



Policy Title: Harassment and Discrimination Policy

Issued by: Employee Relations Committee

Approved by: Council of Trustees (June 7, 2010)

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PURPOSE

Brescia University College ("Brescia") is committed to providing, in accordance with the Ontario *Human Rights Code* and the *Occupational Health and Safety Act*, a positive and safe working and learning environment for each member of the Brescia community. Brescia encourages mutual respect and the preservation of the personal dignity, self-worth and human rights of all of its members and is committed to providing them with an equitable environment free of harassment, discrimination, threats or exploitation.

Brescia will not tolerate any behaviour which denies individuals their dignity and respect and which is offensive, embarrassing or humiliating. All Brescia employees and members of its Council of Trustees have a responsibility to respect the dignity and human rights of their co-workers and the public they serve. Harassment of another member of the Brescia community in the carrying out of duties or in the provision of goods and services, constitutes a disciplinary infraction and will be dealt with appropriately.

APPLICABILITY:

This policy applies to all employees of Brescia, including managerial, supervisory, full-time and part-time, as well as to all students registered or attending classes at Brescia or living in a Brescia residence, members of Brescia Councils and committees, the Ursuline Religious, members of the Alumnae Council, the Brescia University College Foundation and students of the University of Western Ontario while they are at Brescia.

Other individuals providing services or conducting research on Brescia grounds, contractors, volunteers, visitors or guests to Brescia are also expected to conduct themselves while at Brescia or conducting any Brescia-related activity, in a manner consistent with this policy. Allegations of harassment and discrimination by such individuals will be dealt with by Brescia and, if substantiated, may be considered a breach of contract or affect the person's right to be present at Brescia or to participate in any of its activities.

RELATIONSHIP TO OTHER POLICES:

Some behaviours that are defined as harassment under this policy can also constitute workplace violence or abuse and, as such, Brescia's Workplace Violence Policy may also be applicable in the circumstances.

RESPONSIBILITIES:

Administrative and supervisory officers are responsible for communicating to all members of the Brescia community that harassment and discrimination are not permitted and will not be condoned or ignored. Administrative and supervisory officers will make every effort to prevent harassment and discrimination by:

- i. demonstrating through leadership and action a commitment to the prevention of harassment and discrimination;
- ii. communicating the principles of this policy and upholding its spirit and intent;
- iii. taking all steps to stop any harassment or discrimination of which they are aware, regardless of whether a complaint has been filed;
- iv. taking all complaints of harassment and discrimination seriously and promptly and diligently investigating any alleged incident;
- v. taking prompt action to resolve complaints and taking appropriate corrective action; and,
- vi. encouraging participation in education and training programs provided by Brescia.

All members of the Brescia community share the responsibility to create a workplace that is free from harassment and discrimination. All members are responsible for understanding what constitutes harassing and/or discriminatory behavior and conducting themselves in accordance with the spirit and intent of the policy.

DEFINITIONS:

a. Harassment under the *Occupational Health and Safety Act*

The Ontario *Occupational Health and Safety Act* defines harassment as “engaging in a course of vexatious comment or conduct against a worker that is known or ought reasonably to be known to be unwelcome”.

For the purposes of this Policy, any vexatious, objectionable or unwelcome conduct or comment that serves no legitimate work-related purpose and has the effect of creating an intimidating, humiliating, threatening or hostile work environment will be considered to be harassment.

Examples of harassment could include, but are not limited to:

- (i) bullying, insulting, taunting or ostracizing;
- (ii) malicious gestures or actions;
- (iii) behaviour that frightens, belittles or degrades;
- (vi) persistent unjustified threats of discipline or sanctions;
- (v) constant unjustified criticism;
- (vi) yelling, shouting; or.
- (vii) damaging or interfering with another's property or equipment.

b. Harassment and Discrimination under the *Human Rights Code*

In accordance with the Ontario *Human Rights Code*, every person covered by this policy has a right to freedom from harassment in the workplace or classroom because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status or disability.

"Discrimination" means the differential treatment of an individual or group that is based not on individual or group performance, but on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status or disability.

Every person has the right to equal treatment in all aspects of employment, services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age [as defined by the Human Rights Code], record of offences, marital status, same-sex partnership status, family status or disability.

Harassment can constitute a discriminatory practice under applicable human rights laws where the objectionable conduct or comment relates to race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status or disability.

Behaviour giving rise to a complaint of harassment does not need to be intentional in order to be considered harassment. The key factor is how the recipient reasonably perceives the behaviour.

