training opportunities offered by the College will explore these definitions in more depth.

Action(s) or behaviour(s) which are consistent with or permitted by the Ontario Human Rights Code shall not constitute discrimination for the purposes of this policy.

4.0 ACADEMIC FREEDOM

Sir Sandford Fleming College acknowledges the College community's right to engage in the frank discussion of potentially controversial matters, such as race, sex, sexual orientation, politics, or religion, within the bounds of this policy. Further, the use of legitimate instructional techniques, such as irony, argument, conjecture and refutation, or the assignment of readings which may present a controversial point of view are also acknowledged, but will at all times be subject to this policy.

5.0 COVERAGE

5.1 Scope: This policy will apply to all students, staff, faculty, contractors and third party service providers, as well as volunteers or visitors of Sir Sandford Fleming College.

5.2 Jurisdiction: This policy and the complaint procedures will apply in cases concerning College employees and students:

- (a) Occurring within or affecting people or property within the physical boundaries of the College;
- (b) Occurring on or affecting College owned or controlled property, including student residences;
- (c) Occurring with the use of computer and telephone systems, and College and private vehicles being used for college business or for travelling between work and study locations;
- (d) At a College-sponsored event.
 - For the purposes of this policy, the words "College-sponsored event" shall be broadly construed and will include events sponsored by the Student Administrative Council (Sutherland), the Student Association (Frost), and other bodies affiliated with the College.
 - Incidents occurring off campus which have no or little likelihood of any impact on the working/learning environment at the College would be pursued by individuals through the regular external processes.

5.3 External Relationships: Visitors, contractors, and/or suppliers of services who attend a Sir Sandford Fleming College campus location will be subject to complaints if they engage in prohibited or inappropriate conduct as defined in this policy. All contractual relationships entered into by the College will be governed by a standard contract compliance clause stating that contractors must comply with all current legislation and relevant College policies. Breach of the clause may result in penalties, cancellation or debarment if a contractor is found in violation of the College's policy or government statutes.

5.4 Student Work Placements: Students completing work placements are covered by this policy. Work placement agencies will be made aware of this policy through the Student Work Placement Contract and a Workplace Harassment & Discrimination Prevention Policy pamphlet which will be included in the package of information sent to agencies. If an incident occurs, College representatives will engage in discussions with the student(s) and agency to resolve the issue.

6.0 SANCTIONS, REDRESS, REPRISAL, AND COMPLAINTS MADE IN BAD FAITH

6.1 Sanction / Redress: To the extent possible, where a formal complaint has been substantiated, the College's objective is to restore complainants to the position they would have been in had the inappropriate behavior not occurred and to have respondents recognize the inappropriateness of, and need to change their behaviour. A substantiated act of workplace harassment or discrimination may be cause for disciplinary action by the College up to and including the possibility of discharge in the case of an employee and other appropriate actions for other groups covered by this policy.

6.2 Trivial, Frivolous, Vexatious, or Complaints Made in Bad Faith: Complaints that upon investigation have been found to be trivial, frivolous, vexatious or made in bad faith shall result in a penalty against the complainant. The severity of the penalty will be determined based on the seriousness and impact of the complaint as outlined in section 6.1.

6.3 Protection from Reprisal: Subject to section 6.2, every individual has the right to file a complaint of workplace harassment or discrimination, participate or cooperate in an investigation, provide information relevant to the complaint, in any role under the policy and/or procedures, without fear of retaliation or reprisal. Any form of retaliation or reprisals will not be tolerated and will be treated as workplace harassment and/or discrimination.

7.0 PREVENTION AND EDUCATION

This policy promotes a proactive approach that includes education, prevention and complaint resolution. The College is committed to promoting widespread understanding about what constitutes workplace harassment and discrimination, and why, in its many forms, it is so harmful to its victims and dysfunctional to the institution.

7.1 Awareness of the Policy: The College will ensure awareness of this policy by:

- Making the policy available to any existing and new member of the College. Locations where the full document can be accessed will be posted in high profile locations on each campus, as well as in electronic format and other formats that are available at the College.
- Providing training to all employees, ensuring those persons with managing, supervising, and leadership responsibilities are aware of their obligations under the policy. The training will cover what constitutes workplace harassment and discrimination, the resolution process, complaint procedures and mechanisms available under the Policy.
- Conducting ongoing awareness events.

8.0 COMPLAINT PROCESS

Complaints can be filed and procedures will be followed accessing one of the following options:

- a) Informal Fact-Finding.
- b) Formal Investigation.
- c) Formal Mediation.

This policy does not preclude a complainant from initiating an alternative complaint procedure, for example, to use the criminal process (if the action warrants), launch a civil lawsuit, complain to the Human Rights Tribunal of Ontario, complain to the Ministry of Labour, or access the grievance procedures outlined in their collective agreements and the terms and conditions of their employment.

Because the intent of these procedures is educational and preventative rather than punitive, the process may stop at any step. The complainant has the right to withdraw the complaint at any time during the process up to the conclusion of the formal appeal process. The complainant must understand that withdrawal of the complaint will result in discontinuation of the investigation, and will be taken to mean that the complainant has abandoned his/her claim that workplace harassment or discrimination has occurred.

In appropriate circumstances (e.g. where personal safety is at risk or a strongly negative environment exists), the College will take immediate interim measures to stabilize the situation before the complaint process is initiated or concluded. Where such measures are taken, a time frame for review of the situation will be established.

A complainant or respondent may choose to seek legal advice at her/his own expense. However, legal counsel cannot participate in proceedings under this policy. Complainants and respondents may bring a college representative of his/her choice (e.g. union member, student representative, parent/guardian, college counselor) to any meetings throughout the proceedings.

