

## **PREVENTION OF HARASSMENT AND DISCRIMINATION IN THE WORKPLACE POLICY**

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### **PRINCIPLES**

- 1.1 The purpose of this policy is to provide and maintain a cooperative and professional work environment where all XXX staff, students, volunteers and Board members have the opportunity to contribute to their maximum potential. Workplace harassment, expressions of hate and other discriminatory behaviour are contrary to the achievement of this goal and are strictly prohibited. This policy is one step toward ensuring that our workplace is harmonious, safe and productive. It is the result of a collective effort of Board and staff.
- 1.2 XXX believes that the diversity of our country is a source of social, cultural and economic enrichment and strength and wishes to provide a climate of understanding and mutual respect for the dignity and worth of each individual. As an equity seeking organization, XXX seeks to provide for equal rights and opportunities without discrimination.
- 1.3 XXX will not practice any form of discrimination or harassment, and will protect the right of all persons to be free of hate activity, by or within the organization, based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, disability or perceived disability, sex [including pregnancy], sexual orientation, same-sex partnership status, gender identity, age, marital status, family status, receipt of public assistance, and record of offences. Individuals also have the right to be free from personal harassment in the workplace.
- 1.4 XXX will also not discriminate against or harass anyone because of his or her relationship, association or dealings with a person or persons identified in any of the above prohibited grounds.
- 1.5 This policy applies to all XXX Board members, staff, students, and volunteers with respect to any complaint of discrimination and harassment in the workplace, including contacts with Board Members. This policy includes work-related activities or events that occur outside of normal business hours or off business premises.
- 1.6 It is everyone's responsibility to raise concerns about and resolve all possible discrimination and harassment. It is everyone's responsibility to not ignore or condone potential discrimination or harassment.
- 1.7 As the employer, it is the responsibility of XXX to ensure that XXX is a workplace free of discrimination, harassment, or hate activity. Staff found

to be in contravention of this policy may be subject to disciplinary action up to and including termination of employment. Parallel appropriate steps may be taken with respect to students, volunteers and Board members who contravene this policy.

- 1.8 XXX has the duty to accommodate individuals up to the point of undue hardship, which shall be interpreted in the context of relevant jurisprudence applicable to Ontario workplaces and services.
- 1.9 In addition to the mechanisms set out in this policy, complainants may also use other avenues of recourse, such as the right to contact the Discrimination & Harassment Counsel, the right to file a complaint with the Ontario Human Rights Commission; or, where appropriate, the right to lay an information under the *Criminal Code*; Please note that a complaint to the Commission must be filed within 6 months from the last date of the incident on which a complaint is based. XXX may also take disciplinary action if a complaint made against a staff, student, volunteer or Board member pursuant to the Ontario Human Rights Code is successful.
- 1.10 Nothing in this policy detracts from the Executive Director's authority to otherwise manage the workplace, including appropriate disciplinary action.

## DEFINITIONS

- 2.1 **Harassment** is a course of vexatious comment or conduct that is known, or ought reasonably to be known to be unwelcome.

Despite the foregoing, there may be circumstances where a single incident is serious enough to amount to harassment.

- 2.2 Harassment based on any of the protected grounds sometimes appears as a **poisoned work environment** which is usually defined as comments or conduct that tend to demean a group covered by a protected ground, even if not directed at a specific individual. It describes a situation where offensive behaviour poisons the workplace.

A **poisonous work environment** may arise where there are instances of harassment by anonymous employees; or where no single perpetrator carried out a course of harassing conduct; or, where a member of the protected group against which the harassment is directed is not personally harassed. In any of these circumstances, an employee may invoke this policy and file a complaint.

- 2.3 **Discrimination** includes the act of making a distinction against a person based on the group, class or category, to which that person belongs,

rather than on individual merit. For the purposes of this policy, discrimination exists where distinctions are drawn on the protected grounds set out herein. Discrimination can happen even where the person did not intend it.

**Discrimination** means a distinction, whether intentional or not, but based on a protected ground, which has the effect of imposing burdens, obligations, or disadvantages on such individual or groups not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.

