

Respectful Campus Policy and Procedures

Origin	Student Services/Human Resources	Issuing Authority	University Executive Team
Responsibility	Senior Director, Student Services	Effective Date	May 13, 2016
Subject	Human Rights, Discrimination & Harassment	Authorized	

1. Foundation Statement

Cape Breton University is committed to the human dignity, of individuals and groups of individuals, which is central to this Policy. The University is committed to a campus free of discrimination, harassment and bullying and is dedicated to the highest standards of human equality and academic freedom. The University actively endorses these standards at every level of the institution and in all aspects of student, faculty and staff life while individuals or groups are acting in a capacity defined by their relationship with the University.

Nothing in the Procedures within this Policy denies or limits access to other avenues of redress available under the law, such as a complaint under the Nova Scotia Human Rights Act or a union or association grievance.

2. Relationship to the Nova Scotia Human Rights Act

The Supreme Court of Canada has stated that the provisions of the Human Rights Act bind universities. Where the provisions of any policy, procedure or practice of the University purport to require or to authorize conduct that is in contravention of the Act, the provisions of the Act will prevail.

3. Academic Freedom and Human Rights

Nothing in this policy supersedes the academic freedom as afforded under the CBUFA collective agreement (<http://www.cbu.ca/wp-content/uploads/2015/07/CBUFA-2013-2016-Final-Mar-19-2014.pdf>). For the University to maintain its place as a centre of excellence and to nurture its environment of creative and original research, it is crucial that academic and intellectual independence be strong and secure.

The University acknowledges that situations arise in which there is a perceived conflict between academic freedom and human rights. A violation of either freedom is of grave concern to the University.

While the University encourages frank discussion among its community members, and the pursuit of academic freedom, it wishes to make clear that public or private statements and practices which have the effect of discriminating against a protected class of individuals per the Nova Scotia Human Rights Act (<http://nslegislature.ca/legc/statutes/human%20rights.pdf>) will be considered a violation of this policy.

4. The Coverage of this Policy and its Procedures

This Policy and its Procedures applies to and covers all University administrators, students, employees, Board of Governors, and invitees; whom are individuals invited on the university campus, while such individuals or groups are acting in a capacity defined by their relationship with the University.

5. Definition Discrimination, Harassment and Bullying

No policy document can give a full description and definition of behaviours that fall within the meaning of harassment and bullying. Appendix A lists examples of behaviours that can fall within these definitions as well as training opportunities that will be offered by the Human Rights Office for members of the Cape Breton University community to explore these in more depth. These definitions are made in consideration of the Nova Scotia Human Rights Act.

Discrimination has been defined as distinction, whether intentional or not, but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations or disadvantages on such individuals or groups not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.

Bullying means behaviour, typically repeated, that is intended to cause or should be known to cause fear, intimidation, humiliation, distress or other harm to another person's body, feelings, self-esteem, reputation or property, and can be direct or indirect, and includes assisting or encouraging the behaviour in anyway. Bullying can take many forms; please see Appendix A for examples.

Harassment has been defined as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. One incident can be significant or substantial enough to constitute harassment. The University is committed to providing an environment free of discrimination and harassment for the members of its community. This includes harassment and discrimination, whether intended or not, based on the following grounds:

- Age;
- Race;
- Colour;
- Religion;
- Creed;
- Sex;
- Sexual Orientation;
- Gender Identity;
- Gender expression;
- Physical disability or mental disability;
- An irrational fear of contracting an illness or disease;
- Ethnic, national or aboriginal origin;
- Family status;
- Marital status;
- Source of income;
- Political belief, affiliation or activity;
- That individual's association with another individual or class.

6. Fundamental Tenets

6.1 No Discrimination or Harassment

A violation of human rights, including discrimination and harassment, is a breach of this Policy.

6.2 Reprisals

It is a breach of this Policy to take a reprisal against an individual because that individual has participated in a process to enforce human rights under this Policy and its Procedures, the Act, job requirements and other applicable legislation. A written allegation of a reprisal will be treated as a formal complaint under this Policy and its Procedures.

