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## 8.6.1 HARASSMENT, BULLYING + DISCRIMINATION PROCEDURES

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### ENABLING POLICY

8.6 Harassment, Bullying + Discrimination

### PROCEDURES

Emily Carr University of Art + Design (University) is committed to providing a respectful learning and working environment. Prompt, early action can help stop inappropriate or disrespectful behaviour, reducing the potential of repeated or escalating behaviour.

Individuals experiencing harassment, bullying and/or discrimination may pursue one or more of the following steps: informal early resolution; mediation; or formal investigation.

### EARLY RESOLUTION

1. Wherever appropriate and possible, a serious attempt at resolving situations involving harassment, bullying or discrimination informally should be made by all parties without filing a written complaint under the University's Harassment, Bullying + Discrimination Policy (the "Policy"). Such early resolutions assist in creating and sustaining a respectful learning and working environment.
2. A complainant who believes that she/he has a complaint of harassment, bullying or discrimination is encouraged to discuss the matter with the respondent and to ask the respondent to stop the offensive behavior and/or to take corrective or remedial action before filing a complaint under the Policy.
3. Where the complainant is a student, support, coaching, counselling and/or facilitation are available from the Counselling Office, the Dean of the program, and/or the Vice President, Enrolment + Student Services.
4. Where the complainant is an employee, support and resources are available from the employee's supervisor, Human Resources Department, the Employee Assistance Plan and the Union, where applicable. If complainant and/or respondent are faculty or staff, they should review relevant articles in their Collective Agreement.
5. Where the complainant seeks counselling or support, all information shared by the complainant is kept confidential from the respondent. University personnel will not intervene with the respondent without the complainant's consent, unless there is a threat or likelihood of serious harm to any person.
6. Where a bystander has witnessed behaviour that he/she believes is in contravention of the Policy, he/she should encourage the person who is experiencing the offending behaviour to pursue a resolution either through the early resolution process or through filing a formal complaint. A bystander may offer to accompany the person to report the concerns or offer to report the concerns directly.

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7. In the event that early resolution approaches have not resolved the matter, a complainant may pursue an informal resolution or file a complaint as detailed below.

## **FILING A COMPLAINT**

1. If a complainant wishes to file a complaint under the Policy, the complaint must:
  - (a) be in written form;
  - (b) contain the names of the complainant (or bystander) and the respondent;
  - (c) contain details of the incident(s) complained of (including dates, locations and names of individuals involved in or witnessing each incident) and attach copies of any relevant documents;
  - (d) contain the remedy requested; and
  - (e) be dated and signed by the complainant (or bystander).
2. Except in exceptional circumstances, the complaint must be delivered to the applicable Policy Advisor (Vice President, Enrolment + Student Services, or designate, if the complainant is a student or to the Director, Human Resources, or designate, if the complainant is an employee) within six (6) months of the alleged contravention. If a continuing contravention is alleged in a complaint, the complaint must be filed within six (6) months of the last alleged instance of the contravention. The complainant must have been a member of the University community at the time of the alleged contravention.
3. Upon receiving the complaint, the complaint will be reviewed to determine whether the allegations, if proven, would fall within the scope of the Policy. The Policy Advisor may decide to interview the complainant (or bystander) to assist him/her in making this determination.
4. If the Policy Advisor determines that the complaint does not fall within the scope of the Policy, he/she will:
  - (a) immediately advise the complainant (or bystander) in writing of the determination; and
  - (b) refer the complainant, as appropriate, to other University policies that may address the matter, or to other services within or outside the University that may be able to provide assistance.
5. If the Policy Advisor determines that the allegations, if proven, would fall within the scope of the Policy, the Policy Advisor may either:
  - (a) endeavor to resolve the matter through the informal resolution process set out below; or
  - (b) initiate a formal investigation of the complaint, where:
    - (i) the respondent is alleged to have committed repeated infringements of the Policy;
    - (ii) the complaint, in the judgment of the Policy Advisor is not amenable to informal resolution; and
    - (iii) the complainant (or the person experiencing the alleged offending behaviour) does not wish to make a written complaint or to be identified and the Policy Advisor believes the matter warrants referral to the President + Vice-Chancellor.

