

Harassment and Discrimination Policy

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Harassment Advisors

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1. APPLICABILITY:

This policy applies to all persons for whom King's University College is held responsible, including employees, students, Board members, contractors providing a service at the College, guests or visitors.

2. PURPOSE AND GUIDING PRINCIPLES:

This policy responds to King's University College's commitment to provide, in accordance with its mission as expressed in Vision, Values and Learning: A Strategic Plan for King's University College and the *Ontario Human Rights Code* and the *Ontario Occupational Health and Safety Act*, a workplace and learning environment where everyone is treated with respect and dignity and a process for the handling of complaints of harassment and/or discrimination.

In the implementation of the policy, the King's community is guided by the following principles:

- i. Every member of the King's University College community has a responsibility to assist in creating and maintaining an environment that is free from harassment and discrimination. Both work and learning can best be accomplished in an environment of understanding and mutual respect for the dignity and rights of each individual.
- ii. The rights and dignity of each individual are respected. The College is committed to ensuring equality through its formal policies and procedures.
- iii. The values of academic freedom, procedural fairness, and collegiality in the College are respected.
- iv. As the essential functions of the College are the pursuit, creation, and dissemination of knowledge and understanding through teaching and research, academic freedom is an essential characteristic of King's University College. For faculty members, academic freedom ensures the right to teach, investigate, and speculate without deference to prescribed doctrine. The right to academic freedom carries with it the responsibility to use that freedom in a responsible and ethical way. This policy is not to be implemented in a manner that unfairly limits academic freedom and its responsible use.
- v. Education and mediation are the principal means of promoting and enforcing the policy. The policy recognizes the independence of the College and its preference to work out its own solutions internally.

- vi. The needs of the whole King's community, not just the needs of any single constituency must be served. The policy is balanced in its conception and in its administration. Its application shall not violate existing College employment agreements and policies.

3. RESPONSIBILITIES:

Administrative and supervisory officers are responsible for communicating to all members of the King's community that harassment and discrimination are not permitted and will not be condoned or ignored. Administrative and supervisory officers will make every effort to prevent harassment and discrimination by:

- i. demonstrating by leadership and action a commitment to the prevention of harassment and discrimination;
- ii. communicating the principles of this policy and upholding its spirit and intent;
- iii. taking all steps to put a stop to any harassment or discrimination of which they are aware, regardless of whether a complaint has been filed;
- iv. taking all complaints of harassment and discrimination seriously and promptly and diligently investigating any alleged incident;
- v. taking prompt action to resolve complaints and taking appropriate corrective action;
- vi. encouraging participation in education and training programs provided by the College.

All members of the King's University College community share the responsibility to create a workplace that is free from harassment and discrimination. All members are responsible for understanding what constitutes harassing and/or discriminatory behaviour and conducting themselves in accordance with the spirit and intent of the policy.

RELATIONSHIP TO OTHER POLICIES:

Some behaviours that are defined as harassment under this policy can also constitute workplace violence and, as such, King's Workplace Violence Policy may also be applicable in the circumstances.

4. DEFINITIONS:

- a. Harassment under the *Occupational Health and Safety Act*

The *Ontario Occupational Health and Safety Act* defines harassment as "engaging in a course of vexatious comment or conduct against a worker that is known or ought reasonably to be known to be unwelcome.

For the purposes of this Policy, any vexatious, objectionable or unwelcome conduct or comment that serves no legitimate work-related purpose and has the effect of creating an intimidating, humiliating, threatening or hostile work environment will be considered to be harassment.

Examples of harassment could include, but are not limited to:

- i. bullying, insulting, taunting or ostracizing;

- ii. malicious gestures or actions;
- iii. behaviour that frightens, belittles or degrades;
- iv. persistent unjustified threats of discipline or sanctions;
- v. constant unjustified criticism;
- vi. yelling, shouting;
- vii. damaging or interfering with another's property or equipment.

b. Harassment and Discrimination under the *Human Rights Code*

In accordance with the *Ontario Human Rights Code*, every person covered by this policy has a right to freedom from harassment in the workplace or classroom because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same sex partnership status, family status or disability.

"Harassment" means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

"Discrimination" means the differential treatment of an individual or group that is based not on individual or group performance, but on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status or disability.

Every person has the right to equal treatment in all aspects of employment, services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age [as defined by the Human Rights Code], record of offences, marital status, same-sex partnership status, family status or disability.

Behaviour giving rise to a complaint of harassment does not need to be intentional in order to be considered harassment. The key factor is how the recipient reasonably perceives the behaviour.