Examples of harassment as defined in the Ontario Human Rights Code include, but are not limited to:

- i. objectionable remarks, innuendos or taunting of/about a person in relation to his/her racial or ethnic background, colour, place of birth or any other prohibited grounds of discrimination;

- ii. refusal to converse or work cooperatively with an employee because of racial or ethnic background or any of the other prohibited grounds of discrimination;
- iii. insulting gestures, graphics or jokes based on a person's sex or sexual orientation or any prohibited grounds that cause embarrassment or discomfort.

c. Sexual Harassment:

For the purposes of this Policy, sexual harassment means any unwelcome conduct, comment, gesture or contact of a sexual nature that is likely to cause offense or humiliation, or that might, on reasonable grounds, be perceived as placing a condition of a sexual nature on employment or on any opportunity for promotion, evaluation or training or any other benefit or advancement within Brescia.

Sexual harassment includes, but is not limited to, sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature when:

- i. submission to such conduct is made either implicitly or explicitly a condition of employment;
- ii. submission to or rejection of such conduct is used as a basis for any employment or assessment decisions such as promotions, salaries, performance evaluations, separation affecting the employee or grade submissions for students; or,
- iii. such conduct has the purpose or the effect of unreasonably interfering with the employee's or student's work performance or creating an intimidating, hostile or offensive work environment.

Examples of sexual harassment would include making unwelcome sexual or gender-related remarks and gestures by:

- i. making offensive jokes or remarks about women or men or sexual orientation;
- ii. making requests for sexual favours;
- iii. staring at or making unwelcome comments about someone's body or personal appearance;
- iv. displaying sexually offensive pictures or materials;
- v. verbally abusing someone on the basis of gender or sexual orientation; or,
- vi. engaging in unwanted physical contact such as touching, patting, pinching or hugging.

Sexual harassment can also mean that someone is bothering you simply because you are a man or a woman or transgendered, or because of your sexual orientation. Making stereotypical statements about one gender or the other can be a form of sexual harassment. Sexual harassment can happen between members of the same or opposite sex. Sexual harassment may occur over one incident, or over a series of related or unrelated incidents.

This definition of sexual harassment is not intended to inhibit interactions or relationships based on mutual consent or normal social contact between employees, nor is it intended to preclude legitimate classroom discussion on topics of a sexual nature, assuming such discussions fall within the guidelines of Brescia's Policy on Academic Freedom.

d. The Workplace

For the purposes of this policy, the workplace includes, but is not limited to, all Brescia facilities and worksites, including vehicles, cafeterias, community placement sites, training sessions, business travel, conferences and all locations where Brescia business is conducted. The workplace also includes all Brescia sanctioned social functions or business performed at any location away from Brescia, whether performed during or outside of normal working hours.

e. General Provisions

Harassment may occur over one incident, or over a series of related or unrelated incidents.

Harassment does not include actions taken by administrative or supervisory staff who are exercising their supervisory rights and responsibilities in good faith. Performance reviews, work evaluations and disciplinary measures taken by Brescia for any valid reason do not constitute harassment.

Harassment, including sexual harassment, is not intended to preclude the appropriate use of course material and the conduct of scholarly discussions or research related to any of the prohibited grounds referenced above.

COMPLAINT PROCEDURE:

Several options are available to employees or students who believe they have been subjected to harassment or discrimination at Brescia. Nothing precludes the complainant from proceeding to the Ontario Human Rights Tribunal at any time during any of the following processes. Further, the following options are not progressive in nature and a complaint may be initiated at any stage.

An employee or student of The University of Western Ontario or its other affiliates may lodge a complaint under this Policy when a Brescia community member is alleged to have harassed and/or discriminated against him or her. However, if an employee or student of The University of Western Ontario or its other affiliates is alleged to have harassed and/or discriminated against a Brescia community member, the Brescia community member should proceed under the applicable policy of The University of Western Ontario or affiliate of which the employee or student is a member.

a. Interim Measures

Pending the results of a complaint, Brescia University College may impose such interim measures as it deems necessary. Interim measures may include, but are not limited to, relocating the respondent, changing reporting structures or placing him or her on a non-disciplinary suspension with pay pending the outcome of the investigation.

b. Direct Action

Employees or students who believe they have been harassed or have been the subject of discrimination are encouraged to raise the concern directly with the individual responsible for the alleged misconduct, make it known that the conduct or comment is unwelcome and that they wish it to stop immediately. Employees or students are further encouraged to keep a detailed record of the alleged harassment or discrimination, including dates, times, locations and witnesses.