In order to have discriminatory behaviour, the effect has to be a burden, obligation or disadvantage. If the distinction is in favour of individuals, it is usually an affirmative action program and legal under the Human Rights Code.

- 2.4 **Constructive discrimination** occurs where a requirement, qualification or factor exists that, on its face, appears neutral, but in practice serves to exclude or restrict to a person or a group of persons identified by a prohibited ground of discrimination.
- 2.5 **Adverse effect discrimination** means that an employer, for genuine business reasons, adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties or restrictive conditions not imposed on other members of the work force.
- 2.6 **Systemic discrimination** means practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics.
- 2.7 **Personal harassment** includes: offensive comments or actions, which demeans an individual, cause personal humiliation and/or threaten the economic livelihood of the individual. Personal harassment does not have to be related to the grounds prescribed under the Ontario Human Rights Code.

## **XXX'S COMMITMENT TO A HARASSMENT-FREE AND DISCRIMINATION-FREE ENVIRONMENT**

- 3.1 A copy of this policy is to be given to all current and future staff, students, volunteers and Board Members as part of the XXX orientation process. All persons receiving a copy of this policy will be required to familiarize themselves with the contents and process set out in this policy.
- 3.2 Within three months of its adoption, all current staff shall be provided with a training day on the meaning of discrimination, harassment and hate activity and the responsibilities and rights under this policy. Current Board members will receive similar training.<sup>i</sup>
- 3.3 XXX shall monitor and review the effectiveness of this policy and its procedures by consulting with staff, students, volunteers and Board members and shall revise the policy where doing so will result in a more effective policy. This is to occur within six months from its adoption date and on an annual basis subsequently. The policy is to be monitored to address any changes in corporate structure or legislation, etc. that may have an impact on it.
- 3.4 XXX shall not take reprisal action or threaten reprisal action against any one because they have rejected harassment, they have complained under this policy or they have provided information regarding a complaint. An individual alleging a reprisal shall bring the allegation immediately to the attention of the Personnel Committee of the Board of Directors. XXX acting on an allegation of discrimination or harassment does not constitute reprisal.
- 3.5 The mechanisms set out in this policy are developed in order that an individual's concern about harassment, discrimination, or hate activity will be dealt with in an effective, speedy and fair manner. The situations that may give rise to complaints vary widely. As a result, each situation will be assessed on a case-by-case basis. Management will assess each situation and consider its seriousness, the potential for informal resolution and the necessity to take immediate action.
- 3.6 The Notes attached to this policy are intended to assist a person to document and formulate his or her complaint. They are not part of the policy itself, but serve as a guide.

## **COMPLAINT PROCESS - GENERAL**

- 4.1 There are various steps to attempt to resolve complaints under this policy:
- 4.2 The timelines set out may be abridged or extended on consent of those involved.
- 4.3 Advisors:

- a) A person who believes that he or she is experiencing discrimination or harassment may at any time contact the Discrimination & Harassment Counsel of the Law Society of Upper Canada for advice.
- b) A person against whom an allegation of discrimination or harassment has been made may contact an advisor as appointed by the Board of Directors.

Advisors are in place to assist all staff by,

- answering questions;
- explaining any aspect of the policy;
- outlining options for remedy;
- helping staff and members of XXX with the implementation of a remedy; and
- helping staff or members of XXX document a complaint for investigation.

Advisors are advocates for a workplace free of harassment and discrimination - they are not advocates for an individual. Advisors maintain confidentiality to the extent practicable and appropriate under the circumstances. They are not investigators under the policy nor are they decision-makers.

A designated Advisor may be a staff member of the clinic or the clinic may wish to designate the Discrimination and Harassment Counsel of the Law Society of Upper Canada as Advisor.

#### Step 1 – Informal Resolution

4.4 Wherever possible, individuals experiencing discrimination and/or harassment should take the following actions:

- Inform the person (in writing, by e-mail, telephone, fax or in person) who is harassing or discriminating against them, that his/her behaviour and/or action is unwelcome and should stop. Often this will resolve the situation.
- Keep a record of the incident, including the time, location, people present, etc.

At this stage, there is not technically a complaint so that there is not a formal record of the informal attempt at resolution.

