

**Approving University Official(s):** Human Resources

**Responsible Office:** Human Resources

**Effective date:** July 19, 2022

**Last review date:** July 19, 2022

**Next review date:** 3 years

## **[Student Discrimination and Harassment Procedures]**

### **Purpose**

This Student Discrimination and Harassment Policy (“Policy”) identifies the ways Yorkville University and Toronto Film School, and their affiliates (collectively, “Yorkville”) promote a Discrimination and Harassment free environment.

### **Audience**

This Policy applies to all Members of the Yorkville Community.

### **Procedures**

#### Informal Resolution Steps

Student Services/Program Advisors, supervisory or managerial personnel will attempt to facilitate an informal resolution by:

- suggesting that the complainant confront the problem (if it is safe to do so) by making it clear to the individual alleged to have engaged in Discrimination and Harassment that the behaviour is not acceptable and by obtaining a commitment that the behaviour will stop;
- informing the individual of the complainant’s concern regarding the alleged objectionable behaviour and Yorkville’s expectation for appropriate behaviour, providing a copy of the policy and/or other relevant Yorkville policies, and obtaining a commitment that the behaviour will stop; and
- following up with the complainant to ensure that the behaviour has stopped. Supervisory and managerial personnel may initiate mediation by a neutral third

party. They may also consult with the Diversity, Equity and Inclusion Office where appropriate.

In cases where an informal plan of action is implemented, Student Services/Program Advisors, supervisory or managerial personnel will follow up by monitoring the situation, holding, if necessary, subsequent meetings with the parties and taking further steps to ensure that the Discrimination and Harassment has stopped.

All notes and/or information prepared in the course of the informal complaint process will be forwarded to the Student Code of Conduct Office or Human Resources Department as applicable for storage in a confidential workplace incident file separate from the personnel/student file. Only a record of negative consequence, warning or caution will be placed in the respondent's personnel/student file.

### Initiating a Formal Complaint

Formal complaints will only be initiated once all reasonable efforts have been made to resolve the conflict informally. If the formal complaint is against faculty or staff, the Chief Talent & Culture Officer will have the discretion to refer a formal complaint to an appropriate supervisor. If the formal complaint is against a student, it will proceed to the Student Conduct Officer.

If a student requires assistance in completing the formal complaint form, another individual such as a colleague can assist but the complainant's authorization of the form needs to occur through their signature. If a supervisor is the party alleged to be responsible for the objectionable behaviour or alleged to condone the objectionable behaviour, the complaint should be reported to the appropriate manager above the supervisor. The person designated as the reporting contact should not be under the direct control of the respondent.

If the incident or complaint involves the owner, President, or senior executive, an external person qualified to conduct a workplace/learning environment Harassment investigation who has knowledge of the relevant Discrimination and Harassment laws may be retained to conduct the investigation. Employee/student respondents may wish to contact the appropriate supervisor/manager/Student Conduct Officer. For assistance and representation throughout the complaint process, both employee/student complainants/respondents are referred to the list in the section entitled 'Assistance for Complainants, Respondents, and Witnesses' below.

### Respondents to a Complaint

Individuals who are named as respondents in a complaint have a right to know in a timely manner that they are the subject of a complaint, who the complainant is, what the allegations are and what approach to a resolution is being considered. In particular, a respondent has a right to know the specifics of an allegation, including times, dates and alleged conduct.

### Assistance for Complainants, Respondents and Witnesses

Prior to initiating any complaint and throughout the complaint process, complainants have a right to assistance and support. Individuals who are named as respondents in a complaint, as well as witnesses, also have a right to assistance and support throughout the complaint process. The following people may provide support:

- professional support staff, including the Academic Accommodations and Accessibility Office, the Diversity, Equity and Inclusion Office where appropriate.
- employee or colleague.
- trained resource person such as a mental health counsellor, Employee Assistance Program counsellor; and/or
- translator/interpreter (if necessary)

The Complainant and the Respondent also have the right to be represented by legal counsel during the complaint process and subsequent processes under this Policy.

### Threshold Assessment

All formal reports filed under the policy will be subject to an immediate threshold assessment to determine whether the alleged conduct would, if proven, meet the definition of Discrimination and Harassment.