6.3 Presumption of Innocence

Anyone named in concerns, disputes or formal complaints under this Policy and its Procedures will be presumed innocent until a formal decision to the contrary is reached under the terms of this Policy and its Procedures.

6.4 Bad Faith Allegations

It is a breach of this Policy for any person to make an allegation of discrimination or harassment in bad faith, or to initiate a procedure under this Policy in bad faith or to influence an ongoing procedure under this Policy in bad faith. A written assertion that a bad faith allegation has been made will be treated as a formal complaint under this Policy and its Procedures. If such an allegation is substantiated, it will be subject to the same consequences as complaints of discrimination or harassment. A complaint that is found not to constitute discrimination or harassment is not alone evidence of bad faith.

7. Duties and Responsibilities

All members of the University community have the responsibility not to engage in activities that constitute a breach of this Policy. The University has a duty to maintain an environment free of discrimination, bullying and harassment for all persons served by it, and to be vigilant against violations of this Policy. The University has an obligation to make reasonable accommodation, where appropriate, on grounds covered in the Act and this Policy. Quite apart from the general expectations for all members of the community, the University's administrators, deans, chairs and directors of academic departments, other directors and supervisors (referred to hereinafter as "a person(s) with supervisory responsibilities") are in positions of trust, power and authority and have a particular duty to take steps to prevent discrimination and harassment on the grounds covered by this Policy and to support the implementation of its Procedures. Persons with supervisory responsibilities are also encouraged to support, where established, special programs designed to eliminate disadvantage caused by discrimination.

8. Confidentiality

Confidentiality is preferred and will usually lead to the best outcome for the parties concerned. Therefore, parties to a concern, dispute or formal complaint (including witnesses called during a fact-finding procedure and any other persons involved) have a responsibility to maintain confidentiality. Communication between a party and their support person or representative under this Policy and its Procedures is not a breach of confidentiality. A breach of confidentiality may constitute a breach of this Policy. However, information disclosed during any stage of an informal concern or a formal complaint, or during mediation, that gives rise to health and safety concerns for any individual should be reported to the University's Human Rights Officer and any other appropriate authority.

9. The Human Rights Officer

The Human Rights Officer is responsible for managing processes in a consistent, timely, impartial and fair manner. The Human Rights Officer is responsible for:

- providing advice to all participants under this Policy and its Procedures;
- assisting persons with supervisory responsibilities in the resolution of human rights concerns;
- managing the fact-finding process;
- helping those who are involved in the dispute or complaint resolution procedures under this policy to acquire the assistance and support of trained personnel;
- bringing to the attention of persons with supervisory responsibilities any University policy, procedure or practice that appears to discriminate against an individual or a group based on prohibited grounds;
- report directly to the President on violations of the policy.
- acting on any equity related matters that may be referred to by the President of the University

10. The Standard of Proof

The standard of proof, to be applied in making formal decisions under this policy, is based on a “balance of probabilities”; the same standard used in Human Right cases

11. Personal Advisors

Any person involved in the complaint process will seek assistance, support or representation from another person of their choice, such as a union observer/representative or student. The Human Rights officer will advise the parties about possible personal advisors available to them on campus upon request.

Prior to the formal resolution stage, such personal advisors may participate in the process as observers and/or representatives; however, the actual parties to the process must be present and participate. When a personal advisor attends and/or represent a party to a complaint, that party must advise the Human Rights Office. A member of the Human Rights Office may not act as personal advisor.

12. Stages of Complaint

The following process describes three stages: personal resolution, informal/mediated resolution and formal resolution. Action taken by a complainant, or that will be discussed with a complainant, will depend on the circumstances of the case. In all but the most serious cases, the University would hope that the matter could be resolved through the personal resolution or informal resolution stages. The aim is to arrive at a constructive and mutually acceptable outcome wherever possible.

