

**POLICY:** Human Rights and Anti-Harassment/Discrimination

**SECTION:** General Policies – Human Resources

**MOTION#/DATE:** 16 - xxx – December 12, 2016

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### Effective Date

December 12, 2016

### Policy Statement

Under the *Ontario Human Rights Code*, every person has a right to equal treatment in the provision of services and facilities, occupation of accommodation, contracts and in employment. Under the *Occupational Health and Safety Act*, all employers are required to have a workplace harassment policy, program, information, instruction and protect workers from workplace harassment.

Toronto Public Library (the "Library") is committed to respectful, equitable service delivery and employment practices. Every person has a right to equal treatment in the provision of services and facilities, occupation of accommodation, contracts and in employment. This Policy articulates the Library's commitment to prevent and address harassment and discrimination under the *Ontario Human Rights Code* and the *Occupational Health and Safety Act*.

The goal of this Policy is to recognize the dignity and worth of every person (whether resident, service recipient or employee) and to create a climate of understanding and mutual respect. The Library will not tolerate, ignore, or condone discrimination or harassment and is committed to promoting respectful conduct, tolerance and inclusion. All employees are responsible for respecting the dignity and rights of their co-workers and the public they serve. The Library's Human Rights and Harassment Procedures provide a range of dispute resolution options for employees, Library users and Board Members who believe that they may have experienced discrimination and/or harassment. All complaints shall be treated confidentially and there shall be no reprisal.

### Application

1.0 This Policy applies to all Library employees, volunteers and Board Members, and to all aspects of the employment relationship. Library staff are expected to abide by this Policy,

the *Ontario Human Rights Code*, the *Occupational Health and Safety Act* and any other relevant legislation and Library policies.

Members of the public, service recipients, visitors to and users of Library facilities/public space and individuals conducting business with, for or with support from the Library, are expected to adhere to this Policy. This includes refraining from discriminating and/or harassing Library employees, elected officials and persons acting on behalf of the Library. If such discrimination and/or harassment occur, the Library will take action to ensure a harassment/discrimination-free workplace, facility and service provision, including barring a harasser from its facilities, limiting services, discontinuing business and/or revoking contracts with consultants or contractors.

This Policy should be read in conjunction with the Library's Human Rights and Harassment Procedure and the Human Rights and Harassment Supplementary Procedure ("Complaint Procedures").

The Human Rights and Harassment Procedure contained in the Collective Agreement covers all employees (including part-time, temporary employees, Pages, full-time employees) in their relations to each other and, between all such employees, elected officials and members of the Board.

The Human Rights and Harassment Supplemental Procedure provides process for all managers (including directors and the City Librarian), exempt staff and contract workers of the Toronto Public Library. This Supplemental Procedure covers bargaining unit employees in the event that they have experienced harassment or discrimination in the course of their duties, as a result of the behaviour of customers, volunteers, vendors or any other person who is not a Library employee, elected official or member of the Board.

## Social Areas and Prohibited Grounds

### *2.1 Services and Facilities:*

Every person has a right to equal treatment with respect to Library services and facilities, without discrimination or harassment because of one or more of the following prohibited grounds:

- a. age
- b. ancestry
- c. citizenship
- d. colour
- e. creed
- f. disability
- g. ethnic origin
- h. family status

- i. gender expression
- j. gender identity
- k. marital status
- l. place of origin
- m. political affiliation\*
- n. race
- o. sex (including pregnancy, breast feeding)
- p. sexual orientation

### 2.2 Contracts:

Every person having legal capacity has a right to contract on equal terms without discrimination because of one or more of the following prohibited grounds

- a. age
- b. ancestry
- c. citizenship
- d. colour
- e. creed
- f. disability
- g. ethnic origin
- h. family status
- i. gender expression
- j. gender identity
- k. marital status
- l. place of origin
- m. political affiliation\*
- n. race
- o. sex (including pregnancy, breast feeding)
- p. sexual orientation

