

**LOYALIST COLLEGE
POLICY & PROCEDURE MANUAL**

Subject:	Discrimination and Harassment	Number:	HR 105
Issued By:	Executive Director, HR Services & Organizational Development	Date Issued:	March 26, 2014
Supersedes:	January 1, 1995	Page(s):	1 of 15
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PURPOSE

Loyalist College has the right, as well as the legal and moral responsibility, to ensure that all its members are treated fairly, equitably, and respectfully, in order to promote a learning, living and working environment that is free from discrimination and harassment. Each member of the College community shares in this responsibility. This policy outlines Loyalist's position related to acceptable and unacceptable behaviour with respect to human rights and the responsibilities of the College and all members of the College community.

SCOPE

This Policy applies to all members of the College community and is in effect at all times. College community members include: employees and students of Loyalist, members of the Board of Governors, members of advisory and ad hoc committees, contractors, service providers, and visitors, including invitees, guests or persons who have no on-going connection to the College but are on campus. All college activities and functions are covered by the policy and extend beyond the physical boundaries of Loyalist College. Off-campus activities that take place under the auspices of Loyalist College (college-related social functions, work or academic placements, off-campus field trips, work/academic related travel) are covered by this policy.

DEFINITIONS

See Appendix A

POLICY

Loyalist College is committed to maintaining a working, living and learning environment that will be free of discrimination and harassment as prohibited by the Ontario Human Rights Code and from personal or psychological harassment as defined in the Respectful College Community policy (HR 109).

Loyalist College will promote education, increased awareness and prompt action as the most effective mechanisms for preventing discrimination and harassment as defined in this policy and will have zero tolerance should such acts occur.

All concerns related to discrimination and harassment will be addressed in a manner that is timely, facilitative and with due regard to confidentiality.

All College community members have the right to express legitimate concerns about human rights violations that they are experiencing in their work, residence or education at Loyalist without fear of reprisal. Anyone who attempts reprisal or threatens reprisal against a person who initiates a complaint or participates in proceedings under this Policy may be subject to disciplinary action.

All College community members have the right to file a Human Rights complaint within six (6) months of the occurrence of the event(s).

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The College recognizes that any accusation in a complaint is a serious matter that can cause considerable stress and grief to the person who is the subject of the complaint. Accusations must be founded in serious concerns. Anyone who makes a complaint in bad faith will be subject to disciplinary action under this Policy.

As an employer, the College has a continuing responsibility to deal with unfair treatment or harassment at the workplace when made aware of the circumstances, regardless of whether there has been a formal written complaint. Any behaviour which denies individuals their dignity and respect and/or is offensive, embarrassing and humiliating will not be tolerated.

RESPONSIBILITY

Community College members

Establishing and maintaining a workplace/learning environment that is free of discrimination and harassment is a shared responsibility of all College community members.

All College Community members will:

College community members share the responsibility to create an environment free of discrimination and harassment.

The following are actions which community members will undertake to support such an environment:

- Act in a manner that demonstrates inclusiveness and is respectful of diversity
- Act in a manner that treats all individuals in a fair and equitable manner
- Increase their awareness of the prohibited grounds of discrimination and harassment under the Ontario Human Rights Code
- Refrain from engaging in, condoning or ignoring behaviour inconsistent with an environment free of discrimination and harassment
- Address concerns and complaints in a timely manner as outlined in this policy
- Report incidents of apparent violation of this policy to the President or Executive Director of Human Resources when necessary, cooperating in the investigation and resolution of complaints pursuant to this policy.

Managers

Managers (includes other members who are responsible for directing the work of others, including the work of students) must act immediately on observations, reports or allegations of discrimination or harassment.

All Managers will:

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- Demonstrate the leadership necessary to prevent discrimination and harassment and address any observations or allegations of such behaviours immediately
- Model appropriate behaviour
- Be fully informed about the Human Rights Code, the college policy and procedures and ensuring that all employees, students and other members of the College community are aware of the policy and their shared rights and responsibilities
- Deal with unfair treatment or harassment at the workplace regardless of whether there has been a formal written complaint. Any behaviour which denies individuals their dignity and respect and/or is offensive, embarrassing and humiliating will not be tolerated.

