

Harassment in the workplace

Prevention, protocols and sanctions.

Policy

The Society is committed to providing a work environment that is free of harassment and supportive of the self-esteem and dignity of every person within the Society.

The Society's intent is to ensure there is a climate of understanding, cooperation and mutual respect. To be successful in this objective, it is incumbent upon all members of the Society not to condone or tolerate behaviour that constitutes harassment.

The Society will provide for a fair and prompt investigation of any complaint or concern without fear of reprisal, as long as the complaint is not found to be frivolous or vexatious.

Scope

This policy applies to complaints of harassment that involve employees or volunteers of the Society.

This policy covers complaints of harassment and sexual harassment in the workplace, as defined below. Problems or issues not covered by these definitions fall under 2.9 – Problem Resolution or grievance procedures for unionized employees.

As the Society employs minors in paid and volunteer roles, express reference is made to the fact that this policy will also apply to minors. A minor or a minor's parent or guardian may file a complaint(s) in accordance with this policy. In such an event, the complaint shall be reported to the National Director, Human Resources, who in consultation with legal counsel will review the necessity for reporting the complaint to the child welfare authorities or police of the jurisdiction within which the complaint arises.

Definitions

Harassment

Harassment comprises any unwelcome or objectionable, physical, visual or verbal conduct, comment or display, whether intended or unintended, that is insulting, humiliating or degrading to another person, or creates an intimidating, hostile or offensive environment and/or is on the basis of race, ethnicity, language, financial ability, religion, gender or sexual orientation, disability or age, or any other kind of discrimination which is prohibited by particular provincial/territorial legislation: made by an employee, volunteer, client or supplier of the Society;

- Directed at and offensive to any other employee, volunteer, client or supplier of the Society, or any other individual or group that the person knew or reasonably ought to have known would be offensive (e.g., unintended).

Examples of harassment include, but are not limited to:

- Threats made or perceived, that are malicious, vexatious or based on any of the prohibited grounds under Human Rights legislation
- Derogatory written or verbal communication or gestures (e.g. name-calling, slurs, taunting pictures or posters, bullying, graffiti), that are malicious, vexatious or that relate to any of the prohibited grounds under Human Rights legislation

Provided for reference only.

Always consult current legislation in your jurisdiction to create policies and procedures for your organization.

- Application of stereotypes or generalizations based on any of the prohibited grounds under the legislation

Sexual harassment

Sexual harassment means any unwelcome conduct, comment, gesture or contact of a sexual nature, whether on a one-time basis or in a continuous series of incidents that:

- Might reasonably be expected to cause offence, embarrassment or humiliation
- Might reasonably be expected to be perceived as placing a condition of a sexual nature on employment, services, or on any opportunity for training or advancement.

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

- Remarks, jokes, innuendoes or other comments regarding someone's body, appearance, physical or sexual characteristics or clothing
- Displaying of sexually offensive or derogatory pictures, cartoons or other material
- Persistent unwelcome or uninvited invitations or requests
- Unwelcome questions or sharing of information regarding a person's sexuality, sexual activity or sexual orientation
- Conduct or comments intended to create, or having the effect of, creating an intimidating, hostile or offensive environment

Bullying

Bullying is an offensive, cruel, intimidating, insulting or humiliating behaviour which includes physical violence or the threat of physical violence. It can be physical or verbal, direct or indirect such as gossip. Bullying is considered harassment in general, unless there is physical contact or a threat of violence, where it is considered violence. Bullying is ill treatment which is not addressed under human rights legislation or criminal codes.

Workplace

For the purposes of this policy, workplace includes any location in which employees and/or volunteers are engaged in Society business activities necessary to perform their assignments. This includes, but is not limited to, Society buildings, employee/ volunteer parking lots, employee/volunteer organized social events, field locations, clients' homes, and during business related travel.

Abuse of power

Abuse of power happens whenever a Society staff/volunteer abuses or misuses his/her power and discretion for personal benefit, or in benefit of another person.

Abuse of power, for the purposes of this policy, includes situations involving a minor, situations that involve a reporting relationship, or any situation that includes an accusation from a client against an employee or volunteer who is providing a service upon which the client depends. Incidents that involved an abuse of power are considered by the Society as being, generally, of a more serious nature than peer-to-peer situations.

Mediator

A mediator is an impartial, neutral party, without decision-making powers, whom both parties accept. The mediator may be the applicable HR representative, or other internal or external party. The goal of mediation is to assist both parties to reach a mutually beneficial agreement.

Investigator

The investigator is utilized where mediation is not appropriate or fails. An investigator must be a well-trained individual who is able to conduct a formal process with clear documentation. An investigator will not have a reporting line or personal relationship/connection with either the complainant or alleged harasser.

Provided for reference only.

Always consult current legislation in your jurisdiction to create policies and procedures for your organization.

