

## 4.8.10 Investigations Procedures

### GUIDELINES FOR INVESTIGATING COMPLAINTS

#### A. Scope of these Guidelines

These Guidelines are issued by the *Office of the Vice President Academic and Applied Research (VPAAR)* and the *Office of the Executive Director Human Resources and Payroll (EDHRP)*, under the authority of policy *4.8.10 Investigations* to deal with complaints filed by students, employees and the public. If you are dealing with a complaint for which there is already an established process, then these Guidelines are not meant to supersede.

These Guidelines are non-binding and may be varied where it makes sense to do so. They are primarily designed for use in situations or incidents where there is a single or multiple, identifiable, or unidentifiable complainant(s). In situations or incidents where there are multiple complainants, or the complainant is not identifiable, you should contact the *Office of the VPAAR* and/or the *Office of the EDHRP* as appropriate, to determine how to proceed.

All complaints must be reported to the *Office of the VPAAR* (complaints involving students) and the *Office of the EDHRP* (complaints involving employees) for tracking and risk management purposes.

#### B. Definitions

**Allegation:** a conduct, comment, and/or event alleged in the complaint.

**ADR Process:** is an alternative dispute resolution process, including but not limited to, conflict coaching, face-to-face mediation, shuttle mediation, facilitated discussion.

**Balance of Probability:** The standard on which allegations in a complaint will be assessed. The balance of probabilities means that a particular allegation is “more likely than not” to have occurred. This is a lower standard from criminal cases, which require that a charge be proved “beyond a reasonable doubt”.

**Conflict of Interest:** as defined in the *Code of Ethics* policy.

**Complaint/Claim:** conduct, comment, and/or event alleged to be unsatisfactory or unacceptable (also see allegation)

**Complainant:** the person making a complaint.

**Decision-Maker:** College official in an excluded/exempt position appointed to review the findings and decide on the outcome of an investigation.

**False, Frivolous, Vexatious or Reckless Allegations:** Allegations and complaints that are knowingly made with reckless disregard for the truth and without merit.

**Findings:** the Investigator's determinations, including whether or not specific allegations are substantiated, as a result of the investigation.

**Hearsay or Third-Party Evidence:** Evidence that is not derived from direct observation or experience, but from another person, such as statements of one person reported by another person.

**Infraction:** A breach of a policy, code of conduct, employment duty, or other requirement, that warrants coaching, discipline, restrictions on movements or activities, or any other limitation of the Respondent's privileges, entitlements, rights or obligations if substantiated.

**Investigation:** process undertaken by the College to ascertain whether a respondent is in breach of policy or engaging in conduct that warrants discipline, restrictions on movements or activities, or any other limitation of the Respondent's privileges, entitlements, rights or obligations.

**Investigator:** individual appointed to conduct an investigation, which may include a College official in an excluded position or external third-party.

**Participants:** students, staff, management, public, legal representative or advisor involved in an investigation.

**Particulars:** Facts surrounding an allegation (i.e. date, time, location, witnesses etc.).

**Personal Information:** information about an identifiable individual (as defined in FIPPA).

**Preliminary Review:** process of gathering information and review, to determine the need for an investigation.

**Reasonable Apprehension of Bias:** legal standard to determine bias - where an informed person, acting reasonably and in view of all relevant context, would consider it more likely than not that a decision maker was subject to bias and/or unable to make a fair and impartial decision.

**Report:** written document based on an investigation.

**Representative/Advisor:** union, professional association, legal counsel, student's person of choice (i.e. friend, parent) or other as approved by the Office of the VPAAR or the Office of the EDHRP.

**Respondent:** an individual who is the subject of a complaint/allegations being investigated.

**Third Party Agencies:** agencies, organizations including but not limited to RCMP, Tri-Council agencies (NSERC, SSHRC, CIHR).

