

Harassment and Discrimination Policy and Procedures

Policy Category:

Human Resources

Approved By:

Priorities and Planning Group (Policy) Board of Governors (Procedures)

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1. Preamble

The Board of Governors of Lakehead University believe that all members of the University community have the right to study, to work, and to live in an environment free from all forms of harassment and discrimination including, but not limited to any or all that are based on the prohibited grounds of the Ontario Human Rights Code. Lakehead University believes in the necessity of providing safeguards for members of the University community against harassment and discrimination.

The Ontario Human Rights Code, provides that every person has a right to freedom from discrimination and harassment on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, visible or not visible disability, age, marital status, family status, the receipt of public assistance and record of offenses or other grounds as may be amended in accordance with the Ontario Human Rights Code.

2. Definitions

2.1 Harassment

"Harassment" is defined by the Ontario Human Rights Code as a course of comments or conduct consisting of words or actions that disparage or humiliate a person in relation to a prohibited ground contained in the Code. Harassment occurs when the person alleged to have committed an infraction knows or ought reasonably to have known that such comments or conduct would be unwelcome. It can include comments or conduct that is intimidating, threatening or abusive and may be accompanied by direct or implied threats to the individual's grade(s), status or job. Harassment can occur between members of the University Community.

Examples of harassment may include, but are not limited to, gestures, remarks, jokes, taunting, innuendo, display of offensive materials, threats, imposition of academic penalties without just cause, electronic distribution of offensive

material, hazing, stalking, shunning or exclusion related to the prohibited grounds.

2.2 Personal Harassment

"Personal Harassment" is behaviour that generally involves a course of comment or conduct directed towards a person or persons:

- a) which serves no legitimate educational or work-related purpose; and
- b) which is known or ought reasonably to be known, to have the effect of creating an intimidating, humiliating, or hostile educational or work environment.

When sufficiently serious, a single incident may be considered personal harassment.

Any determination of personal harassment would involve an assessment of the behaviour in question, effect of these behaviours, the reasonableness of that effect, and whether it was known or should have been known that such behaviour would be unwelcome by the person alleging that he/she was harassed. _

2.3 Sexual Harassment

"Sexual Harassment" is behaviour of a sexual nature by a person who knows or ought reasonably to know that the behaviour is unwanted or unwelcome; and

- a) which interferes with another person's participation in an institution-related activity; or
- b) which leads to or implies employment, educational, or academically-related consequences for the person harassed; or
- c) which creates a poisoned environment.

Examples of sexual harassment may include, but are not limited to, unwanted physical contact, unwanted attention, unwelcome demands for dates, leering, inappropriate staring, displays of sexually offensive images or graffiti, repeated and vulgar sexual comments, distribution of pornographic material, inappropriate gender-related comments, unwelcome remarks about a person's appearance, solicitation of sexual favours, demands for sexual favours, implied or express promise of reward or benefit in return for sexual favours, and implied or express threat or act of reprisal if sexual favours are denied.

2.4 Discrimination

"Discrimination" includes differences in treatment that results in the unfavourable, adverse, or preferential treatment of individuals, or groups of individuals, on the basis of a prohibited ground under the Ontario Human Rights Code.

Discrimination occurs when one or a series of actions, decisions, or educational/workplace structures imposes disadvantages on a person or group of persons protected by human rights legislation.

2.5 Poisoned Environment

"Poisoned Environment" means comments or conduct related to the prohibited grounds and of a significant nature or degree that creates ill will, enmity, or malice for individuals or groups. It includes comments or conduct that creates and maintains an offensive, hostile or intimidating climate for work, study or living. Examples of a poisoned environment may include, but are not limited to, graffiti, cartoons, signs, remarks, exclusion and adverse treatment related to one or more of the prohibited grounds.

2.6 Systemic Harassment/Discrimination

"Systemic Harassment/Discrimination" means policies, practices, procedures, actions or inactions that appear neutral but have an adverse impact associated with one of the prohibited grounds.

2.7 Vexatious Complaint

"Vexatious Complaint" means a complaint made with the intent to be retaliatory in nature and/or intended to annoy or to damage the reputation of the respondent. This concept is not to be confused with a complaint made in good faith with the intent to improve the University that is found to be without merit.

2.8 Third Party Facilitation

"Third Party Facilitation" is part of the informal resolution process that may be applied upon request of a complainant and with the agreement of an alleged respondent.

2.9 Members of the University Community

"Members of the University Community" include students, members of the Board of Governors and anyone employed by Lakehead University.