Human Resources Services and Organizational Development Department will:

- Administer the Discrimination and Harassment policy and provide College community members with information and guidance required about the policy and resolution procedures to make informed choices
- Ensure that this policy statement is posted in conspicuous locations around the College and that the policy/procedures reside on the WIKI under "Human Resources"
- Facilitate education programs and other strategies to promote awareness of the issues of personal harassment
- Post this policy electronically as well as in visible and accessible locations on all College campuses
- Lead an annual review of this policy to ensure its effectiveness
- Provide reports to MPGX summarizing the frequency and type of complaints under this Policy. Information provided will take into account the need to ensure confidentiality where appropriate
- Manage substantiated incidents of reprisal or retaliation that are contrary to this policy. Appropriate corrective or disciplinary action may be taken by the College
- Manage vexatious or bad faith complaints that are contrary to this policy. Appropriate corrective or disciplinary action may be taken by the College

PROCEDURE

The following procedures provide guidelines for the measures to be taken by Loyalist College and College community members to address and resolve issues of harassment and discrimination.

All parties involved in a complaint must be treated fairly. The rights of all individuals must be respected in any procedures relating to this policy. Only in the case of extraordinary circumstances in terms of personal safety or strongly negative environment will interim measures be taken to stabilize an immediate situation. The College, where possible, will attempt to resolve situations in an informal way.

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At any point in the process, however, an individual may choose to abandon the informal means and proceed to a more formal resolution procedure.

1. Time Limits:

A complaint must be filed within six (6) months of the last incident giving rise to the complaint. In exceptional circumstances, a complaint that does not meet the timeline may be accepted for consideration under this policy when circumstances warrant an extension of this deadline, the delay was incurred in good faith and/or no person is negatively impacted by this delay. **(Outline process to be followed for extending deadline).**

2. Complaint Resolution Options:

Resolution options fall into two broad categories:

- Informal Resolution; and
- Formal Resolution

2.1 Informal Resolution:

The informal resolution process does not, in itself, create a formal record, nor will any corrective or disciplinary action be taken or consequence imposed.

Step 1: Direct Approach

Wherever possible, a College community member who believes that they are experiencing unwanted behaviour which would fall within this procedure is encouraged to communicate directly with the person who is the source of the behaviour, either verbally or in writing that the conduct is unwelcome and must stop. The individual should document the behaviour experienced, including date(s), time(s), location(s) and witness(es). The individual should also document any discussion or resolution attempts between themselves and the person(s) concerned.

Step 2: Seek Assistance

If the behaviour continues and/or the individual is unable or unwilling to approach the person who is the source of the perceived problem, the individual should contact one of the following for advice and assistance. The name of the respondent (s) need not be disclosed at this stage:

Student:

- If the complainant is a student, he/she should speak to a “contact” person (i.e. professor, program coordinator, Dean, student success mentor or Director, Student Success). Students on field placements are encouraged to contact their placement coordinator, or, if not possible, any of the resources listed above.

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- If the complaint is deemed as a Human Rights complaint, the contact person or the complainant will report the complaint to the Manager, HR Services. If the complaint is deemed not to be a Human Rights complaint, the complainant will be informed of other College procedures that apply.

Employee:

- If the complainant is an employee, they should contact his/her supervisor or manager.
- If the complaint is deemed as a Human Rights complaint, the contact person or the complainant will consult with Human Resources Services. If the complaint is deemed not to be a Human Rights complaint, the complainant will be informed of other College procedures that apply. Employees covered by a Collective Agreement, are entitled to be accompanied by union representation.

Step 3: Mediation

- Mediation can often lead to successful resolution of a complaint. The Manager HR Services may recommend mediation to the parties at any stage in the process. Further, the complainant or respondent may request mediation; however, both must agree to participate.
- If the respondent has not yet been informed of the complaint, HR Services will now advise the respondent of the complaint and of the complainant's request for a mediated resolution. The respondent will then be provided with information about the process.
- Once there is agreement on proceeding with mediation, HR Services will recommend a mediator. Mediators may be members of the College community trained in mediation skills or external mediators may be contacted. Both the complainant and the respondent must agree on the mediator. If the parties fail to agree on a mediator, the complaint procedure will proceed directly to the formal resolution process.
- The mandate of the mediator is to bring both parties together to explore each other's point of view and to assist the parties in reaching a solution. The mediator will not make decisions, recommendations nor act as an advocate for either party. The mediation process will be "without prejudice" and "off-the-record". This means that the rights of the parties involved will not be waived by entering into this dispute resolution process. If successful, the settlement may be documented in a written agreement.
- Mediation is terminated when:
 - The complainant and the respondent reach a mutual agreement to resolve the complaint
 - The complainant or the respondent decides not to pursue mediation any further
 - The mediator recommends to HR Services that the complaint proceed to the next step