Examples of harassment as defined in the *Human Rights Code* include, but are not limited to:

- i. objectionable remarks, innuendos or taunting about a person in relation to his or her racial or ethnic background, colour, place of birth or any other prohibited grounds of discrimination;
- ii. refusal to converse or work cooperatively with an employee because of racial or ethnic background or any of the other prohibited grounds of discrimination;
- iii. insulting gestures, graphics or jokes based on a person's sex or sexual orientation or any prohibited grounds that cause embarrassment or discomfort.

Harassment may occur over one incident, or over a series of related or unrelated incidents.

Harassment does not include actions taken by administrative or supervisory staff who are exercising their supervisory rights and responsibilities in good faith. Performance reviews, work evaluations and disciplinary measures taken by the College for any valid reason do not constitute harassment.

These definitions of harassment and discrimination are not intended to preclude legitimate classroom discussion on issues related to the prohibited grounds.

c. Sexual Harassment:

For the purposes of this policy, sexual harassment means any unwelcome conduct, comment, gesture or contact of a sexual nature that is likely to cause offense or humiliation, or that might, on reasonable grounds, be perceived as placing a condition of a sexual nature on employment or

on any opportunity for promotion, evaluation or training or any other benefit or advancement within King's University College.

Sexual harassment includes, but is not limited to, sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature when:

- i. submission to such conduct is made either implicitly or explicitly a condition of employment;
 - ii. submission to or rejection of such conduct is used as a basis for any employment or assessment decisions such as promotions, salaries, performance evaluations, separation affecting the employee or grade submissions for students;
 - iii. such conduct has the purpose or the effect of unreasonably interfering with the employee's or student's work performance or creating an intimidating, hostile or offensive work environment.
- Examples of sexual harassment would include, but are not limited to:

- i. requests for sexual favours;
- ii. unwelcome remarks, e-mails, voicemails, written materials, questions, jokes, innuendo or taunting, about a person's body or sex, including sexist comments or sexual invitations;
- iii. verbal abuse or threats of a sexual nature;
- iv. leering, staring or making sexual gestures;
- v. display of pornographic or other sexual materials in the form of degrading pictures, graffiti, cartoons, sayings or email;
- vi. unwanted physical contact such as touching, patting, pinching or hugging;
- vii. intimidation, threat or actual physical assault of a sexual nature;
- viii. sexual advances with actual or implied work related consequences.

This definition of sexual harassment is not intended to inhibit interactions or relationships based on mutual consent or normal social contact between employees. Nor is it intended to preclude legitimate classroom discussion on topics of a sexual nature.

d. The Workplace

For the purposes of this policy, the workplace includes, but is not limited to, the physical worksite, classrooms, offices, College residences, cafeteria, training sessions, business travel and conferences.

5. COMPLAINT PROCEDURE:

Upon becoming aware of any incident which may fall under the definition of harassment or discrimination, nothing precludes the College from deciding that it may be necessary to take appropriate action, even if the complainant does not wish the matter to proceed. In the event that the College decides to proceed, the complainant will be notified.

Several options are available to employees or students who believe they have been subjected to harassment or discrimination at the College. Nothing precludes the complainant from proceeding to the Ontario Human Rights Commission at any time during any of the following processes.

a. Direct Action

Employees or students who believe they have been harassed or have been the subject of discrimination are encouraged to raise the concern directly with the individual responsible for the alleged misconduct, make it known that the conduct or comment is unwelcome and that they wish it to stop immediately. Employees or students are further encouraged to keep a detailed record of the alleged harassment or discrimination, including dates, times, locations and witnesses.

Employees or students may choose not to approach the individual responsible for the alleged misconduct directly if they feel this may be difficult or inappropriate. In these situations, complainants are encouraged to take action as outlined in paragraph (b).

b. Informal Complaint

Members of the King's community who believe they have been harassed or have been the subject of discrimination and have unsuccessfully tried to deal directly with the individual responsible for the alleged misconduct or feel that a direct approach is inappropriate, may deal with the complaint on an informal basis. In this instance, the complainant is encouraged to contact a Harassment Advisor. For information on the Terms of Reference of the Harassment Advisory Service and the appointment of Harassment Advisors, please see Appendix A.

The complainant, with the assistance of the Harassment Advisor, will determine the desired course of action. Some options are to:

- i. discuss the concern directly with the respondent;
- ii. discuss the concern directly with the respondent, with the assistance of the contact person;
- iii. request that the contact person meet with the respondent and discuss the complaint;
- iv. request that a neutral third party be appointed to mediate the complaint [see paragraph (c) below];
- v. make a Formal Complaint [see paragraph (c)];
- vi. any other course of action that may be appropriate;
- vii. take no action at this time.