## **C. General Principles**

### **C. 1 Fairness**

The College has a responsibility to respond to complaints fairly, and in accordance with any applicable protocol, policy, collective agreement or statute. When you investigate a complaint, you do so as a representative of the College and are bound by these same obligations. You must treat complaints seriously, always keeping in mind how difficult it may be for the Complainant to come forward, especially in situations where a power imbalance exists between the parties. At the same time, you must never forget that the Respondent has a right to a fair, unbiased investigation, which includes the right to know the nature of the allegations against them and an opportunity to respond to these allegations. Finally, you have an obligation to respect the rights of witnesses, and all other individuals involved in investigations.

### **C. 2 Bias**

Before you take any steps to investigate a complaint, you must be certain that you can do so fairly. If your involvement in the current situation raises a “reasonable apprehension of bias” which calls into question your impartiality, then you should contact the *VPAAR* and/or *EDHRP*, for assistance in delegating responsibility for conducting the inquiry or making the decision.

### **C. 3 Timeliness**

The College must resolve investigations in a timely manner, while not sacrificing the fairness of the process. One of the most common causes of dissatisfaction for parties to an investigation is the slow pace of the process. You should try to ensure that Complainants and Respondents have a realistic understanding of how long the investigation will take and keep them informed of your progress.

You should not underestimate the amount of time it will take you to investigate a complaint. You may need to hold several meetings with the Complainant, the Respondent, and/or with witnesses to ensure you have fully explored all aspects of the complaint and the response. You will also need time to write your notes and/or investigation report.

### **C. 4 Confidentiality**

Although investigations should be conducted as confidentially as possible, you cannot guarantee absolute confidentiality or anonymity. The principles of information disclosure during the investigation process are set out in Policy 4.8.10 Investigations. As an investigator, it is essential for you to familiarize yourself with these rules and communicate them clearly to the parties to the investigation.

### **C. 5 Record-Keeping**

You are responsible for keeping detailed notes of all interviews and conversations related to your inquiries. You may have another person with you during your investigation as a record-keeper. If someone takes notes on your behalf you should review them promptly, make any changes you think appropriate, and initial them to indicate your adoption of the contents.

The parties may provide written evidence or other documentation to you during the investigation. You must store all of this documentation in a secure location during the investigation.

Since these notes may have to be disclosed to the parties through Freedom of Information requests or other legal processes, you should ensure that they are clear, relevant and objective. The investigation file will also be stored in the *Office of the VPAAR* (complaints involving students) and *the Office of the EDHRP* (complaints involving employees) at the conclusion of the investigation.

If a participant or representative involved requests access to any of the investigation records, approval is needed from the *VPAAR* and/or *EDHRP*, to determine what can be released. Documents may have to be redacted (blacked-out) prior to disclosure as required by privacy legislation to protect the rights of third parties.

#### **C. 6 UCIPP Risk Management Branch and/or Legal Actions**

In instances where legal action is taken or threatened, the matter must be immediately referred to the *Office of the VPAAR* (for situations or incidents involving students) and the *Office of the EDHRP* (for situations or incidents involving employees).

Those Offices are also responsible for the timely notification of incidents or claims to the UCIPP/Risk Management Branch. Ideally 24 hours of the incident/injury/threat or taken legal action.

The Claims Department UCIPP/Risk Management Branch can provide assistance/guidance with the investigation and may even retain an independent adjuster or legal counsel.

Such claims or potential claims that UCIPP is involved with include:

- Human Rights Complaints;
- Civil Resolution Tribunal notifications;
- Small Claims Notices of Claim;
- BC Supreme Court Notices of Civil Claim;
- Requests for compensation;
- Allegations of negligence;
- Injuries to students.

#### **C. 7 Union, Association, Person of Choice and Legal Representation**

In some employment-related processes, faculty and staff may be entitled to union representation.

Others may raise the entitlement of member/professional association representation. Check with the *Office of the EDHRP* to determine if this is required or appropriate in your investigation. In some student related processes, student have the option of a person of choice attending for emotional support. This could be a friend, parent, student services. Check with the *Office of the VPAAR* if there are questions in this regard.