2.2 Formal Resolution:

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Step 1: Formal Statement

- If/when the complainant decides to proceed to formal resolution, he/she will submit a written statement outlining the specific details of the complaint to the Manager, HR Services. The complainant shall be informed that they will be identified to the respondent, if this has not already happened, and their statements will be shared with the respondent.
- The Manager, HR Services will advise the respondent of the complaint and provide the respondent with a copy of the complaint. The respondent may provide a written response within a maximum of five (5) working days of receiving the written complaint (or such longer period of time that the Manager, HR Services may determine if circumstances justify an extension). If the respondent declines to provide a written response, he/she will provide an oral response to the Manager, HR Services or designate. In this event, the respondent will review and correct the notes made of the interview and will sign the corrected notes to verify their accuracy. This response will be shared with the complainant.
- If the respondent fails to provide a written response or reasonable alternative within a maximum for five (5) working days, the Manager, HR Services will take such action as he/she feel s appropriate at that time.

Step 2: Investigation

- The Manager, HR Services or designate will complete the investigation before any serious sanction is taken. Investigations may also be undertaken by external investigators engaged by Loyalist College. Any investigation of a complaint against a member of the Board of Governors, HR Services and College Executive Team (CET) will be conducted by an external investigator.
- The investigation of a complaint will normally include meeting with the complainant, respondent and witnesses, collecting and preparing documentation such as a report of the complaint incident signed by the complainant, the respondent's reply, witness statements or records of interviews, etc. The Manager, HR Services will review the facts disclosed by the investigation with both the complainant and the respondent prior to making any final findings and submitting a report to the Executive Director, HR Services within fifteen (15) working days from the beginning of the investigation or as soon thereafter as reasonably possible.

Step 3: Investigation Findings/Corrective Action

- The Executive Director, HR Services will review the report findings and make a decision as to what corrective action will be taken. Corrective action may include disciplinary action up to and including suspension and/or termination or expulsion as well as preventative, educational and remedial measures. The Executive Director HR Services will inform both parties of the decision and the corrective action that has been taken within ten (10) days of receiving the investigation report from the Manager, HR Services or designate.

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Step 4: Appeal Process

- Either party may appeal the decision, in writing, within ten (10) working days to the President or designate. If either party appeals, a copy of the submission will be given to the opposing party to allow an opportunity to respond in writing within five (5) working days.
- The President or designate will review the investigation report, the Executive Director, HR Services' decision, the appeal submission and response. If the President or designate decides to hold a hearing, he/she will advise the parties of a date for an appeal hearing to take place. That hearing will be presided over by the President or designate. The procedure at this hearing is meant to be informal and the President or designate will determine the procedure to be followed at the hearing. Otherwise, the President or designate will make a final decision based on the investigator's report, the appeal submission and the response.
- The President or designate will provide a written decision with reasons to the parties as soon as reasonably possible. The parties will also be informed of any remedial action that will be taken, if appropriate. This decision is final and cannot be appealed.

3. Record Retention

- Notes, records or documents (whether handwritten, electronic or otherwise) created during the course of the investigation by the investigator will be dated and signed and included in the investigation file along with any evidence collected.
- All notes, along with the signed resolution agreement if applicable, will be submitted to HR Services upon resolution of the complaint.
- All information will be treated confidentially, in accordance with the Freedom of Information and Protection of Privacy Act. Records of all complaints will be maintained and secured by HR Services separately from other employee or student records or files.
- HR Services will retain these notes in a confidential file for a period of seven (7) years from the date of resolution after which time all records shall be destroyed. If there is a recurrence of the incident, the resolution is breached, or outside action is taken such as a human rights complaint or court action, the seven year period will be extended as required.

4. Timelines

- Timelines set out in this procedure are subject to extension by the College official who is the prime decision maker at the step in which the extension is requested. However, extensions will be granted only in circumstances where the request for extension is made in good faith and for extenuating circumstances and where there would be no prejudice to the other party or the College.

5. Right to Appeal the Outcome of the Formal Resolution Process

- In the event that the complainant decides to pursue their complaint in another forum (e.g. Human Rights Commission or Tribunal, Grievance procedure or the Courts), the College may

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decide, in its discretion, to terminate or suspend the processing of the complaint under this Policy at any point in the process. This policy does not preclude an individual's right to take such alternate action, however, an appeal to the President is not allowed when an employee elects to proceed under the grievance procedure.

