

## **JOHN B. AIRD GALLERY'S POLICY ON ANTI-DISCRIMINATION, HARASSMENT FREE WORKPLACE POLICY**

**Adapted from the Cultural Human Resources Council's HR Toolkit.**

### **Workplace Harassment and Discrimination**

**JOHN B. AIRD GALLERY** (the "Organization") upholds the right of every person to be free from harassment and discrimination of any kind including sexual harassment, bullying and discriminatory harassment in the workplace, and every worker (including the Director/Curator, guest Curator, Juror and any member of a partner organization), Artist and Volunteer (including Board Members) is assured of the protection of this right.

Workers, artists and volunteers are entitled to be treated with dignity and respect and to have a work environment free from harassment and discrimination, **applicable occupational health and safety and/or human rights legislation, including:**

- **the Occupational Health and Safety Act- Part III.0.1 Violence and Harassment, including Definitions Section 1 "workplace", "workplace harassment", "workplace sexual harassment" and "workplace violence"; Section 4 Workplace harassment; Section 32.0.1 Subsection (1) Policies, violence and harassment (b); Section 32.0.6 Subsection 1 (<https://www.ontario.ca/laws/statute/90o01#BK56>);**
- **the Occupational Health and Safety Act- Part VIII Enforcement- Section 55.3 Order for Workplace harassment investigation (<https://www.ontario.ca/laws/statute/90o01#BK97>);**
- **the Ministry of Labour's Health and Safety Guidelines related to Workplace Violence and Harassment ([https://files.ontario.ca/wpvh\\_guide\\_english.pdf](https://files.ontario.ca/wpvh_guide_english.pdf));**
- **the Ontario Human Rights Code- Part I Freedom from discrimination Section 5- Employment Subsection 2- Harassment in employment <https://www.ontario.ca/laws/statute/90h19?search=Ontario+Human+Rights+Code>**
- **the Ontario Human Rights Code- Part I Freedom from discrimination Section 7- Sexual harassment Subsection 2- Harassment because of sex in workplaces <https://www.ontario.ca/laws/statute/90h19?search=Ontario+Human+Rights+Code#BK1> ;**
- **the Ontario Human Rights Code- Part II Interpretation and Application Section 10 Definitions re : Parts I and II subsection (e) 'harassment' <https://www.ontario.ca/laws/statute/90h19?search=Ontario+Human+Rights+Code>**
- **the Canadian Human Rights Act- Part I Prohibited Discrimination Section 14**

**Subsection 1 Harassment and Subsection 2 Sexual Harassment- <http://laws-lois.justice.gc.ca/eng/acts/h-6/FullText.html>; and**

- **the Constitution Act, 1982 Part I Charter of Rights and Freedoms Legal Rights Section 7- Life, liberty and security of person; Section 10 Arrest or detention and Section 12- Treatment or punishment <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>**
- **the Constitution Act, 1982 Part I Charter of Rights and Freedoms Equality Rights Section 15 Subsection 1 Equality before and under the law and equal protection and benefit of law and Section 15 Subsection 2 Affirmative Action Programs <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>**

This policy applies to all workers, artists, volunteers and representatives of the Organization while in the workplace, on Organization premises, or during any work- related and/or social functions.

Workers, artists and volunteers are expected to assist the Organization in its attempts to prevent and eliminate harassment in the workplace. The Organization will treat any form of harassment that occurs in the workplace seriously irrespective of the alleged harasser's position within the Organization.

Nothing in this policy prevents an individual's right to file a complaint with the **adjudicative body (e.g., Ministry of Labour, the Ontario Human Rights Commission, the Ontario Human Rights Tribunal, or the Canadian Human Rights Commission)** should they feel the situation warrants such action.

## Definition

The Occupational Health and Safety Act defines “workplace harassment” as “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.”

The definition of workplace harassment includes “workplace sexual harassment”. “Workplace sexual harassment” is defined as “engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the 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.” Workplace bullying can be considered a type of workplace harassment. Discrimination is not captured within the definition of workplace harassment. However, if harassing behaviour is occurring based on discrimination, this constitutes discriminatory harassment. Workplace violence is not captured within the definition of workplace harassment (see page 10).

