

DISCRIMINATION & HARASSMENT

2 – 01A

Issued: March 24, 1999

**Revised: March 27, 2001, November 1, 2007, June 11/10, October 22, 2012,
January 31, 2013, December 6, 2013, June 9, 2016, December 1, 2017**

POLICY STATEMENT

The Stratford Festival is committed to creating and maintaining a positive and professional work environment. In support of this, the Festival expressly prohibits any form of discrimination and harassment, including sexual harassment, as defined under the Ontario *Human Rights Code*, and any form of workplace harassment, including sexual harassment, as defined by the Ontario *Occupational Health & Safety Act*. Any complaints filed under this policy will be investigated thoroughly and in a timely manner.

SCOPE

This policy applies to the following persons and corporations:

- all employees and volunteers of the Stratford Festival, including those employed on a contract basis;
- members of the Board of Governors;
- members of societies and associations which are under the authority of the Stratford Festival;
- persons or corporations, including independent contractors, in a contractual relationship with the Stratford Festival; and,
- visitors or patrons who may be on Festival premises.

For the purposes of this policy, the persons listed above shall hereinafter be collectively referred to as a “worker”.

The actual determination of any violation of this Policy can be made only in the context of a particular case, in accordance with fair procedures.

DEFINITIONS

Unlawful Discrimination

Prohibited grounds of discrimination with respect to employment are defined by the Ontario *Human Rights Code* as being: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

Disability

Disability means that a person has, or has had, or is believed to have had:

- a) any degree of physical disability, infirmity, malformity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and

without limiting the generality of the foregoing, including diabetes, mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheel chair or other remedial appliance or device;

- b) a condition of mental impairment or a developmental disability;
- c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
- d) a mental disorder; or,
- e) an injury or disability for which benefits were claimed or received under the *Workplace Safety and Insurance Act, 1997*.

Harassment

Harassment means “engaging in a course of vexatious comment or conduct against a worker that is known or ought reasonably to be known to be unwelcome.” Harassment includes sexual harassment and workplace sexual harassment.

Harassment based on any of the prohibited grounds under the Ontario *Human Rights Code* is considered discrimination. Other forms of workplace harassment are considered inappropriate and detrimental to a positive working environment and will not be tolerated.

Examples of harassment may include, but may not be limited to:

- a) unwelcome, offensive, or intimidating remarks, jokes, insults, nicknames, innuendo, or taunting;
- b) bullying or aggressive behaviour;
- c) repeated offensive or intimidating phone calls, emails, texts, or postings on social media sites;
- d) displaying or circulating posters, notices, bulletins, or electronic photos which may cause offence and encourage discrimination, or create a hostile environment;
- e) racial or ethnic slurs, and use of terminology that reinforces stereotypes based on prohibited grounds;
- f) abuse of supervisory authority that endangers a person’s employment, work performance or interferes or negatively influences the person’s career. This includes misuses of power including intimidation, threats, blackmail and coercion;
- g) public humiliation or degrading behaviour to a subordinate or co-worker;
- h) swearing at, or yelling at a subordinate or co-worker in an aggressive manner;
- i) continuing onstage behaviour (as part of character portrayal) outside of the rehearsal or performance context.

What is not considered harassment:

- a) reasonable action or conduct by a manager or supervisor relating to the management and direction of workers or the workplace, even if there are possible unpleasant consequences for a worker (eg. disciplinary action, performance management, changes to schedules or duties, implementation of policies, etc.);
- b) differences of opinion or disagreements between co-workers which are handled respectfully.

Sexual Harassment

Sexual harassment means engaging in a course of vexatious comment or conduct against a worker because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or 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. In a theatrical context, sexual harassment also includes one, or a series of, comments or conduct of a gender-related or sexual nature, outside the boundaries of consent or production context (rehearsal or performance context).

Specific examples may include, but may not be limited to:

- a) unwelcome, offensive, or intimidating remarks, jokes, innuendoes, or taunting about a person's body, attire or sex;
- b) practical jokes of a sexual nature which cause awkwardness or embarrassment;
- c) displaying pornographic pictures, posters, graffiti or other offensive material;
- d) questions or comments about an individual's sexual preferences or gender identity;
- e) leering (suggestive staring) or other obscene or suggestive gestures;
- f) unwanted sexual flirtations, advances, or propositions;
- g) unwanted physical contact including touching, kissing, patting and pinching;
- h) persistent unwanted contact or attention following the end of a consensual relationship;
- i) conduct such as stalking
- j) attempting to engage in sexual behaviour, comment or conduct offstage that is specifically choreographed for the stage and/or is part of a character portrayal.

Reprisal

Reprisals or threats of reprisal, whether or not by a person in a position of authority, are defined as acts or threats designed to punish an individual who has reported discrimination or harassment, or who has engaged in an investigation of discrimination or harassment, or who has otherwise exercised their rights under this policy. Reprisal or threats of reprisal also include acts or threats designed to dissuade an individual from reporting discrimination or harassment.

In sexual harassment cases, reprisals can also be defined as acts or threats designed to punish an individual who has rejected sexual advances.

There shall be no reprisal against any individual who, in good faith, reports an incident of harassment or discrimination or participates in an investigation. All reprisals or threats of reprisal ought to be reported immediately.

Workplace violence is dealt with through the Stratford Festival's Policy #2-01B. However, it is important to note that issues of harassment and sexual harassment may escalate over time into threats, or acts of physical violence. Alternatively, a victim of harassment or sexual harassment may react violently to prolonged harassment in the workplace. Workplace violence will not be tolerated.

PREVENTION AND INTERVENTION

Prevention and intervention are key to achieving an environment free of discrimination and harassment. Stratford Festival supports this by providing a clear policy statement and an internal complaint and investigation procedure, and by providing training and communications regarding this policy, as well as employee and employer rights and obligations.

