



## Medicine Hat College Procedure **RESPECTFUL WORK AND LEARNING ENVIRONMENT COMPLAINT RESOLUTION**

Procedure #:	PR-HR-01-01
Procedure Authorities:	Director, Human Resources Human Rights Advisor
Executive Sponsor:	Vice-President, Administration and Finance
Approved by:	Vice-President, Administration and Finance
Effective Date:	November 26, 2020

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### 1. PURPOSE

This procedure provides information to Medicine Hat College (MHC) employees and students who are subjected to disrespectful behaviour, discrimination, or harassment as defined in the MHC Policy: Respectful Work and Learning Environment and outlines the steps to be taken to reach resolution. Students must complete the process outlined in PR-HR-01-02 (RWLE Student Informal Complaint Resolution) prior to lodging a formal complaint under this procedure.

These procedures do not apply to students who are respondents to allegations of disrespectful behavior, discrimination, or harassment as defined in MHC policy: Respectful Work and Learning Environment, or other non-academic misconduct complaints. For these, please refer to PR-SD-04-01 Student Non-Academic Misconduct Procedures.

These procedures do not replace or modify individual rights guaranteed by law.

### 2. POLICIES

- HR-01: Respectful Work and Learning Environment (the **Policy**)

### 3. DEFINITIONS

All terms used throughout these procedures that are not otherwise defined herein shall have the meanings ascribed to such under the Policy.

- **Appeal:** an option available to complainants and respondents based on the following grounds: alleged bias of the decision-maker; alleged breach of the principles of natural justice and/or procedural fairness; or the availability of substantial new evidence previously unavailable to the decision-maker.
- **College Executive:** any college employee holding one of the following titles: president or vice-president.

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- **Complaint File:** a file that contains all documentation regarding a complaint including but not limited to: complainant statements, respondent statements, dates of meetings and discussions, time period extensions, requests for mediation, agreement to mediation, investigation report, resolution statement, complainant requests to terminate the complaint, and correspondence to the complainant(s) and respondent(s) regarding sanctions and/or remedies.
- **Facilitator:** the person who, in their official capacity, will receive the formal complaint and will manage the complaint to resolution. The following defines who the facilitator will be:

For complaints based on the protected grounds as outlined in the MHC Policy: Respectful Work and Learning Environment (as set out under the Alberta Human Rights Act <sup>1</sup> )	Human Rights Advisor <a href="mailto:HumanRightsAdvisor@mhc.ab.ca">HumanRightsAdvisor@mhc.ab.ca</a>
For complaints <b>NOT</b> based on the protected grounds as outlined in the MHC Policy: Respectful Work and Learning Environment	Human Resources Consultant or Human Resources Director <a href="mailto:HumanResourcesSupport@mhc.ab.ca">HumanResourcesSupport@mhc.ab.ca</a>

- **Mediation:** an attempt to settle a dispute through a neutral third party.
- **Procedural Fairness/Natural Justice:** a process that provides a person with a fair and unbiased hearing before a decision is made that will impact on their rights or interests. What constitutes a fair and unbiased hearing will vary from case to case according to circumstances.
- **Witness:** a third-party person who has observed an alleged violation under this policy or has relevant information.
- **Working Day:** any day from Monday to Friday when the college is open. Holidays and weekends are not considered working days.

**4. RULES OF PROCEDURAL FAIRNESS**

Throughout this process, all parties involved shall be entitled to fair treatment which includes

- (a) Reasonable notice of any meeting at which attendance is requested.
- (b) As a respondent, reasonable notice of the filing of a complaint and of its nature and substance so as to be able to respond to it.
- (c) To bring evidence to the attention of the decision-maker.
- (d) Consideration whether there are any obstacles or factors which might hinder a person’s ability to respond to an allegation or complaint, or to make a submission on any matter, and otherwise make appropriate allowances so that a person’s submission or response will be taken into consideration.