A complaint must be filed within six (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. Substantial prejudice, as defined by the Human Rights Tribunal of Ontario exists where it can be shown that proceeding with the complaint will deprive the respondent of an essential right such as the right to a complete defence (e.g. the destruction of material evidence by unforeseen event such as fire, flooding, etc.; death or significant incapacity of material witnesses). The passage of time or inconvenience in finding witnesses or locating documents does not amount to substantial prejudice.

Two or more complaints alleging a violation engaged in by the same person, or having facts in common, may be dealt with in the same proceeding.

A person who is the subject of a complaint made under these procedures and who has reason to believe

that the complaint is vexatious, in bad faith, or itself a form of harassment, has the right to file a complaint.

This policy is supplemented by procedures which provide a mechanism to receive and resolve workplace harassment and discrimination complaints within the College's obligations and rights under the Ontario Human Rights Code and the Occupational Health & Safety Act. The College acknowledges that it is not a court of law or a quasi-judicial system.

8.1 Confidentiality: Throughout the complaint and fact finding process the College will treat all information as confidential except where a disclosure is required in order to investigate and/or resolve a complaint under this policy, and subject to the Freedom of Information and Personal Information Protection and Electronic Documents Acts and the requirement to disclose information or give evidence as required by law, such as grievance arbitrations, Human Rights Tribunal proceedings, Occupational Health & Safety disclosure requirements, and judicial proceedings.

8.2 The College's Obligation to Act: The Ontario Human Rights Code and the Occupational Health & Safety Act requires that a person who has the authority to prevent or discourage workplace harassment or discrimination may be held responsible for failing to do so. All college members in positions of authority have a particular duty to take reasonable steps to deal with incidents of workplace harassment or discrimination when they know of or ought reasonably to have known of the incident.

In order to comply with its legal obligations, the College may, under appropriate circumstances, initiate a complaint procedure without a request to do so from a complainant. As well, where appropriate, the College may choose to continue with a procedure even after a complainant has decided to terminate the process.

8.2.1 Incidents of Harassment not Resulting in Complaints: Members of the College Community who witness incidents of harassment which do not result in complaints on the part of the victim are still required to report this harassment to the respondent's supervisor or Dean following the complaint reporting procedures in Appendix B. The College will follow the complaint process in Appendix B to investigate the complaint.

8.3 Time Lines: Time lines may be extended if delays are incurred in good faith and will not result in substantial prejudice. Substantial prejudice exists where it can be shown that proceeding with the complaint will deprive the respondent of an essential right such as the right to a complete defence (e.g., the destruction of material evidence by unforeseen event such as fire, flooding, etc.; death or significant incapacity of material witnesses). The passage of time or inconvenience in finding witnesses or locating documents does not amount to substantial prejudice.

This decision will be made by the Executive Officer and communicated to all parties involved.

8.4 Systemic Discrimination: In the event that a College policy, procedure or practice is the subject of a complaint based on the prohibited grounds of discrimination, the complaint is to be brought to the attention, orally or in writing, to the College Administrator who is responsible for that policy, procedure or practice. The Administrator will engage in discussion, informal fact-finding, or formal investigation, whichever applies depending on the form and substance of the complaint, and will follow the principles and timelines of the applicable process described in the Procedures section 1 (a) or 1(b).

9.0 REMEDIES AND SANCTIONS

Remedies are intended to restore the complainant to the position s/he would have experienced had the incident not occurred. Remedies for a complainant who is an employee may include offers of employment or reinstatement; or monetary compensation. For students, remedies may include transfer, review of academic standing, provision of learning support services, or adjustment/reimbursement of tuition fees. College counsellors will provide students and employees with supportive counselling.

Sanctions exist to:

- provide the message that violations of this Policy and the Ontario Human Rights Code will be taken seriously;
- provide consequences for inappropriate behaviours;
- educate people who are unaware that their behaviour is offensive.

Where sanctions are taken against an employee, a range of progressive sanctions are possible which conform to generally accepted standards of employee discipline and the two collective agreements.

Potential sanctions as a result of an informal fact-finding process or a formal investigation include but are not limited to:

Verbal Warning/Reprimand: An instruction to a member of the College community requiring that s/he cease or change the behaviour giving rise to the complaint.

Written Warning/Reprimand: A written notice to a member of the College community requiring s/he cease or change the behaviour complained of.

Probation: An agreement which will permit a student to continue to attend classes and placements, and continue her/his association with the College. Normally it will limit College activities and may include specific terms and conditions.

Behavioural Contract: This is a written agreement between a member of the College community and the College. It will specify conditions which must be met and adhered to in return for the right to:

- maintain or resume employment duties;
- gain readmission to class or a placement;
- participate in a College approved activity;
- or resume a desired relationship with the College.

Loss of Privileges: A denial of specified privileges for a stated period of time.

Suspension: A written order to leave a building, class, placement situation, job/work assignment, or other areas of a College campus for a stated or indefinite period of time.

Expulsion: A written order which terminates a student's relationship with the College. The official record will read: Involuntary withdrawal-Student Misconduct.

Dismissal: Employment is terminated.

The following criteria will be considered in determining the appropriate level of sanction:

- The seriousness/severity of the incident(s);
- The reliability of evidence;
- Remedies sought by the complainant; and
- The documented history of the respondent (or the complainant in the case of malicious/fraudulent complaints) regarding related issues or incidents.

10.0 MALICIOUS/FRAUDULENT COMPLAINTS

The College will take disciplinary action in situations where complaints are proven to be malicious or fraudulent. Discipline will be consistent with the two collective agreements, the Student Rights and Responsibilities Policy, and Section 6.0 of these procedures, as they apply.