### 2.3 Employment:

Every person has a right to equal treatment in employment without discrimination or harassment because of one or more of the following prohibited grounds:

- a. age
- b. ancestry
- c. citizenship
- d. colour
- e. creed
- f. disability
- g. ethnic origin
- h. family status
- i. gender expression\*\*
- j. gender identity\*\*

- k. marital status
- l. membership in a union or staff association
- m. place of origin
- n. political affiliation\*
- o. race
- p. record of offences\*\*
- q. sex\*\* (including pregnancy, breast feeding)
- r. sexual orientation\*\*
- s. workplace harassment\*\*

\* These grounds are included in the Library's Policy, but are not explicitly covered by the *Ontario Human Rights Code* or the *Occupational Health and Safety Act*

\*\* Workplace harassment as defined in the *Occupational Health and Safety Act* includes harassment based on sex, gender identity, gender expression, sexual orientation and non-Code harassment, harassment that is not based on a prohibited ground listed above.

## Accountability

### 3.0 Staff Roles and Responsibilities

All Library employees, volunteers, and Board Members are responsible for knowing this Policy and Complaint procedures, not engaging in harassment/discrimination and cooperating in good faith in dispute resolution processes, including investigations and abiding by confidentiality expectations contained in the Complaint Procedures.

### 3.1 Library Board

Library Board members undertake the following:

- receive and assess, in consultation with Library officials, the City's Legal Services Division and/or external experts as appropriate, complaints involving the City Librarian
- receive and assess, in consultation with Library officials, the City's Legal Services Division and/or external experts as appropriate, investigation reports involving the Director of Human Resources, the City Librarian or Board Members
- ensure complaint investigation results are communicated in writing to the parties
- determine, where appropriate, corrective actions based on investigation findings and in consultation with Library officials and/or the City's Legal Services Division

### *3.2 City Librarian*

The City Librarian undertakes the following:

- receive and assess, in consultation with Library officials, the City's Legal Services Division and/or external expertise as appropriate, complaints involving the Director of Human Resources or Board Members
- oversee external consultants, in consultation with Library officials and the City's Legal Services Division, for investigations involving the Director of Human Resources or Board Members
- transmit investigation reports undertaken by external consultants to the Library Board where required

### *3.3 Director of Human Resources or designate*

The Director of Human Resources or designate undertakes the following:

- receive and assess, in consultation with Library officials and/or the City's Legal Services Division, as appropriate, the merits of a complaint
- conduct investigations of all formal harassment complaints, prepare findings and make recommendations about complaint remedies/corrective actions
- implement, or support the implementation of, appropriate complaint remedies/corrective actions

### *3.4 Directors*

Directors undertake the following:

- provide leadership in creating and maintaining discrimination-free, harassment-free, and respectful workplaces
- ensure resource availability and effective implementation of complaint settlements, remedies and corrective actions
- ensure that staff are held accountable for their responsibilities under the Policy and have the appropriate knowledge and skills to meet their obligations

### *3.5 Managers*

All Library Managers have the following responsibilities:

- ensure divisional employment and service policy, program development and implementation are inclusive and that processes are in place to provide accommodation as required under the *Ontario Human Rights Code* and the *Accessibility for Ontarians with Disabilities Act*

- model respectful behaviour and address incivility; set and enforce standards of appropriate workplace conduct
- complete human rights training and ensure employees receive information and instruction on this Policy and Complaint Procedures
- post the current version of this Policy and Complaint Procedures in all work locations
- address complaints/incidents of harassment/discrimination/reprisal when raised directly by employees
- address service delivery contract non-compliance/breaches related to harassment and/or discrimination in consultation with Human Resources

### *3.6 Human Resources Department*

The Human Resources Department has the following responsibilities:

- remove barriers in employment policies and practices that may have the effect of discriminating against groups/individuals who are protected under the *Ontario Human Rights Code* and *Accessibility for Ontarians with Disabilities Act*
- support management in addressing accommodation, harassment and discrimination, including advising on actions that would be appropriate in the circumstances
- work with divisions to ensure complainants/respondents receive investigation results in writing
- work with divisions to determine, where necessary, appropriate corrective actions to address Policy breaches
- work with divisions to ensure that corrective action(s) recommended/implemented to address investigation results are communicated to the complainant/respondent in writing
- make training available for Library management and employees on this Policy, Complaint Procedures and related legislative obligations

### *3.7 Employees*

Employees have the following responsibilities:

- behave in a civil and respectful manner in relation to all employment/service provision activities
- immediately report non-Code workplace harassment experienced or witnessed to management. For clarity, reports of workplace harassment should be made to a manager who does not report to the alleged harasser

- immediately report Code-related harassment, discrimination, reprisal experienced and/or witnessed to management (not directly managed by the alleged harasser/discriminator)
- document details of harassment and discrimination that are experienced or witnessed
- when requested, provide complaint details in writing using the Complaint Procedures.

## Definitions

4.1 Allegation: An allegation is an unproven assertion or statement based on a person's perspective that the Policy has been violated.

4.2 Complainant: The person alleging that discrimination or harassment occurred. There can be more than one complainant in a human rights complaint.

4.3 Complaint: A complaint is a written or verbal report by a complainant alleging that they have experienced or witnessed harassment and/or discrimination based on one or more of the grounds identified in this Policy.

4.4 Discrimination: Discrimination is any practice or behaviour, whether intentional or not, which has a negative impact on an individual or group protected in the *Ontario Human Rights Code* (e.g., disability, sex, race, sexual orientation, etc.,) by excluding, denying benefits or imposing burdens upon them. Discrimination may arise as a result of direct differential treatment or it may result from the unequal effect of treating individuals and groups in the same way. Either way, if the effect on the individual is to withhold or limit full, equal and meaningful access to goods, services, facilities, employment or contracts available to other members of society and their membership in a prohibited ground was a factor, it is discrimination.

4.5 Duty to Accommodate: The Duty to Accommodate is the legal obligation to take steps to eliminate disadvantages caused by systemic, attitudinal or physical barriers that unfairly exclude individuals or groups protected under the *Ontario Human Rights Code*. It also includes an obligation to meet the special needs of individuals and groups protected by the Code unless meeting such needs would create undue hardship. Failure to accommodate a person short of undue hardship is a form of discrimination.

4.6 Employee: For the purpose of this Policy, the term employee includes: Library employees, job applicants and individuals performing services directly on the Library's behalf whether with or without compensation or benefit, excluding individuals providing services by way of service provision/third party contracts.

4.7 Equal Treatment: Equal treatment is treatment that brings about an equality of results and that may, in some instances, require different treatment. For example, to give all persons equal treatment in entering a building, it may be necessary to provide a ramp for an employee who requires the use of a wheelchair.

4.8 Incident: An incident is an event or occurrence, in which discriminatory and/or harassing behaviour is exhibited in the workplace. An incident includes situations where an individual knows or ought to have reasonably known that the behaviour is contrary to this Policy. An incident, may not have been raised to management directly by a complainant (e.g., a manager is aware of sexualized banter between workers through observation or this information is raised to the manager by a third party but no one has come forward to complain).

4.9 Incivility: Incivility is not workplace harassment. It is subtle or overt, deviant behaviour where intent can be ambiguous. It is characterized by rude, discourteous interactions that display a lack of regard for others.

4.10 Harassment: Provisions regarding harassment are included in both the *Ontario Human Rights Code* and the *Occupational Health and Safety Act*, referred to as "Workplace (non-Code) Harassment". It is a form of discrimination if it is Code-based harassment.

Harassment may result from one incident or a series of incidents. Harassment can occur between co-workers, between management and employees, between employees and Board Members, between employees and vendors, between employees and recipients of library services, between employees and members of the public, between Board Members and members of the public.

