

## **Procedure 10 – Unit Harassment Policy**

### **3.10.1. Policy**

- 3.10.1.1** The Toronto Secondary Unit is committed to providing a safe, secure and respectful environment that is free from harassment at Unit premises and at all Unit sponsored events. Unit premises are considered as the Unit office and such other premises as may be used for Unit sponsored events. Unit events are considered to include all conferences, seminars, workshops, meetings or activities and while conducting Unit business.
- 3.10.1.2** The Toronto Secondary Unit is committed to fostering the goodwill and trust necessary to protect the rights of all individuals.
- 3.10.1.3** The Toronto Secondary Unit recognizes the right of members of the Unit to be free from harassment, and the Unit will not tolerate any violence, threats, harassment, or intimidation at Unit premises or Unit sponsored events and while conducting Unit business. The Unit undertakes to respond to and act on a member's complaint of harassment by another Unit member(s).
- 3.10.1.4** The Toronto Secondary Unit recognizes that no perceived incident of harassment is trivial. It is the responsibility of all members of the Unit to conduct themselves in accordance with this Policy in order to create and maintain a Unit environment free from harassment.
- 3.10.1.5** This Policy applies to all Unit members. It applies to interactions between and among Unit members at Unit premises and Unit sponsored events and while conducting Unit business.
- 3.10.1.6** This Policy does not pertain to:
  - 3.10.1.6.1** persons who are not members of the Unit, as complainant or respondent under any circumstances;
  - 3.10.1.6.2** OECTA members with respect to any incident arising from the employment relationship with the TCDSB. Any complaint related to employment is to be dealt with pursuant to the grievance procedure in the applicable collective agreement or the TCDSB's applicable Harassment Policy.
- 3.10.1.7** This Policy in no way supersedes an individual's rights under the Ontario *Human Rights Code*, S.O. (1981, c. 53) as amended, where applicable.
- 3.10.2** Definitions  
Harassment

- 3.10.2.1** Harassment is defined as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.
- 3.10.2.2** Personal harassment includes objectionable conduct, comment, action or gestures directed towards a specific person or persons, which has the effect of creating an intimidating, humiliating, hostile or poisoned environment.
- 3.10.2.3** While harassment often involves repeated conduct or communication, or persistent patterns of behaviour, in some circumstances a single act or incident, which has a harmful effect, may also constitute harassment.
- 3.10.2.4** Some examples of harassment include:
- unwelcome remarks, slurs, taunts or derogatory comments about a person;
  - written or verbal abuse or threats;
  - physical assault;
  - bullying;
  - intimidation;
  - physical or mental maltreatment;
  - practical jokes that embarrass or insult a person;
  - humiliating a person in front of his or her co-workers or peers;
  - abuse of authority that undermines a person's performance or a departure from reasonable conduct.
- 3.10.2.5** The following situations are not normally considered to be harassment or discrimination:
- the discussion and debate of controversial topics or issues in the course of Association business or activities;
  - the statement of any opinion or position by a person who has the right as a member of the Association to participate in Association activities;
  - requirements to comply with rules or standards of the Association's Handbook.
  - mutually consensual expressions of affection.

#### **Sexual Harassment**

- 3.10.2.6** Comments or conduct of a sexual nature and/or abusive conduct based on gender, gender identity, sex (including pregnancy and breast feeding) or sexual orientation, directed at an individual or group of individuals by any person or persons, who knows, or ought reasonably to know, that such comments or conduct is unwelcome and/or unwanted and/or creates an intimidating, hostile or offensive environment.
- 3.10.2.7** Sexual harassment may occur during a single incident or a series of single incidents.

Whether or not a single incident constitutes sexual harassment will depend on the nature and type of incident(s).

**3.10.2.8 Sexual Harassment includes, but is not limited to:**

- unwelcome sexual invitations or requests;
- demands for sexual favours;
- unnecessary touching or patting of a person's body;
- leering at a person's body;
- unwelcome and repeated innuendos or taunting about a person's gender, gender identity, sex (including pregnancy and breast feeding) or sexual orientation;
- unwelcome remarks or verbal abuse of a sexual nature;
- visual displays of sexual images perceived to be degrading or offensive;
- unwelcome remarks or verbal abuse based on gender, gender identity, sex (including pregnancy and breast feeding) or sexual orientation which are demeaning or degrading;
- threats of a sexual nature;
- sexual assault and;
- any other unwanted verbal or physical conduct of a sexual nature.

