

ARTICLE 1 - PREAMBLE

1.1 Purpose of Common Agreement

1.1.1 The purpose of this Agreement is to establish and maintain orderly collective bargaining procedures between the Parties.

1.1.2 In order to promote the efficient and effective operation of the institution through the establishment and continuance of harmonious relations and working conditions established under the collective agreement, and to assist in the development and expansion of the public post-secondary system, the Parties therefore agree to the following terms of contract.

1.2 Future Legislation

In the event that any future legislation renders null and void or materially alters any provision of this Agreement, the Parties hereto will negotiate a mutually agreeable provision to be substituted for the provision so rendered null and void or materially altered. All other provisions of the Common Agreement shall remain in full force and effect.

1.3 Conflict with Policies

Every reasonable effort will be made to harmonize employer policies with the provisions of this Agreement. In the event of a conflict between the contents of this Agreement and any policies made by the employer, the terms of this Agreement will prevail.

1.4 Singular and Plural

Wherever the singular is used in the Common Agreement, the same shall be construed as meaning the plural if the context requires unless otherwise specifically stated.

ARTICLE 2 - HARASSMENT

2.1 Statement of Commitment

The Institutions promote teaching, scholarship and research and the free and critical discussion of ideas.

Unions and employers are committed to providing a working and learning environment that allows for full and free participation of all members of the institutional community. Harassment undermines these objectives and violates the fundamental rights, personal dignity and integrity of individuals or groups of individuals. Harassment is a serious offence that may be cause for disciplinary sanctions including, where appropriate, dismissal or expulsion.

The Institutions have a responsibility under the *BC's Human Rights Code* to prevent harassment and to provide procedures to handle complaints, to resolve problems and to remedy situations where harassment occurs.

The employer will offer educational and training programs designed to prevent harassment and to support the administration of the institutional policies and to ensure that all members of the institutional community are aware of their responsibility with respect to the policy. The Unions and Employers agree that attendance is required and will take place during compensated work time.

2.2 Definitions

2.2.1 Harassment is a form of discrimination that adversely affects the recipient on one or more of the prohibited grounds under the *BC Human Rights Code* [R.S.B.C. 1996 c.210].

Harassment as defined above is behaviour or the effect of behaviour, whether direct or indirect, which meets one of the following conditions:

- (a) is abusive or demeaning;
- (b) would be viewed by a reasonable person experiencing the behaviour or effect of the behaviour, as an interference with her/his participation in an institutional related activity;
- (c) creates a poisoned environment.

As of this date, the grounds protected against discrimination by *BC's Human Rights Code* [R.S.B.C. 1996 c.210] are age, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation and, in the case of employment, unrelated criminal convictions.

2.2.2 Sexual Harassment is behaviour of a sexual nature by a person who knows or ought reasonably to know that the behaviour is unwanted or unwelcome; and

- (a) which interferes with another person's participation in an institution-related activity; or
- (b) leads to or implies employment, or academically-related consequences for the person harassed; or
- (c) which creates a poisoned environment.

2.3 Procedures

2.3.1 Local Informal Processes

The Parties agree that the local parties where mutually agreeable, may first attempt to use local policies or processes to resolve complaints of harassment and sexual harassment prior to accessing the following procedures in Article 2.3.3 Mediation and 2.3.4 Investigation.

2.3.2 Right to Legal Counsel

The union is the exclusive bargaining agent for the bargaining unit employee and as such has the exclusive right to represent the employee in all matters pertaining to his/her terms and conditions of employment, including matters that may lead to discipline by the employer. An individual bargaining unit employee has no right to be represented by legal counsel during an Article 2 investigation involving an allegation of harassment.

2.3.3 Mediation

When a complaint is received by the employer involving an individual covered by this collective agreement, whether as a complainant or respondent, the local parties will initiate a mediation procedure at the bargaining unit level. The mediation process is the recommended avenue of resolution.

Consensual mediation will require the agreement of the complainant and the alleged harasser to use the following process:

- (a) the local parties will discuss the nature of the complaint and agree upon who will conduct the mediation;
- (b) the mediation process and resolution will be kept strictly confidential by all participants;

- (c) where a resolution is reached, the complainant and the alleged harasser must agree in writing to the resolution and the matter will then be considered concluded;
- (d) no record of the mediation except the written agreed resolution will be placed on an employee's file. The written resolution will be removed from the employee's file after twelve(12) months unless there has been a subsequent complaint of harassment against the employee within the twelve (12) month period.

2.3.4 Investigation

Where either the complainant or alleged harasser does not agree to mediation, or no resolution is reached during the mediation, the complaint will be referred to an investigator selected from a list of investigators agreed upon by the local parties.

An investigator will be appointed within ten (10) working days of referral.

Where the local parties are unable to agree on a list of investigators, JADRC will determine the list. (See Appendix B.)

The referral should, where possible, include a written statement from the complainant and the alleged harasser which succinctly outlines the issue(s) in dispute. The referral should be assembled by the Institution and forwarded to the Investigator with a copy sent to the union(s).