A person who is the subject of a complaint made under these procedures and who has reason to believe that the complaint is trivial, frivolous, vexatious, in bad faith, or is itself a form of harassment, has the right

to file a complaint.

11.0 APPEALS

Either the complainant or respondent, if dissatisfied with the results or outcome of an informal fact-finding process or formal investigation, may appeal the matter in writing within fifteen (15) working days of receiving a decision.

The results of an informal fact-finding process would be appealed to the Vice President Academic (if the respondent is a student) or next level Supervisor (if the respondent is an employee).

The results of a formal investigation would be appealed to the President or the Vice-President, Human Resources and Strategic Development.

The Vice-President Academic/next level Supervisor/President/Vice-President will ensure that all aspects of the findings are reviewed and that a final decision is communicated within fifteen (15) working days of receipt of the appeal.

12.0 RECORDS

The Human Rights Officer will maintain a confidential file pertaining to each informal complaint for the current calendar year plus two (2) years following the conclusion of the informal complaint process, after which time the contents of the file will be destroyed.

The Vice-President, Human Resources and Strategic Development is responsible for maintaining a confidential central file pertaining to each formal investigation made under this policy and of the resolution of same. Files will be accessible only to the President, the Vice-President, Human Resources and Strategic Development and the College's Human Rights Officer, or as may be required by law. Files on formal investigations will be retained for the current calendar year plus seven (7) years following conclusion of the appeal period, after which time the contents of the file will be destroyed.

Statistical information on the number, nature and type of complaints will be kept and reports filed annually by the Human Rights Officer. Annual reports will be distributed to the Diversity Committee, the Vice-President of Human Resources and Strategic Development, the College President, the Senior Leaders Team, and the Board of Governors.

Where an investigation results in disciplinary action, this information will be placed in the respondent's personnel file or student file. Where the complaint has not been substantiated, no reference will be placed in the personnel or student file of either party.

When an individual has lodged a complaint that is later found to have been trivial, frivolous, vexatious or made in bad faith, and discipline has been imposed, a letter regarding the same will be placed in his/her personnel file or student file.

Once each year, an individual may appeal to the Executive Officer/President to have the letter on file removed, a decision on which is at the discretion of the College.

13.0 AUTHORITY

It is the responsibility of the Vice-President, Human Resources and Strategic Development to monitor towards ensuring that these procedures are properly enforced. S/he will assess the policy and procedures every three years, and initiate formal review as required.

S/he draws the authority for this from the Respectful Working and Learning Environment Policy (#3-311).

14.0 RELATED POLICIES

#4-412	Safety Policy
#5-506	Student Rights & Responsibilities Policy
#4-420	Violence Prevention Policy

15.0 POLICY REVIEW

This policy is approved by the Board of Governors and under the authority of the President of the College and Vice-President, Human Resources and Strategic Development. It will be reviewed as often as is necessary, but at least annually to ensure on-going compliance with existing and emerging legislation, statutes and collective agreements, and to ensure a College environment that meets the principles and intent of this policy and its procedures.

Appendix A

Respectful Working and Learning Environment Policy Definitions

3.1 Workplace Harassment: is all-encompassing term, includes bullying, psychological harassment, sexual and racial/ethnic harassment, and harassment based on any protected ground as outlined in human rights legislation. Workplace harassment is defined by the Occupational Health & Safety Act as:

“engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome”.

3.1.1 Bullying: refers to persistent, offensive, abusive, intimidating or insulting behavior, abuse of power and/or unfair punitive sanctions which makes the recipient feel upset, threatened, humiliated and/or vulnerable, which undermines the recipient’s self-confidence and/or reduces the recipient’s feelings of self-esteem and self-worth, and which may cause the recipient to suffer stress. Bullying refers to any vexatious behavior that is known, or out reasonably to be known, to be unwelcome and that:

- i) Adversely affects an employee’s dignity, or psychological or physical integrity, and/or
- ii) Takes the form of repeated conduct which could reasonably be regarded as intending to intimidate, offend, degrade or humiliate, and/or
- iii) Results in a harmful working environment.

Examples include, but are not limited to:

- berating/belittling an employee or an individual
- unreasonably questioning someone’s abilities and skills, when not related to an appropriate evaluation of performance
- excluding or isolating a person by making others avoid him/her
- ignoring a person in the workplace or classroom
- making repeated unwarranted criticism
- undermining or deliberately impeding a person’s work
- spreading malicious rumours or gossip
- making physical gestures intended to intimidate, offend, degrade or humiliate an employee or an individual
- making comments that are threatening, derisory or defamatory.

Reasonable action by the College, a manager, by the Union or its representatives, by students, employees, individuals or by groups is not bullying/psychological harassment.

Examples of such reasonable actions include but are not limited to:

- the transfer, demotion, discipline, counsel or dismissal of an employee in a reasonable manner;
- a decision, based on reasonable grounds and facts, not to promote or grant another benefit in connection with an employee’s employment or performance;
- the legitimate right and responsibility of managers to conduct on-going evaluation of employee performance at work, which may result in reasonable changes to a person’s assignment as a result of an evaluation;
- the legitimate right of Union members and officials to reasonably conduct grievance investigations, file grievances, conduct inspections, lawfully picket and, without limiting the aforementioned, generally conduct Union business in a reasonable manner;

- the legitimate right and responsibility of employees to correct inappropriate student behavior and maintain order in the work environment in a reasonable manner;
- respectfully expressing disagreement or reasonably stating a contrary point of view;
- the legitimate exercise of freedom of thought and inquiry, and expression.