All complaints must be initiated within six (6) months of the incident occurring. In extenuating circumstances a complaint filed beyond the six month limitation may be considered at the sole discretion of the Human Rights Office. This is not from the first incident if it is a recurring issue.

Any of the time frames for the steps outlined below may be extended upon mutual agreement of the parties. In extenuating circumstances, Human Rights Office may also extend a time frame.

A complainant has the right to withdraw a complaint at any stage in this process. The University may continue to act on the issue identified in the complaint in order to comply with its legal obligations.

12.1 Personal Resolution

Any faculty member, staff member, student, course participant, volunteer or visitor who believes that she or he has experienced or witnessed discrimination, harassment and/or bullying should contact the Human Rights Office for advice and assistance in resolving the matter.

Any faculty member, staff member, student, course participant, volunteer or visitor who believes that she or he has experienced or witnessed discrimination, harassment and/or bullying should inform directly or through supervisor, if possible, to make it clear to the person causing the offence that such behaviour is inappropriate, unacceptable, unwelcome and should not be repeated. A prior meeting with Human Rights Officer can help in preparing that person to address the other party, whether in person or in writing.

Any faculty member, staff member, student, course participant, volunteer or visitor who believes that they have experienced or witnessed discrimination, harassment and/or bullying should keep a personal record of the details of any alleged incidents of discrimination, harassment and/or bullying, including:

- Date and time
- Place
- Name and status of other person involved
- A specific account of what happened – be as detailed as possible
- The effect of the incident
- Names of any witnesses
- Action taken including any person to whom the incident has been reported and any attempts at personal resolution

It is important that such a record be kept for each incident and that it is made as soon after the event as possible. Where possible, any correspondence (letters, memos, notes, emails) relating to the incidents should also be kept. Such records should be brought to the Multicultural and Diversity Officer when seeking advice and assistance in resolving the matter. Individuals who are in a position of power whom witness or receive complaints of discrimination, harassment and/or bullying from faculty, staff or students should also keep a record of the alleged incident and forward that record to the Human Rights Officer.

Where:

- An attempt at personal resolution does not succeed,
- The behaviour continues,
- The behaviour is of a more serious nature than can be dealt with by personal resolution, or
- Personal resolution is not appropriate to the specific case, then the faculty member, staff member or student should make a complaint to the Human Rights Officer. A complaint will then prompt attempts at informal/mediated resolution or formal resolution procedures, depending on the circumstances of the case.

The Human Rights Office will document and retain all contacts as confidential documents.

12.2 Informal/Mediation Resolution

Informal resolution will attempt to be conciliatory rather than adversarial. It is important for both parties to retain their dignity, and for practical solutions to be found to enable the parties to continue to work and study together.

In the first instance, the Human Rights Officer will explore the use of alternative dispute resolution with the parties to resolve the matter. Where the parties agree, the Human Rights Officer will work together with the parties to resolve the matter. Any information obtained during alternative dispute resolution or an

attempted settlement arising from the process is without prejudice and will not be introduced automatically as evidence in any subsequent investigation or hearing.

If an informal resolution, acceptable to both parties, is reached, then the Human Rights Officer will send written communication to the parties, setting out the understandings and/or agreement. Receipt of this written communication and confirmation in writing regarding the agreement must be acknowledged by both parties. The Human Rights Officer will then assist in bringing about whatever administrative or other action is needed to implement the resolution. Where a complaint is resolved informally, the Human Rights Office will retain the complaint as a confidential document and no reference to its existence will be contained in either the complainant's or the respondent's official student or personnel file.

Informal resolution shall normally be completed within eight (8) weeks (40 university days)

Where:

- Alternative dispute resolution measures do not succeed,
- Both parties are not willing to attempt informal resolution,
- The behaviour continues,
- The behaviour is of a more serious nature than can be dealt with by informal resolution, or
- Informal resolution is not appropriate to the specific case, and then the matter will move to formal resolution procedures.

