



# Respectful Work & Learning Environment

Policy supersedes Harassment Policy, Approved May 11, 1992, updated 2004

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## Part 1 – The Policy

### 1. Purpose

#### 1.1 The purpose of this policy is to:

- Develop and support a respectful work and learning environment that values and promotes principles of diversity and inclusion, and one that does not tolerate discriminate (p. 14), harassment (p.14) and/or bullying (p. 13);
- Make provision for support services, including training and awareness initiatives, to promote a respectful work and learning environment;
- Outline rights, responsibilities and types of behaviours which fall within the scope of this policy and
- Outline procedures for handling and resolving complaints.

#### 1.2 Use of this policy

Members of the University community are strongly encouraged to use this policy and the related procedures to address concerns and complaints of harassment or discrimination. There are a range of options to resolve conflicts in this policy. These options will be described below.

### 2. Scope and Limitations

#### 2.1 This policy applies to:

- All OCAD students (p. 16), employees (p. 15), volunteers (p. 17), visitors, contractors and employees of other organizations not related to the University but who nevertheless work on or are invited onto university premises (p. 17).
- This policy is in effect at all times and in all communications and interactions.

#### 2.2 Limitation

The resolution options described in the procedures are in addition to, and not in substitution for, other internal or external options or other legal rights. Nothing in this policy is intended to discourage, prevent or preclude an individual from filing a grievance through the applicable collective agreement, initiating legal action (civil or criminal) or exercising any other legal rights, including: filing a complaint with the Human Rights Tribunal of Ontario, the police or courts or any other legal body.

### **3. Policy Complements**

- Student Non-Academic Misconduct Policy
- Memorandum of Agreement between the University and the OCAD Faculty Association,
- Collective Agreements between the University and OPSEU Local 576 Units 1 & 2

### **4. Statement of Commitments**

#### **4.1 Equity and Inclusion**

Ontario College of Art & Design (“OCAD U or the “University”) is committed to supporting equity, diversity, inclusion and dignity of all people. The University promotes equity and inclusion in its learning and working environment and in the conduct of the University’s affairs. OCAD will not tolerate harassment to or discrimination against any community member. Harassment and discrimination violate an individual’s human rights and run contrary to the University’s fundamental values. OCAD will act promptly and efficiently to address this conduct. The University will endeavour to ensure that individuals who believe that they have been subjected to harassment or discrimination are able to express concerns and register complaints without fear of retaliation or reprisal. The University will exercise care to protect and respect the rights of both the complainant and the respondent.

#### **4.2 Rights and Freedoms**

OCAD recognizes the importance of certain rights and freedoms at a university dedicated to intellectual inquiry and creative practice. The University is committed to upholding all fundamental human rights, including freedom of association, freedom of conscience, opinion and belief, and freedom of thought, inquiry, artistic and creative expression. Nothing in this policy is to be interpreted, administered or applied in a way that infringes upon academic freedom, or upon legal conduct between individuals that is based on mutual consent. Nothing in this policy is to be understood to prevent any faculty, employee, or student, from instructing, evaluating and engaging in fair criticism of another’s behaviour or performance.

### **5. Rights and Responsibilities**

#### **5.1 All Employees, Students and Volunteers have the right to:**

- Participate, learn, and work in an environment that promotes equal opportunities and prohibits discriminatory practices;
- File a complaint in an environment free from harassment and discrimination;
- Be informed of complaints made against them;
- Have their complaint investigated pursuant to this policy without fear of embarrassment or reprisal;
- Make representation in accordance with the complaint procedures and described in this policy;
- Be kept informed throughout the process;
- A fair appeal process for both the respondent (p. 16) and complainant (p. 14); and
- Confidentiality and privacy.

#### **5.2 Rights and University Officers**

This policy shall not be interpreted, administered, or applied in such a way as to detract from the rights and obligations of the President, Vice-Presidents, Associate Vice-Presidents, Deans, Directors, or Managers or others with the authority to make personnel decisions, to make day-to-day management decisions or to take other supervisory actions affecting employees or students,

including discipline, provided that the purpose of management and supervisory decisions is not to discriminate against the employee or student on the basis of a prohibited ground.

### **5.3 Responsibility**

All members of the university community, particularly those in management and leadership positions, are responsible for:

- Conducting themselves in an appropriate manner, treating others fairly, and with dignity and respect;
- Being cognizant of the fact that working and learning can best be accomplished in a climate of understanding and mutual respect and that harassment and discrimination can occur even when there is no intention to harass or offend another person;
- Establishing, contributing to, and maintaining a respectful environment by demonstrating respect for others, and not by condoning and/or engaging in conduct that is inconsistent with the law or this policy.

