

HRCO OP-1

Table of Contents

PURPOSE	4
DEFINITION OF TERMS	5
Complaint	5
Complainant.....	5
Discrimination.....	5
Harassment.....	6
Human Rights Commissioner's Office (HRCO)	6
Resource people	6
Reprisal	6
Respondent.....	6
Reconsideration Request	6
Restorative Practice	6
Threshold Assessment	7
COMPLAINTS PROCESS	7
APPLICATION OF THE COMPLAINT PROCESS	7
1.1 Who can use the complaint process?.....	7
1.2 What are some potential remedies?.....	7
1.3 Use of complaint process does not prevent other avenues	7
1.4 Responsibility to act	8
1.5 Reprisal	8
ROLE OF THE HRCO	8
2.1 General.....	8
2.2 HRCO's Role	8
SELF-HELP RESOLUTION PROCESS	8
3.1 General.....	8
3.2 Talk to the Respondent	9
3.3 Talk to a Resource Person	9
3.4 Role of the Resource Person	9

3.5	Board’s obligation to investigate.....	9
	HRCO COMPLAINT RESOLUTION PROCESS	9
4.1	Who can make a complaint?	9
4.2	Where complaint may arise	9
4.3	Complaints against trustees	10
4.4	Support and/or representation in making a complaint.....	10
4.5	How to make a complaint to the HRCO.....	10
4.6	Timeframe to consult with HRCO	10
4.7	1 Year to Complain	10
	CONFIDENTIALITY	10
5.1	Ensuring confidentiality	10
5.2	Involved parties to maintain confidentiality	10
5.3	Disclosure of information.....	11
5.4	Confidentiality is not anonymity	11
	PRELIMINARY THRESHOLD ASSESSMENT.....	11
6.1	General.....	11
6.2	HRCO preliminary threshold assessment	11
6.3	Consideration of other complaint processes.....	11
6.4	HRCO communication of preliminary threshold assessment decision	12
6.5	Making a reconsideration request of preliminary threshold assessment decision	12
6.6	Basis for granting a reconsideration request	12
6.7	Reconsideration not based on factual disputes	12
6.8	Reconsideration request decision	12
6.9	Reconsideration decision is final	12
	INFORMAL RESOLUTION	13
7.1	Informing respondent of complaint	13
7.2	Informal resolution if parties consent	13
7.3	If no informal resolution, complaint moves to investigation	13
	INTERIM MEASURES	13
8.1	Recommendation for interim measures if appropriate	13
	MEDIATION.....	13
9.1	Mediation offered throughout the complaint process.....	13
	INVESTIGATION AND RESOLUTION	14

10.1	HRCO to investigate	14
10.2	Investigation process	14
10.3	Support and/or representation during investigation	14
10.4	Record of interviews	14
10.5	Complainant’s right to withdraw complaint.....	14
10.6	HRCO termination of investigation	14
10.7	Standard of proof.....	15
10.8	Communication of HRCO investigation findings to complainant and respondent	15
	➤ If complaint is supported by the evidence	15
	➤ If complaint is not supported by the evidence.....	15
	RECONSIDERATION REQUEST PROCESS OF OUTCOME DECISION.....	15
11.1	Making a reconsideration request of the outcome decision.....	15
11.2	Basis for granting a reconsideration request	16
11.3	Reconsideration not based on factual disputes	16
11.4	Reconsideration request decision	16
11.5	Reconsideration decision is final	16
	FILE RETENTION	16
12.1	Documents kept by HRCO	16
12.2	Retention of documents by HRCO.....	16

PURPOSE

This operating procedure outlines the complaints processes related to allegations of harassment and discrimination that infringe the *Human Rights Code* (“Code”) and should be read as a companion to the Board’s Human Rights Policy (“Human Rights Policy 51”).