3.1.2 Psychological Harassment: Refers to any vexatious behavior in the form of repeated and hostile or unwanted conduct, comments, actions or gestures, that affects an individual's dignity or psychological or physical integrity and that result in a harmful work or learning environment for the individual. Psychological harassment can take many forms and may include:

- unreasonably questioning someone's abilities and skills, when not related to appropriate evaluation of performance
- insulting a person by use of degrading comments or obscenities
- unreasonably casting doubt on a person's decision making, when not related to appropriate evaluation of performance
- making a person perform useless, humiliating or demeaning tasks that are not reasonably expected to be part of that person's employment
- unreasonably ceasing to give a person work on an on-going basis
- isolating a person by making others avoid him/her
- ignoring a person in the workplace or classroom
- threatening or abusive language (oral or written, including voice mail, email, on-line chats and comments posted on websites).

Legitimate and constructive criticism of an employee's performance or behavior at work, or a student's academic performance, is not personal harassment or bullying. An occasional raised voice or argument is also not considered personal harassment. Personal harassment and bullying will not be condoned under the guise of strong management, when employees are not treated with dignity and respect.

3.2 Human Rights Harassment may be 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, hostile, derogatory, or inappropriate. Such harassment may be based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, gender identification, sexual orientation, age, marital status, family status, disability, record of offences (in employment only), and receipt of public assistance (in accommodation only) as defined by the Ontario Human Rights Code.

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.

Types of Harassment include:

(a) Sexual Harassment may be one or a series of comment(s) or conduct of a gender-related or sexual nature that is known or ought reasonably to be known to be unwelcome/unwanted, offensive, intimidating, hostile, derogatory, or inappropriate.

This may include, but is not limited to:

- demeaning gestures, remarks and jokes, slurs, taunting, innuendo based on gender
- unwanted physical contact, leering, inappropriate comments about clothing, physical characteristics or activities, unwanted questions or comments about one's private life
- the production, display or distribution of pornographic or other sexually offensive or derogatory pictures of material
- unwanted requests for sexual favours
- implied or expressed promise of reward or benefit in return for sexual favours
- pressing an individual to accept unwelcome invitations, including repeated telephone calls, letters or emails

- deliberate physical contact to which the individual has not consented or had the opportunity to object to, unnecessary or inappropriate touching and/or offensive gestures
- implied or expressed threat or act of reprisal if sexual favours are not given
- sexual assault. (Sexual assault is an offense under section 271 of the Criminal Code of Canada, and must be referred to appropriate authorities. The College will take appropriate steps to meet its mandate to provide a safe environment.)

(b) Racial Harassment may be one or a series of comment(s) or conduct of a racial nature that is known or ought to reasonably be known to be unwelcome/unwanted, offensive, intimidating, hostile, derogatory or inappropriate.

This may include but is not limited to:

- physical assault or unwelcome physical contact
- verbal abuse, threats, derogatory name-calling, racist slurs, insults and/or jokes
- ridicule of an individual on racial or cultural grounds
- comments which imply that race impairs the person's ability
- exclusion from normal workplace interactions or social events
- unfair allocation of work and/or responsibilities
- racist graffiti, insignia, objects or pictures or display and/or publication of racist material
- inciting others to commit any of the above (sections 318 and 319 of the Criminal Code of Canada explicitly prohibit acts inciting hatred or violence towards any group on the basis of race, colour, and ethnic origin).

(c) 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. This form of human rights harassment often stems from homophobia and heterosexism. Homophobia means harassing, prejudicial treatment of, or negative attitudes about, lesbian, gay, bisexual, trans-identified, transgendered, inter-sexed, two-spirited, or queer persons and those perceived to be of these sexual orientations or gender identities. Homophobia includes a range of feelings and behaviours from discomfort and fear to disgust, hatred and violence. Heterosexism is based on societal values that dictate that everyone is, or should be, heterosexual. Some examples of this form of harassment include:

- "gay-bashing" or physical violence, including sexual violence
- making derogatory comments, innuendos, insults, slurs, jokes or threats about sexual orientation or sexual practice, including voice mail, email, online chat or posted on a website
- silencing talk of sexual or gender diversity
- forcing people to "come out" or to "stay in the closet" (disclose or hide their sexual orientation)
- linking homosexuality with pedophilia (child abuse)
- defacing notices, posters or property with homophobic graffiti
- removing or defacing notices, posters, postcards, or other property of the Fleming Association of Queers (FAQ) or other awareness initiatives on campus
- rejecting or excluding individuals or groups because of their sexual orientation or gender identity.

(d) Disability Harassment may also 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 a disability.

3.3 Discrimination may be 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 the employment status of an employee or academic status of a student.

This may include, but is not limited to, the refusal to provide goods, services or facilities, exclusion from employment or employment benefits, unequal treatment in employment, exclusion of support persons or service animals for disabled persons, and/or refusal to work with, teach, or study with someone based on a prohibited ground of discrimination.

There are two types of discrimination which are prohibited under the Ontario Human Rights Code: Direct Discrimination and Indirect or Adverse Impact Discrimination.

- (a) **Direct Discrimination** refers to differential treatment which negatively affects an employee or student and which is directly related to a prohibited ground of discrimination. Such differential treatment need not be intentional or overt to constitute direct discrimination.
- (b) **Indirect or Adverse Impact Discrimination** occurs where a requirement, qualification or factor which appears neutral results in the exclusion, restriction or preference of a person because of his or her membership in a group identified by a prohibited ground of discrimination.
- (c) **Systemic** includes 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.