### **5.4 OCAD recognizes the following:**

- It is located within a richly diverse society in Toronto;
- It has a duty to act in a manner consistent with the Ontario *Human Rights Code* and *Occupational Health and Safety Act*;
- It has a commitment to academic freedom (p. 13) and freedom of thought, inquiry, and expression which may result in respectful disagreements regarding beliefs and principles; and
- It cannot condone behaviour that is likely to undermine the dignity, self-esteem or productivity of any of its members, whether such behaviour occurs on University premises or in conjunction with University-related activities.

Therefore, OCAD U is committed to an inclusive and respectful working and learning environment, free from harassment, discrimination and/or bullying.

## Part 2 – Procedures to Address Concerns

This section outlines the procedures to be followed to address concerns arising from the Policy on Respectful Work & Learning Environment.

### 1. Accountability

**1.1 Director, Diversity & Equity Initiatives:** responsible for advising the President that a formal review of these procedures is required.

**1.2 Policy Administrators:** (p. 16) responsible for the communication, administration and interpretation of the policy and procedures.

### 1.3 Resolution Options

Harassment and discrimination can be, or can become, behaviour toward the extreme end of the continuum of conflict. Prompt action and early resolution efforts initiated by the affected employee or student can be very effective in stopping inappropriate or disrespectful behaviour at the low end of the conflict continuum, and reducing the risk of objectionable behaviour being repeated, or escalating to a more serious level.

Any member of the University community who believes that he/she has experience discrimination or harassment may bring it to the attention of the University by contacting the appropriate Vice-President.

**Note:** Any person receiving a concern or complaint or potential complaint of harassment or discrimination should consult the Policy Administrators before advising an employee or student about their rights and/or options. Procedures related to this policy provide individual(s) with a range of options for the resolution of concerns/complaints of harassment and/or discrimination. There are both informal and formal procedures, outlined below.

### 2. Informal Process

An informal conflict resolution is facilitated by an organizational member through means other than the formal complaint process, grievance or litigation. This process may involve a self-managed option, a consultative option or a mediated option.

#### 2.1 Self-Managed Option

This option provides the parties with the flexibility to manage the conflict resolution process and seek suitable solutions. Initially, individual(s) may choose to address their concern(s) directly on their own, or with the support of a friend or colleague. Employees or students may choose to seek advice or assistance from a supervisor, professor, or other person in authority. Employees or students, as well as those who may assist them, may also seek guidance or coaching from the Policy Administrator(s).

This process does not require documentation and no records will be created or retained. In the event that the matter is not resolved, there are further options below.

#### 2.2 Consultative Option

Individuals may use this option in situations where they feel unable to take direct action, or if the offensive behaviour persists in spite of it being brought to the respondent's attention by the complainant. The purpose of consultative option is to explore options, obtain appropriate referrals to university resources, relevant policies and procedures, or obtain the perspective of a neutral person who is not connected to the dispute. The complainant may consult any OCAD supervisor whom he/she feels comfortable working with to resolve the matter.

The supervisor may meet with the complainant, the respondent and any other relevant person or union representative, with a view to supporting the parties to resolve the matter and will direct the complainant and respondent to the policy.

The supervisor must document and forward a record of the date, time and nature of any incident that is brought to his/her attention, along with the names of any witnesses and the steps taken to address the situation to the Director, Diversity & Equity Initiatives, whatever the outcome may be, using the *Informal Complaint Report Form* (p.18).

If an accommodation or other resolution is requested by the complainant, the respondent, or any other relevant person as a result of a complaint under these procedures, the request will be made to the Policy Administrators. The focus of this consultation is to attempt to find a suitable accommodation that minimizes disruption to the working and/or learning environment.

If an informal resolution, acceptable to both parties, is reached, then the supervisor will:

- a) Forward a written communication to both parties, setting out the terms and/or agreement; receipt of this written communication will be acknowledged by both parties;
- b) Assist in bringing about whatever administrative or other action is needed to implement the resolution; and/or
- c) Ensure that the Director, Diversity & Equity Initiatives receives all the documentation including the written communication acknowledged by both parties.

**Note:** the *Informal Complain Report Form* (p. 18) will be used to document incidents addressed under the consultative option, and a copy will be provided to the Director, Diversity & Equity Initiatives. No record of the informal resolution will be kept in either the complainant or respondent's student or personnel file. All documentation will be forwarded to the Director, Diversity & Equity Initiatives for retention.

### **2.3 Mediation Option**

Mediation (p. 16) is a collaborative process to produce agreement or resolution between two parties facilitated by a neutral and impartial person. A mediator (p. 16) facilitates an exchange in which the parties clarify issues, hear each other's perspective, provide new information and move toward an agreement. In mediation, the parties have the responsibility for the resolution. The time limit in a mediation process is usually agreed upon between the parties and the mediator.

Mediation may make a formal complaint unnecessary. The complainant or respondent may ask for mediation, or accept it if it is proposed. If she/he decides to work toward a mediated settlement, the Policy Administrators will appoint an internal or external mediator who is acceptable to both parties. At the conclusion of mediation, if a mutually acceptable resolution is agreed to by the parties, the mediator will prepare a *Resolution Agreement* (p. 16) and have it signed by both parties, who will each be provided with a signed copy. The mediator will not retain documents. All documentation will be forwarded to the Director, Diversity & Equity Initiatives for retention.