Although either a Complainant or a Respondent can seek legal advice, lawyers are generally not permitted to participate in the investigation process. If you receive a request for a lawyer to participate, you should refer this request to the *VPAAR* and/or *EDHRP* as appropriate.

### **C. 8 Additional supports**

If you do not know what to do at any point in your investigation, you should request advice from the *Office of the VPAAR* and/or *the Office of the EDHRP*, as appropriate.

## **D. Receiving the Complaint**

**D. 1** Before commencing an investigation in accordance with these Guidelines, it is essential for you to determine whether your role is to conduct the preliminary review, investigate, act in the capacity of decision maker, all or none of the above.

- Ensure that the complaint is not covered by a separate established investigation process either in policy, collective agreements or legislation. If it is, refer the Complainant to the individual or department responsible for that particular process.
- Notify the *Office of the VPAAR* (involving students) and the *Office of the EDHRP* (involving employees) for tracking and risk management purposes and to do determine whether your role is to conduct the **preliminary review, investigate**, act in the capacity of **decision-maker**, all three or none:
  - The **preliminary review** consists of actions prior to an investigation, which are intended to determine whether to commence an investigation. These actions can include gathering documents, materials, potentially relevant policy and hearing the complaint, for the purpose of a deciding whether to conduct an investigation.
  - An **investigator** collects documentary and oral evidence to determine what happened.
  - A **decision-maker** decides, on the basis of those facts, whether to uphold the claim.
  - In some investigations, you may fill more than one role. In other investigations, you will only be asked to be the investigator, and somebody else will be the decision-maker. Or the College may employ the use of a third-party investigator to do both.

It is essential for you to understand your role in any particular investigation; if you are in any doubt, you should consult with the *VPAAR* or *EDHRP*, as appropriate.

- D. 2** If you are conducting the preliminary review and/or investigation, the first task is to gather evidence related to the complaint. You should generally follow these steps:
- Promptly acknowledge receipt of the complaint and advise the Complainant that you will schedule a meeting as soon as possible. If you are meeting with a faculty member or a staff member, check with the *Office of the EDHRP* to determine whether any union/association representation is required at the meeting. Or, if you are meeting with a student, check with the *Office of the VPAAR* to determine whether student has the option of a person of choice attending.
  - Generally, your first meeting with the Complainant will be to hear the scope of the complaint and clarify the allegations. Take notes during the interview or have a record-keeper attend the interview. It is preferable that a complaint be set out in writing by the Complainant. Check applicable policy to determine if there is a particular form required for a written complaint. Note: a complaint does not always need to be in writing to create an obligation to investigate. Whether the complaint is submitted orally or in writing, the matter should be described in sufficient detail to clearly identify the conduct complained about. Advise the Complainant to be as factual and objective as they can. Make sure you have enough evidence/particulars about the complaint to understand the issues and to provide the nature of the complaint and fully question the respondent on the matter(s). Also obtain the Complainants contact information.
  - If the Complainant insists on submitting the complaint orally, you should produce a written summary of the complaint as described by the Complainant. Then review your summary with the Complainant to confirm that you have accurately captured the complaint.
- D. 3** When the decision has been made to proceed with investigation, you must meet with the complainant a second time to go through the following steps:
- Describe the process you will be following to investigate the complaint. Inform the Complainant that you are undertaking the investigation as a representative of the College. That you are not acting on behalf of either party to the complaint. Therefore, you are acting in the capacity of impartiality and neutrality.
  - Advise the Complainant against discussing this matter with the Respondent or potential witnesses during the investigation, in order to protect the integrity of the investigation process as set out in Policy 4.8.10.
  - Advise the Complainant that a decision will be made only after the Respondent has had an opportunity to respond and you have sufficient reliable and credible evidence to support findings upon which a decision can be made.
  - Where needed, provide a copy of Policy 4.8.10 to the Complainant and review the confidentiality and privacy principles contained in that policy that apply to the investigation process.
  - Provide the Complainant with information about the resources available to them within the College that can provide them with information or support.

