

(Amended March, 2018)

This policy was approved by Leadership Council July 14, 2007.

PROCEDURE TITLE: ANTI-HARASSMENT (PROGRAMMING)

SUBJECT: Following are the procedures for the Banff Centre Anti-Harassment policy.

AUDIENCE: This procedure is for artists, practicum, conference clients, visitors, guests, and program participants.

1. COMPLAINT HANDLING PROCEDURES

A complainant with a concern regarding a harassment incident should take direct action (as outlined under the Anti-Harassment Policy, Section 4 - Responding to Harassment), if possible, to make the discomfort and/or disapproval known to the offending person(s).

There are several ways to resolve conflict and disputes that involve harassing behaviour. The ideal resolution takes place quickly and is handled solely by the individuals directly involved. Since this is not always possible, other mechanisms are described below.

A complainant with a concern regarding a harassment incident may immediately consult with their Department Director, Program Head (who will immediately report to Department Director) Participant Resources, Security Services Department or a Harassment Advisor listed at the end of the procedures for the purpose of receiving advice and assistance with a view to resolving the situation. The advisors listed at the bottom of this document shall promptly advise the complainant of a brief understanding of the allegations and inform the complainant of the definition of harassment and processes available to respond to the harassment including:

1. Informing the complainant of the processes available to resolve the problem.
2. Determining which process the complainant wishes to be engaged in. If the individual wishes to engage in individual problem solving, the advisor will assist the complainant on how to address the individual.
3. If the complainant wishes to engage in the mediated session, the advisor will contact the Department Director, with the complainants permission to determine if it is reasonable to proceed with this course of action (e.g., program length)
4. If the complainant wishes to engage in the formal investigation process, the advisor will request a written statement and explain the formal process. (See 2. Formal Investigation Process.)
5. Advisor will assess whether there is a potential risk of immediate re-occurrence, if so, receive permission from the complainant to discuss their concern with the Department Director or designate (Program Manager) to ensure that both parties are kept separated.
6. The Senior Leader will then determine who should be on the investigation team to respond to a formal harassment complaint.
7. The investigation team will collect written statements from all parties and conduct interviews as appropriate to gain a full understanding of the facts of the alleged harassment.
8. The investigation team will prepare a report of findings for the Senior Leader.

9. The Senior Leader will determine appropriate disciplinary actions and advise the complainant and respondent.

10. The Senior Leader will ensure a restoration plan is in place to ensure a positive learning environment.

a. Individual Problem Solving:

If you believe you have been subjected to harassment, you are encouraged to clearly and firmly make known to the alleged harasser that the behaviour is objectionable and must stop. If conflict resulting from the harassing behaviour can be resolved by those directly involved, it reduces the disruption in the work/learning place and contributes to better relationships in the future. Some people are not aware that their behaviour constitutes harassment. Often, simply telling them about the offensive nature of their behaviour is enough to end it. You are encouraged to be proactive and tell the offender to stop. Refer to the policy if necessary. If you want assistance in planning your approach to the alleged harasser, contact your Department Director, Participant Resources, the Security Services Department, or a Harassment Advisor listed at the end of this document.

The outcome tends to be mutual understanding and a verbal agreement to restorative action between those involved. Usually these agreements are not written and no file is created.

b. Facilitated Problem Solving:

If you believe you have been subjected to harassment and are unable to confront the other person or the confrontation does not improve the situation, discuss the problem with your Department Director, Program Head (who will immediately report to Department Director) Participant Resources, the Security Services Department or a Harassment Advisor. These resources can help you assess your options, develop an action plan for resolution and implement the plan. They can help you identify and access a facilitator who may assist you and the respondent to work out an acceptable resolution and they can also be responsible for following up with you to ensure that the conflict has been resolved.

The outcome tends to be a mutual understanding and a verbal and/or written agreement to restorative action between those involved.

c. Mediation:

If the conflict cannot be resolved by the individuals and their local resources, mediation or a similar third party intervention can be requested upon the mutual agreement of those involved in the conflict, providing there is still significant time left in the program that would make this option feasible and reasonable.

Trained and experienced mediators should conduct the mediation process. They can assist two or more parties to reach a resolution to their differences or can also help to resolve conflicts among groups.

