



HUMAN RIGHTS POLICY: COMPETING RIGHTS¹ PROCEDURES & GUIDELINES			
--	--	--	--

Procedure Type:	Management	Initially Approved:	June 2013
Procedure Sponsor:	VP, Student Affairs and Campus Life	Last Revised:	June 2013
Administrative Responsibility:	Diversity and Human Rights Services	Review Scheduled:	April 2018
Approver:	President's Executive Committee		

¹ These guidelines are based, with permission, on the Ontario Human Rights Commission's Policy on Competing Rights. It was developed based on international Human Rights principles, case law, social science research and consultation with community partners and stakeholders. The framework has been recognized by the Supreme Court of Canada.

A. INTRODUCTION

Mount Royal is committed to creating a supporting working and learning environment that is free from Discrimination and Harassment. In Mount Royal's increasingly diverse and complex community, individuals and groups may encounter situations of tension and conflict when they try to enjoy or exercise their rights, Interests or Values. At times, these rights, Interests or Values may be in conflict, or may appear to be in conflict, with other rights, Interests or Values. Depending on the circumstances, for example, the right to be free from Discrimination based on religion or sexual orientation or gender may be at odds with each other or with other rights, laws and practices. How do you resolve a situation where a professor's guide dog causes a severe allergic reaction in a student?

The courts have said we must go through a process on a case-by-case basis to search for solutions to attempt to reconcile Competing Rights and accommodate individuals and groups. This pursuit can be challenging, controversial and sometimes dissatisfying to one side or the other. It is the responsibility of all members of the Mount Royal community to make efforts to better understand the nature of one another's rights and obligations and demonstrate mutual respect for the dignity and worth of all.

These guidelines and procedures set out a process to analyze and reconcile Competing Rights that emphasizes specific objectives and considerations. For example, everyone involved should:

- Respect one another's dignity.
- Encourage mutual recognition of Interests, rights and obligations.
- Facilitate maximum recognition of rights, wherever possible.
- Help parties to understand the scope of their rights and obligations.
- Address stigma and power imbalances and help to give marginalized individuals and groups a voice.

- Encourage cooperation and shared responsibility for finding agreeable solutions that maximize enjoyment of rights.

There are many situations in which rights, Interests and Values seem to conflict or compete. When evaluating situations of Competing Rights, Human Rights and other legal rights will usually hold a higher status than Interests and Values. In some circumstances, Interests and Values may represent reasonable limits on rights.

B. PROCEDURES

1. PRINCIPLES

- 1.1 No rights are absolute. Rights must be interpreted contextually and be balanced against the rights of others.
- 1.2 There is no hierarchy of human or Charter rights. When the protected rights of two individuals or groups come into conflict a balance must be achieved that fully respects the importance of both sets of rights.
- 1.3 Rights may not extend as far as claimed. For example "customer preference" or "business or economic Interests" are not considered a valid competing right involving Discrimination under Human Rights legislation.
- 1.4 The full context, facts and constitutional Values at stake must be considered. This includes a balancing of individual and group rights and recognition of society's underlying Values on Human Rights and equality. Mount Royal recognizes the variety of rights enjoyed by members of the campus community, including rights unique to the campus environment, such as academic freedom. Notwithstanding the range of Values and Interests held by members of our community, international conventions, the Canadian Charter of Rights and Freedoms, provincial Human Rights legislation and legal decisions all recognize the paramount importance and unique status of Human Rights. In all cases, the rights of individuals as protected by the Alberta Human Rights Act, the Mount Royal Personal Harassment policy and/or the Human Rights Policy are superordinate to other rights and freedoms in the campus community. Academic freedom does not imply the right to engage in any action that demeans the freedom or dignity of other individuals in the campus community.
- 1.5 The extent of interference must be considered (only actual burdens on rights trigger conflicts). If the interference is minor or trivial, the right is not likely to receive much, in any, protection. Speculation that a rights violation may occur is not enough -- there must be evidence, and not just an unsupported assumption, that the enjoyment of one right will have a harmful effect on another.
- 1.6 The core of a right is more protected than its periphery. The private exercise of a right is generally given more protection than the public exercise of a right.
- 1.7 Aim to respect the importance of both sets of rights.
- 1.8 Statutory defences may restrict rights of one group and give rights to another. Human Rights and constitutional laws contain exceptions that allow differential treatment in certain circumstances.
- 1.9 As in non-Competing Rights situations, efforts at informal resolution will normally be made before a formal process is initiated.

