

## DISCRIMINATION AND HARASSMENT

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POLICY NO.	310-002
SCOPE	ALL STAFF, FACULTY, STUDENTS, CONTRACTORS AND VISITORS TO NSCAD
APPROVAL	BOARD OF GOVERNORS
ORIGINAL DATE	MAY 29, 2006
LAST REVISION	MARCH 28, 2013
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CONTACT	DIRECTOR, HUMAN RESOURCES

### 1 INTRODUCTION

NSCAD is a university of the visual arts singularly dedicated to the pursuit of excellence in the training of professional practitioners, in the conducting of research, and in the production of works of art in all media. <sup>1</sup>

Discrimination and harassment undermine these objectives and violate the fundamental rights, personal dignity and integrity of individuals or groups of individuals. NSCAD is committed to a learning and working environment that is free of discrimination and/or harassment.

### 2 SCOPE

This Policy applies to NSCAD University in all of its locations and to all members of the university community. These include, but are not limited to, the Board of Governors, administrators, faculty, students, staff, contractors, and visitors. All members of the University Community have a responsibility to adhere to and support this policy.

The NSCAD University Policy on Discrimination and Harassment is intended to support and clarify the protection provided by Provincial laws, university policies and regulations, and legal documents, including collective agreements, without detracting from the rights and obligations for work and study which are contained in them.

### 3 ACADEMIC FREEDOM

This policy is not intended to detract from the right to engage in discussions of potentially controversial matters including, but not limited to age, race, politics, religion, sex, and sexual orientation. The “right to academic freedom of expression carries with it the duty to use that

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<sup>1</sup> Mission Statement.

freedom in a responsible way, consistent with fair and ethical dealings with students and colleagues, and consistent with the performance of teaching ...”<sup>2</sup>.

The task of respecting the rights of freedom from discrimination and harassment together with freedom of expression and inquiry is complex. Therefore, NSCAD University wishes to achieve an appropriate balance between these rights in order to facilitate the pursuit of excellence in the academic environment.

#### **4 POLICY STATEMENT**

NSCAD University prohibits and will not tolerate acts of discrimination on grounds protected by human rights legislation, or any form of harassment committed by any member of, visitor to, or group within the university community. This policy applies to all students, employees, members of the Board of Governors, and visitors to NSCAD. If engaged in university activities whether on or off campus, this policy remains in effect. NSCAD is committed to providing and ensuring a safe workplace, free from harassment and discrimination.

#### **5 DEFINITIONS**

##### 5.1 Discrimination:

Discrimination refers to intentional or unintentional treatment which imposes burdens, obligations, or disadvantages on the basis of grounds protected by the Nova Scotia Human Rights Act and for which there is no legally justifiable reason.

The Nova Scotia Human Rights Act protects against discrimination on the basis of: age; race; colour; religion; creed; sex; sexual orientation; physical disability or mental disability; an irrational fear of contracting an illness or disease; ethnic, national, or aboriginal origin; family status; marital status; source of income; and political belief, affiliation, or activity.

##### 5.2 Harassment

NSCAD will not tolerate any form of harassment

- Harassment takes many forms, and includes any unwanted physical or verbal behaviour that offends, intimidates or humiliates another person in the course of employment or in the provision of a service or discriminates against him or her on the basis of characteristics described in the definition of discrimination.

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<sup>2</sup> FUNSCAD Unit I Collective Agreement, Article 8.01 (C).

- Harassment involves repeated and deliberate behaviour which is intended to humiliate, intimidate or undermine another person.
- Harassment between employees can occur in, or away from, the workplace. Harassment between an employee and a non-employee can occur within the course of employment, in the provision of goods, services or facilities.

### 5.3 Examples of harassment

While the following is not an exhaustive list, harassment may include:

- Verbal abuse or threats.
- Unwelcome remarks, jokes, innuendos or taunting about a person's body, attire, age, marital status, ethnic or national origin, religion, or sex.
- Displaying of racist or other offensive or derogatory material by spoken word or electronic communication.
- Practical jokes causing awkwardness or embarrassment.
- Intimidation.
- Condescension or paternalism which undermines self-respect.
- Actions or remarks intended to humiliate another person.
- Physical assault.
- Retaliation.
- Spreading malicious rumours, gossip, or innuendo.
- Unjustifiably criticizing a person persistently or constantly.