Condoning:

If a person in authority knows, or should reasonably have known, that discrimination or harassment may have occurred and fails to take appropriate action, the person in authority may be found to have condoned the discrimination or harassment and may be subject to sanctions under this policy.

Individuals who observe a situation involving the harassment or discrimination of another or others have a responsibility to inform the harasser of this policy, and report it to their Manager or Human Resources, recognizing that individuals who experience discrimination or harassment are often reluctant to report it.

Confidential Consultation & Information:

While the Festival encourages and highlights the importance of reporting violations of this policy directly by the individual experiencing harassment or discrimination, the Festival also acknowledges that at times, an individual may wish to consult with an advisor (e.g. Human Resources, Union Steward or Deputy, JHSC member, their Manager/Director) without lodging a formal complaint.

Individuals can obtain information about discrimination and/or harassment and/or the Festival's policy and processes, obtain assistance or advice, or explore self-help measures (e.g. how they may respond to the harasser directly) on a confidential basis, by contacting any of the advisors listed above.

Individuals may also discuss an incident with the Director of Human Resources without necessarily filing a formal complaint. In some circumstances, however, the Festival may take action and conduct an investigation even when a formal complaint is not filed by a complainant.

COMPLAINT & MEDIATION PROCEDURE**Confidentiality:**

Information gathered during the investigation and contacts made will be documented and maintained in a confidential file, separate from the personnel file, by Human Resources. To the extent possible, information gathered during the investigation will be kept confidential. Disclosure of information may however be required for the investigation or resolution process, police notification, by law, in a legal proceeding, or in a disciplinary or other corrective process. Those involved in the investigation, including witnesses, will be advised that to maintain the integrity of the investigation, all information discussed ought to be kept confidential and not discussed with other coworkers/peers. A breach of such confidentiality will be subject to disciplinary action.

Anyone may report discrimination or harassment. Employees have Stratford Festival's assurance that all complaints made in good faith will be handled in as confidential a manner as possible.

Other:

Any complaints filed under this policy will be investigated thoroughly and in a timely manner.

Should a complainant or respondent choose to retain legal counsel at any stage of a complaint or appeal, it shall be at the complainant's or respondent's own expense.

All Stratford Festival workers, including the respondent(s), must co-operate fully in any investigation under these guidelines.

Step I: Filing of a Formal Complaint

- The complainant will submit a written complaint to the Director of Human Resources. The complaint will provide details of the alleged harassment, including dates, times, places, names of individuals involved and names of any witnesses. The complainant will be advised that the Director of Human Resources will conduct an investigation. The investigation will include interviews with the complainant, the respondent and, if necessary, any relevant witnesses. While all complaints will be investigated, in order to allow for the most fruitful investigation, it is recommended that the complaint be filed within six (6) months of the alleged incident, or if incidents are ongoing, within six (6) months of the latest incident.

Step II: Investigation

- The Director of Human Resources will meet with the respondent and inform the respondent of the allegations against them, and provide them with an opportunity to respond. The respondent will be advised that the Director of Human Resources will conduct an investigation. This investigation would include interviews with the complainant, the respondent and, if necessary, any relevant witnesses. The Director of Human Resources will request a written response from the respondent within ten days.
- Witnesses will be interviewed as necessary.
- The Director of Human Resources will meet with the complainant and respondent, either individually or together, where appropriate.
- At this point, the procedure may result in a mutually acceptable resolution, or the Festival may need to take corrective action as needed.

Step III: Conclusion and Communication

- Upon completion of the investigation, the appropriate persons (complainant and respondent/alleged harasser) will be advised, in writing, of the conclusions reached and whether any corrective action has been taken or will be taken as a result of the investigation.
- Should the investigation not substantiate the complaint, then the Director of Human Resources will advise both the complainant and the respondent.
- Should the investigation substantiate the complaint, then appropriate corrective action will be taken. Some possible results of the investigation may include (but not be limited to): a formal apology, appropriate counselling for those involved, a mediation meeting with both parties, discussion with the respondent regarding expected and appropriate workplace behaviour and responsibilities, and/or disciplinary action, up to and including termination. The determination of the adequate result will be at the sole discretion of the Festival.
- Complaints that are found to be trivial, frivolous, vexatious or made in bad faith may result in disciplinary action against the complainant. The severity of the action will depend on the seriousness and impact of the complaint.

- A copy of the complaint, and formal responses, witness statement(s), investigator's notes, and the final report (including the conclusion) shall be kept in a secure file, for a minimum of one (1) year.

Should the complaint be against the Director of Human Resources, the complainant should address their complaint to the Executive Director. At all times, the Festival will ensure that an impartial / unbiased person investigates the complaint. The Festival reserves its right to make a decision as to whether the nature of the complaint would necessitate hiring an external party to investigate complaints.

Nothing in this policy should be considered as an impediment for individuals to exercise their rights and obligations under the applicable legislation or collective agreement.

Harassment Program

The Festival will, in consultation with the JHSC or a health and safety representative, if any, develop and maintain this written program to implement this policy with respect to workplace harassment.

This program will be reviewed as often as necessary, but at least annually, to ensure that it adequately implements this policy with respect to workplace harassment.

Revisions to the Policy

The Festival reserves the right to amend this policy and procedures at any time as required. This policy will be reviewed as often as is necessary and at a minimum, annually.

Violations of this Policy

All workers and volunteers are expected to abide by this policy. Workers who violate this policy may be subject to disciplinary measures, up to and including termination of employment. Other persons may be removed from the workplace. Violations of this policy may also lead to civil and/or criminal liability.

Posting

This policy will be posted in a conspicuous location in the workplace.

Anita Gaffney, Executive Director

Date