2. PROCEDURES FOR HANDLING COMPLAINTS

2.1 Informal Procedure

- a. Many Competing Rights situations can be resolved quickly through an informal process. Individuals or parties who have a concern related to Competing Rights may take any of the following actions:
 - i. Express concerns immediately and directly to the individual or party related to the Competing Rights situation in an attempt to directly resolve the issue;
 - ii. Report the situation to Diversity and Human Rights Services; and/or,
 - iii. Report the situation to the Confidence Line.
- b. Upon receiving an inquiry or Complaint, Diversity and Human Rights Services shall arrange a meeting with the individual(s) or party/ies as soon as possible to:
 - i. Hear the concern.
 - ii. Provide the individual(s) or party/ies with a copy of Mount Royal's Policy and these guidelines.
 - iii. Explain the policy and the framework for resolving Competing Rights.
 - iv. Identify and explain the formal and informal options available to the Complainant for resolution.
 - v. Present the Confidentiality and Protection of Privacy Notice, and the Informed Notice and Consent Forms.
- c. A representative of Diversity and Human Rights Services will facilitate a process between the individuals or parties to explore a possible resolution to the conflict.
- d. When necessary, the representative of Diversity and Human Rights Services may provide relevant information concerning a Complaint to appropriate Mount Royal officials. Anyone receiving such information shall be informed of the Confidentiality and Protection of Privacy Notice provisions of the Human Rights Policy.
- e. Meeting individuals outside of Mount Royal is discouraged. All meetings should be held on campus (at the discretion of the Diversity and Human Rights Advisor). However, if an off campus meeting is held, a second individual, as appointed by the Diversity and Human Rights Advisor, must be present.
- f. If, in the opinion of the Diversity and Human Rights Advisor, all attempts at informal resolution have failed or are deemed to be inappropriate, the Complaint may be raised to the formal procedure.

2.2 Formal Procedure

- a. If the conflict is referred to the formal procedure, the Diversity and Human Rights Advisor will refer the issue to the Vice-President, Student Affairs and Campus Life.
- b. The Vice-President, Student Affairs and Campus Life will ensure the framework for addressing Competing Rights situations, as laid out in these guidelines, is followed. The Vice-President, Student Affairs and Campus Life may delegate the process to any individual or individuals as s/he deems appropriate.
- c. All relevant parties will be informed in writing of the decision.

3. FRAMEWORK FOR ADDRESSING COMPETING RIGHTS SITUATIONS

3.1 Stage One: Recognizing Competing Rights Claims

- a. Step 1: What are the claims about?

Parties should include facts, their perceptions about what happened, and views about the potential rights, Values and/or Interests that may underlie the situation.

"Hearing directly from the people affected is crucial to developing effective and responsive ways to resolve tensions between or among rights claims. Those who experience a denial of their rights have a unique perspective on why that is the case and appropriate remedies."² - Patricia Hughes

- b. Step 2: Do claims connect to legitimate rights?
 - i. Do claims involve individuals or groups rather than operational Interests?

Organizations must distinguish between claims that solely affect business operations from competing claims that affect the rights of other individuals and groups. Claims that affect business operations alone are properly considered within the scope of the duty to accommodate and are not competing Human Rights claims. A request for accommodation may turn out to be a Competing Rights situation if, while dealing with the accommodation request, it turns out that the rights of another person or group might also be affected.

- ii. Do claims connect to Human Rights or other Legal Entitlements?
 - iii. Do claims fall within the scope of the right when defined in context?

For example, breadth of the right to freedom of expression as it relates to communicating offensive language will vary depending on the context. For example, in media commentary, the right might be interpreted very broadly, but in a classroom or workplace it may be interpreted more narrowly.

- c. Step 3: Do claims amount to more than minimal interference with rights?
 - i. There is no conflict unless there is sufficient interference with, burden or intrusion on a right. Where the impact on one right is minimal or insignificant, that right must give way to the other.³
 - ii. If there is a substantial interference with the rights in question, continue to Stage 2.