## **INTERIM MEASURES**

Where the Policy Advisor considers it appropriate to do so, the Policy Advisor may make arrangements through the appropriate senior University administrator for interim measures to be put into place pending the disposition of the complaint. Such measures are precautionary and not disciplinary and may include:

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- (a) separating the complainant and/or the person experiencing the alleged offending behaviour and the respondent organizationally, physically, or both;
  - (b) making arrangements for the work, examinations or assignments of the complainant and/or the respondent to be evaluated by a third party whose interests are not at stake; and/or
  - (c) making such other arrangements that the Policy Advisor considers appropriate in the circumstances.

## **INFORMAL RESOLUTION**

1. The respondent will be provided with a copy of the complaint (or written particulars of the allegations contained in the complaint) and a copy of the Policy. If both the complainant/the person experiencing the alleged offending behaviour and respondent voluntarily agree to participate in an informal resolution process, the Policy Advisor, or designate as agreed upon by the complainant, respondent and the University will meet with the complainant and with the respondent individually, and together subsequently, if appropriate, to attempt to secure a resolution of the complaint satisfactory to both parties. In addition, the Policy Advisor and/or designate may interview other persons who may have pertinent information about, and/or who may have witnessed the relevant incidents.
2. The complainant may, at any time during the informal resolution process, choose to withdraw the complaint, in which case all formal record of the case shall be destroyed. The respondent shall be notified immediately of the withdrawal and no further action shall be taken.
3. If a resolution is achieved, the complainant (or the person experiencing the alleged offending behaviour) and respondent will sign a Resolution Agreement prepared by the Policy Advisor. Should the resolution include an action or remedy by the University, the Resolution Agreement must also be signed by the member of the University responsible for ensuring that the remedy is followed through. All parties will receive a copy of the Resolution Agreement and it becomes part of the respondent's record, as appropriate.
4. If a Resolution Agreement is reached, the matter will normally be considered closed and the Policy Advisor will cease to act on the complaint. However:
  - (a) if the terms of the Resolution Agreement are subsequently breached by either party, the complaint file will be reopened and further action may be taken, including referring the matter to the President + Vice-Chancellor; and/or
  - (b) if the respondent is named in any other harassment, bullying or discrimination complaint by the same or another complainant, the original complaint and the Resolution Agreement may be introduced as evidence in that proceeding.

## **FORMAL INVESTIGATION**

1. If the Policy Advisor determines that a formal investigation should be initiated and/or if the informal resolution process does not result in an agreement, the Policy Advisor will refer the complaint to the President + Vice-Chancellor.
2. If the complaint is referred to the President + Vice-Chancellor for a formal investigation, the Policy Advisor will forthwith inform the parties in writing. The respondent will be provided with a copy of the complaint (or written particulars of the allegations contained in the complaint) and a copy of the policy. The respondent will have a reasonable opportunity to consult with a constituency organization representative, personal representative or counsel. The Policy Advisor will provide the President + Vice-Chancellor with copies of the complaint and the response.