### 5.4 Sexual Harassment

Sexual harassment involves a course of unwelcome sexually oriented conduct, comment, gesture, contact, correspondence (including electronic), or display (including internet access) that creates a working environment that is offensive, hostile, threatening or demeaning. Both males and females may be subject to sexual harassment. Acts of sexual harassment can take many different forms, some of which may not be apparent at first glance but in all cases the perpetrator ought to have known that their actions or behaviours were unwelcome. Sexual harassment includes but is not limited to:

- vexatious sexual conduct or a course of conduct that is known or ought reasonably to be known as unwelcome; or

- a sexual solicitation or advance made by an individual who is in a position to confer a benefit on, or deny a benefit to, the recipient of the solicitation or advance and the person who makes the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance; or
- sexually oriented remarks and behaviour which may reasonably be perceived to create a negative psychological and emotional working environment.

#### 5.5 Examples of sexual harassment

While the following is not an exhaustive list, sexual harassment may include:

- explicit or direct invitations to engage in sexual activities;
- leering, staring, or other sexually oriented gestures;
- unwelcome or unsolicited remarks, jokes or innuendos about a person's gender, appearance or sexuality;
- sexist jokes or innuendos concerning sexual activities;
- the display of inappropriate pornographic or lewd pictures or cartoons;
- unnecessary physical contact including touching, patting or pinching;
- continuing inquiries or comments about someone's sex life;

#### 5.6 Retaliation

For the purpose of this policy, retaliation against an individual includes retaliation for:

- Having invoked this policy (on behalf of themselves or another individual),
- Having participated or cooperated in any investigation under this policy,
- Their association with any individual involved in the process and procedure

NSCAD considers retaliation or the threat of retaliation at any stage to be a serious offence because it prevents potential complainants and witnesses from acting on their concerns. Any employee found to have engaged in retaliation will be subject to disciplinary measures.

#### 5.7 Complainant

A person who initiates a complaint against a person or persons.

#### 5.8 Respondent

For the purposes of this policy the respondent refers to the person whom the complainant has alleged to have committed acts of harassment or discrimination.

#### 5.9 University Representative

The University Representative is the person to whom the complaint is made. Depending on the circumstance the University Representative may be the Director of Human Resource, Dean, Provost & Vice-President Academic and Research, Vice President Finance, President or Chair of the Board of Governors.

#### 5.10 Mediator

A neutral party who facilitates negotiations and conflict resolution, the process being known as mediation

#### 5.11 Investigator

The individual contacted by the university to systematically examine and interview individuals on the facts outlined in statements and through interview processes. This person will ultimately determine, to the best of their ability, whether a violation to this policy has occurred.

### **6 RESPONSIBILITIES UNDER THIS POLICY**

All members of the NSCAD University Community have a responsibility to maintain a working and learning environment free of discrimination and harassment.

#### 6.1 Supervisor's Responsibility

Anyone who is a supervisory role has a responsibility to be aware of any situation which could constitute harassment and to respond appropriately.

#### 6.2 Senior Management's Responsibility

- to designate an individual(s) responsible for the implementation of this policy, and the provision of training, education and resources for them to fulfill their responsibilities under this policy
- to regularly review of this policy and its procedures to ensure that it adequately meets the policy objectives
- To respond appropriately and without undue delay to all reports of discrimination or harassment, including seeking outside professional assistance to resolve complaints.

## **7 COMPLAINTS**

### 7.1 Employees

Complaints should be directed to the Director of Human Resources. Complaints involving the Director of Human Resources should be directed to the Vice President Finance and Administration.

### 7.2 Students and Visitors

Complaints should be directed to the Dean or in his / her absence to the Provost, & Vice-President Academic Affairs and Research. Complaints involving the Dean should be directed to the Provost & Vice-President Academic Affairs and Research. Complaints about the Provost & Vice President Academic Affairs and Research should be directed to the President. Complaints regarding the President should be directed to the Chair of the Board of Governors.