4.11 Code-based Harassment: defined in the *Ontario Human Rights Code* means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome based on one or more of the prohibited grounds listed in the *Ontario Human Rights Code*, that a person knows or ought to know would be unwelcome, offensive, embarrassing or hurtful. Examples of Code-based harassment that is based on a prohibited ground include, but are not limited to:

- slurs or derogatory remarks
- threats
- inappropriate jokes, innuendos, name-calling, teasing, embarrassing practical jokes
- insulting gestures
- displaying pin-ups, pornography, racist, homophobic or other offensive materials
- use of electronic communications such as the internet and e-mail to harass
- actions that invade privacy
- spreading rumours that damage one's reputation
- refusing to work with another
- condescending or patronizing behaviour
- abuse of authority which undermines performance or threatens careers
- unwelcome touching, physical assault or sexual assault



There is no legal obligation for an individual to tell a harasser to stop. The fact that a person does not explicitly object to harassing behaviour, or appears to be going along with it does not mean that the behaviour is not harassing or that it has been consented to.

4.12 (Non-Code) Workplace Harassment: is harassment that is not related to a prohibited ground identified in *the Ontario Human Rights Code*. Workplace harassment, defined in the *Occupational Health and Safety Act* means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome. It also includes Workplace Sexual Harassment. Workplace harassment often involves a course or grouping of behaviours. However, a single serious incident of such behaviour that has a lasting harmful effect on an employee may also constitute workplace harassment. This policy is not intended to interfere with constructive feedback regarding performance or legitimate operational directives to employees by their supervisors, managers or directors.

Examples of workplace harassment include a pattern of:

- frequent angry shouting/yelling or blow-ups
- regular use of profanity and abusive language
- verbal or e-mail threats (not including threats to exercise physical force which are covered by the workplace violence policy)
- intimidating behaviours - slamming doors, throwing objects
- targeting individual(s) in humiliating practical jokes
- excluding, shunning, impeding work performance
- spreading gossip, rumours, negative blogging, cyber-bullying
- retaliation, bullying, sabotaging
- unsubstantiated criticism, unreasonable demands
- frequent insults and/or name calling
- public humiliation
- communication that is demeaning, insulting, humiliating, mocking
- intent to harm
- a single, serious incident that has a lasting, harmful impact

Workplace harassment does not include:

- legitimate performance/probation management
- appropriate exercise and delegation of managerial authority
- operational directives/direction of workers or the workplace
- other reasonable action(s) taken by management
- a disagreement or misunderstanding
- conflict between co-workers
- work related change of location, co-workers, job assignment
- appropriate discipline
- less than optimal management
- a single comment or action unless it is serious and has a lasting harmful effect
- rudeness unless it is extreme and repetitive

- incivility
- conditions in the workplace that generate stress (technological change, impending layoff, a new boss, friction/conflicts with other employees, workload, etc.)

4.13 Sexual Harassment: Sexual harassment is a form of discrimination based on the prohibited ground of sex under the *Code*. It is also prohibited under the *Occupational Health and Safety Act*. Workplace sexual harassment means engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex/sexual orientation/gender identity/gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome. It also includes making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

**Sexual Orientation:** Refers to the sex/gender of those to whom one is sexually and romantically attracted. Categories of sexual orientation typically have included attraction to members of one's own sex/gender, attraction to members of another sex/gender, and attraction to people of more than one sex/gender.

**Gender Identity:** is each person's internal and individual experience of gender. It is their sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender may be the same as or different from their birth-assigned sex.

**Gender Expression:** is how a person publicly presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice. A person's chosen name and pronoun are also common ways of expressing gender.