3.4 Negative Environment: One or a series of comments or conduct that creates a negative environment for individuals or groups and are related to the prohibited grounds. The comment or conduct has the effect of "poisoning" the working or learning environment. A complainant does not have to be a direct target to be adversely affected by a negative environment. It includes conduct or comment that creates and maintains an offensive, hostile, or intimidating climate for learning or work.

Examples include exposure to graffiti, signs, cartoons, remarks, exclusion, adverse treatment related to one or more of the prohibited grounds.

3.5 Hate/Discriminatory Material: It is an offense under the Criminal Code of Canada to publish, display, transmit, or distribute before the public or direct to an individual, or cause to be published, displayed, transmitted or distributed within Sir Sandford Fleming College or through the use of College resources, with the intent of inciting others to discriminate, any notice, sign, symbol, emblem or other representation that expresses or implies discrimination or an intention to discriminate. In addition, it is a violation of the Ontario Human Rights Code to publish or display before the public, or cause the publication or display before the public, of any notice, sign, symbol, emblem or other similar representation that indicates the intention of the person to discriminate, or is intended by the person to incite discrimination, contrary to the Code.

Other Definitions (as contained in this policy)

Vexatious: means lacking a sufficient ground and only serving to annoy and distress.

Disability: as set out in the Ontario Human Rights Code, means,

- a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes, mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device;

- b) a condition of mental impairment or a developmental disability;
- c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
- d) a mental disorder; or
- e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act.

Derisory: means it is ridiculous, laughable, incongruous, disrespectful, mocking (e.g. the dog ate my homework).

Respectful Working and Learning Environment Complaint Procedures

1.0 Overview of Complaints Processes

Whenever possible, students and employees are encouraged to attempt to resolve conflicts directly. Employees and students of the College who experience workplace harassment or discrimination should first attempt to make it known to the individual(s) responsible that the behaviour is offensive, contrary both to law and to the College's policy, and request that it stop.

In the event that the complainant is uncomfortable with the idea of addressing his/her complaint with the person they allege to be in conflict with this policy, then the complainant should immediately proceed to one of the following processes:

- a) Informal Process - Fact-Finding
- b) Formal Investigation
- c) Formal Mediation

(a) Informal – Fact-finding

In the event an individual is unable to resolve the conflict by having a discussion with the other person(s) involved, then s/he may proceed to the **Informal Fact-Finding** process. **If a student is unaware who is Dean for their program they should consult Appendix C.**

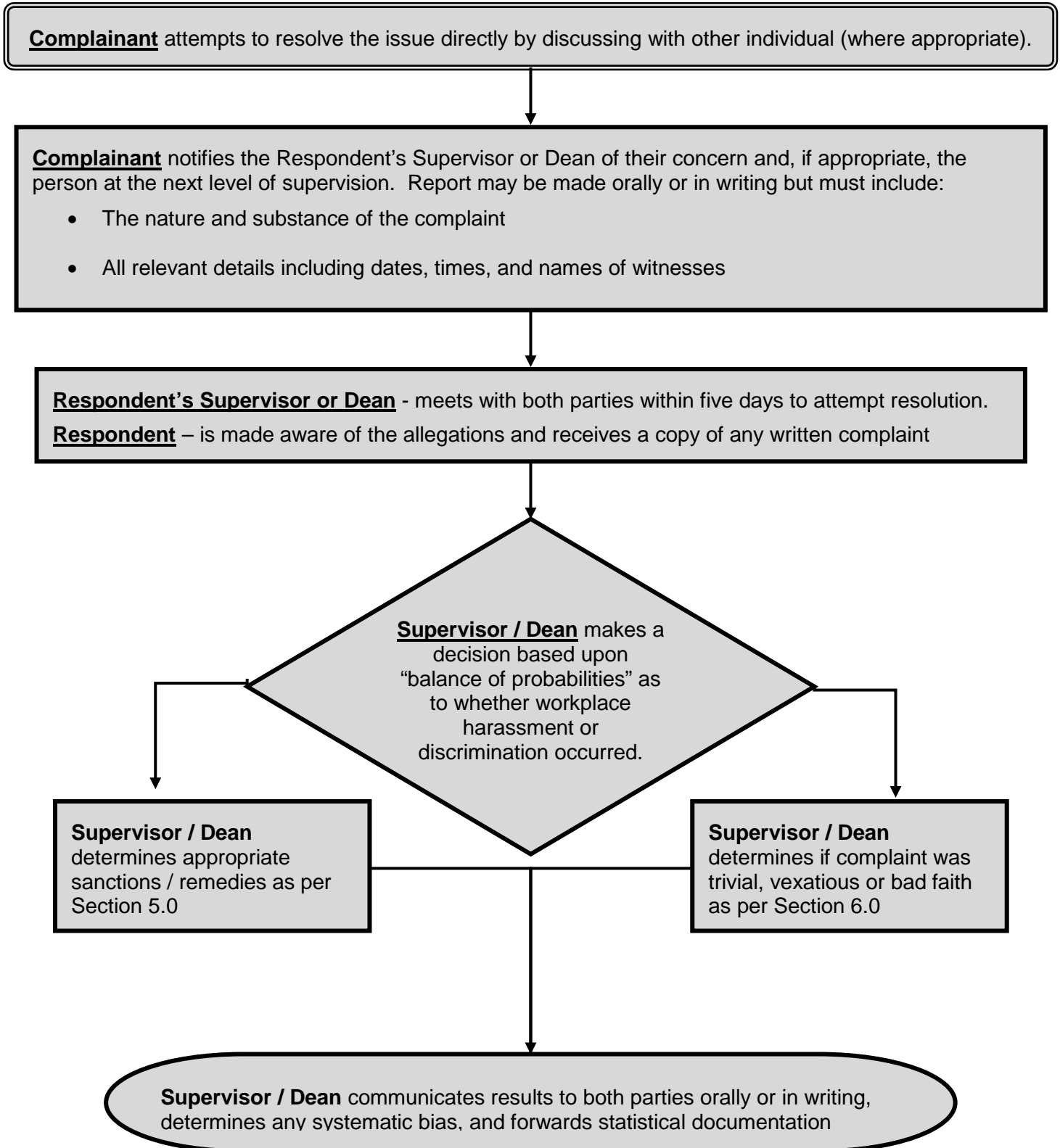
Complainant	Supervisor/Dean	Respondent
<p>Complainant initiates a fact-finding process by notifying the supervisor/Dean (the person to whom the respondent/employee reports or the School in which the respondent's program belongs), and if appropriate, the person at the next level of supervision, orally or in writing with the following details:</p> <ul style="list-style-type: none"> • the nature and substance of the complaint; • all relevant details including dates, times, and names of witnesses; • requested outcome 	<p>Within five (5) working days of receiving the complaint, the supervisor/Dean meets with the complainant and the respondent, separately or together, to attempt to obtain a satisfactory resolution. The supervisor will share details of the complaint with the respondent, including a copy of a written complaint if one exists.</p> <p>NOTE: The supervisor may appoint a designate to act in his/her place. Timelines may be extended if delays are experienced in good faith. This shall be communicated to the parties.</p>	<p>Is made aware of the allegation made against him/her and receives a copy of the written complaint if one exists.</p>
<p>Will be strongly encouraged to be accompanied by a third party in a supportive capacity. This may be a Union member. A third party may not speak on behalf of the complainant.</p>	<p>May request the production of documents or information from the complainant, respondent, witnesses or other resources that is relevant to the fact-finding process.</p>	<p>Will be strongly encouraged to be accompanied by a third party in a supportive capacity. This may be a Union member. A third party may not speak on behalf of the complainant.</p>