## Behaviours Constituting Harassment

While the following is not an exhaustive list, harassment may include:

- verbal abuse or threats;
- unwelcome remarks, jokes, innuendoes or taunting for any reason, including about a person's body, attire, age, marital or family status, ethnic or place of origin, **level of literacy, membership in a union or staff association, political affiliation, receipt of public assistance**, religion, race, sexual orientation, gender identity or gender expression, disability, ancestry, colour, citizenship, creed, sex, record of offences, **or any other personal characteristics by or within the organization.**
- practical or "dirty" jokes which cause awkwardness or embarrassment;
- stalking, leering, staring or gestures;
- display of pornographic, racist or other offensive or derogatory pictures or other material;
- condescension, intimidation or paternalism which undermines self-respect;
- unwelcome or unwanted sexual advances, including but not limited to patting, pinching, brushing up against, hugging, cornering, kissing, fondling, or any other similar physical contact or written solicitation normally considered unacceptable by another individual;
- requests or demands for sexual favours; and/or,
- physical and sexual assault.

While the following is not an exhaustive list, sexual harassment may include:

- differential treatment of workers or co-workers, Artists or Volunteers etc.;
- verbal or written comments, jokes, teasing, and/or other communication of a sexual nature;
- demeaning language based on gender or sexual preference;
- graphic comments about an individual's body;
- use of sexually degrading words to describe an individual;
- display of sexually suggestive objects and/or pictures in the workplace;
- foul or obscene language and/or gestures;
- unwanted physical conduct such as patting, pinching, and/or brushing up against another person's body;
- a promise of better treatment in return for sexual favours; and/or
- indirect or expressed threats for refusal of a sexual request.

Courteous, mutually respectful, non-coercive interactions which are acceptable to both parties are not considered to be harassment or sexual harassment. The Organization will not tolerate or condone sexual harassment of its workers by anyone.

This policy is not intended to limit or constrain the reasonable exercise of management functions in the workplace. Reasonable action or conduct by a member of management that is part of his or her normal work function would not normally be considered workplace harassment or sexual harassment. Examples could include changes in work assignments, scheduling, job assessment and evaluation, implementation of dress codes and progressive discipline.

## Poisoned Work Environment

A poisoned work environment is created by persistent and serious wrongful comments or conduct that creates a hostile or intolerable workplace. The comments or conduct need not be directed at a specific individual, and may be from any individual, regardless of position or status. A single comment or action, if sufficiently serious, may create a poisoned environment.

Conduct that creates or contributes to the creation of a poisoned work environment will not be tolerated at the Organization and workers, Artists or Volunteers found to have engaged in such acts will be subject to discipline up to and including termination.

## Responsibilities of Management

The Organization will:

- promote a workplace that is free of harassment and sexual harassment;
- develop and maintain a written workplace policy and program with respect to workplace harassment and sexual harassment in compliance with the **Occupational Health and Safety Act, the Ministry of Labour's Health and Safety Guidelines related to Workplace Violence and Harassment; the Ontario Human Rights Code and the Canadian Human Rights Act;**
- provide workers, Artists or Volunteers with information and instruction regarding the workplace policy and program with respect to workplace harassment and sexual harassment including appropriate steps to be taken and investigation procedures;
- take every reasonable precaution for the protection of the workers, Artists and Volunteers;
- ensure workers, Artists and Volunteers understand who to contact regarding concerns about the policy or when to report an incident;
- ensure the workplace is free from discrimination and harassment including, sexual harassment, bullying and discriminatory harassment;
- respond appropriately to complaints brought to their attention;
- respect the confidentiality and sensitivity of such issues to the extent possible;
- document all information and investigation results;
- conduct an investigation into allegations of harassment or sexual harassment; and,
- take action if witnessing harassment or sexual harassment or elements of a poisoned work environment.

## Responsibilities of workers, Artists and Volunteers

Workers, Artists and Volunteers must:

- comply with this policy by avoiding any behaviour or conduct that could reasonably be interpreted as a violation of this policy;
- report any instances of discrimination, harassment or sexual harassment; and
- maintain a work environment free from discrimination and harassment including sexual harassment, bullying and discriminatory harassment.