## **8 GENERAL PRINCIPLES**

All complaints will be investigated without delay.

The President of NSCAD University will oversee the administration of this policy, the investigation and resolution of complaints. Where disciplinary actions are imposed, employees covered by collective agreements will have access to the grievance procedures outlined in their agreement.

## **9 CONFIDENTIALITY AND RECORDS**

Records or reports of complaints, incidents, or investigations shall be maintained as confidential files and in accordance with federal privacy legislation and the terms and conditions of collective agreements or student record-keeping procedures.

## **10 SERIOUS CRIMINAL ACTIVITY**

Violations that are of a serious nature and that constitute criminal activity, such as sexual assault, physical assault, and/or verbal threats to a person's physical wellbeing, shall be immediately reported to the appropriate authorities.

## **Complaint Resolution Procedures**

### **GENERAL STATEMENTS:**

Voluntary settlement of discrimination and harassment complaints is often the best avenue for resolving issues. Individuals will be assisted in reaching informal resolution of discrimination and harassment complaints, wherever possible, to ensure the formal process remains a last resort. Complainants are encouraged to report their concerns as soon as possible after the alleged misconduct. These procedures are intended to facilitate fair, appropriate and speedy resolution to concerns and/or complaints.

Days referred to in this document reflect working days, not calendar days (unless otherwise noted).

### **GENERAL PROVISIONS:**

- Any member of the University community may seek, confidential advising and assistance from the University Representative, the appropriate Union representative, or outside legal counsel (at their own expense).
- The complainant's identity must be disclosed to the respondent in order that the complaint proceeds.
- All parties to a complaint will be advised of the provisions of this policy.
- The University Representative shall facilitate informal resolution of complaints as outlined below under the **INFORMAL RESOLUTION**.
- Any party involved in the complaint may discontinue the informal resolution or mediation process at any time.
- The University Representative shall not act as an advocate for complainants or respondents with respect to individual complaints of discrimination or harassment against another member of the University community.
- Timeframes outlined within this document will be adhered to, subject to extenuating circumstances involving the parties, the persons responsible for administering the procedures, or the availability of other individuals such as an external mediator or investigator.
- Complaints under this policy can be resolved by employing any or all of the following procedures:

- **INFORMAL RESOLUTION**

- **MEDIATION**
- **FORMAL INVESTIGATION**

### **CONFIDENTIALITY**

- All members of the University community involved in any proceedings pursuant to this policy are expected to maintain confidentiality. A breach of confidentiality is a disservice to both the complainant and the respondent and will constitute a violation of this policy.
- Confidentiality is not the same as anonymity. For a complaint to go forward to mediation or investigation, the identity of the complainant and the details of the complaint must be released to the University Representative, the respondent, the mediator and /or investigator.
- Information regarding a complaint may be provided to appropriate University employees on a need to know basis as determined by the University Representative. This may include situations where there are security or safety issues. Any person so informed shall be advised of the nature of the complaint and is bound by confidentiality requirements.

### **INFORMAL RESOLUTION**

Any individual who feels that he/she is discriminated against or harassed is encouraged to discuss his/her concerns with, in the case of students their faculty member or Division Chair; in the case of employees, their Immediate Supervisor, the Immediate Supervisor of the person whom the complaint involves or the Director of Human Resources

The Faculty member or Chair shall:

- Speak to the individuals involved or,
- Consult with or refer the complainant to The Director of Financial Aid & Student Counselling or the Dean as appropriate

The Immediate Supervisor or Immediate Supervisor of the person whom the complaint involves shall:

- Speak directly to the individuals involved or;
- Assist and support the complainant and/or respondent to speak with each other or;
- Consult with or refer the complainant to the Director of Human Resources if more appropriate

The Director of Human Resources, Dean or Director of Financial Aid & Student Counseling shall:

- Provide information with respect to the NSCAD Policy on Discrimination and Harassment and behavior constituting discrimination or harassment and/or