The *Code* provides that everyone has a right to equal treatment in the following social areas:

- Services (such as education), goods and facilities;
- Employment;
- Contract;
- Accommodation (housing); and
- Vocational associations

The *Code* prohibits discrimination and harassment in those social areas on the basis of the following protected grounds:

- **age** is defined in the *Code* as being 18 years or older, or 16 years or older in housing if you have withdrawn from parental control
- **ancestry** means a lineage of people from whom one is descended
- **citizenship** means the legal status of being a citizen of a particular country
- **colour** refers to the skin colour of a person, usually associated with race
- **creed** means practices, beliefs, and observances that may be part of an organized faith or religion or other faith or spiritual practices
- **disability** is defined in the *Code* as:
 - (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
 - (b) a condition of mental impairment or a developmental disability,
 - (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
 - (d) a mental disorder, or
 - (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*

- **ethnic origin** means the culture individuals identify with and from which they derive a common heritage or ancestry, or a shared historical past
- **family status** is defined in the *Code* as the status of being in a parent and child relationship
- **gender expression** refers to how a person expresses their gender identity to the world, which may include the way they dress, the way they style their hair, the way they act or speak, and the pronouns they use
- **gender identity** is linked to an individual's intrinsic sense of self and their sense of being female, male, a combination of both, or neither regardless of their biological sex
- **marital status** is defined in the *Code* as the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside of marriage
- **place of origin** means the country where a person was born
- **race** is a socially constructed identity which refers to a group of people of common ancestry, distinguished by physical characteristics such as color of skin, shape of eyes, hair texture or facial features
- **receipt of public assistance** means receiving government income support such as Ontario Works and is a *Code* ground with respect to accommodation (housing) only
- **record or offences** under the *Code* means a conviction for an offence for which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked or an offence under any provincial enactment and is a *Code* ground with respect to employment only
- **sex** relates to a person's biological sex, male or female
- **sexual orientation** refers to the range of human sexuality including gay, lesbian, bisexual, and heterosexual orientations
- **association, relationship, or dealings with a person or persons identified by a protected ground of discrimination**

DEFINITION OF TERMS

Complaint - Any complaint of a breach of the *Code*.

Complainant – An employee, student, parent, volunteer, trustee, contractor, permit-holder, or visitor to the Peel Board who considers that she or he has been subjected to discrimination, harassment or reprisal as defined in the *Code*.

Discrimination - Any alleged behaviour that meets the definition of discrimination outlined in the *Code* and defined in Human Rights Policy 51:

Differential treatment on the basis of one or more enumerated ground that results in disadvantage. Discrimination can be direct or indirect and need not be intended.

Harassment - Any alleged behaviour that meets the definition of harassment outlined in the *Code* on the basis of a protected ground:

Engaging in a course of vexatious comment or conduct that is known, or ought reasonably to have been known, to be unwelcome.

Human Rights Commissioner's Office (HRCO) - The HRCO deals with complaints made under Human Rights Policy 51, provides ongoing human rights education and training to the Board community, reviews Board policies to ensure compliance with the *Code* and may address systemically-based human rights and equity issues impacting on the Peel Board community.

Resource people - These include but are not limited to: superintendents, supervisors, principals/vice-principals, managers, and any federation, union or employee group association representatives.

Reprisal – Any alleged behaviour that meets the definition of reprisal as outlined in the *Code*:

Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

Respondent - A person or group whose conduct is the subject of a complaint.

Reconsideration Request – A request that the HRCO reconsider any of the following HRCO decisions:

- (a) a complaint does not meet the preliminary threshold under Human Rights Policy 51 and is not within the mandate of the HRCO;
- (b) following an investigation, the outcome decision that a complaint is supported by the evidence and established; and,
- (c) following an investigation, the outcome decision that a complaint is not supported by the evidence and is not established.

Restorative Practice – A focus on making a complainant whole by repairing the harm experienced by the complainant and rebuilding relationships.

Threshold Assessment – A determination whether a complaint falls under Human Rights Policy 51 and within the mandate of the HRCO. That is, the threshold assessment determines if the complaint involves a social area and shows a link between the unequal treatment creating disadvantage and a protected ground.

