

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

**Responsible Office:** Human Resources

**Effective date:** May 24, 2022

**Last review date:** May 20, 2022

**Next review date:** 3 years

## **[HR- Workplace Discrimination and Harassment Procedures]**

### **Purpose**

The purpose of the Workplace Discrimination and Harassment Policy (the “Policy”) is to maintain a work environment free from acts of discrimination and harassment. It applies to employees, students, visitors, and contractors. Contractors will be advised of the applicable provisions of this Policy and will be expected to adhere to and enforce these requirements for their employees, sub-contractors, and agents. A contractor or the contractor’s employee, sub-contractor or agent that is found to have engaged in discriminatory and/or harassing conduct against an employee, other contractor or student may have its contract terminated or may be requested to remove or replace their employee, sub-contractor or agent. This Policy is a clear statement of Yorkville University and Toronto Film School and their affiliates (collectively, “Yorkville”) commitment and determination to act promptly against incidents of discrimination and harassment and to create an environment where discrimination, harassment and abuse will not be tolerated. The objectives of the Policy are to:

- Demonstrate and promote the commitment of Yorkville to protect the dignity and rights of its employees;
- Alert and educate employees to the fact that discrimination and harassment are prohibited under the laws of Canada;
- Take immediate action and provide confidential, impartial and effective procedures to resolve complaints in ways that respect the rights of all parties;
- Provide appropriate remedies to complainants in recognition of the impact of discrimination and harassment;
- Identify various roles and responsibilities for the maintenance of a discrimination and harassment-free workplace; and

- Provide appropriate responses and consequences where discrimination and/or harassment has occurred.

Yorkville expects that incidents of workplace discrimination and harassment will be dealt with promptly by all parties and will be investigated in a fair, consistent, thorough, and confidential manner.

## **Audience**

All persons working for Yorkville or carrying out Yorkville's business are covered by the Policy. This includes staff who are temporary, part-time, full-time and contract employees.

## **Procedures**

All those covered by the Policy have a right to report discrimination and harassment and are entitled to have access to dispute resolution processes. Reasonable attempts shall be made to resolve matters through an informal resolution. The first step is to inform the individual (if it is safe to do so) that their behaviour is unwelcome and must stop immediately. Many disputes can be resolved quickly and effectively using this approach. In order to stop objectionable behaviour, supervisory and managerial personnel should make reasonable attempts to address and resolve disputes in a timely fashion.

These procedures provide a mechanism for implementing the Policy and for reporting and investigating incidents of workplace discrimination and harassment. Nothing in these procedures denies or limits access to other avenues of redress available under the law. In such a case, this process shall cease until the parties and their respective representatives have met with the Chief Talent & Culture Officer to determine whether a formal investigation will proceed or whether the complainant wishes to proceed under another process. Multiple processes shall not be permitted to proceed concurrently, although informal dispute resolution attempts shall be permitted at any time with the agreement of Yorkville and the parties.

The following steps represent the process for resolving a discrimination and harassment complaint through Yorkville. The complainant is free to commence the complaint procedure at the formal or informal stage outlined herein. The complainant is also free to discontinue a complaint at any time. Yorkville, however, may deem the circumstances worthy of further investigation and initiate its own action.

## **GENERAL**

### **1.1 Who May Initiate a Complaint?**

Employees who are covered by this Policy have access to the complaint procedures. Individuals who believe they are targets of workplace discrimination and harassment may initiate a complaint. In addition, those who have witnessed

workplace discrimination and harassment directly, have received reports of discrimination and harassment incidents, or have reasonable grounds to suspect that discrimination and harassment is occurring, may also initiate a complaint.

## 1.2 Timelines

All complaints must be reported within one (1) year of the most recent alleged harassing behaviour. A complaint outside this time frame may be considered by consulting the Chief Talent & Culture Officer .