Once initial fact-finding is completed, the Supervisor / Dean takes the following steps:

1. Having considered all information provided, the supervisor will make a determination based on the "balance of probabilities" which means that it is either more likely or not likely that workplace harassment or discrimination occurred. Should the complaint be substantiated, the supervisor will make a determination of appropriate sanctions/ remedies as applicable (see section 5.0). Should the complaint not be substantiated, the supervisor will determine whether the complaint is proven to be trivial, frivolous, vexatious or made in bad faith (see section 6.0).
2. The results of the meeting(s) will be communicated to both the complainant and the respondent, orally or in writing, within ten (10) working days of the meeting.
3. Where, as a result of an informal fact-finding process, systemic bias is determined within any College policy, procedure and/or practice, the supervisor/Dean will recommend actions to the Human Rights Officer which may include amendments, revisions or elimination of existing College policies, procedures or practices.
4. The supervisor will forward statistical documentation regarding the outcome of the informal resolution to the Human Rights Officer within ten (10) working days.

Respectful Working and Learning Environment Complaint Procedures

Informal Process – Fact-Finding



(b) Formal Investigation

If the complainant is not satisfied with the results of the informal process, formal mediation, s/he may request a **formal investigation** into the matter. Such request should be made as soon as possible, and must be within six (6) months of the last incident. Complaints submitted after this time period will be considered on an individual basis to ensure no substantial prejudice will result to any party affected by the delay.

- *Substantial prejudice exists where it can be shown that proceeding with the complaint will deprive the respondent of an essential right such as the right to a complete defence (e.g., the destruction of material evidence by unforeseen event such as fire, flooding, etc.; death or significant incapacity of material witnesses). The passage of time or inconvenience in finding witnesses or locating documents does not amount to substantial prejudice.*

Complainant	Supervisor / Dean / Human Rights Officer	Respondent
<p>Complainant initiates a formal process by submitting a written request to the Human Rights Officer (for complaints based on prohibited grounds) or his/her supervisor/Dean. This written request must indicate:</p> <ul style="list-style-type: none"> • the nature of the complaint, • identify times, dates, and places; • the name(s) of the party or parties; • the names of any supporting witnesses. <p>It must be signed and dated by the complainant and witnessed by the Human Rights Officer or Supervisor/Dean. The complainant must understand that s/he will be required to speak further on this matter, and that the person complained against will be given a copy of the complaint.</p>	<p>The Supervisor/Dean or Human Rights Officer determine if the complaint falls under the jurisdiction of this policy</p> <p>If so, s/he will pass on the complaint to the Executive Officer of the respondent's division (e.g. Vice-President Academic, Vice-President, Executive Director) for investigation.</p> <p>The Vice President, Human Resources and Strategic Development, and the College President shall be notified by the Human Rights Officer or Supervisor/Dean of all formal investigations and informed of the progress, results and solution.</p>	<p>The Human Rights Officer will meet with the respondent to review the process and provide a copy of the written complaint.</p>

Once it has been determined that the formal complaint falls under this policy, the following steps in the investigation process shall occur:

1. The Executive Officer in consultation with the Human Rights Officer shall contract with an investigator who is external to the College community. If the Executive Officer is the named Respondent, the President shall select the investigator. If the President is the named Respondent, the complaint will be directed to the Vice-President, Human Resources and Strategic Development, who will follow the procedure outlined in the Addendum: Investigating/Resolving Complaints Made Against the President/Board of Governors (Appendix C).
2. The investigator will have training and experience in what constitutes workplace harassment & discrimination, the Ontario Human Rights Code, dispute resolution, and effective investigation procedures. S/he will also have received orientation to the College's Harassment and Discrimination Prevention Policy and its complaint procedures. The investigator may request the production of documents that may be relevant to the investigation. The investigator will investigate the complaint in the following manner:
 - The investigation will be limited to what is within the jurisdiction of this policy.
 - The investigator will determine who will be interviewed.
 - The respondent will be given a full and fair opportunity to respond to the complaint orally and in writing.
 - The investigator reserves the right to refer the complaint back to the Human Rights Officer if a resolution is possible.