The harassment advisor or any third party appointed to mediate the complaint will not have the authority to conduct an investigation or other formal fact finding process.

If the concern or complaint is resolved through a written agreement, the only written record of the resolution will be given to the complainant and the respondent, and a copy placed in the individual's file.

If, after the Informal Complaint process, the complaint remains unresolved, the complainant may refer the complaint to the Formal Complaint process.

c. Mediation

All complainants shall be encouraged by College personnel to explore the possibility of mediation before filing a formal complaint. As mediation is voluntary, the complainant and/or the respondent may choose not to participate.

With the agreement of both the complainant and the respondent, the Harassment Advisors or another mutually acceptable neutral third party will informally mediate the allegation at the earliest possible stage. During mediation, either party may be accompanied by a friend or colleague subject to the same confidentiality requirements as the complainant and respondent.

The Harassment Advisors will not volunteer, nor shall they be called upon by an investigator appointed under this policy to disclose details concerning the allegation or the informal mediation process.

During mediation, both parties are expected to deal with the mediator in a full, frank and honest way in the hope of resolving their differences.

The mediator will not be asked, and is not permitted, to adjudicate an allegation.

The mediator may terminate mediation at any time he/she feels that mediation has no reasonable prospect of resolving the dispute.

In mediating an allegation, the mediator will endeavour to work out a settlement agreement, which specifies the actions to be taken by both parties.

The mediator will report in writing to the Harassment Advisory Service, without further detail or reasons, that:

- i. the allegation has been withdrawn; or
- ii. mediation has been successful, a settlement agreement signed, and the settlement agreement is being or has been implemented; or
- iii. mediation has not resulted in an agreement to resolve the dispute and has been terminated; or
- iv. mediation has no reasonable prospect of success and is terminated.

The mediator will not be called upon by the College to disclose any details of the allegation or of the mediation process. Nor will the mediator be called upon by any investigator appointed by the College to ascertain the facts of the case.

Where mediation has resulted in an agreement, the settlement agreement and all files or records relating to the allegation, will be retained by the Harassment Advisory Service for one year, unless otherwise stipulated by the agreement.

Where mediation fails and no formal complaint is filed, a limited record of the course of action taken by the College will be retained.

d. Formal Complaint

Employees or students may choose to file a Formal Complaint either directly, or after an Informal Complaint is considered.

A Formal Complaint must be submitted in writing to the Principal except in cases where the complainant and the respondent are students in which case the complaint will be submitted to the

Dean of Students. These people are known as the designated authorities. Complaints with respect to Principal will be directed to the Secretary of the Board.

The written complaint should include:

- i. the name of the person(s) reporting the complaint, name of the complainant and respondent;
- ii. nature of the conduct;
- iii. date, time and place of the incident(s);
- iv. name(s) of any witness(es);
- v. steps already taken (if any) to resolve the matter.

A copy of the Formal Complaint will be provided to the respondent. The respondent will be afforded an opportunity to respond to the Formal Complaint, in writing, and a copy of that response will be provided to the complainant.

Investigation of a Formal Complaint:

Upon the filing of a formal complaint, the College will appoint a qualified, professionally trained, internal or external investigator(s) to investigate the complaint. Pending the results of the investigation the College may impose such interim measures as it deems necessary.

The designated authority will advise the complainant and the respondent if an investigation has been initiated and the name(s) of the internal or external investigator(s).

a. Fact Finding:

The investigator(s) will conduct interviews with all relevant parties including any witnesses, and review any relevant material to clarify the details of the reported incident(s). Both the complainant and respondent will be given full opportunity to present their cases.

b. Report of Findings:

- i. The investigator(s) will, after completing the investigation, produce a final written report which will be forwarded to the designated authority.
- ii. This report will include the investigator's findings of fact, and his or her opinion on whether harassment or discrimination occurred.
- iii. The investigator(s) will normally complete his or her report within 20 working days of being appointed.
- iv. The complainant and respondent will be given the opportunity to review the report.

6. DISCIPLINARY ACTION:

a. Possible Actions and Sanctions

If, after an investigation, the investigator(s) finds that a complaint is substantiated, the designated authority will determine what corrective action is to be taken, if any. Any of the following actions/sanctions may be taken:

- i. require the introduction of information or education sessions for the respondent(s) or a particular group;
- ii require that the respondent(s) participate in a counselling process;
- iii. require a review and modification of policies, procedures and practices for a particular work group;
- iv. impose discipline on the respondent(s), ranging from a letter of reprimand up to and including dismissal (see below for examples).