2.10 Visitors

Visitors include, but are not limited to, contractors, presenters, prospective students and the families of students.

2.11 Harassment and Discrimination Coordinator

The University has a Harassment and Discrimination Coordinator, reporting to the Vice-President (Administration and Finance), who will coordinate educational initiatives and the complaint services related to this policy for the University community.

3. Policy Guidelines

As stated in the preamble, the Board of Governors of Lakehead University believes that all members of the University community have the right to study, to work, and to live in an environment free from harassment and discrimination including, but not limited to, any or all that are based on the prohibited grounds of the Ontario Human Rights Code.

To provide an environment that supports the University's goals and the dignity and self-esteem of its members, the University's policy constitutes the following:

- 1) Behaviour from members of the University community that constitutes harassment or discrimination on any of the prohibited grounds as set out in the Ontario Human Rights Code shall not be tolerated.
- 2) Individuals who believe they have been harassed or discriminated against shall have the right to complain and receive due process under this Policy.
- 3) Complaints of harassment and discrimination should be directed to the Harassment and Discrimination Coordinator. However, it is recognized that some individuals may wish to complain initially to their supervisor or, in the case of students, to a staff or faculty member. When complaints are initiated at this level, the supervisor, staff, or faculty member shall maintain confidentiality and encourage the complainant to talk with the Harassment and Discrimination Coordinator. It is also the responsibility of the supervisor, staff or faculty member to notify the Coordinator immediately of the nature of the complaint without naming the complainant and the alleged respondent and to consult with the Coordinator about any necessary action or documentation.
- 4) The scope of harassment and discrimination shall extend to include the poisoned environment and appropriate concerns of a systemic nature.
- 5) Each member of the University community is responsible for helping to create an environment that is free from harassment and discrimination. It is the University's objective to make the University community aware of what constitutes harassment and discrimination and the procedures that are in place for dealing with allegations of harassment and discrimination, and understands their responsibility to cooperate in the processing of complaints made under this procedure.

All supervisors, both academic and staff, shall seek to create an environment free of harassment and discrimination within their area of responsibility.

Supervisors will not condone or ignore activities within their areas of responsibility that violate the rights of students, faculty or staff. Supervisors are expected to make those for whom they have responsibility aware that any form of harassment and discrimination is prohibited; and to ensure that any complaints will be attended to promptly and effectively.

6) Harassment and discrimination are serious offenses and individuals found to have perpetrated such offenses may be required to attend training or be subject to disciplinary action ranging from a verbal apology to dismissal or expulsion.

7) Each member of the University community shall be made aware of this Policy and his/her rights and obligations under the Policy.

8) Individuals who are party to a complaint shall be entitled to confidentiality subject to the conditions of the complaints procedures. University personnel having access to information relating to a complaint of harassment and/or discrimination must hold such information in confidence. However, University personnel shall act and, if necessary, break confidentiality in cases that involve imminent danger, when an institutional response is warranted or when otherwise required by law.

9) The Harassment and Discrimination Coordinator shall maintain records of informal complaints for the purpose of statistical reporting. Such records shall not identify the alleged respondent(s). The Coordinator shall compile a single, complete file on a formal complaint and shall maintain this file for seven (7) years. All records of the complaint placed in any other file for disciplinary purposes shall be in accordance with University policies, practices and respective collective agreements.

10) Complaints will be dealt with expediently, fairly and effectively.

11) When appropriate, an individual will be advised of options to pursue a complaint through an informal resolution process. However, this does not preclude an individual's right to proceed directly to a formal complaint.

12) During formal investigation or a complaint, the Harassment and Discrimination Coordinator shall not be called as a witness related to information released to her/ him through her/his duties under this policy.

13) A third party who has been engaged in facilitation under the informal process, under this policy shall not be called as a witness in any subsequent formal investigation nor be required to produce notes taken at a facilitation process.

14) Vexatious complaints are not condoned and individuals creating such complaints may be subject to disciplinary action.

15) A reprisal or threat of reprisal against a complainant or against a person involved in the complaint process, whether the complaint is substantiated or not, may result in disciplinary action.

16) Visitors to the University or contractors engaged by the University will be expected to adhere to this Policy.

17) A person's right to equal treatment without discrimination is not infringed by the establishment of a special program. The University may implement a special program to relieve hardship or economic disadvantage, assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity, and/or to contribute to the elimination of discrimination prohibited by the Ontario Human Rights Code.