Upon receiving the written *Resolution Agreement*, the Director, Diversity & Equity Initiatives, in consultation with Policy Administration, will work with the parties to implement the terms of the agreement.

In the event that mediation does not resolve the issue, the complainant will have the right to submit a formal complaint in accordance with this policy.

#### **2.3.1 Appointment and Training of Mediators**

The University will build capacity among its members to handle mediation processes. Supervisors and those who routinely handle conflicts will be encouraged to take mediation training organized by the Policy Administrators. Policy Administrators will work with academic and administrative unit leadership to identify and appoint representatives

who will be trained to conduct the mediation process. The University will train mediators regularly, but not less than every two years.

### **3. Formal Process**

A formal process of conflict resolution is used when parties have not reached an agreeable resolution. It involves a fact finding process, resulting in written report and where necessary a decision by the University. The decision may be appealed.

#### **3.1 The formal complaint will:**

- a) Be in writing indicating that it is a formal complaint, and be signed and dated by the complainant;
- b) Set out the particulars of the allegations, including, where possible, the dates, times and nature of the allegations and the names of any witnesses to the behaviour; and
- c) Be submitted to the appropriate Vice-President.

The Vice-President will consult with the Policy Administrators and make an initial determination as to whether the complaint falls under the policy. If it is determined that the allegation(s) does not fall under the definitions set out in this policy, then the complainant will be advised accordingly and no further action will be taken on the formal complaint.

A Policy Administrator will initiate a meeting with the complainant to determine or discuss the options and procedures. In the event that the complainant decides to pursue another option to resolve the matter, the complainant will write to the Vice-President withdrawing the complaint from the formal process. The Policy Administrator may recommend that the complainant pursue informal resolution of the matter.

If it is determined that the allegation(s) falls within the definitions set out in this policy, and the complainant wishes to proceed with a formal complaint, the Policy Administrator(s) will recommend to the Vice-President that fact finding be initiated.

The Vice-President will formally confirm receipt of the complaint with the complainant and advise that the complaint will be forwarded to the respondent; inform the respondent(s) of the facts of the complaint; and identify the Fact Finder(s) (p. 16).

#### **3.2 Policy Administrators**

The Policy Administrators are designated to receive formal complaints of harassment and/or discrimination and requests for fact finding. Once a formal complaint is brought to the attention of the Policy Administrators, they will contact the appropriate supervisor. The complainant will be advised that this contact and direction is being sought.

### **4. Fact Finding**

#### **4.1 Appointment of Fact Finder(s)**

The appropriate Vice-President, in consultation with Policy Administrators, will appoint a Fact Finder(s) on a case-by-case basis from within or outside the University whose duties will include the fact finding of formal complaints and written report of the findings and recommendations.

On behalf of the University, Fact Finders will act promptly to investigate the allegation(s) in accordance with the principles of natural justice and procedural fairness. Following the fact finding process, the complainant and the respondent will be informed in writing of the results of the fact finding, and will be provided with an opportunity to respond.

#### **4.2 Determining the Applicability of the Complaint**

The Fact Finder will review the allegation(s) to ensure that it falls within the definitions set out in this policy. This review may include a meeting with the complainant to discuss the details of the formal complaint.

#### **4.3 Fact Finding Timeline**

The Fact Finder(s) will establish a timeline for the investigation (p. 16) to be completed and communicate it to the parties. The investigation will be concluded as expeditiously as possible. If the Fact Finder(s) foresees significant and unexpected delays in the completion of the process, he/she will notify the complainant and the respondent. The Fact Finder(s) will advise them of the reasons for the delay and provide an estimate of the time required to complete the fact finding process.

#### **4.4 Seeking Resolution Through Mediation**

If, at any time during the course of the fact finding, the Fact Finder(s) deems it appropriate for the complainant and respondent to seek resolution through mediation, and where both parties consent to do so, the Fact Finder(s) may interrupt the fact finding for such period(s) of time as he/she considers reasonable to facilitate such an approach to resolution. Any such resolution may provide for withdrawal of the complaint or a portion thereof.

#### **4.5 Duties of the Fact Finder(s) During Fact Finding**

Upon fact finding being launched the Fact Finder(s) will:

- a) Obtain and review the formal complaint that is signed and dated by the complainant;
- b) Inform and advise those who are or who have the potential to become involved in the fact finding process about the policy and the procedure;
- c) Inform individuals named as respondents about the subject of the complain, and the details of the allegations;
- d) Invite the respondent to provide a written response to the complaint within a reasonable time, which will be at the discretion of the Fact Finder(s);
- e) Provide the respondent with a reasonable opportunity to consult with counsel, a union or human resources representative, student advocacy representative or personal representative; and
- f) Gather facts through interviews with the complainant and the respondent, and any other person(s) deemed relevant to the fact finding.

