



National Gallery of Canada

POLICY ON HARASSMENT IN THE WORKPLACE

Approved by the Board of Trustees of the National Gallery of Canada
March 25, 2002. Amended by the Board of Trustees December 4, 2007

SECTION 1

1. PURPOSE

The purpose of this policy is to provide a respectful work environment that supports productivity, the dignity and self-esteem of every employee, as well as ensuring a workplace free of harassment.

2. APPLICATION

This policy applies to all employees, persons under contract, students and volunteers and members of the Board of Directors covering all situations involving harassment, whether it be personal, sexual or abuse of authority.

3. POLICY STATEMENT

Harassment in the workplace is unacceptable and will not be tolerated. Every employee, person under contract, student and volunteer will be treated fairly in the workplace, in an environment free of discrimination and harassment.

Behaviour that denies individuals their dignity and respect, is offensive, embarrassing or humiliating and will not be tolerated. The use of authority or position to humiliate, coerce or harass is forbidden.

Harassment of an employee, person under contract, student, volunteer, member of the public or others by an employee constitutes a disciplinary infraction subject to disciplinary penalties up to and including discharge.

Disciplinary or corrective measures may also be taken against any manager who is aware of a harassment situation and who fails to take corrective action; anyone who interferes with the



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resolution of a complaint by threats, intimidation or retaliation; or anyone who files a complaint that is frivolous or in bad faith.

All employees, contractors, students, volunteers and visiting public (when required) will be informed of this policy, and a copy of this policy will be part of any orientation program.

The complaint process including the investigation if necessary should be completed without undue delay.

Participation in the complaint process will not prevent complainants from filing a grievance on the same issue at anytime.

4. AUTHORITY

The ultimate responsibility and authority for applying this policy rests with the Director of the National Gallery who is responsible for fostering a work environment free of harassment.

This policy does not restrict the authority of those with managerial responsibilities, reasonably exercised, in such areas as performance review, employee relations and implementing disciplinary actions.

5. DEFINITIONS

Harassment: means any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. This includes but is not limited to the behaviour in Appendix A to the policy. It includes harassment within the meaning of the Canadian Human Rights Act, i.e. harassment based on the following prohibited grounds of discrimination: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

Sexual harassment: means any conduct, comment, gesture or contact of a sexual nature, whether on a one-time basis or in a continuous series of incidents that might reasonably be expected to cause offence or humiliation to any employee or that the employee might reasonably perceive as placing a condition of a sexual nature on employment or on an opportunity for training or promotion.



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Abuse of authority: is a form of harassment and occurs when an individual improperly uses the power and authority inherent in his or her position to endanger an employee's job, undermine the performance of that job, threaten the economic livelihood of the employee, or in any way interfere with, or influence the career of, the employee. It includes verbal abuse, intimidation, threats, blackmail or coercion.

Abuse of Process: although the characterization of a frivolous, vexatious or malicious complaint may be subjective, anyone using this policy or the complaint process for purposes other than its stated objectives may be subject to disciplinary action, up to and including discharge. Unfounded complaints are not necessarily considered abuse of process.

Complaint: is a formal allegation of harassment submitted in writing to the Chief or the Senior Advisor, Human Resources, and which is based on actions defined as harassment.

Delegated Human Resource Representative: The Chief and/or the Senior Advisor, Human Resources as the delegated NGC representatives to receive the complaint.

Delegated Union Representative: The President or the Chief Steward (PSAC) or the Chair or Chief, Steward (PIPSC) as the delegated Union Representative to assist with the complaint should the complaint involve a member of the respective Unions (as applicable).

Mediation: is a voluntary process used to resolve conflict by having a neutral person help the disputing parties arrive at a mutually acceptable solution. The National Gallery will be responsible for the costs related to this service.

Investigator: The investigator will be an external consultant specialized in the area of harassment in the workplace and will be selected jointly with Management and Union (as applicable).