The mediator may initiate separate meetings between them and each of the involved parties to arrive at an understanding of the individuals' issues and interests. This may be followed by joint sessions. Some variations of this problem solving process, which can help restore the workplace or learning environment to a respectful level, include the use

of a facilitator to help the manager, artist, guest, participant and/or employees work

through the dispute and prevent recurrence. The parties will work together to apply the process that is most appropriate to each situation.

The outcome is a mutual understanding and written, signed and recorded agreement of restorative action between those involved.

d. Formal Investigation

When it is not possible to resolve a conflict through individual, facilitated problem solving or mediation, depending on the nature of the complaint, a formal investigation may be initiated through a formal complaint (see 2: Formal Investigation Process). The formal complaint process is an explicit procedure that will involve a harassment investigator(s). A formal complaint should never be undertaken frivolously. It requires careful consideration and should usually be a last resort. This process may take longer, involve more people (witnesses) and requires the complaint to be in writing.

The outcome is a report of the findings of the investigation, determination of whether or not harassment occurred and a restorative plan that may or may not include disciplinary measures.

If a formal complaint and investigation take place, the Senior Leader for the area will make the final decision, based on the investigator's report, as to whether or not harassment has occurred and will determine the appropriate action to be taken. This may include application of disciplinary sanctions or expulsion.

e. Time Limits

Complaints respecting events that exceed the length of the program will not be investigated unless there are special circumstances. Such circumstances could include:

- Matters relevant to events or harassment issues that are currently present or likely to be present in the program;
- Where the alleged harasser is currently in the employ of the employer and the complaint is of such serious nature that if true, would warrant discipline, therapy or training.

2. FORMAL INVESTIGATION PROCESS:

a. Content of a Formal Complaint

The formal complaint must contain the following information:

- Name of Complainant;
- Program: Name of Program, location and length of program/departure date;
- Home and Local Phone Numbers of Complainant;
- Type of Harassment (i.e. on what prohibited grounds did the harassment occur);
- Respondent: alleged harasser's name;
- Details of the Complaint: description of the objectionable behaviour. What was said or done? When? How often? Where? Circumstances surrounding the incident(s)?

Describe what you have done in response to the behaviour. Have you advised the alleged harasser(s) or another appropriate person that the behaviour is objectionable and must stop;

- Complainant's Signature: by signing a formal complaint, agreement is provided to have this information given to:
 - Senior Leader
 - Respondent's Department Director
 - the respondent(s).

Note: The respondent will be given a copy of the actual complaint, not a summary or edited version. However, in the case of multiple respondents, only details of the complaint pertaining to an individual respondent will be provided to that respondent.

b. Complaint Process

Within **three calendar days** of the receipt of a formal complaint, the recipient will ensure that the Senior Leader of the department involved (or designate), and, Department Director receive a copy of the complaint. All those who receive copies of the complaint must observe strict confidentiality requirements.

A copy of the complaint and this policy will be given to the respondent by department management within **three calendar days**. In the event of multiple respondents, only details of the complaint pertaining to an individual respondent will be given to the respondent.

Complaints that involve an Senior Leader will be dealt with by the President & Chief Executive Officer (CEO) and a recommendation will be provided to the Chair of the Board of Governors for a final and binding decision.

c. Separation of Complainant and Respondent

The Senior Leader will, with advice from the Department Director or Harassment Advisor, decide if the complainant and respondent(s) need to be separated pending the completion of the intervention.

d. Investigators

An investigator, or team of investigators, will be appointed by the Senior Leader after consultation with the Department Director and/or Participant Resources within **three calendar days** of the receipt of the formal complaint. The cost of the investigation is the responsibility of the program involved.

The goal of this policy is to quickly return the workplace/learning environment to a respectful and productive environment. Investigators will recognize and suggest opportunities for mediation or problem solving and facilitate those opportunities in lieu of the investigation when appropriate.

e. Authority of Investigators

The investigator(s) is authorized by this policy to collect evidence relevant to the investigation. The evidence will be returned to its owner upon completion of the investigation. The investigator(s) is authorized to suggest mediation at any time during the investigation if they believe it will lead to a satisfactory resolution. They have the authority to request the temporary release of a program participant or employee in order to conduct interviews in a timely manner. Those requested to be interviewed, will do so without penalty.

f. Investigation

Note: Where stated, time frames are intended to be guidelines only. Individual circumstances may cause the time frames to be exceeded.

i) Process

- a. The investigator(s) will ensure that the respondent has been given a complete copy of the complaint and a copy of this policy. In the event of multiple respondents, only the details of the complaint pertaining to an individual respondent will be provided to that respondent.