The fact finding will be conducted in a neutral manner, with the purpose of determining facts that will either prove or disprove the complaint.

The Fact Finder(s) may, at their discretion, tape record these interviews for the purpose of assisting in the documentation of the fact finding. The complainant and the respondent will cooperate fully with the Fact Finder(s) and provide any information required by the Fact Finder(s) upon request. The complainant or respondent may be accompanied during the interview by counsel, a union or Human Resources, Student Advocacy representative or personal representative. The Fact Finder(s) are not required to address the accompanying parties during the interview. However, the accompanying persons may consult with either the complainant or the respondent in the course of the interviews. The Fact Finder will interview witnesses and take witness statements if necessary.

The Fact Finder(s) may identify the situation when the parties by mutual agreement wish to refer the matter to an internal or external mediator, or any of the other process provided for in this policy. In this situation, the Fact Finder(s) refers the matter to the Policy Administrators to either initiate the mediation process or direct the parties otherwise. In this case, the formal process is suspended. In the event that there is a need, in the future, to revert to the formal fact finding process, the process will resume.

Upon completion of the fact finding process, the Fact Finder(s) will prepare a written report which sets out the allegation(s) and the information obtained, and provides a conclusion as to whether, on a balance of probabilities, the Policy on Respectful Work & Learning Environment has been breached.

The Fact Finder(s) will provide a copy of the written report to the Policy Administrators and to the appropriate Vice-President. Fact Finder(s) do not keep records.

Where the respondent is a member of the Executive Leadership Group, the President will be directly involved instead of a Vice-President. If the President is the respondent, the Chair of the Board of Governors will be directly involved.

## **5. Findings**

### **5.1 No Breach of Policy**

If it is determined that the Policy on Respectful Work & Learning Environment has not been breached, then the Fact Finder's will advise the appropriate Vice-President and the Policy Administrators. The Vice-President, in consultation with the Policy Administrators, will advise the parties accordingly and may choose to provide them with a copy of the Fact Finder(s) written report that must not contain personal information of any identifiable individual. No further action will be taken and no record of the complaint will be placed on the University's official employment file or student file for the respondent.

### **5.2 Record**

No record of the complaint will be kept in the complainant's personnel file or student record, unless it is determined that the complaint was trivial or frivolous (p.16). The University may take disciplinary action against a complainant in cases where a trivial or frivolous complaint is made.

### **5.3 Breach of Policy**

If it is determined that, based on the written report, the Policy on Respectful Work & Learning Environment has been breached, the appropriate Vice-President, in consultation with Policy Administrators, will determine an appropriate disposition of the matter. In cases where suspension or dismissal requires approval beyond the Vice-President level, such matters will be referred to the President.

### **5.4 Notice of Disposition**

Notice of the disposition will be provided to the complainant, the respondent, and the appropriate supervisor. The appropriate supervisor will ensure that the disposition is fulfilled, and file a copy of the disposition in the University's official employment file in HR for the respondent (in the case of an employee) or in the University's official student file in the Office of the Registrar (in the case of a student). A copy of the disposition will be placed in the file of the Director, Diversity & Equity Initiatives.

### **5.5 Record Keeping**

Records, including tapes, created during the process of complaint investigation are subject to the *Freedom of Information and Privacy Protection Act*, Ontario. The complete file remains with the Director, Diversity & Equity Initiatives and is confidential. Access to the records is restricted to those who need to know in order to carry out their duties. This can include access to specific records for Mediators, Fact Finders, Policy Administrators, Adjudicators and Vice-Presidents. The complainant(s) and respondent(s) and/or their representatives are entitled to receive information as designated in this policy. A formal request for access under the *Freedom of Information and Privacy Protection Act* (FIPPA) is handled by the University's FIPPA Coordinator.

All individuals involved in the complaint resolution process must keep records safe and secure. This means locked cabinets and/or secure electronic devices. Electronic records should be managed in a separate folder and password protected or made secure in an appropriate manner.



Individuals involved are advised not to work on these matters in public places or to use mobile devices that are not secure.

Record disposition is subject to the Records Retention Schedules.

## **5.6 University-Instituted Fact Finding**

A Vice-President, in consultation with Policy Administrators and, where appropriate, the President may request that a fact finding be conducted in the absence of a formal complaint and in circumstances where he/she deems it appropriate to do so. The University will utilize the same methods of fact finding, adapted as necessary to meet the circumstances. Based on the results of this fact finding, appropriate disciplinary action may be taken.

## **6. Appeal**

### **6.1 Appealing a Decision**

In the event a complainant or respondent to a formal complaint has one or both specific concerns listed below, a request may be made to the appropriate Vice-President to convene an appeal. The complainant or respondent has 10 working days (p. 17) to request an appeal from the date of the decision. An Adjudicator (p. 13) will be appointed by the appropriate Vice-President.