## E. Meeting the Respondent

E. 1 Your next task is to meet with the Respondent. You should generally follow the following steps:

- Meet with the Respondent as soon as practicable. If you are meeting with a manager, faculty or staff member, check with the *Office of the EDHRP*, to determine whether any representation is required at the meeting. Provide sufficient notice of the meeting, in accordance with any relevant policy, practice or collective agreements.
- Take notes during the interview or have a record-keeper attend the interview. Explain the investigation process. Inform the Respondent that you are undertaking the investigation as a representative of the College. That you are not acting on behalf of either party to the complaint. Therefore, you are acting in the capacity of impartiality and neutrality.
- A respondent has the right to know the nature of the allegations against them. The investigation meeting notice must provide the nature of the complaint/incident, which is a general description of the complaint/incident. You may choose to provide the Respondent with the written complaint as submitted or a summary of the allegations. Providing the complaint or a summary is not required, but a summary may be appropriate in the case of particularly extensive allegations. At a minimum, all allegations must be made clear through the investigative questioning to provide full opportunity to respond. Note: not all statements in a complaint require a response. Sometimes evidence is provided which, even if true, is not relevant to the complaint or would not constitute an infraction. This would be determined in the preliminary review. If you can, you should identify those matters in the complaint that could constitute an infraction if established and therefore require a response.
- While the Respondent must be provided an opportunity to respond to the allegations, the Respondent is not obliged to provide a response. If that circumstance arises, you should advise the Respondent that in the absence of a response you will base your findings on the available evidence and/or may be required to make reasonable inferences when making your findings, or when deciding the matter.
- Advise the Respondent against discussing this matter with the Complainant and against engaging in any form of retaliation against the Complainant or potential witnesses.
- Where needed, provide a copy of Policy 4.8.10 to the Respondent and review the confidentiality and privacy principles contained in that policy that apply to the investigation process.
- Reiterate the College's commitment to investigate all complaints fairly under the College's policies and identify any resources that can provide the Respondent with information or support.

## F. Interviewing Witness

**F.1** During your meetings with the Complainant and Respondent, it will be important to determine whether there were any witnesses to the events described by either the Complainant or Respondent. If there were, you may need to interview these witnesses. When interviewing witnesses, you should generally follow the following steps:

- Before interviewing a witness, you should know why you are interviewing the individual and what contribution they may make to your inquiry into the complaint. Witnesses do not need to be told details of the complaint but must be provided sufficient information to place their evidence in context. You may tell the witness why you are interested in speaking to him or her, i.e. how they fit into the picture.
- You must interview witnesses without the Complainant or the Respondent in attendance.
- Describe your role and the process you will follow.
- Discuss confidentiality with the witnesses. Explain to them that they are obliged to maintain the confidentiality of personal information that they have received through the investigation process. Advise them that their identity will be disclosed to the Complainant or the Respondent only if, in your judgment, such disclosure is required to give them a fair opportunity to respond. Also, their identity may need to be revealed to the VPAAR and/or EDHRP, and in any subsequent proceeding related to the investigation, such as an arbitration or a lawsuit.
- Take notes during the interview or have a record-keeper attend the interview.
- Although witnesses do not normally have a right to representation in the interview, you should consult with the *Office of the VPAAR* and/or the *Office of the EDHRP* for direction if a request arises.
- Potential witnesses may refuse to be interviewed or to provide evidence related to the complaint. In such circumstances, a witness may be compelled. As such, you should contact the *Office of the VPAAR* and/or the *Office of the EDHRP* for direction and assistance.

## G. Making Findings of Fact

At the end of the evidence-gathering phase of your inquiry, you must analyze this evidence to make findings of fact. This is the most difficult aspect of responding to a complaint as the evidence you gathered may be complex or contain inconsistencies that are difficult to reconcile.

When making findings of fact, you must apply the standard of 'balance of probabilities'. This means that the allegations will be considered to be proven if you conclude that, given all the evidence, it is more likely than not that the events as alleged by the Complainant occurred. You do not have to be satisfied that the events have been established 'beyond a reasonable doubt'; that standard of proof is only used in criminal trials. Depending on the evidence, you may accept some aspects of the claim as established and not accept others. It is strongly recommended that you consult with the VPAAR and/or EDHRP if you are uncertain about how to apply the 'balance of probabilities' standard.