Employees or students may choose not to approach the individual responsible for the alleged misconduct directly if they feel this may be difficult or inappropriate. In these situations, complainants are encouraged to take action as outlined in “Informal Complaint”, below.

c. Informal Complaint

Members of the Brescia community who believe they have been harassed or have been the subject of discrimination and have unsuccessfully tried to deal directly with the individual responsible for the alleged misconduct or feel that a direct approach is inappropriate, may deal with the complaint on an informal basis. In this instance, the complainant is encouraged to contact:

- (i) his or her direct supervisor or Departmental Director; or,
- (ii) if the Department Departmental Director is the source of the problem leading to the complaint, the Director of Human Resources; or,
- (iii) in the case of a Brescia student who believes that she/he has been the subject of discrimination or harassment, the Academic Dean; or,
- (iv) if none of these contacts is appropriate under the circumstances, the Principal.

The complainant, with the assistance of the contact person as referred to above, will determine the desired course of action. Some options are to:

- (i) discuss the concern directly with the respondent;
- (ii) discuss the concern directly with the respondent, with the assistance of the contact person;
- (iii) request that the contact person meet with the respondent and discuss the complaint;
- (iv) mediate the complaint;
- (v) make a formal complaint [see paragraph (e), below];
- (vi) any other course of action that may be appropriate.

The contact person or any third party appointed to mediate the complaint will not have the authority to conduct an investigation or other formal fact finding process unless a Formal Complaint is made pursuant to Paragraph (e) or approval to proceed is given by the Director of Human Resources.

If the concern or complaint is resolved through a written agreement, the only written record of the resolution will be given to the complainant and the respondent, and a copy given to the Director of Human Resources.

If the Informal Complaint process is inappropriate or if the complaint remains unresolved following the Informal Complaint process, the complainant may refer the complaint to the Formal Complaint process.

d. Mediation

All complainants shall be encouraged by Brescia personnel to explore the possibility of mediation before filing a formal complaint. As mediation is voluntary, the complainant and/or the respondent may choose not to participate.

With the agreement of both the complainant and the respondent, the contact person will informally mediate the allegation at the earliest possible stage. The Director of Human Resources, in consultation with the Principal, may, in his or her discretion, appoint an external mediator to mediate the complaint. During mediation, either party may be accompanied by a friend or colleague (unless the friend or colleague was a witness to the incidents at issue) subject to the same confidentiality requirements as the complainant and respondent. During the mediation, both parties are expected to deal with the mediator in a full, frank and honest way in the hope of resolving their differences. The following process will be used for the conduct of the mediation:

- i. A written and signed complaint must be submitted by a complainant. The written complaint should include:

- a. the name of the person(s) reporting the complaint, name of the complainant and respondent;
 - b. nature of the conduct;
 - c. date, time and place of the incident;
 - d. name(s) of any witness(es).
- ii. The Respondent shall be provided with a copy of the Complaint and shall be entitled to respond in writing, and a copy of that response will be provided to the complainant.
 - iii. The mediator shall meet separately with both parties to discuss and clarify the issues.
 - iv. Either the complainant or the respondent may request that a personal meeting be held with the other at any time. If both parties agree, the meeting will be held at the discretion of the mediator who must be present if a meeting is held. The number of such meetings is at the discretion of the mediator.
 - v. The mediator will not be asked, and is not permitted, to adjudicate an allegation.
 - vi. The mediator may terminate mediation at any time he/she feels that mediation has no reasonable prospect of resolving the dispute.

Following the mediation, the mediator shall prepare a report stating:

- i. the case background containing a brief description of the allegations and response (with no conclusions as to fact or credibility);
- ii. the steps taken to resolve the complaint;
- iv. if a resolution is proposed, the details of such proposed resolution;
- v. if a resolution is not proposed, the report shall indicate whether the complainant wishes to proceed to the formal investigation process described below or withdraw the complaint.

Both parties will have the opportunity to read the report. If both parties are in agreement with it, they will sign the report. If either or both parties disagree with the report, they have the right to provide their comments, in writing, to the mediator, who shall address any such deficiencies.

Then, the signed Report will be forwarded to the Director of Human Resources.

If the Director of Human Resources, in consultation with the Principal, believes that the proposed resolution is not sufficient for the purposes of ensuring Brescia's compliance with the

Ontario *Human Rights Code* or the *Occupational Health and Safety Act*, he or she may refer the matter back to the mediator for further consideration or may refer the matter to a formal investigation as described below.

If the Director of Human Resources, in consultation with the Principal, believes that a proposed withdrawal of the complaint by the complainant would not be sufficient for the purposes of ensuring Brescia's compliance with the *Ontario Human Rights Code* or the *Ontario Health and Safety Act*, he or she may refer the matter to a formal investigation as described below.

e. Formal Investigation Process

Upon becoming aware of any behaviour or conduct which may fall under the definition of harassment or discrimination, nothing precludes Brescia from deciding that it may be necessary to take appropriate action, including a formal investigation, even in the absence of a formal complaint [or complainant] or if the complainant does not wish the matter to proceed. In the event that Brescia decides to proceed, the complainant will be notified.