The grounds for appeal are:

- The Fact Finder(s) did not comply with the procedures set out in the policy; and/or
- New evidence has become known after the final decision but before the expiry of the ten working days limitation period for requesting an appeal.

No appeal of the final decision will be undertaken with regard to a claim that the conclusions drawn by the Fact Finder(s) based on findings of fact were incorrect.

### **6.2 Appointment of an Adjudicator**

The appropriate Vice-President will appoint an internal or external Adjudicator as necessary.

#### **6.2.1 Duties of an Adjudicator**

- To determine whether the Fact Finder(s) did not comply with the procedures set out in the policy; and/or
- Recommend one of the following:
  - That the final decision be upheld
  - That it be amended based on new findings
  - Or, that a new investigation be undertaken.

### **6.3 Suspending Imposition of Discipline**

At the request of a respondent, the appropriate Vice-President, in consultation with Policy Administrators, may suspend the imposition of the disciplinary measures, pending the outcome of an appeal by the respondent.

### **6.4 Liability**

No one charged with responsibility under this procedure, who carries out his/her duties in good faith and conscience, shall be personally liable in accordance with the University's *Policy on Legal Representation* for any action or claim arising out of their good faith execution of those duties.

### **6.5 Interference and Retaliation**

#### **6.5.1 Disciplinary action due to interference and retaliation**

Interference with the conduct of a fact finding, or retaliation against any of the involved parties or witnesses, whether the complaint turns out to be substantiated or unsubstantiated, may itself result in disciplinary action.

#### **6.5.2 Protection of Individuals**

Where the respondent is in a position of authority with respect to the complainant, the appropriate supervisor may, where it is feasible to do so and at the complainant's request, reassign either the complainant or the respondent to different duties, or permit a student an academic accommodation(s), for example, switching sections of a course, pending the resolution of the complaint.

In the event of concerns for the safety of individuals involved in an investigation process, the Vice-President, in consultation with Director, Campus Services & Security, will take appropriate action.

## **7. Training Procedures**

Through the Policy Administrators, training sessions will be organized for employees and students in relation to establishment and implementation of the Policy on Respectful Work & Learning Environment and procedures.

The relevant supervisor and/or the Policy Administrators will facilitate any request or requirement for counseling/education/training on behalf of either the complainant or the respondent.

## **8. Remedies and Sanctions**

In cases of harassment and/or discrimination, the objective of a remedy is two-fold. The first objective is to prevent the continuation or repetition of the conduct. The second objective is to restore the complainant to the position she/he would have been in had the harassment or discrimination not occurred. Any remedies and/or settlements of harassment and discrimination complaints will take into consideration and address the interests of the OCAD community at large.

Wherever there is a finding of harassment or discrimination, there are a range of remedies and/or penalties which may be imposed. There include, but are not limited to one or more of the following:

- a) A written directive from the relevant supervisor to the respondent to cease the behaviour, with failure to do so leading to further penalty;
- b) A program of education for the respondent and/or the complainant and/or the department;
- c) An oral and/or written apology to the complainant from the respondent;
- d) Counseling and training for the respondent and/or the complainant;
- e) Restricted access to a physical area of the University;
- f) For students, suspension for a set time or expulsion, as set out by *Non-Academic Misconduct Policy*;
- g) For employees, suspension, for a set time, with or without pay, or dismissal.

## **9. Time Period for Filing Complaints**

A complainant must normally file a complaint of harassment or discrimination within six (6) months of the date of the alleged incident(s). OCAD recognizes that there may be extenuating circumstances that may prevent a formal complaint from being made within this time period. A complaint outside this timeframe may be permitted, in consultation with the Policy Administrators.

## **10. Trivial and Frivolous Complaints, Vexatious Complaints or Complaints Made in Bad Faith**

The Policy Administrators will together determine whether the subject-matter of concerns or a complaint is trivial, frivolous, vexatious, or made in bad faith. They may, at their discretion, decide not to investigate a complaint. This decision may be made at any stage of the complaint or investigative process. Any person who is found to have made a trivial, frivolous or vexatious complaint or a complaint, made in bad faith, may be subject to a range of remedies/penalties, similar to those taken when a respondent is found to have breached the policy.

## 11. Right to Representation

At any interview or proceeding related to the informal complaint process under this policy, a complainant and a respondent may have present his or her union/association representative(s), and/or a support person(s), such as a friend, relative or partner.

At any interview or proceeding related to a formal complaint or an appeal under this policy, complainants and respondents may have present his or her union/association representative(s), his or her agent (e.g. legal counsel), and/or a support person, such as a friend, relative or partner. Where appropriate, interpreters, including sign language interpreters, may be present.