3.2 Stage Two: Reconciling Competing Rights Claims

Reconciliation is a process for exploring options to reduce or eliminate interference and allow full or at least "substantial" exercise of the rights of all parties within the given context. Often, reconciliation will involve changing conditions or adjusting how one or both parties enjoy their rights. This may look like a multi-party Human Rights accommodation process involving secondary changes such as altering schedules, working conditions, activity locations and so on.

- a. Step 4: Is there a solution that allows enjoyment of each right?
- b. Step 5: If not, is there a "next best" solution?
 - i. If the reconciliation process does not lead to an ideal solution, there is still a duty to explore options that least impair or compromise a right.
 - ii. Consider principles together with the full context in mind.
 - iii. Any limitation of a right should consider Human Rights Values, including respect for human dignity, inclusion of all, community and social harmony and the collective Interests of minority or marginalized groups.

3.3 Stage Three: Making Decisions

- a. Decisions must be consistent with Human Rights and other laws, court decisions, Human Rights principles and have regard for Mount Royal University policy.
- b. All parties have a shared responsibility to act in good faith, show dignity and find solutions for everyone involved.
- c. Where a situation is particularly complex or contentious, it may be appropriate to consult legal counsel.
- d. At least one claim must fall under the Alberta Human Rights Act to be actionable at the Alberta Human Rights Commission.

4. APPEAL PROCESS

Decisions made by the Vice-President, Student Affairs and Campus Life are final and binding.

C. DEFINITIONS

- (1) **Competing Rights:** Competing Human Rights involve situations where parties to a dispute claim that the enjoyment of an individual or group's Human Rights and freedoms, as protected under the Alberta Human Rights Act (the Act) and the Mount Royal Human Rights Policy, would interfere with another's rights and freedoms. This complicates the normal approach to resolving a Human Rights dispute where only one side claims a Human Rights violation. In some cases, only one party is making a Human Rights claim, but the claim conflicts with the Legal Entitlements of another party or parties.

While many situations may at first appear to involve Competing Rights, one must recognize that not all claims will be equal before the law; some claims have been afforded a higher legal status and greater protection than others. For example, international conventions, the Canadian Charter of Rights and Freedoms, provincial Human Rights legislation and legal decisions all recognize the paramount importance and unique status of Human Rights.

Other non-Human Rights-related rights may also be protected in legislation, but may not have the same status as Human Rights. Claims may also be based on Interests or Values held by individuals or groups. While there are many situations in which rights, Interests and Values may seem to conflict or compete, when evaluating situations of Competing Rights, Human Rights and other legally codified rights will usually hold a higher status than Interests and Values. These guidelines are meant mainly to be a tool for resolving situations where there is a conflict of Human Rights and rights that are legally protected.

- (2) **Examples of Competing Rights Situations:** A competing Human Rights situation exists when legally protected rights are present in both claims, and at least one of the claims connects to Human Rights law. Based on this definition, allegations of competing Human Rights scenarios might include:

a. Human Right v. Human Right: Related to any of the Alberta Human Rights Act's 13 protected grounds; the competing grounds could involve the same or different grounds.

Example: A professor's guide dog is affecting one of her students, who has a severe allergy to dogs. Both individuals might make Human Rights claims on the ground of a physical disability.

b. Human Right v. other legislated right: Related to any of the Act's 13 protected grounds and a right conferred by an act of a provincial legislature or federal parliament.

Example: A student makes a recording of a classroom lecture and discussion as an academic accommodation

related to her/his disability. A classmate claims his/her privacy rights under FOIP are infringed as a result of the recording.

c. Charter Right v. Charter right: Related to the rights and freedoms protected under the Charter.

Example: A religious-based college refuses to allow a pro-choice group onto its campus. The college claims its freedom in religion, as protected by the Charter, while the group claims its freedom of expression, also protected by the Charter.

(3) Human Rights:

Human Rights are inalienable, indivisible, universal entitlements codified in international and domestic law. In Canada, they are protected and interpreted through:

a. The Canadian Charter of Rights and Freedoms (Charter)..

b. Provincial-territorial Human Rights legislation (e.g., Alberta Human Rights Act).

c. Decisions of tribunals and courts.

d. Human Rights commission policy statements, interventions and other mandated functions.

e. International law/instruments (ratified treaties, treaty body comments/ decisions, international and other jurisdictional court decisions).

