



Policy and Program regarding workplace harassment

Policy 1.4

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Policy and Program regarding workplace harassment

Statement of philosophy

The College has endeavoured to create a work environment in which all people are treated with respect and dignity. The College will not tolerate any acts of workplace harassment by its employees, Councillors, Non-Council Committee Members or non-employees who interact with the College which may include but are not limited to members of the public or a member of the College ("non-employees"). Employees, Councillors and Non-Council Committee Members share a common responsibility for keeping the College's work environment free of workplace harassment.

Purpose of the workplace harassment Policy and Program

The purpose of this Policy and Program is to educate employees, Councillors, Non-Council Committee Members and non-employees as to the types of conduct that can contribute to an unhealthy and unproductive work environment and to ensure, to the extent possible, that a healthy and productive work environment is maintained for all employees of the College. Although this Policy and Program is not punitive in nature, sanctions against individuals may be necessary to achieve the purpose of this Policy and Program.

Definitions and interpretation

This Policy and Program applies to workplace harassment and workplace sexual harassment.

For the purposes of this Policy and Program "workplace harassment" means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome and includes:

- a. conduct which interferes with a climate of understanding and mutual respect for the dignity and worth of each person. Offensive comments or conduct that is known or ought reasonably to be known to be unwelcome or to cause insecurity, discomfort, offence or humiliation to another person or group, or
- b. when submission to such conduct is made, either implicitly or explicitly, a condition of employment, or
- c. when submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, matters of promotion, raise in salary, job security and benefits affecting the employee), or
- d. when such conduct has the purpose or the effect of interfering with the person's work performance or creating an intimidating, hostile or offensive work environment.

For the purposes of this Policy and Program, "workplace harassment" also includes, but is not limited to, harassment regarding one or more prohibited grounds as defined by Ontario's Human Rights Code (the Code). For the purposes of this Policy and Program, "prohibited grounds" are race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status and family status or disability, as defined by the Code.

For the purposes of this Policy and Program "workplace sexual harassment" means:

- a. engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- b. making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

For the purposes of this Policy and Program, the term "worker" includes any person who performs work or supplies services to the College for monetary compensation. The term "complainant" includes "complainants" as appropriate in the circumstances, and the term "harasser" includes "harassers" as appropriate in the circumstances.

For the purposes of this Policy and Program, "workplace" includes a virtual office.

Wherever the Staff Relations Committee is referred to in this Policy and Program, it shall mean the Executive Committee of the College in its capacity as the Staff Relations Committee.

Types of behaviour which constitute workplace harassment

For the purposes of this Policy and Program, the types of behaviour that constitute workplace harassment and/or workplace sexual harassment include, but are not limited to:

- use of socially unacceptable, profane or derogatory language that would likely result in embarrassment or humiliation for the recipient
- derogatory remarks, verbal innuendo and inappropriate gestures
- inappropriate actions such as pinching, grabbing, hugging, leering, brushing against and touching
- degrading references to appearance
- jokes told or carried out after the joker has been advised that they are embarrassing or offensive, or that are, by their nature, clearly embarrassing or offensive
- the display of or the distribution by mail, fax or electronic means of explicit or otherwise offensive material
- sexually suggestive or obscene comments or gestures
- unwelcome inquiries or comments about a person's sex life
- unwelcome sexual flirtations, advances, propositions
- persistent unwanted contact or attention after the end of a consensual relation
- request for sexual favours
- verbal abuse or threats
- sexual assault
- vexatious conduct, such as constant criticism of work, which is directed at an individual because of one or more prohibited grounds

The question of whether workplace harassment has taken place is determined by the effect of the harassing conduct on the recipient and not the intention of the harasser. *What matters is how the conduct is perceived by the recipient.*

The workplace harassment may be caused by an employee who is in a position of authority, a fellow co-worker, a Councillor, a Non-Council Committee Member or a non-employee.

Behaviour may constitute workplace harassment even if it does not occur on the College's premises if it has a negative impact on employment relationships.

A reasonable action taken by the College or a supervisor relating to the management and the direction of workers or the workplace is not workplace harassment.

People covered under the Policy and Program

This Policy and Program applies to all workers, Councillors, Non-Council Committee Members and non-employees and is for the protection of all workers including the Registrar & CEO of the College, and all Councillors and Non-Council Committee Members.