4. Education of University Community

Lakehead University will undertake the following educational initiatives for the University community:

1) There will be broad dissemination of information regarding this policy and procedure. The policy and procedure will be made available to members of the University community and visitors.

2) All members of the University community will be made aware of their responsibilities under the policy and the Code in creating and maintaining an environment free from discrimination and harassment. They will also be made aware of complaint procedures and various internal and external mechanisms available.

3) An awareness and/or training program for members of the University community and visitors will be implemented.

4) A mechanism will be established to solicit feedback on an on-going basis for harassment and discrimination issues.

5. General

1) The Board of Governors of Lakehead University recognizes that some collective agreements contain articles on discrimination, harassment, and academic freedom; these are attached hereto as Appendix A.

2) Nothing in this policy is intended to preclude any person from following any alternate complaint procedure that may be available under the Code of Student Behaviour and Disciplinary Procedures, a Collective Agreement, and the Ontario Human Rights Code, or from initiating any other proceedings in law.

3) The Vice-President (Administration and Finance) in consultation with faculty, staff, and students, will review this policy within five (5) years to ascertain if any amendments are necessary.

6. Procedures

6.1 Informal Process

1) A member of the University community who feels he or she has been harassed or discriminated against should promptly contact the Harassment and Discrimination Coordinator.

2) In complaints in which the respondent(s) are unknown to the complainant or in situations in which the complaint is of a systemic nature, the complainant should consult with the Harassment and Discrimination Coordinator to seek a remedy through the informal process.

3) The Coordinator will meet with a complainant as soon as possible and do the following:

- a) identify options available to the individual;
- b) advise the complainant of his/her representation rights, including but not limited to, union representation and collective agreements;
- c) review informal means of resolving the problem including speaking or writing to the alleged respondent and/or requesting arrangements be made for a third party to facilitate an informal resolution;
- d) provide information on formal means of resolution;
- e) determine whether the individual should be encouraged to contact an appropriate body or individual such as the police, counselling services, sexual assault crisis centre;
- f) with the permission of the complainant, seek advice from appropriate University personnel without identifying the complainant or alleged respondent.

If the complainant decides to move forward with a complaint the Harassment and Discrimination Coordinator will meet with the respondent(s) as soon as possible and do the following:

- a) identify options available to the individual respondent(s);
- b) review informal means of resolving the problem including arrangements to have a third party facilitate an informal resolution;
- c) advise the respondent(s) concerning his/her rights and responsibilities under this policy;
- d) assist the respondent(s) in understanding the complaint;
- e) advise the respondent of his/her representation rights including, but not limited to, union representatives and collective agreements.

4) No reprisals will be taken against individuals solely because they have sought advice pertaining to incident(s) of harassment and/or discrimination.

5) After a complaint is made the Harassment and Discrimination Coordinator, in consultation with the appropriate supervisory or academic personnel, will determine if any immediate action or interim measures are required to protect the University, its community, or any of its members. These measures may include, but are not limited to, limiting access to facilities, making arrangements for alternative grading or supervisory relationships, or discontinuing contact between the complainant and the respondent during the period of proceedings under this policy.

6) A third party, selected from a pool of qualified facilitators, trained in mediation and or conflict resolution requested to facilitate an informal resolution to a complaint shall attempt to bring about a resolution. At all times he/she shall respect confidentiality and shall understand that he/she cannot impose any form of discipline, sanction or redress. Such party shall not be called as a witness in any subsequent formal investigation under this policy.

7) A complainant may proceed directly to the formal complaint process, pursuant to the Harassment and Discrimination Policy, without having attempted an informal resolution.

8) A complainant may choose not to proceed to the formal complaint process, pursuant to the Harassment and Discrimination Policy, even if the informal resolution has proven to be unsuccessful.

9) A complainant may choose to proceed under the terms of the Ontario Human Rights Code, with a complaint either with or without attempting resolution as provided under this policy.

A complainant may choose to institute criminal or civil proceedings with respect to the subject matter of a complaint being dealt with under this policy.

Commencement of proceedings in the courts under the criminal or civil law with respect to the subject matter being dealt with under this policy will not necessarily affect the processing of complaints under this procedure.

The right to institute civil proceedings as stated above shall not bar either the complainant or University from taking the position in any civil proceedings that the complainant's right to seek redress for the alleged harassment/discrimination is restricted to the procedures under the Harassment and Discrimination Policy and that a Court has no jurisdiction to hear such claim.