## 12. Notes to Complaint

- 12.1 In the case of *sexual harassment and/or human rights harassment*, the complainant may choose to consult with his/her immediate supervisor, union representative, Director, Student Services, Director, Diversity & Equity Initiatives or Director, Human Resources, for the purpose of receiving advice and assistance with a view to resolving the situation.
- 12.2 In the case of *personal harassment of employees*, an employee may also consult with the Director, Human Resources or union representative for the purpose of receiving advice and assistance with a view to resolving the situation informally.
- 12.3 In the case of *personal harassment of students*, a student may also consult with the Director of Student Services or Student Union representatives, for the purpose of receiving advice and assistance with a view of resolving the situation informally.
- 12.4 If a *complaint is against a direct supervisor*, the complainant may seek advice and assistance director from the Director, Diversity & Equity Initiatives or Director, Human Resources, union, or Student Union representative, as is appropriate for the type of harassment.

## 13. Annual Report

The Director, Diversity & Equity Initiatives will, on behalf of the Policy Administrators, make available to the University community through the Office of the President an annual report concerning the number, general type and general disposition of cases, and on educational and other activities related to this policy.

## 14. Confidentiality and Personal Privacy

Individuals need to be able to discuss their concerns and receive advice and assistance in a safe environment. To ensure a fair process, complainants and respondents are advised not to discuss complaints under the policy with anyone who is not necessary to the process of resolution, counseling, fact finding or appeal. Where copies of an investigative report have been provided to a complainant or respondent, the report must be kept in strict confidence. In case of any intentional or unnecessary breaches of confidentiality, the complainant, respondent or other relevant person may be subject to disciplinary action by the University.

The University respects personal privacy and will not disclose the name of a complainant or respondent or witness or any other details that would identify the parties, except where:

- Required for the fact finding and resolution of a complaint and taking corrective action (preventative, remedial and/or disciplinary);
- A student or employee is deemed to be at risk;
- There is a risk to the health, safety and security of any member of the University community; or
- As required by law.

## 15. Policy Review

Review of procedures of the Policy on Respectful Work & Learning Environment will be conducted every three (3) years. The next scheduled review day for these procedures is June 2012.

These procedures may be revised or rescinded if:

- It is deemed necessary by the Vice-Presidents; or
- The relevant bylaw, regulation(s) or policy is revised or rescinded.

## Part 3 – Definitions and Notes

### 1. Academic Freedom

As outlined in the Memorandum of Agreement between the university and the OCAD Faculty Association, the university recognizes that “academic freedom is essential to the teaching function of the university, as well as to the creative and scholarly pursuits of the faculty, academic staff, other staff, and students. This includes a commitment to unfettered intellectual and aesthetic inquiry and judgement and to the provision of those textual, audio, and visual resources necessary to free inquiry and practice. Academic freedom includes: the right of responsible teaching from a subjective point of view; the right to freedom of creative practice or expression; and the right of dialogue, discussion, debate and criticism”. Academic freedom applies to faculty and students.

2. **Adjudicator** – a person appointed to review an appeal in accordance to this policy.

### 3. Bad Faith and Vexatious Complaints

A complaint made in bad faith is one that is known by the complainant to be false and/or one in which a complaint is made for a purpose other than gaining a satisfactory remedy. A vexatious complaint is one instituted maliciously and without probable cause and/or one which is not based on reasonable factual grounds, but is merely vindictive. In determining whether a complaint is vexatious or made in bad faith, one considers the knowledge and intention of the complainant. If a complainant is merely bringing forward a complaint to annoy or embarrass a respondent, and knows that there is no actual discrimination or harassment, then it can be said that the complaint is vexatious or made in bad faith.

### 4. Bullying

Bullying means a form of repeated, persistent and aggressive behaviour that is directed at an individual or individuals, and is intended to cause (or should be known to cause) fear and distress and/or harm to another person’s body, feelings, self-esteem or reputation. Bullying usually occurs in the context where there is a real or perceived imbalance of power.

#### 4.1 Examples of Bullying

Examples of bullying may include:

- Discrediting a person, spreading rumours, ridiculing him or her, humiliating him or her, calling into question his or her convictions, or his or her private life;
- Preventing a person from expressing himself or herself, constantly interrupting him or her, and/or prohibiting him or her from speaking to others
- No longer talking to an individual or ignoring their presence, distancing them from other; destabilizing a person by making fun of his or her convictions, his or her tastes and/or his or her political opinions;
- Undermining or deliberately impeding a person’s work by withholding necessary information or purposely giving the wrong information;
- Aggressive behaviour such as finger pointing, standing close to an individual in an aggressive manner, pounding a fist against desk or wall and/or;
- Spreading rumours, images, or hurtful comments through the use of email, cell phones, text messaging, internet, websites, or other technologies.

### 5. “*Bona Fide and Reasonable*”

The onus for showing that a requirement, qualification or factor is *bona fide* and reasonable in the circumstances is on the person(s) or entity (e.g. an Office, a department, the University, etc.) responsible for the applicable policy, procedure, or system. A requirement, qualification or factor that is “*bona fide* and reasonable” is one that is imposed honestly and in good faith, and one which is rational, and based on non-impressionistic and objective criteria.