12.3 Formal Resolution

Failing resolution of the matter through personal or informal resolution, the complainant shall submit a formal complaint in writing, requesting formal resolution, to the Human Rights Officer. The complainant may request assistance, on a without prejudice basis, from the Human Rights Officer without prejudice in draft the complaint forum.

The decision on whether or not to proceed with formal resolution shall be made by the Human Rights Officer. On receiving a formal complaint, the Human Rights Officer will determine if:

- The University has jurisdiction,
- The allegations fall within the scope of this policy,
- The most recent alleged incident occurred within the past six (6) months (120 working days), prior information can be used as supporting information.
- There are any safety risks or health concerns that require immediate action.

If the Office of the Human Rights Officer decides not to proceed, the complainant shall be informed in writing and provided with information on their right to appeal this decision as outlined in this Policy. The respondent will also be then notified that the complaint is not moving forward.

If the Human Rights Officer decides to proceed, the respondent shall be notified within ten (10) working days of receipt of the formal complaint. The respondent shall be provided with details of the complaint and advised of the procedure to be followed in the resolution of the complaint. At this time, the complainant will also be notified that the complaint is moving forward.

The Human Rights Officer will advise both the complainant and the respondent of support services available which they may wish to consult.

12.4 Interim Measures

After a complaint is made, the Human Rights Officer, in consultation with the appropriate supervisory and academic personnel, will determine if any immediate action or interim measures are required to protect the

University, its community or any of its members, and/or the integrity of the process. These measures may include limiting access to facilities, making arrangements for alternative grading or supervisory relationships, or discontinuing contact between the complainant and the respondent during the period of the proceedings. Interim measures, if required, are to be implemented by the appropriate University personnel. Both parties shall be notified of any interim measures required. In addition, where a complaint proceeds to the formal resolution stage, interim measures may also be enacted as part of formal resolution processes under the procedures governing that process.

12.5 Investigation Process

The Human Rights Officer will select an independent investigator from the approved list developed by the Respectful Campus Advisory Group.

The investigator may decide to suspend any investigation in the event that the situation is appropriate for, and the parties mutually decide to attempt, alternative dispute resolution through assistance of the Human Rights Officer.

The investigator may decide to postpone, suspend or cancel any investigation if its continuance would duplicate or prejudice another proceeding or bring the administration of this policy and procedures into disrepute. In coming to a decision, the investigator will consider such factors as:

- The University's responsibility to provide an environment free from harassment and discrimination,
- The recognition that grievances may be filed simultaneously with complaints in order to comply with negotiated timelines (should a complainant under these circumstances elect to grieve a human rights matter under her/his collective agreement or other policy established by the University rather than through this policy and procedures, the University reserves the right to continue with its own investigation to address the matter in compliance with its obligations under the Nova Scotia Human Rights Act),
- Other legal procedures that may be initiated to protect statutory rights, and
- The wishes of the parties.

Once the investigator has been appointed, the Human Rights Officer will make all relevant documentation collected about the complaint available. The investigator will then devise a written investigation plan under which it will interview the complainant, the respondent, and all witnesses whom the investigator determines to have any information relevant to the complaint. In addition, the investigator will list those persons who, although named as witnesses, in its view had no information bearing on the complaint or were not available for interview. If it appears to the investigator that other persons not named by the parties may have information related to the complaint, every effort should be made to interview those potential witnesses. It may also be necessary to re-interview the parties before issuing the draft report.

During the investigation, every attempt will be made to interview the complainant first. Usually the respondent will be interviewed second because they have the right to reply fully to the allegations made against them and to name their witnesses. If a party or witness declines to participate in an investigation, the investigation process will proceed to a conclusion and the investigator will prepare a draft report. The investigator will meet with each of the parties to review the draft report and to provide the parties with an opportunity to provide clarification or response. Once finalized, the report and resulting recommendations will be forwarded to the appropriate person(s) with supervisory responsibilities. In all circumstances, interviews with witnesses will occur after the complainant and the respondent have been given an opportunity to be interviewed. The investigator shall advise any unionized member of their right to union representation during the interviews.