If Yorkville, following this threshold assessment, determines that the report filed:

- would not, if true, meet the definition of Discrimination and Harassment;
- does not provide sufficient details of the alleged Discrimination and Harassment, provided the complainant is given notice that insufficient details have been provided and given reasonable time to provide sufficient details; or
- is made in bad faith, vexatious, frivolous or trivial, or would, if investigated, constitute an abuse of the policy, the complainant will be so advised and no further action will be taken under the policy and procedures for resolving a formal complaint

In all cases, where the Chief Talent & Culture Officer/Student Conduct Officer has determined that the parties have made reasonable efforts to resolve the dispute informally, and has conducted a threshold assessment to determine that a formal complaint should proceed, in the case of a complaint made against faculty/staff the Chief Talent & Culture Officer will direct the appropriate supervisory and managerial personnel to take action to resolve the formal complaint under this policy and in the

case of a complaint made against a student, the Student Conduct Officer will take action to resolve the formal complaint under this policy.

### Formal Investigation and Resolution

Formal complaints require an investigation of the complainant's allegations. In the case of the respondent being an employee, investigators will most often be the supervisory staff of the respondent unless such person(s) actively participated in the unsuccessful informal resolution process, in which case, an independent investigator (who does not have a conflict of interest) will be appointed. In the case of the respondent being a student, the Student Conduct Officer will be the investigator.

In a formal investigation, supervisory/managerial personnel/Student Conduct Officers who conduct the investigation will ensure that the following steps are taken, as soon as possible:

1. appropriate measures are taken to ensure the safety of the complainant.
2. the investigator will endeavor to ensure the investigation is kept confidential and identifying information is not disclosed unless necessary to conduct the investigation, and the investigator should remind the parties of this confidentiality obligation at the beginning of the investigation and require the parties to sign the relevant Confidentiality Statement.
3. the investigator should use the Formal Investigation Template to organize their investigation plan, collection of evidence, analysis and findings in a methodical and objective manner.
4. notify the complainant(s), the respondent(s) and witness(es) that they are entitled to the relevant support and assistance throughout the process including the availability of mental health counsellors, the Academic Accommodations and Accessibility Office, the Employee Assistance Program, and support from the Diversity, Equity and Inclusion Office where appropriate).
5. ensure that the respondent(s) have a copy of the complaint.
6. interview the complainant(s) and/or the third party reporting the complaint.
7. inform the respondent(s) of the allegations and provide an opportunity for response.
8. interview the respondent(s).

9. interview any witness(es) who may be identified by the complainant, the respondent or as necessary to conduct a thorough investigation.
10. take appropriate notes and statements during interviews with the complainant, the respondent and any witnesses.
11. collect and review any relevant documents/evidence.
12. come to conclusions about whether a specific incident did or did not occur based on a balance of probabilities (the question of whether behaviour is a violation of the Workplace Discrimination and Harassment Policy/Discrimination or Harassment Policy will be assessed using objective standards such as the policy's definitions, human rights legislation, case law and other relevant resources).
13. consult with the Diversity, Equity and Inclusion Office when appropriate on matters requiring subject matter expertise on diversity, equity and inclusion issues.
14. provide a written summary of the steps taken during the investigation, the complaint, the allegations of the complainant, the response from the respondent, the evidence of any witnesses, and the evidence gathered; the summary must set out findings of fact and come to a conclusion about whether Discrimination and/or Harassment was found or not; the summary should be provided to the complainant and the respondent and give them an opportunity to respond to same.
15. take appropriate action(s) to resolve the situation and inform the complainant and the respondent of any corrective action identified as a result of the investigation.

If the respondent declines to participate in the formal investigative process, the investigation will still proceed. The respondent should be encouraged to participate in the interest of a balanced and fair process.

### Record Keeping

Human Resources/designated investigator/Student Conduct Officer will keep records of the investigation including:

- a. a copy of the complaint or details about the incident;
- b. a record of the investigation including notes;

- c. a copy of the investigation report (if any);
- d. a summary of the results of the investigation that was provided to the complainant who allegedly experienced the Discrimination and/or Harassment and the respondent, if the respondent is a student/employee
- e. a copy of any corrective action taken to address the complaint or incident of Discrimination and/or Harassment.