Advisors are in place to assist all staff by answering questions and explaining any aspect of the policy.

#### Step 2 – Formal Resolution

Individuals should consult with advisors, if necessary, for assistance in resolving issues of harassment and discrimination of any employee or member of XXX. This may include speaking to another employee or member of XXX on behalf of a complainant or respondent, facilitating a solution, between two or more affected parties or assisting a complainant or a respondent through an investigation. Advice provided by Advisors is not and should not be considered as legal advice.

Advisors are in place to assist all staff by outlining options for remedy, helping staff and members of XXX with the implementation of a remedy and helping staff or members of XXX document a complaint for investigation.

- 4.5 Where attempts to achieve an informal resolution of the problem are unsuccessful or where the individual feels unable to bring the matter directly to the attention of the alleged respondent, a formal complaint may be filed.
- 4.6 If the complainant is concerned about the conduct of a member of staff, a Board Member, a student or a volunteer, he or she shall promptly make an oral or written complaint to his or her own supervisor or the executive director. A written statement of complaint must follow an oral complaint. If the complainant is the executive director, then he or she shall promptly make a written complaint to the Personnel Committee.
- 4.7 If the complaint is against the executive director, section 7 applies.
- 4.8 If the complaint is against a Board member, section 8 applies.
- 4.9 If the complaint is first raised with a supervisor, then the supervisor shall notify the executive director forthwith.
- 4.10 The executive director shall promptly interview the complainant to document the details of the complaint, what remedy the complainant is seeking and what process under this policy the complainant wishes to pursue. The executive director shall then interview the respondent to document his or her perspective of the events and ascertain what process under this policy he or she wishes to pursue. The respondent shall be provided with a copy of the policy, the complaint and be given an opportunity to respond in writing. The executive director may delegate these interviews to the supervisor.

## Step 2 - Formal Resolution through Mediation

- 5.1 If the executive director and the parties consider that mediation is appropriate, the executive director, or designate, shall ascertain whether the parties prefer an internal or an external mediation process. If they do not agree, then the mediation will be external. Mediation can be arranged prior to, or during an investigation.

- 5.2 If the parties opt for an internal mediation process, they must also agree whether the supervisor or the executive director shall conduct the mediation. If they do not agree, then the mediation will be external.
- 5.3 A neutral, trained mediator selected by the executive director shall conduct an external mediation process on behalf of XXX. This mediator may volunteer his or her services or be paid by XXX to conduct the mediation.
- 5.4 External mediation may also be utilized if the matter was not resolved at the internal mediation and the internal mediator, as well as the parties, believes that an external mediation has a strong likelihood of success.
- 5.5 The outcome of the mediation shall be reported to the executive director.
- 5.6 Where an agreement is reached through the mediation process a written statement shall be prepared. This statement shall contain details of the complaint, the response of the respondent, the agreed upon outcome and a mechanism to ensure appropriate implementation of the outcome. It must be signed by the complainant, the respondent, the mediator and the executive director. A copy of the statement of resolution shall be placed on the respondent's personnel file.
- 5.7 If a satisfactory resolution cannot be reached, an investigation will be conducted.

### Step 3 – Formal Resolution Through Investigation

- 6.1 If the executive director decides that mediation is not appropriate, or, if mediation did not result in a satisfactory resolution, then an investigation of the complaint may be conducted. The investigation may be conducted by the executive director or by an external investigator.
- 6.2 If the executive director conducts the investigation, he or she shall do so promptly and decide whether or not the complaint is upheld or dismissed and shall implement what remedy or discipline he or she considers appropriate in the circumstances. If the executive director considers termination appropriate, he or she shall make that recommendation to the Board.
- 6.3 The executive director may decide to recommend to the Board that an external investigation is warranted based on his or her own assessment of the situation or in response to a request by the complainant that the investigation be conducted by an external investigator. In making this recommendation, the executive director shall not identify the parties to the Board but will outline the nature of the complaint and the steps taken so far. The Board shall make its decision as promptly as possible, but in any event, no later than three weeks after the request is made by the complainant.