## Procedure for Making a Harassment-Related or Sexual Harassment-Related Complaint

The Organization will investigate and act expeditiously and firmly in dealing with persons harassing others. Complaints regarding harassment may be directed to the **Anti-Discrimination and Harassment Complaints Director**, in writing if possible.

If a worker, Artist or Volunteer believes that he or she is being harassed, the worker, Artist or Volunteer should take one or both of the following steps:

1. If comfortable doing so, the worker, Artist or Volunteer should tell the harasser to stop. The worker, Artists or Volunteer should firmly state that the behaviour is objectionable, unwelcome, and must stop immediately. The worker, Artist or Volunteer should also keep a written record of the incident, along with the steps taken to stop it. If the activity or behaviour does not stop after the person has been confronted, or if the worker, Artist or Volunteer does not feel comfortable confronting the person, then the worker, Artist or Volunteer should follow the procedure as outlined in step 2.
2. The worker, Artist or Volunteer should discuss the incident with the **Anti-Discrimination and Harassment Complaints Director** or, where the alleged harasser or sexual harasser is the **Anti-Discrimination and Harassment Complaints Director**, the worker, Artist or Volunteer should discuss the incident with **President of the Board of Directors**. In the event that the **Anti-Discrimination and Harassment Complaints Director** and the President of the Board of Directors are the alleged harassers or sexual harassers, the worker, Artist or Volunteer should discuss the incident with the Secretary of the Board of Directors. During this initial meeting, the worker, Artist or Volunteer should complete a written complaint with or without the assistance of the person receiving the complaint.

## Investigation Process

The Organization will ensure a full, fair, and appropriate investigation is conducted into each incident or allegation of discrimination or harassment that it becomes aware of. Investigations will be carried out according to the following guidelines:

- all investigations will be conducted promptly;
- all those directly involved, and witnesses will be spoken with;
- notes/statements will be prepared during each interview, reviewed by the person(s) being interviewed and signed for accuracy;
- records or other documents relevant to the incident being investigated (this may include work schedules, complaints and observation notes, and may involve taking pictures of the scene) will be reviewed;
- relevant employment agreement language and/or Organization policies/procedures will be reviewed;
- a final summary/report of the investigation will be prepared; and,
- the allegedly and/or actually harassed worker, Artist or Volunteer and the alleged and/or actual harasser will be informed separately in writing of the results of the investigation and any corrective action taken as a result of the findings of the investigation.

The Organization will investigate the complaint diligently and confidentially to the maximum extent possible. In addition, any negative employment consequences which are found to have resulted from the harassment or sexual harassment will be rectified as much as and as soon as possible.

## Progressive Discipline

Any worker, Artist or Volunteer found to have engaged in conduct that violates this policy will be subject to progressive discipline, up to and including termination of employment or contract (including termination from the Board of Directors, removal from an exhibition, or the Volunteer roster). Because allegations of harassment are very serious, frivolous complaints found to have been made for improper purposes will result in progressive discipline of the complainant, up to and including termination of employment or contract.

If any worker, Artist or Volunteer receives a complaint of harassment or is otherwise aware of, or informed of a harassing situation, he or she must inform the **Anti-Discrimination and Harassment Complaints Director** immediately.

## Confidentiality

Workers should feel secure in knowing that their concerns will be handled as discreetly and sensitively as possible. Identifying information about any individuals involved in the harassment allegation will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or as otherwise required by law.

### Reprisals

This policy strictly prohibits reprisals against a worker, Artist or Volunteer because he or she has brought forward a concern or has provided information regarding a concern under this policy. Any worker, Artist or Volunteer who commits or threatens reprisal against another worker for following this policy in good faith may be subject to progressive discipline, up to and including termination of employment or contract.