12.6 Investigation Time Frame

The investigation shall be completed within eight (8) weeks (40 working days). Time that elapses during the suspension of an investigation, as set out above; will not be included when calculating this time limitation. The results of the investigation shall be summarized in a report to the Human Rights Officer and shall include a determination as to whether this Policy has been breached and if so and recommendations as to sanctions for the respondent. The Human Rights Officer will provide each party with a copy of the report.

12.7 Investigation Results and Reports

Once the investigation is complete, the investigator will prepare a draft report that shall be reviewed with each of the parties detailing:

- Allegations giving rise to the formal complaint,
- Grounds in this policy that have allegedly been violated,
- Any responses of the respondent and complainant,
- Findings of fact,
- One of four recommendations:
 1. that the case be closed on the grounds of insufficient evidence of a breach of this policy,
 2. that a settlement be reached without the possibility of disciplinary action,
 3. that procedures be initiated that could result in disciplinary action against the respondent for breach of this policy,
 4. that procedures be initiated that could result in disciplinary action against the complainant on the grounds of frivolous, vexatious, malicious, or bad faith complaint.

The complainant and respondent have the right to comment in writing on the draft report before a final report is issued. Their written comments must be submitted to the investigator within five (5) working days of the receipt of the draft report, written comments will be included in the final report. Based on the results of the investigation and the responses to the draft report, the investigator will prepare a final report. The final report will be submitted to the Multicultural and Diversity Officer who will distribute it to the parties as well as the President of the University.

Where the final report recommends that disciplinary procedures be initiated against either party, the Human Rights Officer will forward a copy of the report to Human Resources for disciplinary sanctions. Such recommended sanctions, if applied will be imposed in accordance with any collective agreement pertaining to the respondent and or policy governing employees whom are nonunionized. Human Resources will report back to the Human Rights Officer once disciplinary sanctions have been determined and applied. Human Resources may include the final report and documentation regarding sanctions in the respondent's official personnel or student file, in accordance with existing policies, agreements or contracts with the various University groups.

Where the final report recommends settlement without disciplinary action, the Human Rights Officer will work with the parties to implement the terms of that settlement.

Where the final report finds no breach of this policy, the matter shall be considered resolved and no information shall be forwarded to Human Resource or placed in the official personnel or student file of the respondent.

Where the final report results in discipline, it will be treated as a disciplinary record and kept on the employee's file for the period of time stipulated in the relevant collective agreement.

13. Whistleblower Protection

A member of the Cape Breton University community who comes forward in good faith with reports or concerns about compliance with University policies or procedures shall not be subject to reprisal or retaliation for making such a report. Any such reprisal or retaliation shall be considered harassment under this policy.

14. Annual Reporting and use of Records for Statistical Purpose

The Human Rights Office will provide a written report, annually, to the University President regarding the numbers, types and outcomes of inquiries, concerns, disputes and complaints under this Policy and its Procedures in the preceding year. In turn, the President will release the report to the University community. Statistics for the report, or for other purposes, may be derived from confidential records, but will be worded in such a way as to maintain the anonymity of persons named or otherwise involved in proceedings.

For statistical purposes all allegations of discrimination, bullying or harassment will be reported without names or specific details.

In the data gathering and reporting process, a distinction will be made between inquiries, concerns, mediated disputes and complaints.

15. Monitoring and Amendment

A Respectful Campus Advisory Group will be established to advise the Human Rights Office on matters pertaining to this Policy and its Procedures. The Respectful Campus Advisory Group will be comprised of one (1) representative from each employee group, one (1) student, one (1) representative from the senior executive of the University and the Human Rights Office will also act as chair.

The mandate of the group will be to advise the Human Rights Office on the following:

- Use of this Policy and its Procedures;
- Proposed changes to the Policy and its Procedures;
- Preparation of the annual report to the President, including analysis of statistical information about use of this Policy and its Procedures;
- Timing and process for a formal review of this Policy and its Procedures to be recommended to the President;
- Appointment of human rights investigators.