The appointment of an investigator does not preclude an investigator from mediating the dispute where possible up to the time of submission of the Investigator's report to the local parties pursuant to Article 2.3.5(a) below.

Any complaint of harassment will be kept confidential except as is necessary to investigate and resolve the issue. Investigators will stress the confidentiality of the investigation with the person(s) interviewed.

2.3.5 Terms of Reference of the Investigator

- (a) The purpose of the investigator will be to ascertain facts.
- (b) All persons quoted in the investigation will be named by code determined by the Investigator to preserve confidentiality.
- (c) The complete report of the Investigator will be given, in confidence, to the union(s) and the employer. It is the responsibility of the employer to forward a copy of the report to the complainant and the respondent. The employer will state, in a covering letter, that the report is confidential. The report should refer to individuals involved by code only. However, a reference key will be provided to the employer and the union(s) for internal use. This practice should be repeated at any subsequent arbitral proceeding. Upon consultation with the union, the employer may redact information from the forwarded report if the release of that information would violate the personal privacy of the individuals.
- (d) The report will not be introduced as evidence or have standing in any arbitration, or other legal procedure. This does not preclude the parties

from reaching an Agreed Statement of Fact based upon facts in the report in preparation for an arbitral proceeding.

(e) **Reliance on Report of Third Party Investigator**

Despite 2.3.3 (d), an institution is entitled to rely on the fact of mediation or the report of a third party investigator as evidence that may mitigate liability in a proceeding that follows receipt of the third party investigator's report.

The employer is entitled to rely on the investigator's report as evidence that it acted in good faith in any disciplinary action that it undertook following receipt of the third party investigator's report where the issue of good faith is raised by a grievor or the union.

(f) The investigator will not be compellable as a witness in any arbitration or other legal procedure which may result from the investigation.

(g) The investigator will conclude her/his work within twenty (20) days of appointment and will render a report within a further ten (10) days. These timelines may be extended if deemed appropriate by the local parties. If a dispute arises with respect to the extension, the matter will be referred to JADRC. If requested by the investigator, the employer will provide meeting space and contact information about persons to be interviewed.

(h) The investigator may, as part of her/his report, make recommendations for resolution of the complaint.

(i) The investigator's report will not be placed on an employee's file.

2.4 Findings

2.4.1 The employer will make a written determination based upon the facts and recommendation, if any, within ten (10) working days of the receipt of the Investigator's report. If necessary, this timeline may be extended by mutual agreement between the local parties.

2.4.2 The determination will:

(a) state the action(s), if any, to be taken or required by the employer;

(b) include, where appropriate, a statement of exoneration.

2.5 Rights of the Parties

Should a complainant file a complaint under the provisions of the *Human Rights Code*, it is understood that the *Human Rights Code* complaint will be set aside until such time as the procedures under this Article have been completed.

Where an allegation includes both complaints under the *Human Rights Code* and a personal harassment complaint, the local parties may agree to have the Investigator investigate all of the complaints, in order to relieve against expense and duality of process.

2.5.1 The above noted procedure does not restrict:

- (a) The employer's right to take disciplinary action;
- (b) The union's right to grieve such disciplinary action or to grieve an alleged violation of this Article.

2.5.2 The report of the investigator may be used in the development of an Agreed Statement of Fact for an arbitral proceeding.

2.6 False Complaints, Breaches of Confidentiality and Retaliatory Action

Frivolous, vexatious or malicious complaints of harassment or breaches of the confidentiality provisions of this clause or retaliation in respect of a complaint may result in discipline.

Should retaliation be alleged following the filing of a complaint, an Investigator may deal with that allegation and make a finding.

2.7 Local Discussion

The local parties will meet as necessary to facilitate the administration and other aspects of the application of this Article including issues arising under Article 2.8 below. The local parties may refer any differences over the administration or application of this Article to JADRC for resolution.

2.8 Relation to Other Agreements

Where a complaint under Article 2 involves individuals who are covered by another collective agreement the local parties will meet to clarify and agree upon a procedure.

ARTICLE 3 - EMPLOYER/UNION RELATIONS

3.1 Human Resources Database

The Parties believe that their on-going and collective bargaining relationships are enhanced through useful, timely, and accessible data on relevant human resources matters, including those listed below.

The Parties agree to provide and support the accumulation and dissemination of available data to the PSEA, which will be responsible for the management of the HRDB project including the gathering, analysis, and maintenance of such data. The Parties may undertake joint projects for the comparative analysis of such data.

The Parties agree that a Steering Committee will oversee this program. The Committee will include representatives designated by each Party.

The Parties recommend that the Ministry of Advanced Education, Training and Technology continue to provide funding to assist in the gathering, analysis, and maintenance of such data through the agreed-upon organization.

3.1.1 Relevant Matters include:

- (a) Health and Welfare
 - (i) Benefit Plan Designs
 - (ii) Participation rates
 - (iii) Premiums