Workers, Artists and Volunteers are encouraged to assist the Organization in its efforts to prevent and eliminate harassment and sexual harassment in the workplace by treating their co-workers with courtesy and respect at all times during their employment or Volunteer term. The Organization, in turn, will do its best to deal with complaints that may arise in a fair and objective manner. Any breach of this policy will result in progressive discipline up to and including termination of employment or contract (including termination from the Board of Directors or removal from the Volunteer roster).

## **Workplace Violence**

The health and safety of our workers, Artists and Volunteers is critical. Priority is given to protecting our workers and our audiences/volunteers from violence and/or intimidating behaviours. Such conduct interferes with everyone's ability to perform their job and is not in keeping with the Organization's philosophy of trust and mutual respect.

The Organization's workers, Artists and Volunteers are entitled to have a work environment free from violence and intimidating behaviours as prescribed by the **Occupational Health and Safety Act, the Ministry of Labour's Health and Safety Guidelines related to Workplace Violence and Harassment; the Ontario Human Rights Code and the Canadian Human Rights Act.** This policy applies to all workers, Artists, Volunteers and representatives of our Organization while in the workplace, on Organization premises, and during any other work-related or work-related social functions.

Workers, Artists and Volunteers are expected to assist the Organization in its attempts to prevent and eliminate violence in the workplace. The Organization will react seriously and severely to any form of violence that occurs in the workplace, irrespective of the alleged offender's position within the Organization.

Nothing in this policy prevents an individual's right to file a complaint with the Ministry of Labour, the Ontario Human Rights Commission, the Human Rights Tribunal of Ontario, or the Canadian Human Rights Tribunal should they feel the situation warrants such action.

### Definition

"Workplace violence" is defined as:

- the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker;
- an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker; and
- a statement or behaviour that is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

## Forms of Workplace Violence

- Violence by Strangers (e.g., gala attendees, the public, etc.)
  - Usually enters the place of work on the pretense of being a guest.
  - Commits robbery or another violent act.
- Violence by Guests (e.g., a donor, a friend or family member of a worker, etc.)
  - May be an expected or unexpected situation.
- Violence by Co-workers
  - Could include current worker and Manager, former worker and Manager, a prospective worker, and may occur at or outside of work (e.g., at an after-work social event, an awards gala, a retreat, etc.)
- Domestic Violence
  - Occurs when a worker has a personal dispute with a spouse, partner, relative or friend and the spouse, partner, relative or friend comes to the Organization to harass, threaten, injure or kill the worker.

## Behaviours Constituting Workplace Violence

While not an exhaustive list, workplace violence may include the following acts:

- harming, bullying or threatening to harm any worker, Artist, Volunteer or member of the public (e.g., an audience member, a customer, a friend or family member of an employee who is visiting the workplace, a volunteer, etc.);
- damaging or threatening to damage the property of the Organization or any worker, Artist, Volunteer or member of the public (e.g., an audience member, a customer, a friend or family member of an employee who is visiting the workplace, a volunteer, etc.);
- possessing a dangerous weapon or incendiary device; and/or
- engaging in stalking behaviour with respect to any worker, Artist or Volunteer.

## Responsibilities of Management

Management (the Board of Directors) must:

- promote a non-violent workplace;
- provide Employees, Artists and Volunteers with information and instruction regarding the workplace policy and program with respect to workplace violence including appropriate steps to be taken and investigation procedures;
- take every reasonable precaution for the protection of Employees, Artists and Volunteers;
- inform workers, Artists and Volunteers of potential risk situations;
- ensure workers, Artists and Volunteers understand who to contact regarding concerns about the policy or when to report an incident;
- model behaviour that helps support a positive work environment;
- ensure the workplace is free from violence;
- respond to complaints brought to their attention promptly and appropriately;
- respect the confidentiality and sensitivity of such issues to the extent possible;
- document all information and investigation results;
- request that executive-level management conduct an investigation into allegations of violent situations; and/or,
- conduct a Risk Assessment and advise the Organization, and other entities/persons as mandated by legislation, of the results of the Risk Assessment.