In reaching your findings of fact you may be required to resolve conflicting versions of events (i.e. a 'he- said/she-said' dispute). If the Complainant, Respondent or witnesses disagree about what happened, you will need to assess their credibility by carefully considering their evidence in the context of all the other evidence available to you. Credibility is determined by which version of events is more consistent with all of the evidence, and not simply on the basis of which party presents a better appearance of sincerity or seems more believable.

You must be impartial and fair, and you must not reach any conclusions until you have gathered and considered all the relevant evidence. Whatever findings you make, you must base them upon the relevant evidence and make conclusions that, in your view, can reasonably be drawn from this evidence, and you must clearly explain how you came to these conclusions.

If you determine that the complaint has not been established on a 'balance of probabilities', this is not the same as finding that the Complainant lied about the allegations; it only means that there was insufficient evidence, on the balance of probabilities, to prove the allegations.

If you have evidence that the Complainant pursued the complaint knowing it to be false, then you should consult with the *Office of the VPAAR* and/or the *Office of the EDHRP* about whether there should be any consequences for the Complainant for knowingly making a false complaint.

#### **H. Deciding Whether the Respondent Committed an Infraction**

After you have made your findings of fact, the next step will be to decide whether these facts support a finding that an infraction occurred. If your role in the investigation is solely to be a fact-finder, then somebody else will make this decision. The decision-maker is not obliged to accept your findings of fact, and may ask for more information from you or from any of the investigation participants. The requirements of procedural fairness continue to apply to all such requests for information.

If you are responsible for deciding whether the facts support a finding that an infraction occurred, then it is strongly recommended that you seek advice from the *VPAAR (matters involving students)* and/or *EDHRP (matters involving employees)* about how to undertake your analysis and record your conclusions.

#### **I. Documenting and Communicating Findings and/or Decision**

It is highly recommended that you prepare a written report, even if you believe that the allegations are trivial or unsubstantiated. The report should summarize the evidence provided from the Complainant, Respondent and witnesses, and set out your findings of fact along with an explanation of how you came to those findings.

Where an investigation of the complaint has been conducted, the investigator will prepare a written report (“Investigative Report”) that will normally include the following information:

- list of allegations
- respondent reply
- a summary of the evidence considered (i.e. witness testimony, documents etc)
- any assessment of credibility that is required to render a determination
- the investigator’s findings of fact (i.e. conclusions about events or conduct that occurred, based on the evidence and assessment of credibility), including a determination as to whether or not, on a balance of probabilities, the allegations identified in the complaint are substantiated.

If you are solely a fact-finder, you should include sufficient detail in your report to allow the decision-maker to reach an informed decision about whether the facts support a finding that an infraction occurred. The decision-maker is not obliged to accept your findings of fact, and must be able to satisfy themselves that these findings are supported by the evidence cited in your report. If you are also the decision-maker, then your report should clearly explain how you determined whether the facts support a finding that an infraction occurred.

The investigative report and final result are confidential. Disclosure is only as set out in policy 4.8.10.

#### **J. Withdrawal of Complaint**

The complainant may withdraw their complaint during the investigation process, or they may decide at some point to engage in an informal resolution. This should be done in writing where possible. There may be obligations on the College to investigate without a complainant and/or ongoing responsibilities on the College when this occurs, you should consult with the *Office of the VPAAR* and/or the *Office of the EDHRP* for direction and assistance.

#### **K. Informal Resolution**

Resolution of the complaint may be accomplished in a number of ways. You may be able to support both parties through the conflict/incident, they may resolve amongst themselves, or you may retain the services of a third party to facilitate an Alternative Dispute Resolution (ADR) process between the Complainant and the Respondent. The *VPAAR* and/or *EDHRP* are available to provide support at this stage where needed.