COMPLAINTS PROCESS

APPLICATION OF THE COMPLAINT PROCESS

1.1 Who can use the complaint process?

Members of the Peel Board community – any employee, student, parent, volunteer, trustee, contractor, permit-holder, or visitor - who believe that their rights under the *Code* have been infringed by discrimination, harassment, and/or reprisal by another member of the Peel Board community may:

- (a) resolve the concern in a collaborative and respectful manner either by engaging directly with the alleged respondent or through the assistance of a resource person who may refer the complainant to the HRCO; and/or,
- (b) consult with the HRCO regarding possible action which may include filing a complaint and engaging in informal resolution, mediation, and/or investigation.

1.2 What are some potential remedies?

Every complaint involves individual facts and circumstances and remedies for any complaint will be specific to that complaint. Where the complaint is supported and established, the HRCO will make recommendations to the Director of Education about appropriate remedial action focusing on restorative practices and other remedies aimed at making the complainant whole.

1.3 Use of complaint process does not prevent other avenues

Nothing in this Policy precludes an individual from exercising other legal or contractual rights. This Policy is not intended to prevent or discourage a complainant from making a complaint to the Human Rights Tribunal of Ontario, from using any procedure available under a collective agreement, if applicable, or from pursuing any other legal avenue available.

1.4 Responsibility to act

All individuals covered under Human Rights Policy 51 are responsible to act when they have knowledge of discrimination against an employee, student, parent, volunteer, trustee, contractor, permit-holder, or visitor and are expected to co-operate with the HRCO.

1.5 Reprisal

Any individual who files a complaint under Policy 51 or who is involved in a complaint such as a witness, advisor, support person or representative, should not face negative treatment or consequences for having taken part in the complaint process. Any individual who reprises against a complainant for having filed a complaint or against any other individual involved in the complaint process, may be the subject of a complaint under Policy 51.

ROLE OF THE HRCO

2.1 General

The HRCO is an independent and neutral office addressing individual and systemically-based human rights and equity issues impacting on the Peel Board community. To ensure neutrality, the HRCO functions outside of usual reporting lines and accounts solely and directly to the Director of Education. All contacts with the HRCO are handled confidentially.

2.2 HRCO's Role

The HRCO's role includes:

- (a) receiving human rights complaints under Human Rights Policy 51;
- (b) resolving human rights complaints which may include informal resolution, mediation, and investigation;
- (c) developing and delivering human rights education and training;
- (d) reviewing Board policy and practice to ensure compliance with the *Code*; and,
- (e) providing analysis and advice on human rights, including inclusion strategies, support tools for traditionally marginalized communities and other equity issues.

SELF-HELP RESOLUTION PROCESS

3.1 General

Wherever possible and appropriate, parties to a complaint are encouraged to resolve concerns at the earliest possible stages.

3.2 Talk to the Respondent

It may be appropriate in some instances for a complainant who believes that they have experienced discrimination and/or harassment or discrimination-related reprisal to speak directly to the person(s) responsible, and clearly indicate that the conduct is unacceptable. This may resolve the issue.

3.3 Talk to a Resource Person

Where the complainant does not feel able to bring the matter directly to the attention of the person(s) responsible, or the complainant tries this approach and it does not work, the complainant should seek the advice of a resource person for assistance in resolving the matter.

3.4 Role of the Resource Person

The resource person will inform the complainant of the following:

- the option of asking his/her principal or vice-principal, supervisor, or other resource person for help in resolving the issue (provided he or she is not the person named as the respondent);
- the right to make a complaint and direct the complainant to the HRCO; and,
- the availability of counselling and other support services offered by the Board.

3.5 Board's obligation to investigate

The Board may be legally obligated to investigate any allegations of a breach of Human Rights Policy 51 regardless of whether the complainant wishes to pursue the complaint.

