
Harassment and Discrimination

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Policy Reference:	7507
Category:	Administration
Department Responsible:	Harassment and Discrimination Advisor
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Objectives

This procedure applies directly to Policy 7507, Harassment and Discrimination. This procedure provides a fair and equitable process for the resolution of complaints of Bullying and Harassment and Discrimination, enabling Bullying and Harassment or Discrimination to be stopped as soon as it occurs.

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Who Does This Procedure Apply To?

This procedure applies to BCIT students, employees, and contract employees.

Procedure**Procedure to Resolve a Complaint of Harassment and/or Discrimination**

1. Members of the BCIT community are encouraged whenever possible to resolve problems informally and, where necessary, to request the Harassment and Discrimination Advisor (Advisor) to advise and assist in this process.
2. An individual who believes they are being subjected to Bullying and Harassment or Discrimination as defined in Policy 7507, Harassment and Discrimination (the Complainant) should keep a written record of the incident or incidents of the Bullying, Harassment or Discrimination including such information as dates, times, what happened, and names of witnesses, if any.
3. An individual is encouraged to advise the person they believe has bullied, harassed them or discriminated against them (the Respondent) that the behaviour is unacceptable and ask

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them to stop. If this is too intimidating or inappropriate, or if the attempt to stop the offending behaviour is unsuccessful, the Complainant may seek the advice of the Advisor.

4. If the perceived Bullying and Harassment or Discrimination persists, or the perceived Discrimination is systemic or relates to an Institute policy, the Complainant should speak to any of the following:
 - The Harassment and Discrimination Advisor (the Advisor).
 - Where the Complainant is a student, the Instructor, Program Head, Chief Instructor, Associate Dean, Registrar, a Counsellor, and/or Vice President of Student Affairs or the Director of the Student Association.
 - Where the Complainant is an employee, their supervisor, or where the supervisor is the alleged harasser, the manager the supervisor reports to.
 - Where the Complainant is a member of a bargaining unit, they may also wish to speak to their shop steward or individual responsible for human rights within their bargaining unit.
5. Instructors, chief instructors, program heads, associate deans, the Registrar, counsellors, the vice president, Vice President Academic or the Director of the Student Association, supervisors, managers, or bargaining unit representatives who have been approached by a Complainant may contact the Harassment and Discrimination Advisor in confidence for advice on how to proceed, or they may refer the Complainant to the Harassment and Discrimination Advisor.

Initiating a Complaint – Initial Meetings with the Advisor

6. During the initial meeting with the Complainant, the Advisor will outline the policy, coverage, and criteria and the options available for resolving complaints. As well the Advisor will advise the Complainant about their right to representation and confidentiality. The Advisor will also discuss resources such as Employee & Family Assistance Plan (EFAP) if in the opinion of the Advisor the Complainant would benefit from such advice.
7. The parties to Policy 7507, Harassment and Discrimination recognize that there may be circumstances when it is inappropriate for the Advisor to act in this capacity for a specific complaint due to a conflict of interest.

For the purposes of Policy 7507, a conflict of interest exists when there is clear and convincing evidence that the Advisor has (or may be perceived to have) a personal or professional interest in the outcome or resolution of the complaint. If, at the outset, the Complainant or Respondent believes the Advisor to be in a conflict of interest situation, they shall so advise the Advisor. If the Advisor does not agree that a conflict of interest exists, the Complainant or Respondent may request that an alternate Advisor be appointed to implement Policy 7507.

In that case, the Complainant or Respondent must submit their request to the President of the relevant BCGEU bargaining unit (if they are a member of a bargaining unit), the Vice President of Student Affairs or Director of the Student Association (if they are a student), or the Manager of Labour Relations (if they are an excluded employee). The representative may submit a written request for an alternate Advisor. The written request must state the reason for the request.