- 6.4 If the executive director does not believe that the retention of an external investigator is warranted, he or she shall advise the parties of this decision and the complainant may ask the Personnel Committee of the Board of Directors to reconsider the request. If the Personnel Committee agrees that an external investigator should be retained it shall recommend such action to the Board, without revealing the identity of the parties.
- 6.5 If the Personnel Committee has carriage of the complaint process under section 7 of this policy and decides not to recommend an investigation, it shall advise the parties of this decision in writing and the complainant may ask the full Board of Directors to reconsider the request.
- 6.6 If there is to be an external investigator, he or she shall be an independent, neutral third party, who has expertise in human rights and investigations. The investigator will be contracted by XXX and the Board of Directors of XXX shall be the client. The external investigator is carrying out the investigation for the benefit of XXX to assist it with its obligations under this Policy.
- 6.7 Within 10 days of receiving the Board's authorization for an external investigator, the executive director shall retain an external investigator and let the parties know in writing who will be conducting the investigation.
- 6.8 Whether conducted by the executive director or an external investigator, the investigation will be conducted in confidence. Confidential interviews with relevant parties will be conducted to obtain information and clarify the details of the reported incident(s). Both parties will have an opportunity to identify witnesses or others to be interviewed. Where witnesses are not identified, co-workers and any other persons who may have information about the incidents may be interviewed. At their request, interviews of staff may occur off site.
- 6.9 The investigator shall deliver a full investigation report and an executive summary of it directly to the executive director within 60 calendar days. The full report will document the investigation, identify the witnesses and set out the reasons why the investigator has concluded whether the policy was or was not contravened. The investigator will not recommend specific remedies or penalties. The executive director shall ensure that the full report is kept in the strictest confidence, unless required by law. The executive summary will contain the conclusions of the investigation but not the details of the evidence or the reasons nor will it identify witness names.
- 6.10 The executive director will provide the parties with a copy of the executive summary of the report. They shall have 5 working days to submit a written response to the executive summary. The executive director shall then have 5 working days to decide what action to take, disciplinary or otherwise, if any. The executive director shall also provide a brief summary of the outcome of the

investigation and his or her response to the Board, for information purposes, unless 6.11 applies.

- 6.11 If the executive director decides that the investigation warrants that an employee be terminated, then the full report shall be presented to the Board, *in camera*, in order for the Board to consider the recommendation to terminate.
- 6.12 Parties may be represented during the investigation process.
- 6.13 Depending on the circumstances, the executive director may decide that it is necessary to separate the employee and the respondent physically and/or operationally until the investigation is completed. In making this determination every effort will be made to avoid a negative impact on the complainant.
- 6.14 A complaint made in bad faith is one that has absolutely no basis and is deliberately and maliciously filed. In the rare event that the mechanisms in this policy are abused, discipline may be imposed.

## **7. COMPLAINTS AGAINST THE EXECUTIVE DIRECTOR**

- 7.1 Where the complaint involves the conduct of the executive director, the concerned individual shall immediately report the incident to the Personnel Committee of the Board.
- 7.2 The Personnel Committee of the Board of Directors shall assume the responsibilities of the executive director under this policy and have carriage of the complaint process. The procedures and timelines apply to complaints against the executive director and the processes to be followed shall be the same as when the executive director has carriage of the complaint, with necessary changes.

## **8. COMPLAINTS AGAINST A BOARD MEMBER**

- 8.1 Where the complaint involves the conduct of a Board member, the complainant shall immediately report the incident to the executive director who shall forthwith advise the Personnel Committee of the Board. If the Board member against whom the allegation is made is on the Personnel Committee, then the complaint shall be made to the Executive Committee of the Board, who shall have carriage of the complaint. If the complaint is against a member of the Executive Committee then he or she shall not participate in discussions relating to the complaint, except as a respondent under this policy.
- 8.1 The Personnel Committee of the Board of Directors (or the Executive Committee) shall assume the responsibilities of the executive director under this policy. The procedures and timelines apply to complaints against a member of the Board and

the processes to be followed shall be the same as when the executive director has carriage of the complaint, with necessary changes.