## 1.3 Confidentiality

All persons involved with a discrimination and/or harassment complaint, including complainants, respondents, support persons, witnesses, supervisory and managerial personnel and persons conducting investigations are expected to treat the matter confidentially. Persons involved in such complaints may be required to sign a confidentiality statement. Reasonable attempts to protect confidentiality will be maintained during and after the investigation and/or informal resolution/mediation. Yorkville will endeavor to limit the personal information that is collected, used, or disclosed while implementing the Policy and Procedures. If it is determined that an individual involved with the complaint process has breached confidentiality during or after an investigation and/or informal resolution/mediation, that individual may be subject to discipline, up to and including dismissal, or termination of contract, as applicable.

Notwithstanding the above, procedural fairness requires that the respondent to a complaint be apprised of the nature of the complaint and by whom it has been made so that they have an opportunity to respond to the allegations. This may require the disclosure of witness names and statements to the parties. The identity of a person who is involved in an incident of harassment, or the circumstances related to the incident, may be disclosed when:

- a. Necessary in order to investigate the incident;
- b. Necessary in order to protect the safety of employees, students, the public and/or contractors'
- c. Required in order to take corrective measures in response to the incident and inform the complainant(s) of corrective action taken, or
- d. Required by law, for example pursuant to occupational health and safety legislation, proceedings before human rights tribunals, criminal proceedings or other legal proceedings.

Yorkville may be required to provide information obtained during an investigation to an outside agency, such as police services, court or tribunal.

#### 1.4 Records

All correspondence and other documents generated under these procedures should be marked "PRIVATE AND CONFIDENTIAL" and be stored in a locked and secure file in the Human Resources Department. Any related hard-copy and electronic files will also be stored in a confidential and secure manner.

#### 1.5 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 environment or if the complainant(s) and/or respondent(s) requires counselling, appropriate steps will be taken to meet such needs.

#### 1.6 Reprisals

Reprisals against individuals because they have reported a complaint are strictly forbidden. Alleged reprisals shall be investigated as formal complaints and, if substantiated, are subject to the same consequences as complaints of discrimination and harassment.

### *INFORMAL RESOLUTION*

#### 1.7 Right of Employee

Each employee retains the right to decide how to respond to workplace discrimination and harassment, including a meeting with the respondent (if it is safe to do so), in order to resolve the situation. The complainant may contact a supervisor or the Chief Talent & Culture Officer to discuss the situation and how it might be resolved. At this stage, since only advice is being sought, names need not be disclosed. All such enquiries to a third party will be treated as confidential and the complainant is under no obligation to file a formal complaint.

#### 1.8 Supervisory and Managerial Responsibilities

Supervisory and managerial personnel may become aware of workplace discrimination and harassment in the working environment in different ways. They may observe discrimination and harassment directly or receive a report from the individual affected. Supervisory and managerial personnel may also receive reports from third parties.

It is important that supervisory and managerial personnel pay attention to symptoms arising out of possible objectionable behaviour such as reduced productivity, changes in behaviour, absenteeism, requests for transfers or rumours. Without assistance, the targets of objectionable behaviour may be embarrassed or reluctant to report a situation.

A speedy resolution of a complaint can prevent escalation and further negative consequences while promoting restoration of a healthy and respectful learning and working environment.

Informal Resolution is a procedure that provides an opportunity for parties to resolve a dispute mutually in a respectful manner. Yorkville shall require supervisory and managerial personnel to first engage in Informal Resolution as a means of resolving issues.

### 1.9 Informal Resolution Steps

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 workplace 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 Equity, Diversity, and Inclusion Office where appropriate.

In cases where an informal plan of action is implemented, supervisory and 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 Human Resources Department for storage in a confidential workplace incident file separate from the personnel file. Only a record of

negative consequence, warning or caution will be placed in the respondent's personnel file.

## *FORMAL COMPLAINT PROCEDURES*

### 1.10 Initiating a Formal Complaint

Formal complaints will only be initiated once reasonable efforts have been made to resolve the conflict informally. The Chief Talent & Culture Officer will have the discretion to refer a formal complaint to the appropriate supervisor and the parties if the Chief Talent & Culture Officer is not satisfied that reasonable efforts have been made to resolve the dispute informally.