6.2. Formal Process

1) In a formal investigation of a complaint, the following time lines will apply:

- a) All references to days mean working days.
- b) All references to months mean calendar months.
- c) All deadlines are binding, except in situations in which the parties mutually agree to extend them or the President determines the circumstances justify an extension of the time limit in accordance with paragraph 6.2.9 below.
- d) A formal complaint must be made as soon as possible, normally no later than six (6) months after the incident, or most recent incident. (See 6.2.9)

2) The President will identify five (5) persons from outside the University community who are qualified to serve as investigators in formal harassment and discrimination complaints. The names and backgrounds of these individuals will be available, upon request, to members of the University community.

3) A formal letter of complaint must be in writing and signed by the complainant before a formal investigation will be initiated. Emailed complaints will not be accepted.

4) A formal letter of complaint must be addressed to the Harassment and Discrimination Coordinator and should be delivered by hand or in a sealed envelope marked "Confidential".

5) A letter of complaint must contain to the best knowledge of the complainant, the following information about the alleged incident(s) of harassment/discrimination: the name of the respondent(s), the place(s) the incident(s) occurred, date(s) of the incident(s), the prohibited ground(s) and nature of the harassment/discrimination, and any other relevant information.

6) The Harassment and Discrimination Coordinator will supply the respondent(s) with a copy of the complaint within five (5) days of receiving it from the complainant.

7) The Harassment and Discrimination Coordinator will supply the President with a copy of the complaint within five (5) days of receiving it from the complainant. Within five (5) days of receiving a copy of the complaint from the Harassment and Discrimination Coordinator, the President will select an investigator on a rotation basis in order of their listing subject to availability and will advise the Coordinator of the name of the investigator.

8) The Coordinator shall inform both parties of the investigator and his/her background.

9) A formal investigation may proceed, notwithstanding that such complaint is made after the six (6) month time period, if in the opinion of the President in

consultation with the Harassment and Discrimination Coordinator, the circumstances justify doing so.

10) The investigation will be carried out as expediently and effectively as possible. The University will endeavour to have the investigation concluded within ninety (90) days of receipt of the complaint.

11) The investigation will normally include interviews with the complainant, interviews with the respondent(s), and interviews with others considered by the investigator to have information relevant to the complaint. The investigation will be conducted pursuant to rules of natural justice.

12) Upon completion of the investigation, the investigator shall give a written report of the investigation to the President with a copy to the Coordinator.

13) The report to the President shall include: determination on whether the complainant has established that harassment and/or discrimination as defined in the policy has occurred, a review of the facts, findings on the facts and the reasons/grounds on which such determination was based, recommendations on sanctions and/or redress if appropriate, and other such relevant information.

14) Where the complaint involves allegations against President, the Chair and Vice-Chairs of the Board of Governors will perform the role assigned to the President in paragraphs, 2.7, 2.9, 2.12, 2.13, 2.15 and 2.16 of the Procedures.

15) Within ten (10) days of receiving the investigator's report, the President will give a copy of the investigator's report to the complainant and the respondent and will advise them of his/her decision regarding resolution of the complaint.

16) The President may elect not to appoint an investigator to a complaint of alleged harassment and discrimination for reasons which include but are not limited to the following:

- a) the complaint is not based on a protected ground under the Ontario Human Rights Code;
- b) the complaint is not based on conduct or comment that fits the definition of harassment or discrimination set out under this policy;
- c) the complaint is malicious, trivial, vexatious or made in bad faith;
- d) the complaint has been addressed or is being addressed through another resolution process available to the parties;
- e) the complaint has been subject of a formal complaint to the police or the Ontario Human Rights Commission.

When the President elects not to appoint an investigator to a formal complaint written notice will be provided to the complainant stating the reasons for the decision not to appoint an investigator.

6.3 Systemic Complaint/Unknown Respondent Process

1. If there is no remedy through the informal process, the complainant may request a formal investigation into the complaint.
2. The complainant will write a letter of complaint according to the formal procedures outlined in section 6.2 (Formal Process). The letter of complaint should contain as much of the relevant information regarding the dates, place, nature and grounds of the allegation of harassment/discrimination as possible.
3. The Harassment and Discrimination Coordinator will give a copy of the letter of complaint to the President, who will appoint an investigator or team of investigators not necessarily from the list of five as established under 6.2.2.
4. Due to the difficulty in identifying and investigating complaints of a systemic nature, there may be an extension in the time lines established in section 6.2 as necessary, with the exception of 6.2.1 (d), which requires that the complaint normally be made no later than six (6) months of the most recent incident.
5. The President will communicate the findings of the investigation and any resulting remedies to the complainant with a copy to the Coordinator.