Policy application

Prevention

Prevention is always the first line of defense against occurrences of harassment. All employees and volunteers are reminded of their obligation to follow the Society's Code of Conduct and the Fundamental Principles, and to adhere to policies and procedures aimed at ensuring a positive work environment and the highest level of care for clients. Beyond this, there is a duty upon all to prevent harassment by discouraging inappropriate activities and by reporting incidents, as per this policy.

Rights

Everyone has the right to:

- An environment that is free from harassment
- File a complaint when the environment is not free from harassment
- Be informed of complaints made against them
- Obtain an investigation of the complaint without fear of embarrassment or reprisal
- Have a fair hearing
- Be kept informed throughout the process and of remedial action taken
- A fair appeal process for both the respondent and complainant
- Confidentiality to the degree possible under the circumstances
- Representation by a third party

Obligations

The people in an organization have the responsibility to ensure the safety and health of all those who come in contact with the Society, whether that contact is as clients, volunteers, employees or suppliers.

Organizations are obligated legally to take all complaints seriously by:

- Using due diligence, which is the obligation to take reasonable measures to provide appropriate service
- Being very familiar with the harassment policy and following it closely
- Following the process without bias
- Documenting all information from the first disclosure to the final resolution
- Recording only relevant facts – no feelings
- Signing and dating all documents
- Using common sense

Employees and Volunteers responsibilities:

All employees and volunteers are responsible for contributing to a positive work environment and for identifying and discouraging comments or activities that are contrary to this policy. This includes advising people or the alleged harasser that his/her behaviour is unwelcome.

Where a situation occurs, or where an employee or volunteer believes a situation has occurred, he/she is obligated to report it to their supervisor/ manager. If a situation occurs which involves their supervisor/manager, or if their supervisor/manager does not intervene appropriately, the employee/ volunteer may report the situation to their Director/General Manager or to the Director, Human Resources.

Supervisors and managers responsibilities:

Supervisors and manager are expected to eliminate any aspects of the work environment that are not in keeping with this policy, whether or not a complaint has been made. Supervisors and managers are obligated to implement this policy, under the direction of the applicable member of the Society Management Team (SMT), and with consultation from the applicable HR representative.

Provided for reference only.

Always consult current legislation in your jurisdiction to create policies and procedures for your organization.

The HR representative, working with the General Manager or applicable National Department Head, will:

- Advise parties of the process and legal parameters
- Facilitate communication between parties with a view to resolving conflict
- Coach parties as required
- Ensure that the process is followed within the prescribed time frame
- Arrange for investigation, mediation or expertise, as required
- Coordinate the follow up actions
- Maintain original copies of all documentation pertaining to the resolution of differences
- Educate employees and volunteers on the application of this policy

The mediator shall:

- Determine the parties' wishes and needs
- Establish the ground rules for the discussions, with all parties agreeing to the rules
- Explore with the parties different ways to get what each party needs and thus resolve the complaint

The investigator shall:

- Promptly make arrangements for a thorough and unbiased investigation to be conducted in as timely and confidential a manner as possible
- Inform all parties of their rights and responsibilities
- Secure all complaints and responses in writing, with dates, names, witnesses and full descriptions of the incident(s)
- Interview the parties involved and any witnesses to the behaviour, if necessary
- Notify any individual interviewed of their right to be accompanied by the representative of their choice
- Keep the parties to the complaint informed during the process, including providing the alleged harasser with full particulars of the allegations and a copy of the written complaint
- An individual accused of discrimination or harassment will be entitled to respond to the complaint and may wish to offer his/her perspective regarding the allegations and/or present a proposal for resolution
- Prepare a written report for the applicable SMT member and the National Director, Human Resources (or HR designate) outlining the allegations of the complainant, the response of the alleged harasser, the evidence of any witnesses, and the conclusion reached

The National Director, Human Resources shall:

- Keep a confidential record of the number of complaints filed, the nature of these complaints, the outcome of the investigation and the type of corrective action taken

Process

Situations where there has been an accusation of harassment are extremely sensitive and often complex. At all times, the emotional and physical safety of the complainant is paramount, and this may involve taking steps that are not outlined herein. In general, however, the following process should be taken:

Complaint Received ⇒ Mediate and/or Investigate ⇒ Action ⇒ Appeal

Complaint: In order to make an official complaint, a complainant should advise their supervisor/manager or the applicable HR representative. Any individual who receives any complaint against an employee or volunteer must refer it to the human resources representative. From here, there are three (3) possible actions:

Provided for reference only.

Always consult current legislation in your jurisdiction to create policies and procedures for your organization.

1. **No Action:** The behaviour is not found to be harassment, and the complainant agrees.
2. **Resolve:** If the harassment is subtle or mild and the complainant agrees, the complaint is resolved informally with the assistance of the HR representative.
3. **Refer:** If the complaint represents moderate or severe harassment or if the incident involves an abuse of power, then the applicable SMT member and the HR representative are to be notified and the complaint is referred to mediation, investigation or, in extreme circumstances, the police.