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6. EXPECTATIONS

a) Employees. Employees are expected to:

- act towards other individuals professionally and respectfully;
- communicate to the offending party, as soon as possible, directly or through a supervisor/manager, their disapproval or unease;
- get help or guidance from the supervisor, from personnel in Human Resources, or a person designated by the union (if applicable);
- be informed of the NGC policy;
- receive training on the prevention of harassment;
- familiarize him/herself with this Policy;
- receive prompt action if they report an incident of harassment to their supervisor/manager or if necessary, to another appropriate manager;
- be treated without fear of embarrassment or reprisal when dealing with a harassment situation or involved in the resolution of a complaint;
- participate in a problem resolution process before proceeding with the complaint process.

b) Complainants, respondents and witnesses are expected to:

- provide information as required in the steps noted below under "Complaint process";
- co operate in the complaint process if and when called upon to do so;
- limit the discussion of the complaint to those who need to know to ensure utmost confidentiality;
- review their statement, as recorded by the investigator, to confirm its accuracy, prior to the final report being submitted.

c) Complainants and Respondents:

- will receive information related to the complaint in writing, including allegations;
- may be accompanied by a person of their choice during any step of the process. This person should not be a party to the process;
- are expected to review a copy of the draft report;
- will be informed in writing of the outcome of the investigation and whether corrective or disciplinary measures will be taken as a result of their complaint;
- If the complaint is found to be frivolous or in bad faith, respondents will be informed in writing whether corrective or disciplinary measures will be taken as a result of their complaint;
- Can expect to be separated if necessary;



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- Respondents will receive legal assistance if a harassment complaint, filed in accordance with this policy and determined to be unfounded, is pursued in the courts or at a tribunal.

d) Managers are expected to:

- Act towards other individuals professionally and respectfully;
- be aware of the Policy and lead by example;
- have access to learning opportunities on the prevention and resolution of harassment and in conflict resolution;
- ensure that employees are aware of the policy and remind them of its contents as deemed necessary;
- ensure that employees have access to learning opportunities on the prevention and informal problem resolution of harassment in the workplace;
- intervene promptly when they become aware of improper or offensive conduct and involve the parties in resolving the problem;
- address any alleged harassment of which they are aware, whether or not a complaint has been made;
- maintain confidentiality and advise others of same;
- consult human resources to determine the need to separate the complainant and respondent, hierarchically, physically, or both, for the duration of the complaint process, if they deem it necessary;
- address the needs of the parties concerned and the working unit following a complaint with the assistance of a specialist as needed, in order to establish or re-establish harmonious working relationships;
- cooperate fully during the complaint process;
- implement corrective action when required.

e) Delegated Human Resource and Delegated Union Representative are expected to:

- be knowledgeable and trained to act in the complaint and investigative procedures in order to ensure speedy and effective problem resolution of any issue arising from this Policy;
- be impartial in any complaint process in which they are involved;
- excuse himself or herself of any complaint process where they may reasonably be seen to have a conflict of interest;
- be trained in facilitation;
- have access to learning opportunities related to their role and responsibilities;



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- apply the established steps in the complaint process;
- ensure that both parties have access to support and advice during the complaint process;
- separate the complainant and respondent, hierarchically, physically, or both, for the duration of the complaint process, if deemed necessary;
- assign a mandate to the investigator(s);
- ensure that corrective and/or disciplinary measures are taken, where harassment has been found to have occurred;
- ensure that no documents relating to the harassment complaint are placed in the personnel file of either party, other than a disciplinary letter in the file of the employee who is subject to a disciplinary measure;
- ensure that parties are provided with the information to which they are entitled.

SECTION II - RESOLUTION PROCESS

7. INFORMAL PROBLEM RESOLUTION

The objective of early resolution is to resolve any situation, problem or conflict as soon as possible, in a fair and respectful manner without having to resort to the complaint process. Every effort should be made to resolve the problem early with open communication and in a co operative manner.

The use of problem resolution mechanisms such as coaching, counselling and facilitation can in many instances resolve the issue and prevent the situation from escalating to the point where filing a complaint is necessary.

An allegation of harassment is serious. If a person working for the NGC believes that he or she has been harassed, the following actions should be taken:

- The person who feels offended by the actions of another person working for the NGC is encouraged to make it known to that person as soon as possible in an attempt to resolve the problem.
- If the problem is not resolved or if the offended person does not want to speak directly with the other, the offended person should meet with his or her supervisor, or with another manager, or seek advice from the person who is designated to provide



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information on harassment (delegated representatives), in an attempt to find a solution and resolve the problem.

Management must make every effort to resolve the issue between the parties as quickly as possible, if necessary with the assistance of a resource person.

8. FORMAL COMPLAINT PROCESS

If early resolution is not successful or is not deemed appropriate, an employee may file a complaint with the delegated Human Resource Representative. All steps should be completed without undue delay.