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3. The President + Vice-Chancellor will assign either an internal or external investigator who has not previously been involved in the matter to conduct the investigation. The investigator will be someone with appropriate special expertise in investigations.
  4. The President + Vice-Chancellor may refuse to appoint an investigator if the complainant is no longer a member of the University community or is not prepared to cooperate in the investigation.
  5. If more than one complaint has been made about a respondent, the President + Vice-Chancellor may decide to have the complaints investigated together.
  6. The investigator will be provided with terms of reference for the investigation, copies of the complaint and the response and the timeline for completing the investigation and report. Investigations will:
    - (a) be undertaken promptly and diligently and be as thorough as necessary, given the circumstances;
    - (b) be fair and impartial, providing both the complainant and respondent equal treatment in evaluating the allegations;
    - (c) be sensitive to the interests of all parties involved and maintain confidentiality;
    - (d) be focused on finding facts and evidence, including interviews of the complainant, respondent and any witnesses; and
    - (e) incorporate, where appropriate, any need or request from the complainant or respondent for assistance during the investigation process.
  7. The investigator will interview the complainant (and/or bystander), the respondent and any witnesses the investigator believes may have information relevant to the complaint. The investigator will review any documents he/she considers relevant.
  8. The investigator is responsible for interpreting the provisions of any applicable policy or statute and, subject to compliance with the principles of natural justice and procedural fairness, is free to develop his/her own procedures and practices to conduct the investigation and is not constrained by strict rules of procedure and evidence.
  9. The burden of proof is on the complainant or bystander to prove his/her allegations on a balance of probabilities.
  10. After completion of the investigation, the investigator will prepare a written report setting out:
    - (a) the investigator's findings of fact regarding the allegations contained in the complaint;
    - (b) if applicable, the investigator's findings regarding credibility;
    - (c) the investigator's opinion as to whether or not there has been a violation of the Policy; and
    - (d) any mitigating or aggravating circumstances to be considered.
  11. The investigator's report will be delivered to the President + Vice-Chancellor.
  12. The investigator's report will not be disclosed to the parties, except where required by applicable collective agreement provisions or by law.
  13. If the complainant or the respondent refuses to cooperate with the investigator, the investigator may either proceed with the investigation or make a recommendation to the President + Vice-Chancellor regarding further action. The President + Vice-Chancellor is not bound by the recommendation and may direct a different course of action.

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## **THE PRESIDENT + VICE-CHANCELLOR'S DECISION**

1. The President + Vice-Chancellor will review the investigator's report and make a decision regarding the complaint.
2. If the President + Vice-Chancellor determines that the respondent has not engaged in harassment, bullying or discrimination or otherwise violated the Policy, the President + Vice-Chancellor will:
  - (a) dismiss the complaint; and
  - (b) prepare a written record of resolution which will be provided to the complainant and the respondent.
3. If the President + Vice-Chancellor determines that the respondent has engaged in harassment, bullying or discrimination or has otherwise violated the Policy, the President + Vice-Chancellor will:
  - (a) obtain and review any previous record(s) of resolution involving the respondent;
  - (b) if the respondent is an employee, review the respondent's personnel file and, consult with the Director, Human Resources or her/his designate.
  - (c) if the respondent is a student, review the respondent's student file and consult with the Vice President Enrolment + Student Services or her/his designate;
  - (d) make a decision regarding the sanction or penalty, if any, to be imposed on the respondent;
  - (e) make a decision regarding the remedy, if any, to be provided to the complainant;
  - (f) prepare a written record of resolution which will be provided to the complainant and the respondent and the Union where applicable (edited as necessary to protect confidentiality) and filed in the respondent's personnel or student file; and
  - (g) take any other steps the President + Vice-Chancellor considers appropriate in the circumstances.
4. If the President + Vice-Chancellor determines that the complaint is of a frivolous, vexatious or malicious nature, the President + Vice-Chancellor may take appropriate action (which may include disciplinary sanctions).

## **REPRESENTATION**

The complainant and the respondent have the right to be represented at any stage of these procedures by a formal representative or support person. The complainant and the respondent will be so informed.

## **TIME LIMITS**

The time limits set out in these procedures are designed to ensure the expeditious handling of complaints and may be amended at the discretion of the Policy Advisor or the President + Vice-Chancellor.

## **OTHER PROCEEDINGS**

Nothing in the Policy or these Procedures shall be construed as limiting the right of a complainant or respondent to file a grievance under any applicable collective agreement, or to file a complaint or appeal under any statute or University policy.

If a complainant pursues a course of action outside this Policy in connection with a complaint of harassment, bullying or discrimination, the University may, in its sole discretion, decide to place the process under this Policy in abeyance pending the conclusion of the other proceeding.

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## **ANNUAL REPORT + REVIEW**

The Policy Advisors shall provide an annual report to the Board of Governors indicating the number of complaints received under the Policy, the general nature of the complaints and the final resolution of the complaints. The annual report shall not include the identities and personal information of any parties involved pertaining to the complaint. The Harassment, Bullying + Discrimination Policy will be reviewed on a regular basis, at least every five years.