For the purposes of this Policy and Program, workplace harassment includes harassment of an employee by an employee of the College (which includes the Registrar & CEO), a Councillor, a Non-Council Committee Member or a non-employee, which may include but is not limited to members of the public or a member of the College, which occurs (a) in the working environment or (b) anywhere else as a result of employment responsibilities or employment relationships. It includes, but is not limited to harassment which may occur:

- at the office
- outside the office
- at office related social functions
- in the course of work assignments outside the office
- at work related conferences or training sessions
- during work related travel
- over the telephone or through electronic or virtual communications

Reporting an incident

The College encourages reporting of all incidents of workplace harassment and workplace sexual harassment, regardless of who the offender may be. Notwithstanding the existence of this Policy and Program, every person continues to have the right to seek assistance from the Ontario Human Rights Legal Support Centre or the Ontario Human Rights Tribunal, even when steps are being taken under this Policy and Program.

If an employee feels that they have been subject to workplace harassment or workplace sexual harassment, the employee may begin by approaching the person in a clear and firm manner to explain that their behaviour is making the employee uncomfortable. In many cases, this is all it takes to solve the problem. The person doing the harassing might not be aware that the behaviour is offensive, and may volunteer to stop it immediately.

However the College recognizes that many employees will not feel comfortable with the above course of action. Accordingly, the employee has the option of making an informal or a formal complaint to the College.

Informal complaint

A person who believes that they have been subject to workplace harassment or workplace sexual harassment may elect to make an informal complaint. An informal complaint should be made to the Registrar & CEO or, in the event the Registrar & CEO is the alleged harasser, to the Staff Liaison Representative, who will be appointed each year by the Staff Relations Committee to serve as a contact for staff members. The recipient of the complaint will work with the complainant to determine if a suitable course of action, with which the complainant is comfortable, can be developed, up to and including converting the complaint into one of a “formal nature”.

In most circumstances, no action will be taken by the recipient of the complaint without the knowledge of the complainant and no investigation will result from an informal complaint. The complainant should be aware that the recipient of the complaint will keep a confidential record of the complaint so that future repeat events or patterns can be recognized.

However, situations may arise which are of such a serious nature that the College must take action to protect the complainant, other employees or itself. Accordingly, the College will investigate serious, informal complaints without the complainant's consent where an investigation is appropriate in the circumstances.

Councillors or Non-Council Committee Members who become aware that an employee is being harassed have an obligation to report the information to the Registrar & CEO, or if the Registrar & CEO is the alleged harasser, to the Staff Liaison Representative.

Formal complaint

1. Notification of Appropriate Staff

A person who believes that they have been subject to workplace harassment or workplace sexual harassment may elect to make a formal complaint. A formal complaint should be made to the Registrar & CEO or, in the event the Registrar & CEO is the alleged harasser, to the Staff Liaison Representative.

If the formal complaint is reported to the Staff Liaison Representative, the Staff Liaison Representative must file a confidential report with the Staff Relations Committee. The Registrar & CEO must receive a copy of the confidential report, unless the Registrar & CEO is the alleged harasser.

Any formal complaint reported to or filed with the Registrar & CEO that involves a Councillor or a Non-Council Committee Member must also be filed with the Staff Relations Committee.

If a member of the Staff Relations Committee is the alleged harasser, the member shall not be provided with a copy of the confidential report.

2. Authority to Investigate

The College has a duty to protect its employees from workplace harassment and workplace sexual harassment. The College shall investigate incidents and complaints of workplace harassment that are appropriate in the circumstances.¹

The Registrar & CEO has the authority to conduct all investigations of workplace harassment or workplace sexual harassment concerning co-employees or non-employees, unless the Registrar & CEO is the alleged harasser. The Registrar & CEO may request the assistance of the Staff Relations Committee or any outside consultant at any stage in the process of the investigation. However, the Registrar & CEO retains the authority to determine and impose the appropriate sanction against the offending employee.

The Staff Relations Committee shall have the authority to conduct all investigations of workplace harassment or workplace sexual harassment concerning the Registrar & CEO, Councillors or Non-Council Committee Members. The Staff Relations Committee may request the assistance of an outside consultant at any stage in the process of the investigation. However, the Staff Relations Committee retains the authority to determine and impose the appropriate sanction against the offending employee.

3. Description of Misconduct

An accurate record of objectionable behaviour or misconduct is required to resolve a formal complaint of workplace harassment or workplace sexual harassment.

Verbal reports of workplace harassment or workplace sexual harassment must be reduced to writing by either the complainant or the person receiving the complaint, and must be signed by the complainant. A person who believes they have been or currently is being harassed should maintain a record of objectionable conduct in order to effectively prepare and corroborate the complaint.

While the College encourages employees to keep written notes in order to accurately record offensive conduct or behaviour, the College hereby notifies all persons covered by this Policy and Program that, in the event that a law suit or a complaint to the Human Rights Commission develops from the reported incident, the complainant's written notes may not be considered privileged information, and therefore may not be treated as confidential.