6. **Complainant** - A person who brings forward a concern and/or makes a complaint (an allegation, whether oral or written, of harassment or discrimination).

## 7. Discrimination & Harassment

**7.1 Discrimination** means, except where *bona fide* and reasonable cause exists, or where it is based upon *bona fide* and reasonable requirements or qualifications, the differential treatment, whether intended or not, of an individual or group of individuals based on: an individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit; or on any of the following grounds:

- Ancestry
- Race
- Colour
- Nationality or national origin
- Ethnic background
- Religion or religious belief, creed, association or activity
- Age
- Sex
- Gender-determined characteristics
- Gender identity
- Sexual orientation
- Marital or family status
- Source of income
- Political belief
- Political association or activity
- Physical or mental disability or related characteristics or circumstances, e.g. physical size or weight.

**7.2 Harassment** means engaging in a course of vexatious comment or conduct against a person or persons in a place of work or learning that is known or ought reasonably to be known to be unwelcome. Harassment is not the normal exercise of supervisory or teaching responsibilities, including direction, instruction, evaluation counseling and/or discipline.

### 7.2.1 What May Constitute Harassment

Harassment may consist of a single incident of a serious nature or a series of incidents involving unwelcome comments or conduct directed toward a specific person or group of persons which diminish the dignity of the recipient(s) and serve no legitimate work or academic related purpose, and have the effect of creating an intimidating, humiliating or hostile work or learning environment. It may be physical or psychological in nature. It can occur between males and females, and between members of the same gender.

### 7.2.2 Examples of harassment

Examples of harassment may include:

- Derogatory written or oral comments and gestures such as name-calling, slurs, graffiti, pictures, remarks, or jokes based on any characteristics on the prohibited grounds outlined above;
- Evaluations of performance based on any characteristics referred to in section 2 above;
- Behaviour stating or implying actual or perceived abilities or inabilities based on any characteristics on the prohibited grounds outlined above;
- Applying stereotypes or generalizations based on any characteristic on the prohibited grounds outlined above;
- Unreasonable refusal to work with or share facilities based on any characteristics on the prohibited grounds outlined above;
- Inappropriate questions or sharing of information;
- Incidents of yelling, screaming or name-calling;
- Threats to terminate employment or contracts for reasons unrelated to performance;

- Threats to withdraw funding, scholarships or advancement opportunities for reasons unrelated to performance;
- Comments addressed to a person which have the effect of undermining a person's role in the workplace or classroom and or;
- Unwanted conduct, comments, actions or gestures that affect an individual's dignity, psychological or physical integrity, and that result in a harmful work or learning environment for the individual.

### 7.2.3 Harassment does not include:

Legitimate, constructive, and/or fair criticism of an employee or student's performance/behaviour and creative expressions, or the legitimate (i.e. not discriminatory, arbitrary, abusive or defamatory) exercise of academic freedom, or freedom of thought, inquiry and expression in teaching and research.

## 7.3 Sexual Harassment

Sexual harassment means unwelcome sexual attention directed at an individual by someone whose conduct or comments are, or should reasonably be known to be, offensive, inappropriate, intimidating, hostile, and unwelcome.

Sexual harassment often occurs in an environment in which sexist or homophobic jokes and materials have been allowed. Although sexual harassment and sexual solicitations and advances typically involve a female victim, both males and females can be harassed and/or solicited by members of either sex. Moreover, while sexual harassment, solicitations and advances typically involve a power differential, they may occur between equals/peers.

### 7.3.1 Examples of Sexual Harassment

Examples of sexual harassment may include:

- Unwanted sexual attention by a person who knows or ought reasonably to know that such attention is unwanted;
- Express or implied promise of reward for complying with a sexually oriented request;
- Express or implied threat of reprisal for complying with a sexually oriented request;
- Denial of opportunity or an expressed or implied threat of denial or opportunity for refusal to comply with a sexually oriented request;
- Sexually oriented behaviour or gender-based abusive and unwelcome conduct or comment that has the purpose or effect of creating an intimidating, hostile or offensive environment;
- Sexist remarks, jokes, innuendoes or taunting about a person's body, appearance, characteristics, or clothing;
- Persistent and unwelcome invitations or requests for dates;
- Sexually oriented gestures; and/or
- Inappropriate touching.

## 7.4 Sexual Assault

Sexual assault is a crime as fined in the *Criminal Code* (Canada). Sexual assault is also a form of sexual harassment and will be considered such under this policy.

- 8. Employee** - Any OCAD faculty, academic staff, administrative staff, managers and contract or temporary employee. Employees of the University may also be students at the University. An employee will be treated as a "student" under this policy where an incident occurs while the employee is acting within her/his role as a student, and outside the scope of his/her employment.
- 9. Fact Finder** – An individual appointed by a Vice-President to investigate a formal complaint related to OCAD's Policy on Respectful Work & Learning Environment.
- 10. Investigation** – The process undertaken in response to a complaint.