(4) Interests:

An Interest is a matter in which someone has a personal concern, share, portion or stake. Interests may be a societal and/or individual. Although Interests are not legal rights, they are sometimes misunderstood and misclassified as such. In some cases, an Interest could be elevated to the status of a right, if it is validated by a legal body. For example, a court or tribunal could find that an Interest is bona fide (genuine) and reasonable in the circumstances: "the best Interest of the child" have been given a high legal status and used by courts and tribunals to determine a wide range of issues involving children.

(5) Legal Entitlements:

For the purposes of these guidelines, Legal Entitlements are non-Human Rights-related rights that are also codified in legislation (e.g., Occupational Health and Safety Act; Freedom of Information and Protection of Privacy Act).

(6) Policy:

means the Human Rights Policy

(7) Values:

Values are moral principles, standards and/or things that a person (or group) believes are vital for achieving "the good" or excellence in any sphere of life. Generally, Values are subjective and not legally actionable in and of themselves. Understanding the individual or social Values that may

underlie a Human Rights claim will help parties and may inform its ultimate disposition.

(8) University: means Mount Royal University

D. RELATED POLICIES

- Academic Accommodation for Students Experiencing Disabilities Policy
- Code of Conduct Policy
- Code of Student Conduct Policy
- Human Rights Policy
- Offensive/Discriminatory Materials Policy
- Personal Harassment Policy
- Safe Disclosure Policy
- Universal Access Policy

E. RELATED LEGISLATION

- *Alberta Freedom of Information and Protection of Privacy Act*
- *Alberta Health Information Act*
- *Alberta Human Rights Act*
- *Alberta Occupational Health and Safety Act*
- *Canadian Charter of Rights and Freedoms*

F. RELATED DOCUMENTS

- Academic Accommodation for Students Experiencing Disabilities Procedures
- Appendix 1 - Academic Accommodation for Students Experiencing Disabilities Policy: Authority for Academic Accommodation Decisions
- Appendix 2 - Academic Accommodation for Students Experiencing Disabilities Policy: Examples of Academic Accommodations by Type and Level
- Appendix 3 - Academic Accommodation for Students Experiencing Disabilities Policy: Flowchart – Faculty/Instructional Staff Receiving Accommodation Request
- Appendix 4 - Academic Accommodation for Students Experiencing Disabilities Policy: Flowchart – Student Requesting Accommodation
- Appendix 5 - Academic Accommodation for Students Experiencing Disabilities Policy: Sample of a Course Syllabus Statement
- Human Rights Policy: Guidelines and Procedures for Handling Complaints
- Appendix 1 - Human Rights Policy: Definitions for the Thirteen Grounds for Discrimination or Harassment Based on the Definitions Provided by the Alberta Human Rights Commission
- Appendix 2 - Human Rights Policy: Confidential and Protection of Privacy Notice
- Appendix 3 - Human Rights Policy: Informed Notice
- Appendix 4 - Human Rights Policy: Code of Personal Conduct
- Appendix 5 - Human Rights Policy: Human Rights Complaint Form
- Appendix 6 - Human Rights Policy: Competing Rights Framework
- Appendix 7 - Human Rights Policy: Flow Chart for Competing Rights Conciliation
- Collective Agreement between the Board of Governors of Mount Royal University and the Mount Royal Faculty Association
- Collective Agreement between the Board of Governors of Mount Royal University and the Mount Royal Staff Association

- Offensive/Discriminatory Materials Policy: Handling Offensive/Discriminatory Complaints Procedures

G. REVISION HISTORY

Date (mm,dd,yyyy)	Description of Change	Sections	Author (Position Title)	Approver (Position Title)
06/2013	NEW			

² Patricia Hughes, "Competing Rights Policy: The Law Commission of Ontario Approach," *Canadian Diversity*, Volume 8:3, Summer 2012 at 54

³ *Syndicat Northcrest v. Amselem*, 2004 SCC 47, note 16 at para. 84; *Bruker v. Marcovitz*, [2007] 3 S.C.R. 607, note 52.