Mediate: The alleged harasser will be advised of the complaint, if this has not already happened. A mediator will be chosen by the applicable SMT member and the HR representative, and confirmed provided the parties to the complaint agree. In the case where there is no agreement, alternative names will be considered. Mediation takes place and the situation is resolved to the satisfaction of both parties. If no agreement for either a name or process is secured, then the case is referred to investigation.

Investigate: Where, for whatever reason, the complaint remains unresolved, then the applicable SMT member and the HR representative, in consultation with the National Director, Human Resources, chooses an investigator.

The investigator will conduct a thorough and unbiased investigation and provide a written report, including recommendations for action, to the applicable SMT member, the HR representative, the National Director, Human Resources, and the general counsel. They will confer with one another, and others as required, and the applicable SMT member will make a decision as to the appropriate action.

Action

When considering the appropriate action, the SMT member will consider the evidence, the nature of the harassment, whether physical contact was involved, whether the situation was isolated, and whether there was an abuse of power.

Actions may include:

- Verbal or written apologies
- A letter of reprimand or suspension
- A referral to counselling
- Sensitivity training
- Demotion or transfer
- Termination of employment, volunteer activity and/or membership
- Referral to police or other legal authorities
- Other sanctions

Appeal

Either the complainant or alleged harasser may, within thirty (30) days of being notified of the action, submit an appeal, in writing, to the Secretary General and CEO of the Society or designate (designate is not limited to Society employees). In the event that the Secretary General determines that further investigation is required, any additional findings shall be disclosed to the parties, who will be provided with an opportunity to respond. The Secretary General will then review the record and determine whether or not a violation of the Society policy has occurred.

Confidentiality

Complaints of harassment will be received and investigated in a confidential manner in accordance with the procedures, including prescribing corrective action. Information that must be shared will be disclosed on a need-to-know basis.

Any allegation or complaint of discrimination, harassment or sexual harassment will be considered personal information 'supplied in confidence'. The name of the complainant or the circumstances of the complaint will not be disclosed to any person except where disclosure is necessary for the purpose of investigating the complaint. The substance of investigative reports and the substance of meetings held by those in authority regardless of whether it is substantiated, will be protected from disclosure to third parties, except where required for legal reasons.

Strict confidentiality cannot be guaranteed to anyone who wants to make a complaint of harassment. If a complaint goes through an investigation, the respondent and other people involved will have to learn about the complaint. The complainant can be assured that only people who 'need-to-know' will be told of the complaint.

No investigation information is to be kept on the employee/volunteer's personnel file with the exception of official disciplinary/termination papers. Similar to problem resolution cases, harassment investigation information should be kept indefinitely in a separate file. Proven allegations of harassment or sexual harassment, including disciplinary action taken shall be documented and form part of the employee/volunteer's permanent record.

Disciplinary action

Harassment by an employee or volunteer is a serious offence. If an accusation is substantiated, the harasser will be subject to immediate disciplinary action, up to and including dismissal. Intentionally accusing someone of harassment, known to be false, is a serious offence and is subject to disciplinary action. The Society reserves the right to discipline those whose complaints are frivolous or vexatious.

Any interference with the conduct of an investigation, or retaliation against a complainant, respondent or witness, may itself result in disciplinary action.

Criteria in determining level of disciplinary action shall be based on fact scenario and will take into account harm to the individual, harm to the Society and its reputation, and whether or not there was an unequal power relationship.

Where the conduct involves, or may involve, criminal activity, the Society reserves the right to invoke criminal charges.

Employees and volunteers have a duty to disclose criminal activity. For further information, refer to Section 7, Duty of Care/Client Protection.

Human Rights Commission

Nothing in this policy shall be deemed to limit the right of an employee or volunteer to seek assistance from the provincial/territorial Human Rights Commission.

Special circumstances

In the event that any of the parties to an allegation is an employee of the National Human Resources Department, the complainant may, at their option, elect to have a member of the General Counsel's office fulfill the role contemplated in these procedures for the National Director, Human Resources. All of the other provisions of these procedures shall remain in effect.

In the event that the allegation is against a member of the Society Management Team, the complaint will be addressed to the Deputy Secretary General, Operations or Secretary General and CEO as the case may be.

In the event that any of the parties to an allegation is the Secretary General and CEO, the complaint will be addressed to the President of the National Board of Governors.

Provided for reference only.

Always consult current legislation in your jurisdiction to create policies and procedures for your organization.

Responsibility

The National Director, Human Resources, is responsible for advising stakeholders, maintaining, monitoring, and revising this policy; and for authorizing exceptions.

Members of the Society Management Team are responsible for applying and implementing this policy in each of their respective areas.

A national organization agreed to post this policy on www.hrcouncil.ca as part of the HR Toolkit. Sample policies are provided for reference only. Always consult current legislation in your jurisdiction to create policies and procedures for your organization