HRCO COMPLAINT RESOLUTION PROCESS

4.1 Who can make a complaint?

All members of the Peel Board community have the right to make a complaint about conduct which they believe to be discriminatory or harassing and/or a reprisal under Human Rights Policy 51. This includes any employee, student, parent, volunteer, trustee, contractor, permit-holder, and visitor.

4.2 Where complaint may arise

A complaint may address discriminatory or harassing behaviours and/or reprisal at all locations where business, student, or social activities of the Peel Board are conducted including incidents that happen away from Board property outside of normal business hours that are linked to the workplace or school environment.

4.3 Complaints against trustees

All complaints concerning a trustee must be made to the Peel Board Integrity Commissioner.

4.4 Support and/or representation in making a complaint

Any person involved in the complaint resolution process may seek assistance, support, or representation from any other person such as a support person or union representative.

4.5 How to make a complaint to the HRCO

Where a person believes that an infringement of Human Rights Policy 51 has occurred, they may ask the HRCO for a confidential consultation. Complainants may also make a complaint to the HRCO.

4.6 Timeframe to consult with HRCO

The HRCO will arrange a meeting about a complaint within 7 days of receiving a completed HRCO Complaint Form. If support is required in completing the form, accommodations may be requested.

4.7 1 Year to Complain

Complaints to the HRCO must be made within 1 year after the incident to which the complaint relates or if there is a series of incidents within 1 year after the last of the series. The 1 year time limit may be waived in the HRCO's discretion if it is satisfied that the delay was incurred in good faith and that no substantial prejudice will result to any person affected by the delay.

CONFIDENTIALITY

5.1 Ensuring confidentiality

Confidentiality is important. In accordance with the *Municipal Freedom of Information and Protection of Privacy Act* or other applicable legislation, every attempt will be made throughout the complaint resolution process to respect the confidentiality and personal rights of all parties to the complaint and confidentiality will be maintained at all times unless legal obligations require disclosure of information.

5.2 Involved parties to maintain confidentiality

Any individual making a complaint should not discuss the matter anyone other than the appropriate parties. Those involved in dealing with the complaint will make every effort to maintain confidentiality of information and will disclose only where absolutely necessary. Information obtained about a complaint (including identifying information about any individuals

involved) will not be disclosed unless the disclosure is necessary for the purposes of resolving and/or investigating the complaint, or is otherwise required by law.

5.3 Disclosure of information

Wherever possible, the complainant will be consulted before any disclosure of information is made. The importance of confidentiality will be stressed to all those involved in an investigation and everyone will be strictly required not to discuss the complaint with others.

5.4 Confidentiality is not anonymity

Confidentiality does not mean anonymity. When acting on a complaint, a fundamental principle is that the respondent must be informed of who has made the allegations, and the specific nature of the allegations at the earliest possible point in the process.

PRELIMINARY THRESHOLD ASSESSMENT

6.1 General

Upon receipt of a complaint alleging discrimination, harassment, and/or reprisal the HRCO will initiate a preliminary threshold assessment to determine if the complaint is based on any of the protected grounds under Human Rights Policy 51 and within the mandate of the HRCO and whether it is appropriate for the complaint to proceed at that time. The threshold assessment determines if the complaint involves a social area and shows a link between the unequal treatment creating disadvantage and a protected ground.

6.2 HRCO preliminary threshold assessment

The HRCO shall determine whether:

- (a) the complaint meets the threshold and falls under Human Rights Policy 51, in which case, the complaint will proceed; or,
- (b) the complaint does not meet the threshold and does not fall under Human Rights Policy 51, in which case, the complaint will not proceed.

6.3 Consideration of other complaint processes

A complaint may not proceed if the subject-matter of the complaint is raised in an alternate forum such as a grievance and/or arbitration or an application to the Human Rights Tribunal of Ontario.

6.4 HRCO communication of preliminary threshold assessment decision

The HRCO will communicate its preliminary threshold assessment decision in writing to the complainant if it determines that a complaint does not meet the threshold as set out under 6.2 above, or that it is not appropriate for the complaint to proceed at that time because its subject-matter is raised in a complaint that has been filed in an alternate forum under 6.3 above.