4. Time Frame for Reporting Complaint

The College encourages prompt reporting of all complaints so that a rapid response and appropriate action can be taken. However, due to the sensitivity of these complaints and the

¹ Beginning September 8, 2016, the College has a statutory duty to investigate complaints where an investigation is appropriate in the circumstances pursuant to s. 32.0.7(1)(a) of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1.

emotional toll that workplace harassment and workplace sexual harassment may have on a person, no time limit for reporting complaints will be imposed. Late reporting of complaints will not in and of itself preclude the College from taking remedial action.

5. Protection Against Retaliation or Penalty

The College will not in any way retaliate against or penalize a person for:

- a. having invoked this Policy and Program (whether on behalf of one's self or another individual), or
- b. having participated or co-operated in any investigation under this Policy and Program, or
- c. having been associated with the person who has invoked this Policy and Program or participated in these procedures.

As well, the College will not permit the Registrar & CEO or any Councillor, Non-Council Committee Member, employee or non-employee to so retaliate against or penalize another person. Retaliation is a violation of the Policy and Program and the Code, and will be treated in the same manner as workplace harassment. Actions contrary to this provision should be reported immediately. Any person found to have retaliated against or penalized another person will be subject to the same disciplinary action provided for harassers.

Investigating the complaint

1. The Duty to Investigate

If an investigation is appropriate in the circumstances, an investigation shall be commenced into the incident or complaint of workplace harassment or workplace sexual harassment at issue.

If the Registrar & CEO has the authority to conduct the investigation of the complaint, the Registrar & CEO shall determine whether the conduct complained of, if proven true, would represent workplace harassment or workplace sexual harassment.

If the Staff Relations Committee has the authority to conduct the investigation of the complaint, the Staff Relations Committee (in conjunction with the Registrar & CEO, if appropriate) shall determine whether the conduct complained of, if proven true, would represent workplace harassment or workplace sexual harassment.

If it is determined that the complaint, if proven to be true, does not constitute workplace harassment or workplace sexual harassment, the procedures set out in this Policy and Program will not be applicable. However, the matter may be dealt with by the appropriate parties as a personnel matter.

If it is determined that the complaint, if proven true, would constitute workplace harassment or workplace sexual harassment, an investigation should be conducted according to the following procedures.

2. Identification of Investigator(s)

The Registrar & CEO, or if appropriate, the Staff Relations Committee, will determine who will conduct the investigation. The investigator(s) may be the Registrar & CEO, a member of the Staff Relations Committee, or a consultant engaged by the College to assist in the investigation of the complaint. The investigator(s) will, if possible, include the individual receiving the initial complaint.

3. Confidentiality

The investigator(s) will promptly investigate any reported allegation of workplace harassment or workplace sexual harassment in a timely and fair manner. Privacy and confidentiality will be maintained throughout the investigation to the extent reasonably possible in the circumstances. Disclosure of information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking correct action with respect to the incident or complaint, or is otherwise required by law.

The exact nature of the College's investigation will depend on the particulars of the allegation brought to its attention. During the course of an investigation, the College may seek the assistance of legal counsel and/or the police.

4. Reassignment

If appropriate, the investigator(s) may recommend to the Registrar & CEO a reassignment of work responsibilities, if practical, during the investigation process, to separate the complainant from the alleged harasser.

5. Representation

At any time, the complainant or alleged harasser has the right to be represented by legal counsel or other person of their choice, at their own cost.

6. Investigation Process

Although the investigator(s) will be considerate to the complainant's welfare, the investigations will be thorough. The investigator(s) will inform the alleged harasser about the substance of the complaint and will keep the complainant and the alleged harasser informed about developments as they occur during the investigation. The following is a guideline of steps that may be taken during the investigation process. However, the investigator(s) may vary the process of the investigation, depending on the circumstances:

- Confirm name and position of the complainant
- Identify the alleged harasser
- Confidential interview with the complainant
- Ask the complainant how they responded to the alleged workplace harassment