When dealing with complaints, requirements of the Official Languages Act must be taken into account.

The sharing of information related to the harassment complaint with the parties must comply with the principles of privacy and access to information legislation.

Step 1 - Filing a complaint

The complainant submits a complaint in writing to the Chief or Senior Advisor in Human Resources or to the Director of Human Resources if either the Chief or Senior Advisor are the subject of the complaint, within one year of the alleged harassment leading to the complaint. The complaint must include the nature of the allegations; the name of the respondent; the relationship of the respondent to the complainant (e.g., supervisor, colleague); the date and a description of the incident(s); and, if applicable, the names of witnesses. The information provided should be as precise and concise as possible.

Step 2 - Screening and acknowledgement of complaint

Upon receipt of the complaint, the delegated HR representative screens and acknowledges receipt of the complaint. The criteria used in the screening are that the complaint:

- was filed within the time limit set in Step 1, unless there are extenuating circumstances;
- and, must include the information noted in Step 1.

When the complainant is a unionized employee, the respective union will be notified at this stage, unless the complainant does not wish union involvement. Active Union involvement, under this Policy, begins at Step 3.



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If these criteria are met, the delegated HR Representative informs the respondent that a complaint has been received and provides him/her with the particulars of the complaint in writing, including the allegations. The complainant and respondents are advised by the Delegated Human Resources Representative that Union representation/assistance can be provided under this Policy.

If these criteria are not met, the Delegated HR Representative informs the complainant in writing that he or she cannot accept the complaint. If appropriate, the delegated Human Resource representative suggests other means of resolving the issue.

Once the complaint has been acknowledged, the delegated representatives review the complaint and if necessary, seek additional information to determine if the allegations are related to harassment.

The complaint will be reviewed as to whether the events alleged in the complaint, if true, would constitute harassment as described in Article 5 (Definitions). If it is found that the events alleged in the complaint could be deemed harassment, the Delegated HR Representative, in consultation with all parties, will determine whether to proceed with mediation or to the formal investigation process.

If the events described in the complaint do not meet the definition of harassment as determined by the Delegated HR Representative all parties will be notified immediately and informed of the appropriate redress procedure such as mediation grievance, etc.

The Gallery is committed to resolving all types of conflict and will take appropriate steps to resolve the situation.

The delegated representatives review all the relevant information and decide what action to take. They inform the parties in writing of the outcome of the investigation and the Human Resource Representative ensures that corrective and/or disciplinary measures are taken, if warranted.

If the allegations are related to harassment, the delegated representatives determine what efforts have been made to resolve the problem, identify immediate avenues of resolution if any, and take appropriate action.

If mediation is undertaken at any time during the investigation process, the investigation is suspended. It is resumed only if mediation is unsuccessful.



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Step 3 Interim measures

If it is deemed to be in the best interests of both parties, the complainant and respondent could be physically and/or hierarchically removed from one another for the period of investigation. The responsible manager, in consultation with the Director of HR will implement the necessary course of action.

Step 4 - Mediation

At any point during the complaint process, the parties may agree to mediation.

If the parties agree to mediation, the delegated representatives obtain mediation services. The National Gallery will be responsible for the costs related to this service. The parties may be assisted by a representative of their choice during mediation.

Step 5 - Investigation

If it is decided in the review to proceed with the formal investigation and if mediation has either failed or been ruled out, the case will be investigated to determine whether the complaint is:

1. founded;
2. unfounded;
3. an abuse of process.

The investigator will be appointed by and report to the Delegated HR representative within ten (10) working days of either receipt of the complaint or from the date when one of the parties confirmed that mediation has failed. The investigator will not be an employee of the National Gallery. The investigator will be an accredited member of the legal profession and/or recognized expert in conflict resolution/mediation or equivalent.

The investigator mandate will be established by Human Resources in consultation with union delegates if applicable.

Step 5 - Investigation process:

The investigator is responsible for:

- a. Communicating with the complainant to ensure that allegations, circumstances and description of incidents outlined in the complaint are clear and complete;
- b. Gathering, examining and recording of all relevant facts from available documentation according to professional investigation standards;
- c. Giving the respondent the opportunity to reply to the allegations;



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- d. Interviewing witnesses named by both the complainant and the respondent or any others the investigator deems appropriate;
- e. Preparing a written report that will include all relevant background information, facts, findings, analysis and conclusions/recommendations;
 - I. New allegations: If during the course of the interview process, the investigator is presented with what he/she deems to be a new allegation of harassment, he/she will send this new information to the Delegated HR Representative that can recommend to the complainant that a new and separate harassment complaint be lodged;
 - II. Preliminary report: Before the report is final both the complainant and the respondent will be given the opportunity to review the report and provide comments. The investigator will review all comments and integrate relevant information into the final report;
 - III. Final report: The investigator will decide whether there is enough evidence to conclude that harassment occurred.