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<sup>1</sup> *Alberta Human Rights Act*, RSA 2000, c A-25.5 (the *Human Rights Act*)

- (e) Allowing designated representatives to accompany the parties (i.e. faculty association representative, AUPE<sup>2</sup> representative or Students' Association representative.)
- (f) A decision being made without bias or the appearance of bias.
- (g) Acting only on relevant information or evidence.
- (h) Decision-makers giving genuine and proper consideration to the particular merits of a person's case before reaching their decision, and not take into account facts or considerations unrelated to the matter at hand when making a decision.

## **5. COMPLAINANT'S AND RESPONDENT'S RIGHTS**

### **5.1. Complainant's**

- (a) To file a complaint and have it dealt with in a timely fashion without fear of reprisal.
- (b) To have a recognized representative from the following to accompany them during the process: Faculty Association, AUPE<sup>3</sup> or Students' Association.
- (c) To make sure that no record of the complaint is placed on the complainant's personnel file, as long as it was made in good faith and was not frivolous or vexatious.
- (d) To be informed about the process and progress of the complaint.
- (e) To keep their own notes regarding details of the complaint such as, the behaviors, when and where incidents occurred, responses, and the names of any possible witnesses.
- (f) To be informed of the results of the investigation.
- (g) To be informed of other avenues for complaints to be raised either via internal procedures or through the Alberta Human Rights Commission if based on a protected ground.

### **5.2. Respondent's**

- (a) To be informed of the filed complaint.
- (b) To be given a written statement of the official allegations, and to respond to them.
- (c) To have a recognized representative from either of the following accompany them during the process: Faculty Association, or AUPE<sup>3</sup>.
- (d) To be informed that the process could result in a record on a personnel file.
- (e) To be informed about the process and progress of the complaint, and to receive fair treatment.
- (f) To keep their own notes regarding details of the complaint such as, the behaviors, when and where incidents occurred, responses, and the names of any possible witnesses.
- (g) To be informed of the results of the investigation.

## **6. TIME CONSTRAINTS**

Facilitating effective timelines are essential in this process to ensure resolution takes place as quickly as possible. A facilitator may grant reasonable extensions of time periods set out in this complaint procedure.

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<sup>2</sup> Alberta Union of Provincial Employees (AUPE)

A complaint must be made no later than one year from the date of the incident, barring exceptional circumstances. (Complaints outside of this timeframe will be considered on a case by case basis.) Complaints should be filed as close to the incident date as possible. Please note: The Alberta Human Rights Commission will receive complaints made within one year from the date of the alleged contravention of the Human Rights Act.

Complaints may be withdrawn at any time, however, the college may be legally required to proceed with an investigation.

## **7. INFORMATION PRIVACY, CONFIDENTIALITY, AND SECURITY**

The investigation process and any findings resulting therefrom are to remain confidential. All participants are expected to keep information discussed during the meeting with the investigator, and that an investigation occurred, confidential.

It is further expected participants not ask individuals if they participated in the process, not speak to any individuals who may have participated in the process about the subject matter of the investigation, or the contents of discussions within the investigation.

Records should be retained or destroyed according to MHC's record retention practices. Records, documents, or objects must not be altered, distorted, concealed, or destroyed for the purpose of impeding or obstructing any investigation conducted by MHC or any government or regulatory agency

## **8. CONFLICT OF INTEREST**

Should the nature of a complaint place the facilitator responsible for acting under these procedures in a conflict of interest as defined by the college's policy HR-10: Code of Conduct, a college executive who has no involvement in the situation will be responsible for identifying an alternate facilitator.

When the respondent is a college executive, the complaint will normally be referred to an external investigator who shall fulfill all the responsibilities of the facilitator.

If there is any potential for a real or perceived conflict of interest regarding the President's role in the resolution of a complaint, the President will be excused from the proceedings and the Chair of the Board of Governors will determine who will act in the President's capacity.

During the investigation process, the college retains the right to withhold awards or recognition of complainants and respondents. Complainants and respondents will also withhold self-promotion during an investigation.

## **9. PROCEDURES**

### **9.1 RESPONDING TO ALLEGED VIOLATIONS**

Employees who are aware of or who witness incidents, have an obligation under this policy and Occupational Health and Safety legislation to inform their supervisor. The supervisor has a responsibility to respond and take appropriate action to protect the health and safety of employees.