**3.10.2.9 To the extent that conduct alleged to be harassment or sexual harassment may also attract liability and/or responsibilities under other statutes, including the Ontario Human Rights Code, or the Criminal Code of Canada, the existence of this Policy does not preclude the enforcement or exercise of rights under those statutes.**

**3.10.3. No Reprisals**

**3.10.3.1 All concerns or complaints received will be taken seriously and will be handled promptly according to the procedures outlined below.**

**3.10.3.2 a) No adverse action, including retaliation, shall be taken or tolerated against anyone who, in good faith and on the basis of reasonable belief, invokes a process or is a third party providing information under this Policy.  
b) A person may invoke a process under this Policy for any reprisal, real or perceived.**

**3.10.4 Procedures Under This Policy**

**3.10.4.1 Where possible, this Policy and its Procedures are intended to provide an opportunity for resolution of issues at the lowest level in a non-adversarial way between the identified complainant and respondent. There are three possible separate processes:**

- informal resolution of a concern
- mediated resolution
- formal complaint process

**3.10.4.2** When a member raises an issue under this Policy with the Toronto Secondary Unit Release Officer, they will be provided a copy of this Policy and informed of the available options for proceeding. Each of these processes is complete and self-contained, but members have the right to use any of the processes if resolution satisfactory to the parties is not achieved. At any time during the informal resolution or formal complaint processes, the parties may request mediation and suspend the process in which they are engaged. In addition, informal resolution or mediation may be suspended and replaced by a formal complaint process. If mediation is suspended and replaced by a formal complaint process, any information obtained during mediation will not be provided to the Complaints Officer unless all parties agree.

### **3.10.5 Informal Resolution of a Concern**

**3.10.5.1** There are three (3) options that may be considered to facilitate the informal resolution of a concern. The person raising the concern will be advised of these three options. The Unit President will appoint a person to help resolve the issue.

#### **Option 1: Discussion of the concern between the parties**

In some cases it may be appropriate for the local Unit person assisting in the matter to suggest to the person expressing the concern that they approach the person whose behaviour gives or gave cause for concern, making it clear why the behaviour was or is viewed as unacceptable.

This option may not be appropriate if concerns have been raised about personal safety or intimidation or if there is a belief that a situation will escalate as a result of any direct communication.

#### **Option 2: Inform the respondent of the concern and of this Policy and its Procedures**

At the request of the person expressing the concern, the local Unit person will advise the person who is the object of the concern and explain the local Unit's expectation of appropriate behaviour. The local Unit will provide a copy of this Policy and its Procedures to the person who is the object of the concern.

#### **Option 3: Conduct informal inquiry into the concern**

The person appointed by the local Unit shall conduct an informal inquiry into the matter. This may involve speaking, in a balanced fashion, to third parties with information relevant to the concern. The local Unit person will then meet with the parties and make suggestions as to a recommended course of action to resolve the concern. The local Unit person will follow up with all parties in order to

determine whether or not the concern was resolved to the satisfaction of all parties and whether or not the resolution was and is consistent with this Policy and its Procedures. The names of all third parties who provide information will be kept confidential. At any time during the informal inquiry process, the parties may agree to participate in mediation in accordance with Section 6 of this Policy.

#### **3.10.5.2 Important Points for Facilitating Resolution of Human Rights Concerns**

(i) The local Unit will facilitate a resolution by helping the person with a concern to select the appropriate option from Section 5.01 of these Procedures. When a course of action is selected, the local Unit will monitor the situation and, if necessary, hold meetings (together or separately, as appropriate) with all parties to ensure that it is implemented and effective for the parties involved.

(ii) The local Unit should advise all parties to take notes about the situation, including when the alleged incident or incidents occurred and who was present.

(iii) The local Unit will advise all parties of their right to seek the assistance of a representative.

(iv) The local Unit shall monitor the implementation of any resolution reached under this section and shall ensure that those involved with the matter are kept fully informed.

(v) The local Unit must ensure that upon resolution of a human rights concern, accurate and complete records specific to the case are kept in a confidential file. The local Unit must ensure that the fact that concerns have been raised or resolved does not become part of any record unless permission has been given by both parties.

(vi) The names of third parties providing information shall remain confidential.

#### **3.10.6 Mediated Resolution**

**3.10.6.1** Mediation involves a third party acting as a facilitator in direct communication between the two parties. Mediation is not appropriate when only one party is committed to the process. Mediation may not be appropriate in circumstances where there are allegations of physical violence, threats to safety, serious emotional or physical abuse or intimidation.

**3.10.6.2** At any stage during either the informal resolution of a concern or a formal complaint process, any party may request mediation. Mediation is voluntary and will only be used when both parties agree. Mediation may be a practical way to help all parties understand the other party's position and allows all parties to be directly involved in the process. Mediation is not a fact-finding process and the mediator will not make any decision with respect to resolution of the concern or

complaint. The mediator cannot be a witness in any proceeding related to the subject matter of the mediation, unless required by law.

**3.10.6.3** All information obtained during mediation is “off the record” and “without prejudice.” Should mediation be unsuccessful and the formal complaint process be used, information gathered during the mediation will not be used in the complaint process unless all parties agree.