The final report will be submitted to the Delegated HR Representative within sixty (60) calendar days of the start of the investigation or the investigator will provide reasons why a longer period of time is required and propose a new deadline. Both the complainant and the respondent will receive a copy of the final report. Both parties may submit in writing a final submission to be included with the investigator's report.

Step 6 - Resolution

Following the recommendations of the Mediator and/or the Investigator, the Employer will take appropriate corrective and/or disciplinary measure(s). It may include, but not necessarily limited to, any one or a combination of the following:

- formal apology;
- training in appropriate workplace behaviour;
- professional counselling;
- transfer;
- demotion;
- removal from a supervisory / management position;
- oral or written reprimand;
- suspension without pay;
- termination of employment;



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- redress for the complainant.

If the delegated representatives using the criteria within this policy concludes that the complaint is not related to harassment, they inform the complainant and the respondent in writing. The delegated representatives re direct the complainant to the appropriate avenue of recourse or suggests other means of resolving the issue.

SECTION III

9. OTHER REDRESS PROCESSES

The ability of the complainant to address his/her complaint under the Policy on Harassment in the Workplace does not restrict the filing of a grievance under the relevant Collective Agreements. It is advisable, however, that such grievance should be placed in abeyance until the full process of the Policy has been exercised in order to have as much opportunity as possible to resolve the complaint satisfactorily under this Policy.

Employees may wish to discuss grievance options with their bargaining agent.

If harassment is based on one of the grounds of discrimination prohibited under the Canadian Human Rights Act, employees have the right to file a complaint with the Canadian Human Rights Commission.

Assaults including sexual assault are covered by the Criminal Code and in such cases the police should be contacted.

10. CHANGES TO THIS POLICY

Any changes to this Policy will first be discussed with the Bargaining Agents.



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REFERENCES

- Criminal Code
- Canadian Human Rights Act
- Access to Information Act
- Privacy Act
- Official Languages Act
- Collective Agreement between the National Gallery of Canada and the Public Service Alliance of Canada
- Collective Agreement between the National Gallery of Canada and the Professional Institute of the Public Service of Canada

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APPENDIX "A"

What generally constitutes harassment	What may constitute harassment	What does not generally constitute harassment
<ul style="list-style-type: none"> • <i>Serious or repeated</i> rude, degrading, or offensive remarks, such as teasing about a person's physical characteristics or appearance, put-downs or insults. • Displaying sexist, racist or other offensive pictures, posters, or sending e-mails related to one of the eleven grounds prohibited under the <i>Canadian Human Rights Act</i>. 	<ul style="list-style-type: none"> • Criticizing an employee in public. 	<ul style="list-style-type: none"> • Allocating work. • Following-up on work absences. • Requiring performance to job standards. • Taking disciplinary measures. • <i>A single or isolated</i> incident such as an inappropriate remark or abrupt manner.
<ul style="list-style-type: none"> • <i>Repeatedly</i> singling out an employee for meaningless or dirty jobs that are not part of their normal duties. 	<ul style="list-style-type: none"> • Exclusion from group activities or assignments. 	<ul style="list-style-type: none"> • Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.
<ul style="list-style-type: none"> • Threats, intimidation or retaliation against an 	<ul style="list-style-type: none"> • Statements damaging to a person's reputation. 	<ul style="list-style-type: none"> • Measures taken against someone who is careless



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<p>employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours.</p>		<p>in his or her work, such as in the handling of secret documents.</p>
<ul style="list-style-type: none"> • Unwelcome social invitations, with sexual overtones or flirting, with a subordinate. • Unwelcome sexual advances. 	<ul style="list-style-type: none"> • Making sexually suggestive remarks. • Physical contact such as touching or pinching. 	<ul style="list-style-type: none"> • A social relationship welcomed by both individuals. • Friendly gestures among co-workers such as a pat on the back.

Sexual and physical assault are covered by the *Criminal Code*.