Sanctions available to the designated authority include, but are not limited to:

- i. if the finding is against a student, a written apology, a reprimand, a limitation of social privileges, the suspension and/or expulsion of the student;
- ii. if the finding is against an employee of the College, a written apology, a reprimand, the suspension and/or termination of employment as provided by relevant conditions of appointment or employment;
- iii. if the finding is against a guest or visitor, a written apology, a reprimand, a limitation of social privileges, and/or a barring from the College campus or events;
- iv. if the finding is against a Board member, a written apology, a reprimand, and/or expulsion from the Board of Directors;
- v. if the finding is against a contractor providing services at the College, a written apology, a reprimand, cancellation of the contract, and/or a barring from future bids for five years.

The designated authority may consider any recommendation(s) or recommended sanctions proposed by either the complainant or the respondent, including a recommendation by the respondent that the complaint be found malicious and/or vexatious.

The disciplinary action should be appropriate for the seriousness of the breach of the policy and the status of the respondent.

The maximum sanction for the first two occasions when a person is found to have engaged in a course of vexatious comment shall be a directive to desist from such comments, which shall remain in the person's file for a period of not more than seven years.

b. Record of the Action

Where a complaint of harassment or discrimination is substantiated, there will be a formal record of the action taken on the respondent(s)'s personnel file.

All records retained by the designated authority shall be kept in a secured file by the Secretary to the Board of Directors until the case is closed. After the case is closed the records shall be retained in confidence by the Principal for a period of seven years.

c. Retaliation:

All employees and students have a right to be free of retaliation or threat of retaliation as a result of being involved in a complaint of harassment or discrimination. Retaliation will be deemed to be harassment and dealt with in accordance with this policy.

d. Malicious and Vexatious Complaints:

If, as a result of an investigation, it is determined that an otherwise unfounded complaint was intended to be malicious and/or vexatious, it will be considered a form of harassment and will be dealt with in accordance with the sanctions applicable to the complainant as defined above and/or the relevant conditions of appointment or employment document.

e. Respondent Recourse:

Employees may grieve the decision of the designated authority following the appropriate procedures outlined in the relevant Conditions of Appointment or Conditions of Employment document. Students may appeal the decision of the designated authority following the appropriate procedures as outlined in the Code of Student Conduct.

7. CONFIDENTIALITY

The College understands that it may be difficult to come forward with a complaint of harassment or discrimination and recognizes that a complainant and/or a respondent will wish to keep the matter confidential. To protect the interests of the complainant, the person complained against and any others who may report incidents of harassment and discrimination, confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances.

All records of complaints, including minutes of meetings, interviews, results of investigations and other relevant material will be kept confidential by the designated authority except to the extent that disclosure is necessary to conduct an investigation and to take remedial and/or disciplinary action in relation to the complaint.

The complainant will be informed that under the terms of this policy, the process can guarantee only limited confidentiality.

APPENDIX A

King's University College Harassment Advisory Service

A. TERMS OF REFERENCE

The Terms of Reference of the Harassment Advisory Service are:

- a. to increase awareness of harassment and discrimination issues through educational and training programs developed to address the needs of all College constituencies;
- b. to make available periodically to the King's community at large a summary of significant cases of harassment and discrimination where allegations have been made, proven or not proven;
- c. to receive anyone who brings to this Service an allegation of breach of this policy;
- d. to counsel on a confidential basis the complainants and the respondents, explaining the options available under this policy, and outlining the support services available to them;
- e. to conduct informal mediation, with the consent of the complainant and the respondent;
- f. to arrange for the appointment of a mediator for formal mediation, with the consent of the complainant and the respondent;
- g. to maintain statistics on all allegations of breaches of this policy;

h. to maintain in absolute confidence records relating to allegations of breaches of this policy except where disclosure is required by this policy or the law;

i. to avoid conflict of interest;

j. to ensure that an Advisor is available to assist the complainant and the respondent; and

k. to report annually to the Principal. Any subsequent published report will contain statistics on matters relating to allegations of breaches of this policy while maintaining anonymity and confidentiality. All complainants will be advised that all cases will be reported in the aggregate.

B. APPOINTMENT OF HARASSMENT ADVISORS

Harassment Advisors will be appointed for a four-year term by the Principal, subject to the approval of the Board of Directors, in consultation with the Harassment Advisory Service.

The appointments will include at least one female and one male.

Training and development opportunities for the Advisors will be provided.

June 21, 2004

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