On a case by case basis, resolution may be considered at any time during the process as an acceptable outcome provided it is mutually acceptable to the complainant and the institution. Generally, resolution will not be considered once the process has reached Stage 3, and the formal investigation has commenced.

In situations involving alleged violence or other significant violations of the policy, and there are sufficient grounds, the college retains the right to progress immediately to a formal investigation process. The decision to proceed to a formal investigation will be undertaken in consultation with Human Resources and the appropriate management representative.

## **9.2 INFORMAL RESOLUTION**

### **9.2.1 Stage 1 Self-Help**

Any individual who feels that they have been subjected to harassment, discrimination, or disrespectful behaviour is strongly encouraged to immediately inform the individual concerned that the behaviour is unwelcome and request that it stop immediately. This should be documented, including the dates, times, and any witnesses.

If required, a complainant may seek advice and guidance from any of the following: supervisor, faculty association executive, union representative, students' association, human resources consultant, human rights advisor.

### **9.2.2 Stage 2 Supervisory Support and Intervention (Informal Complaint)**

It is recognized that where there is a power imbalance, or other intimidation factors, a complainant may desire assistance to address their concern. Complainants may contact their supervisor for assistance in speaking with the respondent. If the respondent is their supervisor, the next level of management may be contacted for assistance or alternatively, the complainant may contact Human Resources or the Human Rights Advisor.

The supervisor assisting the complainant reviews the options and procedures for resolving complaints and may facilitate a meeting between the complainant and the respondent to reach resolution of the complaint. It is the responsibility of the supervisor (or Human Resources/Human Rights Advisor if applicable) to address the concern in a timely, appropriate manner.

The supervisor assisting the complainant reports the complaint to Human Resources, noting the nature of the complaint (e.g. name calling) the type of complaint (e.g. faculty-staff), area of the college and resolution. Human Resources will track and monitor for organizational trends.

Referrals to other supports may be provided (i.e. EFAP, mediator etc.)

The complainant and the respondent may request that a union or association representative be involved in the process.

Refusal of a respondent to participate in the informal process may move the complaint to the formal complaint stage.

**Students should refer to PR-HR-01-02 RWLE Student Informal Complaint Resolution.**

If the complainant's request to the respondent is unsuccessful, or does not result in a positive change, a complainant may meet with a facilitator to discuss the formal resolution process.

### **9.3 Stage 3 Formal Complaint**

If the issue is not resolved through the informal resolution process, the complainant may submit a Respectful Work and Learning Environment Complaint Form to the Director, Human Resources who will determine if there are sufficient grounds to proceed with a formal investigation under this policy. (Students must complete the process outlined in PR-HR-01-02 Student Informal Complaint Process before lodging a formal complaint.)

The Director, Human Resources, or designate, informs the respondent and provides a copy of the formal complaint within 15 working days. The respondent will submit a written response to the complaint, addressing the specific allegations within 15 working days of receiving the complaint.

Direct interaction between complainants and respondents regarding the complaint during the formal complaint process is not permitted. Workplace accommodations may be implemented as required.

Within 15 working days of receiving the response, the facilitator will review the complaint and the response to determine whether or not to initiate an investigation. If it is determined an investigation should not be initiated, other resolutions will be considered on a case by case basis.

If the decision is to proceed with an investigation, a determination ensuring impartiality will be made if an internal or external investigator should be appointed. Internal investigations will consist of two investigators and are appointed at the discretion of the Director of Human Resources. The appropriate Vice-President will be consulted if it is determined that an external investigator may be required.

The investigator(s) will commence the investigation process within 15 working days, or as soon as reasonably practical, from the notification to proceed. They will conduct interviews with the complainant, respondent, and witnesses separately and in private except for union or association representatives.

If during the course of the existing investigation, another violation is alleged or a new complaint is received, the investigator will disclose the findings to the designated facilitator who will assess the alleged violation or new complaint to determine if it falls within or outside of the existing investigation scope.

- (a) If the alleged violation or new complaint is determined to be within the scope of the current investigation, the investigator will share the complaint with the respondent during the investigation, and allow sufficient time for the respondent to provide a response. Given the new information, the process will be facilitated as soon as possible.