8. If the Advisor receives a request from the Complainant's representative or the

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Respondent's representative that an alternate Advisor be appointed, the steering committee will be convened and will review the request for an alternate Advisor. If the steering committee agrees that a conflict of interest exists, an appointment of an alternate Advisor will be made from a list (Schedule A) of mutually agreed alternate Advisors. The appointment will be made from the list in the order that appears on the list. The alternate Advisor will conduct a review of the complaint in accordance with Sections 9–20 of these procedures. The list may be amended from time to time with the agreement of all of the parties to Policy 7507.

9. If the Complainant wishes to pursue the resolution of the complaint, the Advisor will:
 - Interview the Complainant to obtain all factual information including dates, times, and what happened from the Complainant's point of view, the name of the Respondent, and the names of any witnesses.
 - Obtain a written complaint from the Complainant in which the details of the allegations are clearly described.
 - Determine whether the complaint fits within one or more definitions of Bullying and Harassment and Discrimination as defined in Policy 7507, and determine whether the complaint falls within the timelines set out in Section 3, "Time Limit", of the Duties, Responsibilities and General Information Section of Policy 7507. This determination is a *prima facie* determination only and does not constitute a finding about the merits of the complaint or the accuracy of the facts alleged.
10. The Advisor will advise the Complainant of the determination within two (2) working days of the initial meeting with the Complainant.
11. If the complaint does not fall within the definitions or time limit of Policy 7507, the Advisor will:
 - So advise the Complainant and, if requested, will provide reason(s) in writing.
 - Refer the Complainant to other BCIT policies which may address the matter, or to other BCIT services, or to services outside BCIT which may provide assistance in resolving the complaint.
12. If the Advisor concludes pursuant to Section 9 above that the complaint does not fall within the definitions or time limit of Policy 7507, the Complainant may request a review of that finding by an alternate Advisor selected from Schedule A. The alternate Advisor shall review the complaint within 10 working days of their appointment.
13. In the event the alternate Advisor finds that the complaint does fall within the definitions or time limit of Policy 7507, the complaint will be referred back to the Advisor who shall attempt to resolve the complaint in accordance with the procedures that follow.

Options for Resolving a Complaint

14. If the Advisor determines that the complaint fits within the definitions of the policy, consideration must be given to resolving the complaint through an informal resolution process. The Advisor will suggest this option to the Complainant.

If the Complainant agrees to attempt to resolve the complaint informally, the Advisor will:

- Interview the Complainant to obtain any additional information required to facilitate

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- the resolution process.
- Advise the Respondent of the complaint and obtain all factual information about dates, time, and what happened from the Respondent's point of view.
 - Outline the policy, coverage, and criteria and the options available for resolving complaints to the Complainant and Respondent.
 - Advise the Respondent about their right to representation, confidentiality, and resources such as Employee & Family Assistance Plan (EFAP), if in the opinion of the Advisor the Respondent would benefit from such advice.
 - Advise the Complainant and the Respondent of the process to be used to resolve the complaint and obtain their consent to the process.

15. Procedures for resolving complaints informally may vary according to the circumstances of the complaint at the discretion of the Advisor. Such proceedings may include an attempt to informally resolve the matter through problem solving and mediation. If the Complainant and the Respondent cannot reach agreement at the end of the informal process, or do not agree to proceed with an informal process, the Advisor will conduct an investigation in accordance with the process set out herein and the principles of procedural fairness. Investigations will typically include interviews with the Complainant, Respondent and applicable witnesses. At the conclusion of the investigation the Advisor will prepare a short, written report (the Report) of the investigation that includes the following:

- In the opinion of the Advisor, whether Bullying and Harassment and/or Discrimination as defined by Policy 7507 occurred;
- The reasons for this opinion;
- Recommendations, where appropriate, regarding the creation of an effective working environment, one that is free of harassment and discrimination;
- The Complainant and Respondent may indicate their acceptance of the terms of the resolution by signing the Report.