## Responsibilities of Workers, Artists and Volunteers

Workers, Artists and Volunteers must:

- comply with this policy by avoiding any behaviour or conduct that could reasonably be interpreted as a violation of this policy;
- maintain a work environment free from violence and/or intimidation;
- participate in training or information sessions as provided by the Organization;
- call 911 if the situation warrants it and they find a peer or themselves in immediate danger;
- exercise their right to refuse work if workplace violence is likely to endanger that worker, Artist or Volunteer; and,
- co-operate with authorities and investigators.

## Process for Making Violence-Related Complaints

If workers have witnessed or experienced conduct which they believe to be inconsistent with this policy, they have a responsibility to:

- call 911 if the situation warrants it and they find themselves or others in immediate danger;
- make the behaviour/actions known to the **Anti-Discrimination and Harassment Complaints Director** immediately. In the case of a complaint regarding the **Anti-Discrimination and Harassment Complaints Director**, the **President of the Board of Directors**; and,
- participate in the preparation of an incident report outlining the action/behaviour with the **Anti-Discrimination and Harassment Complaints Director** (or the **President of the Board of Directors**) including the dates, times, nature of the action/behaviour, and witnesses (if any).

## Removal of a Person from the Workplace

Any person who makes substantial threats, exhibits threatening behaviour, or engages in violent acts against workers, visitors, audiences, or other individuals while in the Organization's workplace shall be removed from the premises as quickly as safety permits, and shall remain off the premises pending the outcome of an investigation.

Employees, Artists and Volunteers are not to remove individuals from the premises themselves. Assistance must be requested from the Police.

## Investigation Process

When investigations into complaints are conducted, they will be carried out according to the following guidelines:

- All those directly involved, including the alleged offender and witnesses, will be spoken to within 48 hours of the incident by the **Anti-Discrimination and Harassment Complaints Director**. In the case of the **Anti-Discrimination and Harassment Complaints Director** being the alleged offender, the **President of the Board of Directors** will speak with the parties. In the case where both the Anti-Discrimination and Harassment Complaints Director and the President of the Board of Directors are the alleged offenders, the Secretary of the Board of Directors will speak with the parties.
- Notes/statements will be prepared during each interview and reviewed by the person(s) being interviewed and signed for accuracy.
- Records or other documents relevant to the incident being investigated (this may include safety reports, incident reports, work schedules, injury reports, complaints and observation notes and may involve taking pictures of the scene) will be reviewed.
- Relevant employment agreement or contract language and/or Organization policies/procedures will be reviewed.

## Corrective Action

Any worker, Artist or Volunteer found to have engaged in conduct that violates this Policy will be subject to progressive discipline, up to and including termination of employment or contract (including termination from the Board of Directors, or removal from an exhibition, or the Volunteer roster). Because allegations of acts of violence are very serious, frivolous complaints found to have been made for improper purposes will result in progressive discipline of the complainant.

## Confidentiality

Workers should feel secure in knowing that their concerns will be handled discreetly and sensitively.

As such, worker issues will usually remain between the worker and the **Anti-Discrimination and Harassment Complaints Director**. On occasion, however, an investigation may require consulting with another worker in order to ensure an appropriate resolution.

## Reprisals

This policy strictly prohibits reprisals against a worker because he or she has brought forward a concern or has provided information regarding a concern under this policy. Any worker who commits or threatens reprisal against another worker for following this, or any Organization policy in good faith, may be subject to discipline, up to and including dismissal for cause.

## Domestic Violence

Any form of violence, including domestic violence, will not be tolerated by the Organization.

Should the Organization become aware, directly or indirectly, that a worker, Artist or Volunteer is or has been subject to domestic violence, the Organization as an Employer must act upon this. This could be as a result of the worker telling the Organization directly or through hearing indirectly that domestic violence is affecting a worker, Artist or Volunteer. If a worker, Artist or Volunteer admits that he or she is subject to domestic violence but refuses help, the law still requires the Organization to act. We cannot accept a refusal for assistance as a discharge of our obligations to protect our workers, Artists and Volunteers.

Similarly, if the Organization becomes aware that a worker, Artist or Volunteer is a perpetrator of domestic violence, we will act accordingly.