- 11. Mediation** – A collaborative process to produce agreement or resolution.
- 12. Mediator** – A neutral party who assists in negotiations and facilitates voluntary agreements between parties in a dispute.
- 13. Policy Administrators** – Members of the OCAD community who are charged with the responsibility of administering this policy. In this policy, these are:
- Director, Human Resources
  - Director, Diversity & Equity Initiatives, and
  - Director, Student Services

- 14. Policy Implementation** – In implementing this Policy, the University will make every reasonable effort to balance the rights of all parties with the legal responsibility of the University.

Individual needs and special circumstances will be taken into consideration but, in so doing, the University will balance these against its obligations under this Policy and under the law.

- 15. Respondent** – A person against whom a complaint has been made.
- 16. Resolution Agreement** – A document prepared by the Mediator outlining a mutually acceptable resolution agreed to by the parties after a mediation process. Both parties sign this document.
- 17. Supervisor** – Any employee who has charge over any work and/or learning environment, and/or authority over an individual employee or student.
- 18. Student** – A person who is:
- Registered in an OCAD course of study;
  - Engaged in any academic work which leads to the recording and/or issue of a mark, grade or statement of performance by the appropriate authority in the University or another institution; or
  - Entitled to a valid student card who is between sessions but is entitled because of student status to use University facilities.

**19. Trivial and Frivolous Complaints**

In considering whether allegations are trivial or frivolous, it is the subject matter and not the amount or nature of the remedy sought that acts as a guide for assessing the allegations.

A distinction must be made between a complaint in which the subject is not trivial or frivolous, but where the possible remedy may be very limited, and a complaint in which the subject matter itself is trivial. Only the latter type of complaint should be dealt with as trivial or frivolous.

A trivial complaint is one in which there may be a technical breach of the policy but the impact of the breach is of such a trivial nature that involvement of the Office of Diversity & Equity Initiatives is not warranted.

A frivolous complaint is one which is clearly insufficient on its face, and one in which a complainant alleges the policy has been breached but the evidence does not in any way bear this out. It is one which may be perfectly true in its actual allegations, but yet is liable to be dismissed because it is totally insufficient in substance.

- 20. University Premises** – Any building and/or lands owned, leased, operated, controlled or supervised by the University.



**21. Volunteer** – A person who provides services to the University for which they are not being paid. Where a volunteer is also a student or employee, she/he will be treated as a “student,” or “employee” under this policy.

**22. Working Days** – Mondays to Fridays, excluding Saturdays, Sundays and paid holidays observed by the University.

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**Robert Montgomery**

Chair, Board of Governors, Ontario College of Art & Design University

Date \_\_\_\_\_

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**Sara Diamond**

President, Ontario College of Art & Design University

Date \_\_\_\_\_

Appendix 1

**Respectful Work & Learning Environment Policy  
Informal Complaint Report Form**

|   |                                    |
|---|------------------------------------|
| <b>Complainant's Name</b>   | <b>Complainant's Department</b>    |
| <b>Complainant's Supervisor/Dean/Chair</b>  | <b>Faculty/Division/Department</b> |
| <b>Home Address</b>   | <b>E-mail Address</b>              |
| <b>Telephone/Cell Number</b>  | <b>Best time to call</b>           |
| <p><b>CONCERN/ISSUE:</b> Please provide a concise description of the situation.</p><br><br><br><br>                                   |                                    |
| <p><b>BACKGROUND:</b> When and where did this occur? Date, time, location (i.e. room, building, on or off campus)</p><br><br><br><br> |                                    |
| <p><b>Who was involved? Staff, Students, Security</b></p><br><br><br><br>   |                                    |

**Witnesses? Did anyone else see/hear what happened? Please provide names and contacts if possible**

**Did the complainant/respondent attempt to resolve the issue? Provide actions taken**

**Has reasonable resolution been achieved?**  
Yes \_\_\_\_ No \_\_\_\_  
If yes, please describe the resolution briefly.

**I declare that to the best of my knowledge, the information contained in this statement is correct**

**Signature:**

**Today's date:**

\_\_\_\_\_

\_\_\_\_\_

**Other information and/or details:** Yes \_\_\_\_ No \_\_\_\_  
(Please give additional important information not covered by other parts of this form on a separate sheet.)

**Where to take this form:**

Director, Diversity & Equity Initiatives

Mailing address:

Ontario College of Art & Design University

100 McCaul Street, Toronto, ON M5T 1W1

Office location: Rosalie Sharp Pavilion, 115 McCaul Street, Level 3

T: 416-977-6000 x486 F: 416-977-3034 [diversity@ocad.ca](mailto:diversity@ocad.ca)

The personal information collected on this form is collected under the authority of the *Ontario College of Art & Design Act, 2002* and will be used and disclosed in accordance with the terms of the *Policy on Respectful Work & Learning Environment* by individuals designated to carry out investigations under the Policy. If you have any questions on the

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