- Assist the complainant in determining whether the conduct in question is covered by the policy and/or;
- Review with the complainant the procedural options available for resolution of the matter and/or;
- Offer to assist with the informal resolution of the concern or complaint and/or;
- Refer the complainant and/or the respondent to other internal or external resources for assistance and/or;

The purpose of dealing with a complaint informally is to stop the offending behaviour and to resolve the matter as quickly as possible. Every effort will be made to seek informal resolution within 20 working days of the initiation of the complaint. The informal resolution process is intended to be consensual and confidential. No **INFORMAL RESOLUTION** process that may adversely affect the academic, employment, professional, or other interests of the respondent, or which has the potential to identify the respondent to others, shall proceed without the knowledge and consent of the respondent.

**INFORMAL RESOLUTIONS** can take place in two ways:

- 1) The complainant may prefer to deal directly with the respondent and may seek advice from their faculty member, the Chair of their Division, appropriate union representative, Immediate Supervisor, the Immediate Supervisor of the Respondent, or the Director of Human Resources.
- 2) Other means of informal resolutions can include:
  - Writing a letter to the respondent
  - Scheduling an informal meeting to discuss the complaint

### **MEDIATION**

The parties may attempt to resolve the matter through professional mediation. Mediation is a process by which a neutral third party helps those involved in the complaint reach a resolution that is acceptable to both parties.

The Director of Human Resources will arrange for mediation by a person with relevant mediation training and experience.

Mediation will require a written statement to the University Representative from the complainant outlining the offending behaviour, conduct or issue that the complainant wishes to resolve through mediation. Within 7 days of receipt of a request to mediate, the respondent shall be provided with a copy of the written statement. Within 7 days of the invitation to mediate, the respondent must advise the University Representative whether or not he/she accepts the invitation to mediate.

Mediation will begin within 10 days of the agreement to mediate, subject to the availability of the mediator.

Where agreement to resolve the matter is reached in mediation, the terms of the agreement shall be written out, signed by the complainant, the respondent, and the mediator.

A copy of the settlement reached in mediation shall be provided to each of the parties and kept in the confidential files of the Director of Human Resources for 2 years.

#### **FORMAL INVESTIGATION**

A complaint not resolved through **INFORMAL RESOLUTION** or **MEDIATION** within 10 days of the commencement of such a process, (or longer as extended by agreement of the parties in writing), may proceed to formal investigation.

The objective of the formal investigation is to decide, on a balance of probabilities, whether the respondent's conduct falls within the definition of discrimination or harassment and advise on the recommended next steps towards resolution.

A written request for an investigation may be made to the University Representative. This request should include the following details:

- The full details of the complaint;
- A summary of relevant evidence available (documents, witnesses etc.);
- The requested outcome or remedy.

The University Representative is available to provide guidance to the complainant or respondent. Any additional allegation will be considered a new complaint.

Immediately upon receipt of a request for **FORMAL** Investigation the University Representative will notify the respondent in writing of the complaint, providing him or her with a copy of the complaint and the Harassment and Discrimination Policy. The respondent has the right to submit a written

response to the complaint, with a copy forwarded to the University Representative, no later than 15 days after being notified. The University Representative may provide guidance to the respondent in preparing his or her written response. Without limiting the substance of the response, the respondent may:

- acknowledge or deny the validity of the allegations in whole or in part;
- provide new information;
- propose a resolution to the complaint;
- choose not to respond to the complaint.

If the respondent does not submit a response, the investigation will still proceed.

Immediately upon receipt of a written response by the respondent, the University Representative will forward a copy to the complainant. The complainant has the opportunity to respond in writing no later than 7 days after receipt. Without limiting the substance of the complainant's response, s/he may:

- accept the respondent's response as a full resolution to the complaint;
- request additional efforts at informal resolution; or
- retract or reaffirm all or some of the allegations made in the complaint.

Immediately upon receiving a complainant's written response, the University Representative will provide a copy of the complainant's response to the respondent. The respondent shall have 7 days to respond in writing to the complainant's response.