3. Both the complainant and the respondent will have the right and responsibility to provide all information as accurately and promptly as possible, including dates, times, location of allegations and any other information that would assist in the investigation.
4. The Human Rights Officer will be in communication with the investigator, the complainant, and the respondent until the process is concluded. The complainant and respondent will be informed on an on-going basis of the status of the investigation, but not of details of the interviews.
5. During the investigation, both the complainant and the respondent will be strongly encouraged to be accompanied by a third party in a supportive capacity. This may be a union member. Should the complainant or respondent choose to acquire legal advice throughout the process, this is done at his/her own expense. Third parties cannot speak on behalf of parties to the complaint nor disrupt the proceedings.
6. The investigator will make every effort to complete the investigation of a human rights complaint within thirty (30) working days of receipt of the complaint. If it is necessary to exceed 30 days, this decision will be made by the Executive Officer and the complainant and respondent will be informed as soon as possible of the revised time line.
7. At the conclusion of the investigation, the investigator will write a draft report stating whether or not the complaint is substantiated based on the balance of probabilities (which means that it is either more likely or not likely that the incident(s) of harassment or discrimination occurred). This is consistent with the burden of proof required by civil law and is different from the "beyond a reasonable doubt" burden required by criminal law.
8. The investigator will provide a copy of the draft report to the complainant and the respondent who will have five (5) working days to notify the investigator, in writing, of any errors or omissions in the report, or in the description of the facts or allegations provided by each of them to the investigator.

The investigator will make any further enquiries or amendments, if required, in order to prepare the final written report. The written report will be submitted confidentially to:

- the complainant;
- the respondent;
- the Executive Officer of the respondent's division (e.g. Vice-President Academic, Vice President, Executive Director);
- the College President;
- the Vice-President, Human Resources & Strategic Development;
- the Human Rights Officer.

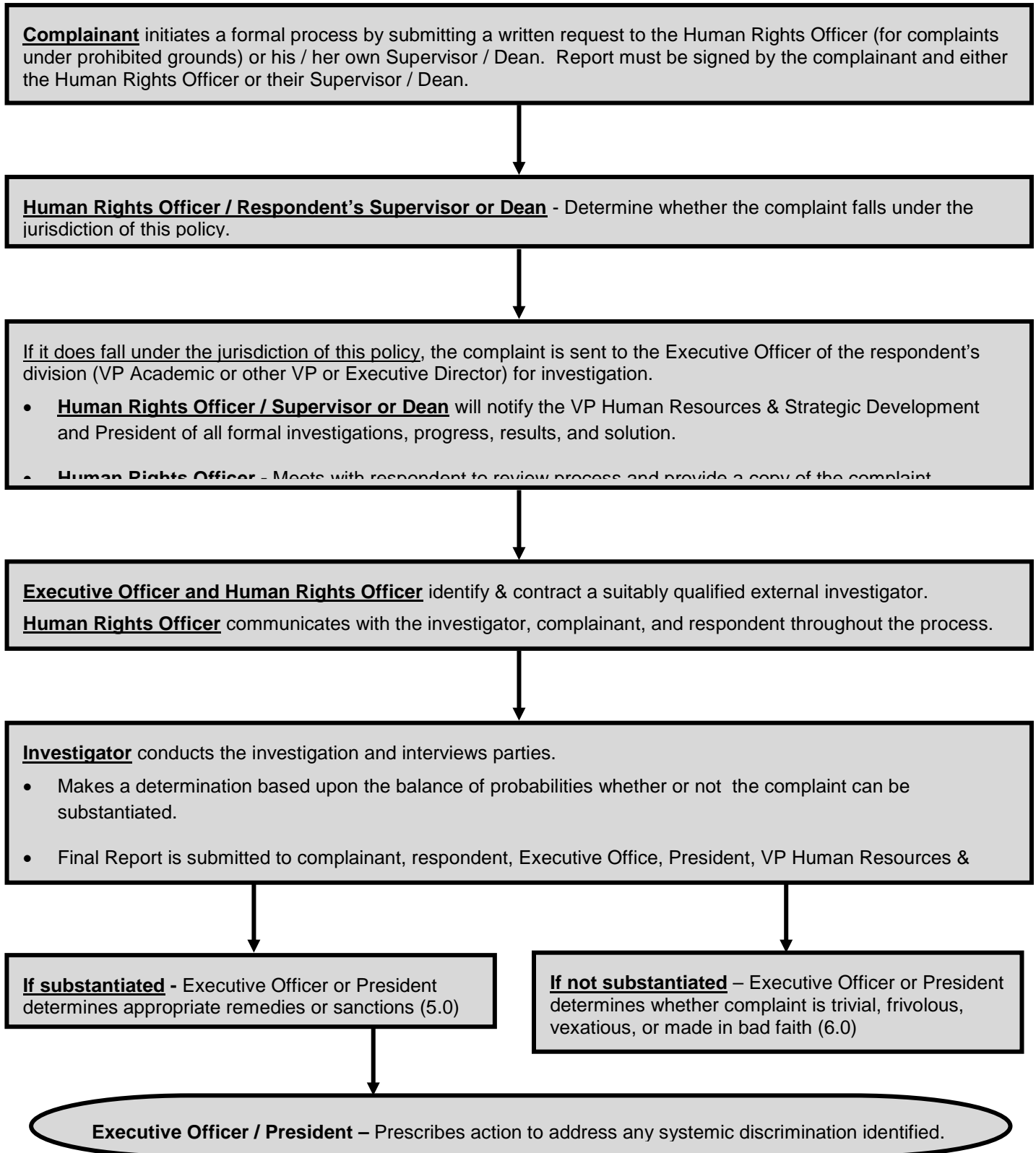
The Executive Officer/President reserves the right to receive the report. The investigator's notes and transcripts (if applicable) will be turned over to the College.