All records of the investigation will be kept in a confidential, secure file. The investigation documents, including this report should not be disclosed unless necessary to investigate an incident or complaint of Discrimination and/or Harassment, take corrective action or otherwise as required by law. Records will be kept for at least three years.

### Standard of Proof

The standard of proof to be applied is the balance of probabilities. This standard means that based on the evidence, the occurrence of the event(s) in question was/were more likely than not.

### Timelines

The investigation will be completed in a timely manner and generally within 90 days or less unless there are extenuating circumstances (i.e. illness, complex investigation) warranting a longer investigation. The deadlines mentioned in this Policy are meant to ensure that the matters are dealt with in a timely fashion. If there are extenuating circumstances which cause the extension of deadlines, the Chief Talent & Culture Officer /Program Director/Dean may extend a deadline where the delay is requested in good faith and the extension does not prejudice or harm those involved in the Reporting process.

### Outcomes in Formal Investigations

Within 10 days of the investigation being completed, the complainant and the respondent, if the respondent is a student/employee, will be informed in writing of the results of the investigation and any corrective action taken or that will be taken by Yorkville to address Discrimination and/or Harassment. In the event a complaint is not substantiated, no further action will be taken, subject to the section on maintaining records. In cases where the complaint is found to be in bad faith, trivial, vexatious or an abuse of the process, in which case, the complainant may be subject to corrective/disciplinary action as outlined in the section "Corrective Actions". However, if

there is need to restore a positive working/learning environment or if the complainant and/or respondent require counselling, follow-up measures may be taken to meet such needs.

Follow-up measures could include:

- counselling for the parties;
- application of strategies to restore a positive working/learning environment;
- mediation;
- specific training for the complainant or respondent;
- workshops for the staff and/or others in the workplace regarding their rights and responsibilities;
- separation of respondent and complainant from each other; and/or
- restorative measures.

### Corrective Actions

#### *Student/Employee Respondents*

In the case of a student respondent, Student Conduct Officers have the authority to:

- remove a student from the University property and/or contact appropriate authorities when student misconduct threatens the safety of persons or property or appears to violate federal, provincial, or municipal law
- issue a warning or reprimand to and/or require an apology from a student found to be in violation of this policy
- recommend to the Student Conduct Committee a penalty stronger than warning and/or apology

For more information on the Student Conduct Committee's authority, refer to the Student Conduct Procedures below.

The appropriate supervisor/Chief Talent & Culture Officer in the case of an employee respondent, and the Program Director/Dean in the case of a student respondent may impose corrective action, including discipline, as appropriate and consistent with the result of the investigation, up to and including termination/expulsion from their program. Corrective action will be implemented in writing.

## Review

In the event an employee respondent to a formal complaint has one or more of the specific concerns listed below, a request may be made to the President of Yorkville to convene a Review. A reviewer will be appointed by the President.

The grounds for review are:

- Procedure: Procedures were not correctly followed in making the decision. For example:
  - Yorkville policy was incorrectly interpreted and applied;
  - There was a fundamental procedural error seriously prejudicial to the student;
  - The decision maker erred in interpreting the facts or assessing the evidence.
- Employee rights: The decision process or the decision infringed on the rights that Yorkville guarantees to the employee, including rights identified under the Discrimination and Harassment policy;
- Natural justice: The decision-making process was not consistent with the generally understood principles of procedural fairness (natural justice). These include:
  - Right to be heard: the employee did not have a fair opportunity to present their case;
  - Freedom from bias: The decision maker was not impartial;
  - Evidence-based decision-making:
    - The decision was not based on evidence, but on speculation or suspicion; and/or
    - The decision was not communicated in a way that made clear what evidence was used in making the decision.

The reviewer will report its findings to the President who will affirm or amend a final decision or require that a new investigation be undertaken.