Each investigator will start the investigation by asking the complainant and respondent if mediation is possible.

- b. The following activities will normally be completed within **5 calendar days** of the appointment of the investigator:
- interview the complainant;
 - interview the respondent(s);
 - interview relevant witnesses (witnesses must be informed that the evidence provided will be shared with the complainant and respondent);
 - collect relevant documents or other physical evidence.

At any time during the investigation, the complainant and respondent(s) can, by mutual agreement, agree to suspend the investigation in favor of a mediation process. If that process is not successful, the investigation may resume and be completed.

- c. Prior to concluding the investigation and preparing a final report, the investigator shall provide the evidence and tentative findings to the respondent and the complainant. In the event of multiple respondents, only the details of the evidence and tentative findings pertaining to an individual respondent will be provided to that respondent. In the case of multiple complainants, each complainant will receive only the details of evidence and tentative findings applicable to him or her. The complainant(s) and respondent(s) then have **three calendar days** to determine if the investigation is complete and to respond. If the responses call for further investigation, it should be completed within **three additional calendar days**.

The challenger must specify what aspect of the investigation is seen as

inadequate. After consultation with the Department Director and/or Participant

Resources, if applicable, the Senior Leader may direct that the investigation be re-opened to address the concerns raised in the challenge.

ii) Written Report

Within **three calendar days** of completing the investigation, the investigator(s) will submit a written report to the Senior Leader.

Within **three calendar days** of receiving the investigator's written report, the Senior Leader will distribute copies to the complainant and respondent. In the event of multiple respondents, only the details of the report pertaining to the individual respondent will be provided to that respondent. In the event of multiple complainants, only the details pertaining to an individual complainant will be provided to that complainant. The report will detail the following:

- the complaint;
- statement of respondent(s);
- a list of witnesses;
- witness statements;
- relevant documents;
- findings of the investigation;
- the investigator's conclusion respecting each allegation/complainant as to whether or not harassment occurred.

The investigator's report will include a recommended course of restorative action where appropriate, but will not provide recommendations regarding disciplinary action.

iii) Determination

The Senior Leader shall make the final decision as to whether or not harassment has occurred, within the meaning of this policy. This decision may involve consultation with the Department Director and/or Participant Resources. The decision as to whether or not harassment has occurred shall be communicated to the complainant, the respondent(s), the Department Director and Participant Resources. The Senior Leader should communicate the decision to the parties involved once the written report is received and the challenge process has been exhausted.

iv) Restorative Action/Discipline

If it is determined that harassment has occurred, the Senior Leader shall determine what appropriate restorative action is to be taken. The Senior Leader may consult with Department Director and Participant Resources. The offending party may be subject to disciplinary action as part of the restorative process that is applied. The discipline may be up to and including expulsion from the program. In the most serious cases of harassment, the Senior Leader will consult with the other Senior Leader, and obtain legal advice, in determining the appropriate disciplinary action. In determining the appropriate restorative action, the Senior Leader may consult with the complainant(s) as to the effect the harassment has had upon them. This consultation may take the form of an "impact statement" from the complainant(s),

which would be in addition to any impact information that was gathered by the investigator. Participation of the complainant(s) in this process would be on a

voluntary basis. If this consultation is carried out by the Senior Leader, the complainant(s) will be advised that the information provided would be shared with the respondent(s) who will be given the opportunity to respond. The information provided by the complainant(s) and respondent(s) will be taken into account in making the decision regarding the restorative action plan to be taken.

v) Implementation of Restorative Action/Discipline

The Senior Leader will communicate to the complainant(s) and respondent(s) the details of the restorative action plan and its implementation. Where disciplinary action is applied as part of the restorative plan, the Senior Leader will, on a confidential basis, inform the complainant(s) of the discipline imposed on the respondent(s), the rationale for imposing discipline and the relevant considerations taken into account. If it is determined that disciplinary action will not be imposed as part of the restorative plan, that decision will also be communicated and explained to the complainant(s).