Employee complainants should contact their appropriate supervisor or a colleague. If an employee 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. Whether the complainant uses the complaint form or not, Yorkville may still be obligated to ensure an investigation is appropriate. If the 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 discrimination and harassment investigation who has knowledge of the relevant workplace discrimination and harassment laws may be retained to conduct the investigation. Employee respondents may wish to contact the appropriate supervisor/manager.

### 1.11 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. A respondent has a right to know the specifics of an allegation, including times, dates and alleged conduct.

### 1.12 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 Equity, Diversity, and Inclusion Office where appropriate;
- Employee or colleague;
- Trained resource person such as an 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.

### 1.13 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 workplace discrimination and harassment.

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

- Would not, if true, meet the definition of workplace 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.

### 1.14 Procedures for Resolving a Formal Complaint

In all cases, where the Chief Talent & Culture 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, the Chief Talent & Culture Officer will direct the appropriate supervisory and managerial personnel to take action to resolve the formal complaint under this Policy.

### 1.14.1 Formal Investigation and Resolution

Formal complaints require an investigation of the complainant's allegations. Investigators will most often be the supervisory staff of the complainant and/or respondent unless such person(s) actively participated in the unsuccessful informal resolution process, in which case, an independent investigator will be appointed. Where the complainant and the respondent have different reporting structures, supervisory and managerial personnel involved will determine who the appropriate person (who does not have a conflict of interest) is to take responsibility for the investigation.

In a formal investigation, supervisory or managerial personnel 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(s);
2. The investigator must ensure that 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 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 may be entitled to support and assistance throughout the process (including the availability of the Employee Assistance Program, and support from the Equity, Diversity, 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 witness(es) who may be identified by the complainant(s), the respondent or as necessary to conduct a thorough investigation; the investigator may interview relevant witnesses who are not employed by Yorkville if there are any identified;



10. Take appropriate notes and statements during interviews with the complainant(s), 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 will be assessed using objective standards such as the Workplace Discrimination and Harassment Policy definitions, human rights legislation, case law and other relevant resources);
13. Consult with the Equity, Diversity, and Inclusion Office when appropriate on matters requiring subject matter expertise on Equity, Diversity, and Inclusion issues;
14. Provide a written summary of the steps taken during the investigation, the complaint, the allegations of the complainant(s), 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 workplace discrimination and/or harassment was found or not; the summary should be provided to the complainant(s) and to the respondent(s) and give them an opportunity to respond to same; and
15. Take appropriate action(s) to resolve the situation and inform the complainant(s) and the respondent(s) of any corrective action identified as a result of the investigation.

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

The investigator will provide reasonable updates to the complainant(s) and the respondent(s) about the status of the investigation.

#### 1.14.1.1 Record Keeping

Human Resources or the designated investigator 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(s) who allegedly experienced the workplace discrimination and/or harassment and the respondent(s), if any employee(s) of the employer;
- e. a copy of any corrective action taken to address the complaint or incident or workplace 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 workplace discrimination and/or harassment, take corrective action or otherwise as required by law. Records will be kept for at least three years.

#### 1.14.1.2 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.

#### 1.14.1.3 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 may extend a deadline where the delay is requested in good faith and the extension does not prejudice or harm those involved in the complaint process.

#### 1.14.1.4 Outcomes in Formal Investigations

Within 10 business days of the investigation being completed, the complainant(s) and the respondent(s), if the respondent(s) is/are an employee(s), will be informed in writing of the results of the investigation and any corrective action taken or that will be taken by the employer to address workplace 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. However, if there is need to a restore positive working environment or if the complainant and/or respondent require counselling, appropriate steps will be taken to meet such needs.

Follow-up possibilities:

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

#### 1.14.1.5 Corrective Actions

The appropriate supervisor or Chief Talent & Culture Officer may impose corrective action, including discipline, as appropriate and consistent with the result of the investigation, up to and including termination. Corrective action will be implemented in writing.

### *REVIEW*

In the event a complainant or respondent to a formal complaint has one or both 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:

- the investigators did not comply with the procedures; or
- new evidence has become known after the final decision but before the expiry of the ten business days limitation period for requesting a review.

No review of the final decision will be undertaken with regard to the claim that the conclusions drawn by the investigator(s) based on findings of fact were incorrect.

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.