Examples of harassment related to the ground of sex, sexual orientation, gender expression and/or gender identity include but are not limited to:

- sexually suggestive or obscene remarks or gestures
- Use of homophobic or transphobic epithets, slurs or jokes
- Insults, comments that ridicule, humiliate or demean people because of their sex, sexual orientation, gender identity or expression
- behaviour that polices and/or reinforces traditional heterosexual gender norms
- Intrusive comments, questions or insults about a person's body, physical characteristics, gender-related medical procedures, clothing, mannerisms or other forms of gender expression
- negative stereotypical comments about an individual's physical characteristics or mannerisms and/or behaviours that reinforce traditional heterosexual gender norms
- circulation or posting of homophobic, transphobic, sexist, derogatory or offensive signs, caricatures, graffiti, pictures, jokes or cartoons, display of pin-up calendars, objectifying images, or other materials

- leering (suggestive staring) at a person's body,
- unwelcome physical contact,
- having to work in a sexualized environment (bragging about sexual prowess, or discussions about sexual activities),
- exercising power over another person, making them feel unwelcome or putting them 'in their place' – regardless of whether the behaviour is motivated by sexual interest
- spreading rumours about, "outing," or threatening to "out" someone
- refusing to refer to a person by their self-identified name and proper personal pronoun
- other threats, unwelcome touching, violence and physical assault

This Policy is not intended to interfere with normal social interaction between employees.

4.14 Racial Harassment: Racial harassment is harassment on the ground of race. It may also be associated with the grounds of colour, ancestry, where a person was born, a person's religious belief, ethnic background, citizenship or even a person's language. Racial harassment/discrimination can include:

- racial slurs or jokes
- ridicule, insults or different treatment because of your racial identity
- posting/e-mailing cartoons or pictures that degrade persons of a particular racial group
- name-calling because of a person's race, colour, citizenship, place of origin, ancestry, ethnicity or creed

4.15 Mediation: A confidential dispute resolution process, during which a neutral third party assists two or more parties to resolve conflict. It is a voluntary process where parties in dispute consent to meet with a trained mediator to determine whether the dispute can be resolved in a mutually satisfactory manner. Mediation discussions between parties are treated as private and confidential to the full extent permitted by law.

4.16 Poisoned Work Environment: A poisoned work environment is a form of indirect Code-based harassment/discrimination. It occurs when comments or actions ridicule or demean a person or group creating real or perceived inequalities in the workplace. Pornography, pin-ups, offensive cartoons, insulting slurs or jokes, and malicious gossip (even when they are not directed towards a specific employee or group of employees, creating intolerable work conditions, have been found to "poison the work environment" for employees.

4.17 Prohibited (Protected) Grounds: Refers to the list of grounds for which a person or group is protected under the *Ontario Human Rights Code* and *Occupational Health and Safety Act*. Under the Code, case law and this policy, there are protections where there is a perception that one of the prohibited grounds applies or where someone is treated differently because of an association or relationship with a person identified by one of the above grounds.

4.18 Reasonable Person Test: This is an objective standard to measure whether a comment or conduct is discrimination or harassment. It considers what a reasonable person's reaction would have been under similar circumstances and in a similar environment. It considers the recipient's perspective and not stereotyped notions of acceptable behaviour. This standard is used to assess human rights complaints under this Policy.

4.19 Respondent: The person who is alleged to be responsible for the discrimination or harassment. There can be more than one respondent in a human rights complaint.

4.20 Witness: An individual who may be able to provide information about workplace comments/conduct that are alleged to have violated this Policy. Witnesses are not entitled to investigation results or complaint details unless the disclosure is necessary for the purpose of investigating allegations.

4.21 Workplace: The workplace includes all locations where business or social activities of the Library are conducted. This Policy may apply to incidents that happen away from work (e.g., inappropriate social media posts, phone calls, e-mails or visits to an employee's home, incidents at luncheons, after work socials).

## References

*Occupational Health and Safety Act*, R.S.O. 1990, c. O.1  
*Ontario Human Rights Code*, R.S.O. 1990, c. H.19

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- Collective Agreement
- Workplace Violence Prevention and Response Policy
- Occupational Health & Safety Policy and
- Rules of Conduct.