6.5 Making a reconsideration request of preliminary threshold assessment decision

If the complainant disagrees with the HRCO's preliminary threshold assessment decision, the complainant may make a reconsideration request in writing to the HRCO by completing the HRCO Reconsideration of a Preliminary Threshold Assessment Decision Form. A reconsideration request must be in writing and sent to the HRCO within 30 days from the date the HRCO communicated its preliminary threshold assessment decision to the complainant. The time to file a reconsideration request may be extended at the discretion of the HRCO in appropriate circumstances.

6.6 Basis for granting a reconsideration request

The granting of a reconsideration request is limited to cases where the HRCO is satisfied that:

- (a) there was procedural unfairness underlying the preliminary threshold assessment decision; or,
- (b) there are new facts or evidence that could impact on the preliminary threshold assessment decision and that could not have been reasonably obtained earlier.

6.7 Reconsideration not based on factual disputes

The HRCO will not reconsider decisions based solely on a disagreement with the factual conclusions drawn by the HRCO.

6.8 Reconsideration request decision

The HRCO shall determine the reconsideration request as follows:

- (a) the reconsideration request is granted and the complaint proceeds; or
- (b) the reconsideration request is denied and the complaint does not proceed.

6.9 Reconsideration decision is final

The HRCO's reconsideration request decision is final.

INFORMAL RESOLUTION

7.1 Informing respondent of complaint

As set out above, the HRCO will contact the complainant to review and discuss the allegation(s) in the complaint in order to perform a preliminary threshold assessment. If the complaint meets the threshold and continues in the complaints process, the HRCO will then inform the respondent of the allegations by either providing the respondent with a copy of the complaint or a summary of the allegations. The respondent will be given 14 calendar days to answer/respond to the allegations. The time for a respondent to answer/respond may be extended at the discretion of the HRCO in appropriate circumstances.

7.2 Informal resolution if parties consent

Where the HRCO has reason to believe that the complaint could be remedied by an informal resolution, the HRCO may ask both the complainant and the respondent to engage in an informal resolution process. If the parties agree to informal resolution, the HRCO will make efforts to resolve the complaint applying restorative practices.

7.3 If no informal resolution, complaint moves to investigation

If the parties do not agree to informal resolution or the complaint is not resolved through informal resolution, the complaint will move to an investigation by the HRCO.

INTERIM MEASURES

8.1 Recommendation for interim measures if appropriate

There may be situations where it is appropriate for the HRCO to recommend interim measures. All HRCO recommendation(s) for interim measures shall be made to the Director of Education who will take all reasonable and necessary action.

MEDIATION

9.1 Mediation offered throughout the complaint process

At any time throughout the complaint process the complainant or respondent may request mediation or the HRCO may offer mediation of the complaint. If all parties are in agreement, mediation may be conducted on a without prejudice and “off the record” basis by the HRCO or a designate of the HRCO. Without prejudice and “off the record” mediation means nothing that is

said by any party in the course of the mediation may be used against them should the mediation not be successful and an informal resolution or formal investigation resumes.

INVESTIGATION AND RESOLUTION

10.1 HRCO to investigate

If the parties do not agree to an informal resolution or the informal resolution process does not resolve the complaint, the HRCO will conduct an investigation. The HRCO may assign an internal or external designate to investigate any written complaints filed under Human Rights Policy 51 (“HRCO investigator”).

10.2 Investigation process

The HRCO investigator may:

- determine the scope and method of the investigation;
- interview/re-interview the complainant and the respondent;
- interview witnesses suggested by the parties;
- interview other witnesses who may provide relevant information for the investigation;
- gather evidence and request the production of documents or things that may be relevant to the investigation; and/or,
- request written statements.

10.3 Support and/or representation during investigation

Anyone interviewed for the investigation may be accompanied by a support person and/or union representative in accordance with the applicable collective agreement provisions.

10.4 Record of interviews

The HRCO investigator will keep records of all interviews.