9. If a complaint is found to be substantiated, the Executive Officer/President will determine appropriate remedies/sanctions as applicable (see section 5.0). If a complaint is not substantiated, the Executive Officer/President will determine whether the complaint is proven to be trivial, frivolous, vexatious or made in bad faith (see section 6.0). The results of the Executive Officer's/President's determination will be communicated in writing to the complainant and the respondent, under an obligation of confidentiality, within ten (10) working days of receipt of the investigator's report.
10. Where, as a result of a formal investigation, systemic bias is determined within any College policy, procedure and/or practice, the Executive Officer/President will prescribe actions which may include amendments, revisions or elimination of existing College policies, procedures or practices.

Respectful Working and Learning Environment Complaint Procedures

Formal Investigation Procedure

Where a complainant is not satisfied with the results of the Informal – Fact-Finding Process they are able to request a formal investigation into the matter. Such a request is to be made within six months of the last incident.



(c) Formal Mediation

Mediation is a simple, effective and rapid conflict resolution method that brings together only those persons concerned by the situation. Mediation seeks to put an end to the alleged harassment, discrimination or bullying by finding, with the help of an impartial third party, mutually acceptable solutions for the people concerned. In order for mediation to succeed, participation in the process must take place in a context of good faith. Mediation may be requested through the Human Rights Officer, and the selection of the mediator must be agreed to by both parties.

The mediation will normally be concluded within (20) twenty working days of the receipt of the case by the mediator. The mediator's responsibility will be to provide a forum for discussion in a neutral setting. The mediator will not impose his/her point of view or that of either of the parties to the process. The mediator will also ensure that the parties have given their free and enlightened consent to any potential settlement that may be reached between them.

If the mediation results in a mutually acceptable agreement, a copy of the agreement will be forwarded to the Human Rights Officer. If the complainant and respondent so agree, it may be made available to an investigator in the case of any future formal process. The agreement will be treated as confidential.

If the mediation does not result in an agreement, the complainant may choose to initiate informal options or a formal investigation within (5) five working days of the conclusion of the attempt to reach an agreement.

Appendix C

Contact Information for Students

Program / Campus	Dean / Principal	Office Location	Phone	Email
School of Continuing Education & Skilled Trades	Deborah Clifford	305 Cobourg Campus	905-372-6865	decliffo@flemingc.on.ca
School of Business, Computing & Hospitality	Jim Drennan	648	705-749-5530 Ext 1519	jdrennan@flemingc.on.ca
School of Education, Health, and Wellness	Carol Kelsey	438A	705-749-5530 Ext 1251	ckelsey@flemingc.on.ca
School of General Arts & Sciences	Ann Drennan	5923	705-749-5530 Ext 1518	adrennan@flemingc.on.ca
School of Law, Justice and Community Services	Paul Legacy	381B	705-749-5530 Ext 1278	plegacy@flemingc.on.ca
School of Environmental & Natural Resource Sciences	Linda Skilton	289A	705-749-5530 Ext 3216	lskilton@flemingc.on.ca
Haliburton Campus	Sandra Dupret	Haliburton Campus	705-457-1680	sdupret@flemingc.on.ca

Addendum to Policy 3-311

Investigating/Resolving Complaints Made Against the President/Board of Governors

This procedure is to be utilized whenever a complaint is made by any member of the College community or by anyone on College property or at a College-sponsored event against the President of the College or external members of the Board of Governors.

The procedure covers complaints of harassment, discrimination and bullying, violations of the Student Rights and Responsibilities document, or any allegations of physical altercations or violations of safety and security.

This option has been provided in order to address the imbalance of power, or even the perception of imbalance of power, due to the positions held by the respondents.

PROCEDURE

1. If the respondent is the President, a written complaint related to an incident of harassment and/or discrimination, physical altercation or a violation of safety and security, must be submitted to the Board Chair. The submission must outline the details, dates, times and places related to the allegation. If the respondent is a member of the Board of Governors, a written complaint related to the same areas, as above, which outlines details, dates, times, and places must be submitted to the Board Chair or Board Vice-Chair.
2. As soon as the President or a member of the Board of Governors is aware of a complaint or potential complaint (as outlined in #1 above) against him/her, s/he will report this immediately to the Board Chair or Board Vice-Chair, whichever is most appropriate. The Board Chair will provide a copy of the written complaint to the President/Board member. The Board Chair or Vice-Chair will, as soon as reasonably possible, notify all Board Executive members and inform them of all the known details.
3. With the support of the Board Executive, the Board Chair or Vice-Chair shall, with the assistance of the Vice-President, Human Resources and Strategic Development, appoint an independent investigator from a prepared roster of investigators to investigate and make recommendations to the Executive of the Board. The Board Executive will also be responsible for determining the appropriate manner and time to inform the whole Board.
4. After due consideration of the findings and the recommendations, the Board Executive will determine what action, if any, should be taken and as appropriate bring the details to the full Board.
5. The independent investigator shall follow the investigation procedure as generally outlined in the College's Harassment and Discrimination Complaint Procedure.
6. It will be the responsibility of the Vice-President, Human Resources and Strategic Development to compile a roster of appropriate independent investigators who may be called upon.