Within 10 days of the completion of this exchange of documentation, or, in the absence of responses or resolution within the time frames provided, the University Representative will assess the file, make a determination as to whether there is a reasonable basis for the complaint to proceed to an External Investigation or be discontinued, and communicate this decision in writing to the parties.

The decision of the University Representative to discontinue a complaint may be appealed in writing, within 10 days of receipt of the decision, by the complainant to the President or designate, with a copy to the University Representative. The President or designate and the University Representative will acknowledge receipt of request for appeal, in writing, within 5 days.

The President may request additional information from the complainant, respondent and the University Representative in order to assess the appeal.

The President or designate, whose decision is final, will communicate his/her decision on the appeal to all parties, including the University Representative, within 10 days of receipt of written submission for appeal.

### **EXTERNAL INVESTIGATION**

The initiation of the External Investigation will be handled by the President or designate.

The President or designate shall, within 10 days of the referral to investigate, appoint a Professionally Trained Investigator, who is independent of any party involved in the investigation.

The Investigator shall conduct interviews and obtain documentation and be given access to any documents considered relevant to the investigation. The investigation shall be completed within 90 calendar days of the Investigator's appointment.

Within 10 days of completing the investigation, the Investigator shall provide, to the complainant and respondent, copies of all documents obtained, summaries of all interviews, and any other relevant evidence other than the documents already provided. The complainant and respondent shall have 10 days to respond in writing to the Investigator.

The Investigator shall, within 10 days of receiving written responses from both the complainant and respondent, or within 10 days of the deadline for receipt of such written responses, whichever is earlier, deliver a written REPORT OF THE INVESTIGATION. The Report shall summarize the relevant evidence and representations of the parties, describe all factual findings, and set out the Investigator's finding(s) as to whether the respondent's conduct constituted discrimination or harassment or both.

The Investigator's final report will contain the following:

- a summary statement about the background of the case;
- a summary description of the complainant's allegations and respondent's response
- a summary of the statements provided by the witnesses and the respondent;
- any pertinent documentation;
- a determination of whether or not the allegations have been proven;

- if the allegations are proven, a determination as to whether there were mitigating or aggravating circumstances affecting either party; and
- any recommended specific sanctions and/or remedial options

Without limitation, the following represents examples of possible sanctions and remedial actions for informal, mediated and formal settlements.

- advice and counseling
- an apology to the complainant
- written warning letter or reprimand
- a campus wide or selected ban
- restricted participation in University activities
- in the case of a student, suspension, probation, or expulsion
- in the case of an employee discipline or dismissal

The Report provided by Investigator shall be immediately delivered to the President, and distributed to the University Representative, the complainant and the respondent.

The complainant and respondent shall have 10 days from receipt of the Investigator's Report to provide written comments on the Report to the Director of Human Resources. Immediately upon receipt of comments from both the complainant and respondent, or within 10 days of receipt of the Report, whichever is earlier, the Director of Human Resources will provide to the appropriate senior administrator (the relevant Vice-President or the President, or the Board of Governors in the case of a complaint against the President), the report of the Investigator and the written comments of the complainant and/or respondent. The President will acknowledge the report in writing to both the respondent and the complainant, and will be available to meet either party upon request.

The final disposition of the complaint, and any sanction or remedy to be applied will be determined by the appropriate level of senior administration or Board of Governors. An affected employee may grieve or appeal this decision under the relevant collective agreement or personnel policies.

In the event that a complaint is discontinued, dismissed, or withdrawn, the Director of Human Resources may recommend to the relevant Vice President, the provision of counseling, education, or such other measures as may be appropriate for the complainant and/or the respondent. The Director of Human Resources may also recommend measures to restore the relevant University department or unit to effective functioning.

## **APPEALS**

All appeals must be submitted to the President or designate within 10 working days of receiving the final report. For grievances, they must be submitted within the time frame specified in the appropriate collective agreement from the date of the report.

### Unionized faculty and staff

The right to grievance and arbitration will serve as the appeal process

### Non union staff

Where the Complainant or Respondent are non union staff, an appeal may be made to the President of the University within 10 days of the decision. The President will render a final decision within 7 days.