10.5 Complainant’s right to withdraw complaint

A complainant may withdraw a complaint at any time. Where the complainant chooses not to pursue his or her complaint but the Board is still obligated to investigate the allegations, the respondent will be advised and the complainant will then be referred to and treated as a witness.

10.6 HRCO termination of investigation

The HRCO investigator may terminate the investigation at any point if the HRCO investigator concludes that the complaint is untimely and it is not appropriate to waive the 1 year time limit,

or the complaint has no reasonable prospect of establishing discrimination, harassment, or reprisal under Human Rights Policy 51.

10.7 Standard of proof

The standard of proof applied in an HRCO investigation is the civil standard of a balance of probabilities. This means that an allegation(s) is supported if the evidence and information provided to the HRCO investigator shows that it was more likely than not that it occurred.

10.8 Communication of HRCO investigation findings to complainant and respondent

The HRCO investigator may contact the complainant and the respondent, separately, along with their respective representatives, if any, to verbally review the HRCO investigator's findings. The HRCO investigator may, in his or her discretion, invite the complainant and respondent to comment on the HRCO investigator's findings prior to rendering the HRCO's final outcome decision. Upon completion of the HRCO's investigation, the HRCO will provide the complainant and the respondent with a copy of the HRCO's investigative report.

➤ If complaint is supported by the evidence

Where the complaint is supported and established, the HRCO will determine what action is appropriate, make a recommendation(s) to the Director of Education about appropriate remedial action, and advise both the complainant and the respondent of the final outcome decision and recommendation(s) in writing.

➤ If complaint is not supported by the evidence

Where the complaint is not supported by the evidence and not established, the HRCO will send a letter confirming its outcome decision to the complainant and the respondent.

RECONSIDERATION REQUEST PROCESS OF OUTCOME DECISION

11.1 Making a reconsideration request of the outcome decision

If the complainant or respondent is not satisfied with the HRCO's outcome decision, either party has the right to request a reconsideration to the HRCO. To request a reconsideration, the complainant or respondent must submit an HRCO Reconsideration of Outcome Decision Form including the reasons for questioning the outcome decision, along with any additional relevant evidence, within 30 calendar days of the date of the HRCO's decision. The time to request a reconsideration may be extended at the discretion of the HRCO in appropriate circumstances. A request for reconsideration received by the HRCO will be forwarded to the other party. The HRCO may request input from the other party in response to the request for reconsideration.

11.2 Basis for granting a reconsideration request

The granting of a reconsideration request is limited to cases where the HRCO is satisfied that:

- (a) there was procedural unfairness underlying the outcome decision;
- (b) there are new facts or evidence that could impact on the outcome decision and that could not have been reasonably obtained earlier;
- (c) the outcome decision is not in line with Board policies or practices; or
- (d) there are other factors that impact on the outcome decision that outweigh the finality of the outcome decision.

11.3 Reconsideration not based on factual disputes

The HRCO will not reconsider outcome decisions based solely on a disagreement with the factual conclusions drawn by HRCO investigator.

11.4 Reconsideration request decision

If a reconsideration request is granted, the HRCO may:

- (a) affirm the original outcome decision;
- (b) vary but affirm the overall outcome decision; or,
- (c) amend the outcome decision.

11.5 Reconsideration decision is final

The HRCO's reconsideration request decision is final.

FILE RETENTION

12.1 Documents kept by HRCO

The HRCO will keep a record of any notes of meetings and interviews, correspondence, results of any investigation, and other relevant material, securely stored in a separate file. Access to the investigation file is restricted to HRCO employees responsible for the investigation and/or resolution of the complaint. Once the investigation is complete, the investigation file will be kept electronically or in hard copy at the HRCO's discretion.

12.2 Retention of documents by HRCO

All documentation will be kept for 15 years. At the end of that period, the HRCO will determine whether the documentation should be retained for a longer period or disposed of. Any file which

is retained will be reviewed, and a decision regarding retention or dispose made at least every 6 years after its initial retention.