On a case-by-case basis, the Senior Leader may determine that for a restorative action plan to be successful, it may need to include communicating information about the disciplinary action taken to other members of the workplace or learning environment. Where this information is provided, the members of the learning environment, in keeping with the principles of this policy, must observe strict confidentiality at all times. Prior to taking this course of action, the Senior Leader will consult with Department Director and Participant Resources.

vi) Evidence and Documents Relating to the Investigation

Due to the possibility of subsequent action; eg., legal proceedings, arbitration, the investigation will be retained for six years.

Upon conclusion of the investigation, the investigator shall retain copies of all such material for his/her record and submit copies to Participant Resources for artists/participants and to Human Resources for all other complaints.

vii) Complaint Withdrawal

A complainant may withdraw a complaint at any time. The employer still may be required to address the concerns raised in cases where:

- there exists a real or perceived threat to the health or safety of other program participants/artists or members of the Banff Centre community;
- there is evidence that the complainant may have been threatened or may fear retaliation;
- failure to close the situation might endanger an employee or community member;
- the complaint alleges serious abuse of power;
- failure to follow through on a complaint would seriously damage the reputation of the Banff Centre.

viii) Representation

If the complainant or alleged harasser is a member of CUPE 4318, the individual may

grant the union full access and representation rights. Non-union employees are also

entitled to representation by a person of their choice.

ix) Employee and Family Assistance Program

Employees who require counseling are encouraged to contact the Employee and Family Assistance Program.

3. MATTERS INVOLVING CRIMINAL BEHAVIOUR

Normally, harassment cases will not involve conduct that may be of a criminal nature. However, in exceptional cases, the actions of the alleged harasser may cross over the line into criminal behaviour.

a. Legal Advice

If a Department Director (or designate) is made aware of a harassment circumstance which they believe may have involved criminal behaviour, the Department Director shall, through Banff Centre Human Resources, contact legal representation to seek whether the matter has crossed the line into criminal action.

b. Role of the Investigator

Where, in the opinion of the investigator, behaviour of a criminal nature has occurred, the investigator shall document the behaviour, provide information to the complainant with respect to advancing the complaint to the police and immediately inform the Department Director (or designate) of the matter.

c. Advance a Criminal Complaint

At any time during the process of handling a complaint where the behaviour of the alleged harasser may be considered to be criminal in nature, and particularly if the matter is investigated and substantiated, the complainant must be advised that he/she has the opportunity to advance a criminal complaint to the police for investigation. In such circumstances where a complainant chooses to advance a criminal complaint, the Banff Centre will offer support to do so.

d. The Banff Centre May Advance Complaint

In cases where the complainant had been afforded the opportunity to advance a criminal complaint but chose not to do so, those wishes should be respected except where there is an overriding concern. Department Directors/department heads who believe a particular matter should be raised with the police, despite the complainant(s)' wishes, must first raise the matter with the Senior Leader, the Security Services Department and Participant Resources/Human Resources who will seek legal advice.

4. DISCIPLINE MEASURES

The Senior Leader shall decide whether or not disciplinary action should be taken. The Senior Leader's decision will be based on representations made by the complainant, the

alleged harasser and the investigator's report.

Potential disciplinary or correctional actions for harassment include, without limitation, one or more of the following:

- apology
- referral for counseling
- reprimand
- relocation to another program
- expulsion

5. APPEAL RIGHTS

If a union member is involved, the individual has the right to appeal the decision in accordance with the Collective Agreement. If the individual is a non-union member, they may file an appeal to the President & CEO or their delegate for review and decision.

6. ADDITIONAL RIGHTS

This policy is not intended to restrict any legal rights available to any person who is subject to this policy.

7. RESPONSIBILITIES OF THE BANFF CENTRE

The Banff Centre will:

- educate members of the Centre's community as to the existence and content of this policy
- provide advice to persons who have or believe they may have been subjected to harassment
- examine every complaint of harassment
- impose appropriate disciplinary measures when a complaint of personal harassment is substantiated.

8. HARASSMENT ADVISORS

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| Manager, Employee Relations | Ext. 6488 |
| Manager, Training and Retention | Ext. 6173 |
| Manager, Security Services | Ext. 6299 |
| Director, Program Administration | Ext. 6613 |
| Managing Director, Hospitality Operations | Ext. 7510 |
| Managing Director, Events and Public Engagement | Ext. 6368 |
| Manager, Library and Archives | Ext. 6255 |
| Director, Indigenous Arts | Ext. 6691 |
| Production Manager, Artistic Support | Ext. 6965 |