**3.10.6.4** Any settlement reached must be mutually accepted by all parties and approved by the Unit President or designate.

**3.10.6.5** If the mediation is successful and a settlement is achieved, a written report of the settlement shall be signed by both parties and the local Unit President or designate and the issue will not proceed any further. A copy of the settlement shall be maintained by the Unit under secure conditions and provided in confidence to the parties. All settlements must contain the following confidentiality statement binding on all parties:

“The parties agree that they shall keep the terms and facts of this settlement completely confidential and shall not disclose the facts or terms of the settlement except with his or her spouse, legal advisors or as required by law.”

If the mediation is unsuccessful, the Process will continue as in 7 – Formal Complaint Process, as required.

**3.10.6.6** Any alleged violation of a settlement reached may be the subject of a further concern raised or complaint under this Policy.

**3.10.7. Formal Complaint Process**  
**A. With Respect to the Merits of the Complaint**

**3.10.7.1** The term ‘complainant’ refers to the person making the complaint under this Policy. The term ‘respondent’ refers to a person who in a complaint is alleged to have engaged in conduct in breach of this Policy.

**3.10.7.2** Any member who believes that he or she has experienced harassment as defined in this Policy at a Unit office or Unit sponsored event may make a complaint under this Policy.

**3.10.7.3** Subject to 10.4.2 above, the complaint shall be made in writing to the Unit President within five business days of the occurrence of the alleged harassment. If the Unit President is alleged to be the respondent or is in a conflict of interest with respect to the complaint, then the role of the Unit President throughout the Policy shall be designated to the appropriate Unit officer in accordance with Unit by-Laws.

- 3.10.7.4** The Unit President shall give a copy of the complaint to the respondent within three business days of its receipt.
- 3.10.7.5** The Unit President shall within three days of giving notice of the complaint to the respondent, designate a Complaints Officer to investigate the complaint who may be a Unit member or other person, as designated by the President, other than an OECTA provincial staff person.
- 3.10.7.6** The Complaints Officer designated to investigate the complaint shall conduct an investigation promptly.
- 3.10.7.7** The investigation shall consist of:
- a) The written complaint and all supporting materials to be relied upon by the complainant;
  - b) The respondent shall be afforded the opportunity to respond to the complaint, including the right to provide a written statement.
  - c) Personal interviews may be conducted of complainant, respondent, or other person(s) as deemed necessary.
  - d) Any new information found during step c) shall be provided to both the complainant and the respondent.
- 3.10.7.8** If at any point during the investigation the parties agree that the complaint may be resolved by informal mediation, this may be pursued by the Complaints Officer under section 6 with assistance from the Unit President.
- 3.10.7.9** If the mediation is unsuccessful and a settlement has not been reached, the Complaints Officer shall issue a report of his or her investigation to the Unit President within two weeks from the date of his or her appointment or as soon as possible after the two week deadline. The report shall contain the findings of the Complaints Officer as to whether a violation of this Policy has occurred and recommendations as to the appropriate action in the circumstances.
- 3.10.7.10** The complainant and respondent shall be given a copy of the report and shall be given an opportunity to provide a written response to the Unit President within seven days.
- 3.10.7.11** The Unit President shall upon receipt of the written responses under 7.10 render a finding as to whether or not a violation of the Policy has occurred.
- 3.10.7.12** Where there is a finding that a violation of this Policy has occurred the matter shall be referred to the General Secretary for a determination as to the appropriate action to be taken, as outlined in 10.7.14 and 10.7.15 below.

**3.10.7.13** If either party to the complaint disagrees with the finding of the Unit President, the party may make a written submission to the General Secretary.

**B. With Respect to the Appropriate Action to be Taken**

**3.10.7.14** In accordance with the Association's By-laws, the General Secretary shall review the written decision and render a decision as to the appropriate action to be taken. Prior to the decision of the General Secretary with respect to the appropriate remedy, the complainant and respondent shall be afforded the opportunity to make submissions to the General Secretary, the manner to be determined by the General Secretary.

**3.10.7.15** The General Secretary may take such action as is appropriate in the light of the nature of the complaint, including referral to the Chair of the Discipline Board under the Association's Discipline Process.

**3.10.8** Confidentiality

**3.10.8.1** All proceedings under this Policy, and the results of those proceedings, shall be dealt with in the strictest of confidence, subject to the Unit's ability to conduct a full and thorough investigation. The Unit will not disclose any information about a complaint except as is necessary, and only to the extent that is necessary, in order to investigate the complaint, to take disciplinary action or as may be required by law, by subpoena or by reasons of danger, health and safety. All complaints, responses, settlements or other documents relating to the complaint shall be kept in a sealed envelope in the office of the Unit President for a period of five years at which time they are to be destroyed.