## Reporting

As all workers, Artists and Volunteers of the Organization have a shared responsibility to ensure the health and well-being of one another, any worker who is aware of a domestic violence situation or a potential domestic violence situation affecting a co-worker has a responsibility to report it to the **Anti-Discrimination and Harassment Complaints Director** or anyone in a managerial position with whom he or she is most comfortable disclosing it to.

Workers are responsible for notifying management of any threats which they have witnessed, received, or have been told that another person has witnessed or received including those related to partner violence. Even without an actual threat, workers should also report any behaviour they have witnessed which they regard as threatening or violent.

Workers are responsible for making this report regardless of the relationship between the individual who initiated the threat or threatening behaviour and the person or persons who were threatened or were the focus of the threatening behaviour.

Like any immediate threat of any form of violence, workers of the Organization should call 911 if the situation warrants it and they find a peer or themselves in immediate danger.

## Confidentiality

To the extent possible, information pertaining to details of a worker, Artist or Volunteer who is a victim of domestic violence will be shared on a need-to-know basis only. However, it must be recognized that in certain situations, the Organization may need to provide some information to certain individuals to fulfill our responsibility to protect our workers, Artists and Volunteers. In all cases possible, the victim will be informed of whom must be made aware of the situation and why.

## **Additional Resources**

CBC Radio-Canada' Policy 2.2.15: Anti-Discrimination and Harassment: <http://www.cbc.radio-canada.ca/en/reporting-to-canadians/acts-and-policies/management/human-resources/2-2-15/>

Canadian Human Rights Commission's About Human Rights in Canada <https://www.chrc-ccdp.gc.ca/eng/content/human-rights-in-canada>

Canadian Human Rights Commission's Template for developing an Anti-Harassment Policy <https://www.chrc-ccdp.gc.ca/eng/content/template-developing-anti-harassment-policy>

Canadian Human Rights Commission's What is Harassment? <https://www.chrc-ccdp.gc.ca/eng/content/what-harassment-1>

Canadian Human Rights Commission's How to file a complaint? <https://www.chrc-ccdp.gc.ca/eng/content/how-file-complaint>

Canadian Human Rights Commission's FAQ <https://www.chrc-ccdp.gc.ca/eng/content/complaint-faq>

Cultural Human Resources Council's HR Management Toolkit <http://www.culturalhrc.ca/hrtools/HR%20Management%20Tool%20-%20Workplace%20Harassment%20and%20Violence.pdf>

Government of Canada's Is it Harassment? A Tool Guide – Employees <https://www.canada.ca/en/treasury-board-secretariat/services/healthy-workplace/prevention-resolution-harassment/harassment-tool-employees.html>

Human Rights Legal Support Centre's How to Guides- <http://www.hrlsc.on.ca/en/how-guides-and-faqs#1>

Social Justice Tribunals Ontario's What we do <http://www.sjto.gov.on.ca/hrto/what-we-do/>

Social Justice Tribunals Ontario's Applicant's Guide to Filing an Application with the HRTO (Human Rights Tribunal of Ontario): <http://www.sjto.gov.on.ca/documents/hrto/Guides/Applicants%20Guide.html>

Toronto Transit Commission's Diversity and Inclusion Toolkit <https://www.ttc.ca/Coupler/PDFs/Diversity%20and%20Inclusion%20Toolkit.pdf>

Toronto Transit Commission's Respect and Dignity Policy [https://www.ttc.ca/TTC\\_Business/Materials\\_and\\_procurement/About\\_Us/Contractor\\_Consultant\\_Reference\\_Materials/Respect\\_and\\_Dignity\\_Policy.jsp](https://www.ttc.ca/TTC_Business/Materials_and_procurement/About_Us/Contractor_Consultant_Reference_Materials/Respect_and_Dignity_Policy.jsp)

Toronto Transit Commission's Workplace Violence Policy [https://www.ttc.ca/TTC\\_Business/Materials\\_and\\_procurement/About\\_Us/Contractor\\_Consultant\\_Reference\\_Materials/Workplace\\_Violence\\_Policy.jsp](https://www.ttc.ca/TTC_Business/Materials_and_procurement/About_Us/Contractor_Consultant_Reference_Materials/Workplace_Violence_Policy.jsp)