Employees, students or Brescia University College may choose to proceed with the Formal Investigation Process at any time, unless a resolution has been reached and implemented during the Informal Complaint Process.

Where no Informal Complaint Process has been initiated, a Formal Complaint (if initiated by a student or employee) must be submitted in writing to the Director of Human Resources except in cases where the complainant *and the* respondent are students in which case the complaint will be submitted to the Academic Dean and shall be dealt with under the University of Western Ontario Code of Student Conduct. Complaints with respect to the Principal will be directed to the Coordinator of the Council of Trustees.

Where a matter has already proceeded by way of Informal Complaint, the mediator will forward a copy of the written complaint and response, if any, to the Director of Human Resources.

The written complaint should include:

- i. the name of the person(s) reporting the complaint, name of the complainant and respondent;
- ii. the nature of the conduct;
- iii. the date, time and place of the incident(s); and,
- iv. the name(s) of any witness(es).

If there has been no Informal Complaint initiated, a copy of the Formal Complaint will be provided to the respondent. The respondent will be afforded an opportunity to respond to the Formal Complaint, in writing, and a copy of that response will be provided to the complainant.

Investigation of a Formal Complaint:

Upon the filing of a formal complaint or a referral of an informal complaint to formal investigation, the Director of Human Resources, in most instances, will be responsible for investigating the complaint. The Director of Human Resources, in consultation with the Principal, may, in his or her discretion, appoint an external investigator to investigate the complaint. Pending the results of the investigation, Brescia may impose such interim measures as it deems necessary. If the issue involves the Principal, the Coordinator of the Council of Trustees may refer the matter to an external investigator.

The Director of Human Resources will advise the complainant and the respondent if an investigation has been initiated and the name(s) of the internal or external investigator(s).

a. Fact Finding:

The investigator(s) will conduct interviews with all relevant parties including any witnesses, and review any relevant material to clarify the details of the reported incident(s). Both the complainant and respondent will be given full opportunity to present their cases. The complainant and respondent may be accompanied by a friend or colleague (unless the friend or colleague was a witness to the incidents at issue) subject to the same confidentiality requirements as the complainant and respondent.

b. Report of Findings:

The investigator(s) will, after completing the investigation, produce a final written report which will be forwarded to the Principal.

- i. This report will include the investigator's findings of fact, and his or her opinion on whether harassment or discrimination occurred.
- ii. The investigator(s) will normally complete his or her report within 20 working days of being appointed.
- iii. The complainant and respondent will be advised as to the findings of the external investigator.

CORRECTIVE AND/OR DISCIPLINARY ACTION:

a. Possible Actions and Sanctions

If, after an investigation, the investigator(s) finds that a complaint is substantiated, the Principal (or Coordinator of the Council of Trustees, if applicable) will determine what corrective and/or disciplinary action is to be taken, if any. Potential actions may include, but are not limited to, the following:

- i. require the introduction of information or education sessions for the respondent(s) or a particular group;
- ii. require that the respondent(s) participate in a counseling process;

- iii. require a review and modification of policies, procedures and practices for a particular work group;
- iv. impose discipline on the respondent(s), ranging from a letter of reprimand up to and including dismissal; or,
- v. request an apology.

The disciplinary action should be appropriate for the seriousness of the breach of the policy and the status of the respondent. The Principal shall also have regard for the conditions of appointment and academic regulations regarding discipline or termination, as detailed within each agreement between Brescia and its faculty, staff and students.

Where a complaint of harassment or discrimination is substantiated, there will be a formal record of the action taken placed in the respondent(s)'s personnel file.

b. Retaliation

All persons to whom this policy applies have a right to be free of retaliation or threat of retaliation as a result of being involved in a complaint of harassment or discrimination. Retaliation will be deemed to be harassment and dealt with in accordance with this policy.

c. Malicious and Vexatious Complaints:

If, as a result of an investigation, it is determined that an otherwise unfounded complaint was intended to be malicious and/or vexatious, it will be considered a form of harassment and will be dealt with in accordance with the sanctions applicable to the complainant as defined above and/or the relevant conditions of appointment or employment document.

CONFIDENTIALITY

Brescia understands that it may be difficult to come forward with a complaint of harassment or discrimination and recognizes that a complainant and/or a respondent will wish to keep the matter confidential. To protect the interests of the complainant, the person complained against and any others who may report incidents of harassment and discrimination, confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances.

All records of complaints, including minutes of meetings, interviews, results of investigations and other relevant material will be kept confidential by the Director of Human Resources and/or investigator except to the extent that disclosure is provided for by this policy or is necessary to conduct an investigation and to take remedial and/or disciplinary action in relation to the complaint.

The complainant will be informed that under the terms of this policy, the process can guarantee only limited confidentiality.