- Confidential interview with the alleged harasser
- When first interviewing the alleged harasser, remind them of the College's Policy and Program against retaliation for making a complaint of workplace harassment
- Thoroughly ascertain what happened, while asking questions in a non-judgmental manner
- Determine frequency/type of alleged workplace harassment and, if possible, the dates and locations where the alleged workplace harassment occurred
- Find out if there were witnesses who observed the alleged workplace harassment
- Confidential interviews with any witnesses
- Collect written statements from complainant, alleged harasser or potential witnesses
- Develop a thorough understanding of the professional relationship, degree of control and amount of interaction between the alleged harasser and complainant (Does the alleged harasser control compensation, terms of employment or promotions? Do these people work in close proximity to one another or on the same project?)
- Determine whether the alleged harasser has carried out any threats or promises directed at the complainant
- Determine the extent to which the alleged harasser has affected the work product or mental or physical well-being of the complainant in order to determine the need for obtaining appropriate counselling for the complainant
- If appropriate, determine if the complainant knows of or suspects that there are other people who have been harassed by the alleged harasser
- Determine if the complainant has informed supervisors, members of the executive or other Councillors, or anyone else, of the situation and their response, if any
- Ask the complainant what action they would like the College to take in response to any finding of workplace harassment

Resolving the complaint

Upon completion of an investigation, the investigator(s) will communicate the results of the investigation to the Registrar & CEO or, if the Staff Relations Committee has the authority to conduct the investigation, to the Staff Relations Committee.

The Registrar & CEO, or if the Staff Relations Committee has authority to conduct the investigation, the Staff Relations Committee, shall, based on the results of the investigation, determine if workplace harassment or workplace sexual harassment has occurred and the

appropriate sanction(s), in accordance with this Policy and Program. The Registrar & CEO, or if applicable, the Staff Relations Committee, shall communicate in writing within 10 calendar days of the investigation being concluded the results of the investigation, including any corrective action that has been taken or that will be taken as a result of the investigation, to the complainant and the alleged harasser, if they are an employee, Councillor or Non-Council Committee Member of the College. This will be done by delivery, if practicable, or by registered mail, if delivery is not practicable. For the purposes of any appeal referred to in this Policy and Program, the decision will be deemed to have been received three days after the decision has been delivered, or seven days after it has been sent by registered mail.

If the Registrar & CEO has the authority to conduct the investigation, the Registrar & CEO has the discretion to report the matter to the Staff Relations Committee or Council or both of them. If the Staff Relations Committee has the authority to conduct the investigation, it has the discretion to report the matter to Council. The report referred to herein may include a statement that an investigation has been conducted, the findings of the investigation, the names of the individuals involved, the decision, or any other information the Registrar & CEO or the Staff Relations Committee considers necessary for the purpose of making the report.

Sanctions

Individuals found to have engaged in misconduct constituting workplace harassment will be sanctioned, up to and including dismissal. Appropriate sanctions will be determined by the Registrar & CEO, with two exceptions. Firstly, if the harasser is a Councillor or a Non-Council Committee Member, the Staff Relations Committee shall determine the appropriate sanction in consultation with the Registrar & CEO. Secondly, if the harasser is the Registrar & CEO, the Staff Relations Committee shall determine the appropriate sanction.

In addressing incidents of workplace harassment, the College's response will, at a minimum, include reprimanding the harasser and preparing a written record. Additional action may include: referral to counselling, withholding of promotion, re-assignment, temporary suspension without pay, financial penalties, termination or, in the case of a Councillor or Non-Council Committee Member, a determination that the Councillor or Non-Council Committee Member's conduct or actions are detrimental to the College and/or disqualification from sitting on a committee.

Although the College's ability to discipline a non-employee harasser (e.g. client, supplier, Councillor or Non-Council Committee Member) is limited by the degree of control, if any, that the College has over the alleged harasser, any person who has been subject to workplace harassment should file a complaint.

Maintaining a written record of the complaint

The College shall maintain a written record of each complaint and how it was investigated and resolved. Written records shall be maintained in a confidential manner in the office of the Registrar & CEO or legal counsel for the College, as appropriate.

Written records will be maintained for ten years from the date of resolution, unless new circumstances dictate that the file should be kept for a longer period of time.

False accusations

If an investigation results in a finding that the complainant falsely accused another of workplace harassment knowingly or in a malicious manner, the Registrar & CEO will determine the appropriate sanctions to be applied against the complainant, which may include termination of employment.

Appeals

Only a decision of the Staff Relations Committee is subject to appeal. The complainant or the person against whom a finding of workplace harassment has been made, may appeal the Staff Relations Committee's finding regarding workplace harassment or its determination of the appropriate sanction(s) to Council in accordance with procedures established from time to time by Council.

Policy and Program review

This Policy and Program will be reviewed as often as is necessary, but at least annually to foster the College's commitment to protecting its employees from workplace harassment.

Conclusion

The College has developed this Policy and Program to ensure that all its employees can work in an environment free from workplace harassment. The College will make every effort to ensure that all its employees are familiar with the Policy and Program and know that any complaint received will be thoroughly investigated and appropriately resolved.