The Advisor may inform the appropriate manager of the complaint, only if by informing the manager a resolution will be more likely. This step will only be done with the knowledge of the Complainant and the Respondent.

16. If, for any reason, the attempt at informal resolution has been unsuccessful, the Advisor's Report shall so indicate, and the Complainant and the Respondent will sign the Report to acknowledge receipt and that the attempt at resolution has been made. The Report will include the reasons for the unsuccessful conclusion. The Complainant may then choose one of the other options listed under Section 20.
17. A copy of the Report of the Advisor shall be provided to the Complainant and the Respondent and shall remain confidential. If the Respondent is an employee and discipline is recommended, a copy of the Report will be forwarded to the Manager of Labour Relations. If the Respondent is a student and discipline is recommended, a copy of the Report will be forwarded to the Office of the Registrar.

When the Advisor recommends discipline and the Respondent is an employee, the Manager of Labour Relations will follow its usual process and determine the appropriate discipline, if any. The outcome will be communicated to the employee and the Respondent's representative and a copy of the Advisor's Report will be sent to the Respondent's representative.

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When the Advisor recommends discipline and the Respondent is a student, the Registrar will determine the appropriate discipline. The student will be advised what discipline is being imposed, and a copy of that letter and the Advisor's Report will be sent to the Respondent's representative.

18. Where the resolution process has involved a manager, a union representative, or a student representative, those individuals will be advised by the Advisor of the nature of the resolution to the complaint.
19. Where the resolution of the complaint is based on remedial measures agreed to by the Complainant and the Respondent, the Advisor will make the necessary arrangements for the implementation of such measures. Failure of the Complainant or the Respondent to undertake remedial measures outlined in the agreement will be regarded as a breach of the agreement and may be considered grounds for discipline or to reopen the complaint.
20. If the informal process is unsuccessful and after the Complainant and Respondent have received the Report, the Complainant or Respondent may proceed as follows:
 - Take no further action.
 - Resolve the matter themselves.
 - Request the appointment of a Board of Inquiry.
 - Pursue any other course of action available at law, under a collective agreement, or pursuant to other Institute policies and procedures.

Where the Complainant or Respondent requests a Board of Inquiry, the request must be submitted in writing to the Advisor and their representative within 10 working days of receipt of the Advisor's Report. The Advisor will notify the Complainant's representative or the Respondent's representative of the request.

Board of Inquiry

21. The parties to Policy 7507 who are representatives of the Complainant or the Respondent, or the Manager of Labour Relations for excluded staff, may notify the Advisor in writing within 20 working days of receipt of the Report (or such longer period as is mutually agreed by the representatives of the Complainant and the Respondent) that a Board of Inquiry is required (the Notice). Such Notice shall set out the reasons for an appeal to the Board of Inquiry. Decisions to proceed to a Board of Inquiry will be made in accordance with the usual practices of the Union, Labour Relations or the Student Association. If no such Notice is received, the findings and recommendations of the Advisor shall be determinative of the complaint.
22. Upon receipt of the Notice, the Advisor shall advise the President in writing that a Board of Inquiry is required.
23. Upon receipt of the Notice the Advisor will, within 5 working days, inform the next available person on the List of Arbitrators in Schedule B that they are to conduct a Board of Inquiry.
24. The List of Arbitrators in Schedule B has been mutually agreed to by BCIT, the BCGEU Local 703 Support and Instructional Bargaining Units, the BCIT Faculty and Staff Association, and the Student Association, and may be changed from time to time upon mutual agreement
25. The Arbitrator selected shall convene a Board of Inquiry within thirty (30) working days.