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- (b) If the alleged violation or new complaint is determined to be a separate violation or new complaint, not within the scope of the existing investigation, recommence Stage 3.

The investigation will determine whether or not a breach of policy has occurred and the investigators will submit a report outlining

- I. the allegation,
- II. an account and analysis of all relevant information obtained on the allegations of the complaint, and
- III. the conclusions reached and the basis for them.

The report may be accompanied by all records created or received by the investigator in the course of the investigation.

Investigators are not responsible for making recommendations for remedies or sanctions.

The report will be provided to the Director of Human Resources who will share the report with the appropriate supervisor.

Human Resources and the supervisor will determine appropriate sanctions or remedies. This may include remedial action or discipline up to and including termination of employment (for cause) or suspension. Implementation of disciplinary action shall comply with the provisions of the applicable collective agreement or with the college standard practice on progressive discipline.

The complainant and respondent will receive written notification of the results of the investigation. The complainant and respondent will not be advised of respective remedies or sanctions.

## **10. REMEDIES AND SANCTIONS FOR RESOLUTION**

Remedies may include but are not limited to the following

- provision of a written apology from the respondent to the complainant;
- initiation of a program of education to address the areas of concern; or
- any other appropriate action.

Sanctions may include but are not limited to the following

- a direction to cease and desist the behavior(s);
- a reprimand in verbal or written form;
- a direction to participate in a program of education and/or counseling as a condition of continued employment or contract;
- attendance at sensitivity or other form(s) of training;
- a restriction of access to specified areas of the college;
- a suspension for a defined period (with or without pay for staff and faculty); or
- any other appropriate sanctions commensurate with the severity of the incident or repeated offences.

## 11. APPEALS

Within 15 working days, the complainant or respondent may appeal the decision with supportive evidence to the appropriate college executive on one or more of the following grounds

- (a) alleged bias of the decision-maker;
- (b) alleged breach of the principles of natural justice and/or procedural fairness; or
- (c) the availability of substantial new evidence previously unavailable to the decision-maker.

The college executive must not have been involved with the complaint process. In the event that they were involved, the appeal will be forwarded to an alternative college executive. Appeals must be in writing, articulating one or more of the grounds stated above, and must be submitted to the college executive within 15 working days of receipt of the decision.

College executive will advise Director, Human Resources that an appeal has been received.

If the college executive determines that there are grounds for an appeal, they will follow the process outlined below.

## 12. APPEAL PROCESS

If an appeal is to proceed, a determination ensuring impartiality will be made if the same investigators will be re-engaged or if a new investigator should be appointed. This will be done in consultation with the appropriate college executive and Human Resources.

The complainant or respondent will be notified that an appeal has been received.

The investigators will review new evidence within 15 working days, or as soon as reasonably practical, from the notification to proceed. The process will be re-engaged as required which may result in conducting interviews with the complainant, respondent, and witnesses separately and in private except for union or association representatives.

The appeal will determine whether or not the new evidence substantiates a breach of policy and the investigators will submit a report outlining their findings.

The report will be provided to the appropriate college executive who will review with the Director of Human Resources. Investigators are not responsible for making recommendations. The college executive, supervisor and Human Resources will determine appropriate sanctions or remedies. This may include remedial action or discipline up to and including termination of employment (for cause) or suspension. Implementation of disciplinary action shall comply with the provisions of the applicable collective agreement or with the college standard practice on progressive discipline. The complainant and respondent will receive a written summary of the results of the appeal.

**The decision of the college executive is final and binding.**



### 13. EXTERNAL RESOLUTIONS

A complainant also has the right to contact the Alberta Human Rights Commission to file a complaint of discrimination based on the protected grounds defined under the Human Rights Act.

A complainant also has the right, if circumstances warrant, to file a report with the police.

### 14. ADDITIONAL INFORMATION

PR-HR-01-02: RWLE Student Complaint Resolution

PR-HR-01-01: Attachment A – RWLE Formal Complaint form

### ORIGINAL COPY SIGNED

Wayne Resch  
Vice-President, Administration and Finance

Date: November 26, 2020

### DOCUMENT HISTORY

March 2015	Procedure approved
March 2020	Revised procedure approved
November 2020	Editorial amendment approved