In the event a student complainant/respondent to a formal complaint wants to appeal the decision based on the student can appeal to the Standing Committee on Academic and Student Conduct Appeals. The decision of the Standing Committee is final. For

more information on this process, refer to the Student Conduct procedures and Student Grievances and Appeals procedures below. A student may appeal the decision on the following grounds including:

- Procedure: Procedures were not correctly followed in making the decision. For example:
  - University policy was incorrectly interpreted and applied;
  - There was a fundamental procedural error seriously prejudicial to the student;
  - The decision maker erred in interpreting the facts or assessing the evidence
  
- Student rights: The decision process or the decision infringed on the rights that the University guarantees to the student, including rights identified under the Academic Freedom policy and the Discrimination and Harassment policy;
  
- Natural justice: The decision-making process was not consistent with the generally understood principles of procedural fairness (natural justice). These include:
  - Right to be heard: the student did not have a fair opportunity to present their case;
  - Freedom from bias: The decision maker was not impartial;
  - Evidence-based decision-making:
    - The decision was not based on evidence, but on speculation or suspicion; and/or
    - The decision was not communicated in a way that made clear what evidence was used in making the decision.

### Student Services/Program Advisors

Student Services/Program Advisors are commonly one of the first staff personnel that a student may contact when they are alleging Discrimination and/or Harassment. Program Advisors can assist the complainant in resolving the matter through an informal resolution, including mediation. Student Services/Program Advisors should also inform students of the respective supports available to them such as mental health counsellors, the Academic Accommodations and Accessibility Office, the Diversity, Equity and Inclusion Office, etc. The first step is to inform the individual (if it is safe to do so) that

their behaviour is inappropriate and must stop immediately. Many complaints can be resolved quickly and effectively using this approach.

In the event that informal resolution is not possible/unsuccessful, the complainant may be provided with information on how to file a formal complaint and can be directed to the formal complaint form. The completed form can then be sent to the relevant Student Conduct Officer as per the contact details on the form.

### Program Directors

If appropriate, Program Directors may get involved in the informal resolution of a student complaint, including mediation.

### Student Code of Conduct Offices and Student Conduct Officers

All formal complaints are to be sent to the respective Student Code of Conduct Offices for the Student Conduct Officer to investigate the matter. Student Conduct Officers should also inform students of the respective supports available to them such as mental health counsellors, the Academic Accommodations and Accessibility Office, the Diversity, Equity and Inclusion Office, etc.

### Human Resources Department

The responsibility of the Human Resources Department is to ensure compliance with this policy as follows:

- ensure that all employees are provided with information about the nature of Discrimination and Harassment and are informed about the policy and procedures, their rights and responsibilities.
- ensure that all complaints are being treated seriously and that appropriate measures are taken.

### Diversity, Equity and Inclusion Office

The responsibility of the Diversity, Equity and Inclusion Office is to operate as an independent department that provides consultation advice on matters related to diversity, equity and inclusion. The Office is responsible for:

- Promoting awareness and education about human rights and the prevention of Discrimination and Harassment
- Providing subject matter expertise on the aforementioned topics where requested in the resolution of these issues and where appropriate

### Supervisory Personnel

The supervisory personnel and relevant managers are responsible for:

- providing a working and learning environment which is free of Discrimination and Harassment;
- approaching employees with concerns about inappropriate behaviour and advising them that it must stop;
- receiving complaints from employees or others;
- assisting in resolution at an informal level when requested by both parties in a timely fashion; and
- protecting the complainant or participants in investigations against reprisals in the workplace.

### Reprisal

This Policy prohibits reprisals against individuals, acting in good faith, who report incidents of workplace Discrimination and Harassment or act as witnesses. Yorkville will take all reasonable and practicable measures to prevent reprisals, threats of reprisal, or further Discrimination and/or Harassment. Reprisal is defined as any act of retaliation, either direct or indirect.

### Records

All correspondence and other documents generated under these policies and procedures must be marked “PRIVATE AND CONFIDENTIAL” and be stored in a locked and secure file in the Student Code of Conduct Office/Human Resources Department, as applicable. Any related hard-copy and electronic files will also be stored in a confidential and secure manner.

### Bad Faith Complaints and Misuse of the Complaint Procedures

It is a violation of this policy to put forward a complaint that is made in bad faith, is trivial, vexatious or an abuse of the process. These include complaints that are filed without reasonable grounds, with the intention to embarrass or harass, or with no factual basis. If there is a determination on a balance of probabilities that a complaint has been filed in bad faith, the complaint process may be discontinued, and disciplinary action may occur. This could range from a verbal warning to dismissal from employment with Yorkville. However, if there is need to restore positive working/learning environment or if the complainant and/or respondent requires counselling, appropriate steps will be taken to meet such needs.