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26. The Board of Inquiry will conduct a hearing at which the Complainant, the Respondent, their representatives, and BCIT are present.
27. The Board of Inquiry shall be conducted in a manner consistent with the principles of natural justice and ensure that the Complainant and Respondent are given a fair hearing. The Board of Inquiry must be held in private.
28. The Board of Inquiry shall determine its own procedures and shall advise the parties of these procedures before the Inquiry begins. The Board of Inquiry may consider any evidence it deems necessary or appropriate as long as the consideration of that evidence is consistent with the principles of natural justice.
29. The Board of Inquiry shall prepare a written decision within 10 working days of the conclusion of the Board of Inquiry, which summarizes the facts and evidence considered, the decision of the Board of Inquiry as to whether harassment or discrimination occurred, and the reasons for that determination. The Board of Inquiry may make any other order or any other recommendation it deems appropriate to correct the situation of Bullying and Harassment or Discrimination, and that order shall form part of the written decision.
30. The decision of the Board as to whether Bullying and Harassment or Discrimination occurred, and including any orders that the Board of Inquiry makes to resolve the matter, shall be final and binding on BCIT, the Complainant, the Respondent, and their representatives.
31. The Board shall forward its written decision within ten (10) working days of the conclusion of the Inquiry to the:
 - Complainant.
 - Respondent.
 - President.
 - Advisor.
 - Manager of Labour Relations where any of the parties is an employee.
 - Bargaining unit staff representative where any of the parties is a member of a bargaining unit, or the Registrar where any of the parties is a student.

Discipline

32. Where a letter of discipline is to be placed on an employee's Personnel File, it shall be done in accordance with the relevant language of the appropriate collective agreement.
33. Where an employee requests the removal of any letters, referred to in Section 32 from the employee's Personnel File, this request shall be subject to the relevant language of the appropriate collective agreement, and shall be grievable in accordance with the relevant language of the appropriate collective agreement.
34. Where a letter of discipline is to be placed on a student's official record, the student shall be so notified in writing by the Registrar.

The student shall be entitled to a copy of all such letter(s), and to indicate by initialling the letter(s) that they have seen the letter(s). Such initialling shall in no way indicate concurrence with the content of the letter(s).

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The student shall also be entitled to add comments to such letter(s), or to add letters, documents, or materials to the file.

35. A student may request the removal of letters of discipline resulting from an informal or a formal resolution process under Policy 7507, two years after the date of such letter(s) being placed on the student's file, by forwarding a written request to the Registrar.

If the Registrar considers these letter(s) to be of continuing relevance, such a request may be denied in writing to the student. The Registrar shall not unreasonably refuse such a request.

The student shall have the right to appeal the decision of the Registrar to the Vice President of Student Services.

When such letters of discipline have been removed from the student's file, the student shall be so notified in writing.

Withdrawals of Complaints

36. The Complainant may withdraw the complaint at any time by notifying the Advisor in writing.
37. When a complaint is withdrawn prior to a determination being made of the validity of the Complainant's case, the Respondent, if they believe the complaint was vexatious or frivolous, has the right to initiate a complaint under Policy 7507 and these Procedures in order to have an opportunity to present their case.

Health and Safety Measures

38. If at any time the Advisor believes that the personal or psychological safety of the Complainant or the Respondent are at risk, appropriate measures will be taken to protect the person, pending the outcome of an investigation and/or the resolution of the complaint.
- If the Complainant or Respondent is a student, the Advisor will consult with the Registrar who will make the necessary arrangements to resolve safety issues.
 - If the Complainant or Respondent is an employee, the Advisor may consult the Manager of Labour Relations, the Manager of Human Resources, or the Director of Safety and Security for assistance in making the necessary arrangements to resolve the safety issue.

Such measures may involve the temporary relocation of one of the parties. The Complainant will not be relocated without their consent. Where temporary relocation is inappropriate or not possible, arrangements may be made for one of the parties to be placed on a leave of absence with pay until the complaint has been resolved.

Forms Associated With This Procedure

- Schedule A, Alternate Advisors (in progress)
- Schedule B, List of Arbitrators (in progress)

Amendment History

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| 3. | Revision 2 | 2014 Jul 22 |

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2015 July