## **9 CONFIDENTIALITY**

- 9.1 The clinic understands that it is difficult to come forward with a complaint of harassment or discrimination and recognizes a complainant's interest in keeping the matter confidential.
- 9.2 To protect the interests of the complainant, the person complained against, and any other person who may report incidents of harassment or discrimination, confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances.
- 9.3 All records of complaints, including contents of meetings, interviews, results of investigations and other relevant material will be kept confidential by the clinic except where disclosure is required by a disciplinary or other remedial process or by criminal law<sup>1</sup>.
- 9.4 A record of the complaint may be placed in an employee's file only in the case that that employee has been disciplined for harassment or discrimination.
- 9.5 A record of the complaint may be placed in the complainant's file only in the case that the complaint was deemed frivolous or retributive.

**COMMITMENT TO THE PREVENTION OF  
HARASSMENT AND DISCRIMINATION AT XXX**

I, \_\_\_\_\_, acknowledge receipt of a copy of XXX's "Prevention of Harassment and Discrimination in the Workplace Policy".

I have read the policy and have received orientation under this policy. Having read the policy, I am familiar with the internal complaint resolution process established by XXX and indicate my understanding of it.

As a \_\_\_\_\_ (i.e. staff person, volunteer, students, Board Member) of XXX, I also agree with the intent to provide a work environment that is free from harassment and discrimination, and which provides for a cooperative, respectful, safe and professional work environment for all XXX staff volunteers, students and Board Members.

Name: \_\_\_\_\_

Date \_\_\_\_\_

Policy and orientation provided by: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTES – Important Information to Consider**

1. Further information on the Ontario Human Rights Code protections, specific policies and guidelines (such as on sexual harassment, race, accommodating persons with disabilities etc.) are available on the Ontario Human Rights Commission's web-site at, <http://www.ohrc.on.ca>. The Commission can be contacted directly at 416-326-9511.
2. It is to be remembered that XXX's e-mail system is not confidential and therefore individuals should refrain from sharing information or concerns on harassment/discrimination-related issues over the e-mail network.
3. The following are the suggested steps to follow when a discrimination or harassment issue arises:
  - Make it known that the comment/conduct is unwelcome: If you feel comfortable doing so, tell the individual responsible for the inappropriate comments or conduct that the behaviour is unwelcome. XXX recognizes that power imbalances may make it difficult to do so and that "keeping quiet" does not mean the recipient accepts or agrees with the

inappropriate behaviour. However, it is important for everyone to understand that the first positive step to resolving a concern is to acknowledge the issue and to ask for help in a timely way.

- Seek advice. The Advisor to a complainant under this policy is Cynthia Petersen, the Discrimination & Harassment Counsel of the Law Society of Upper Canada. She can be reached at 1-877-790-2200
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  - Remember the importance of confidentiality, for everyone. Since allegations of unacceptable or unprofessional behaviour are serious, it is in the interest of everyone that the issues be addressed privately and confidentially.
  - It is important to document your experience. Your notes should include:  
What happened – describe the event(s) or situation(s)
    - Note the date(s), time(s) and place(s) the incident(s) occurred
    - Who saw what happened – names of witnesses, if any
    - Indicate your response, if any
    - Always date your notes and write them as close in time to the event(s) as possible
4. The following examples illustrate what tribunals and courts have held to constitute harassment. It is not exhaustive.
- Sexually oriented comments and unwelcome sexual remarks, advances and solicitations
  - Unwelcome comments about an individual's physical characteristics or mannerisms related to the individual's disability, race, accent, clothes, customs, gender, sexual orientation, etc.
  - Leering or inappropriate staring
  - Suggestive remarks, demands or propositions for dates/intimacy
  - Practical jokes, teasing, innuendo or comments of a sexual, racial nature, etc.
  - Displaying of sexually, racially etc. offensive pictures, graffiti, posters, calendars or other materials
  - Questions, discussions or bragging about sexual activities
  - Paternalism which a person feels undermines his/her self-respect or position of authority
  - Inappropriate comments (written or verbal), including gossiping or rumour-mongering
  - Physical or verbal taunting, threats or abuse
  - Unwelcome physical contact, including touching or hugging