ASSOCIATED APPENDICIES, POLICIES, PROCEDURES & FORMS

Appendix A – Definitions
Appendix B – Discrimination and Harassment Complaint form
Respectful College Community policy (HR 109)
Employee Student Relations (HR 106)

REFERENCES

The Ontario Human Right Code, 1962
The Freedom of Information and Protection of Privacy Act, 1990
The Canadian Charter of Rights and Freedom, 1982

REVISION HISTORY

January 1, 2005 – Revised

APPROVALS

Written by:	Lori Peckham	Date:	March 2014
Approved by:	Karen Cullen	Date:	March 2014

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APPENDIX A

DEFINITIONS

Discrimination: Every employee, student or person in receipt of services from the College has the right to equal treatment, without discrimination on the basis of any ground set out in the *Ontario Human Rights Code, 1962*. Direct discrimination occurs when an individual is subjected to differential treatment as a result of their identification by a prohibited ground of discrimination or their association with a group who are identified by a prohibited ground of discrimination. Some examples of direct discrimination are:

- refusal to provide goods, services or facilities to persons because of membership in a protected group;
- refusal to work with or teach someone because of membership in a protected group.

Harassment: Harassment is defined by the *Ontario Human Rights Code, 1962*, as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome (Section 10 (1) (f)). The College interprets this to include any behaviour that is known or ought reasonably to be known to the perpetrator to be offensive, embarrassing or humiliating to other individuals. Such conduct may include visual representations, electronic messages, written messages, verbal and/or physical conduct, and may relate to any of the grounds of discrimination prohibited by the *Ontario Human Rights Code, 1962*, or other malicious grounds. Some examples of harassment are:

- unwelcome remarks, jokes, slurs, innuendoes or taunting;
- hazing, stalking or shunning;
- the repeated mistreatment of one employee, targeted by one or more employees with a malicious mix of humiliation, intimidation and sabotage of performance (bullying);
- displaying derogatory or offensive pictures, graffiti or materials either through printed copy or personal computer;
- verbal abuse;
- insulting gestures or practical jokes which cause embarrassment or awkwardness;
- unauthorized and/or unnecessary physical contact;
- an impassioned, collective campaign by co-workers to exclude, punish and humiliate a targeted worker.

For the purposes of this policy, “harassment” also includes personal/psychological harassment.

Note: Harassment does not occur where a supervisor gives legitimate directions or instructions to an employee in the course of employment or conducts performance reviews in accordance with the college’s normal procedures.

Personal/Psychological Harassment: Behaviour in the form of repeated and hostile or unwanted

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conduct, verbal comments, actions or gestures, that affects an employee's dignity or psychological or physical integrity and that result in a harmful work environment for the employee. It includes and is not limited to behaviours defined as bullying, mobbing, victimization, emotional abuse, psychological abuse, and psychological violence. A single serious incident of such behaviour that has a lasting harmful effect may constitute psychological harassment. It must be demonstrated that this behaviour affects the person's dignity or physical or psychological integrity and that it results in a harmful work environment for the employee.

Poisoned Learning, Living and Working Environment: Occurs when conduct and/or comments related to one or more prohibited grounds of discrimination under the Code unreasonably interferes with an individual's ability to work and/or learn by creating an intimidating, hostile, offensive or threatening environment. Depending on the impact of the comments or conduct on the individual, one instance may be sufficient to create a poisoned environment for an individual or a group. A poisoned environment can create unequal conditions of employment for the person or persons affected by it. It can interfere with an individual's learning and/or work performance and cause emotional or psychological stress not experienced by other individuals.

An individual does not have to be the person targeted by the comments to experience a poisoned environment. A person who is subjected to overhearing racial slurs or sexually or racially offensive jokes, or viewing racially offensive cartoons or sexually explicit, suggestive or demeaning pictures may view the behaviour as poisoning the environment.

Some examples of poisoning the environment are:

- displaying graffiti, signs, pictures or cartoons which would qualify as prohibited harassment, either through print or computers;
- making derogatory remarks about a particular gender or sexual orientation, race or religion in the classroom or the workplace.

Prohibited Grounds: The protected grounds include:

- in employment, race, disability, place of origin, age, family status, gender, ethnic origin, citizenship, colour, sexual orientation, religion/creed, marital status, receipt of public assistance, record of offences (i.e. pardoned federal offences or record of provincial offences) as these terms are interpreted in the *Ontario Human Rights Code, 1962*.
- in the provision of services, race, ancestry, place of origin, colour, ethnic origin, citizenship, religious creed, sex, age, marital status, family status, disability, sexual orientation, same sex partnership status, as these terms are interpreted under the *Ontario Human Rights Code, 1962*.

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The extent of the protection from discrimination on the grounds of receipt of public assistance or pardoned federal offences or record of offences shall be that as provided by the Code.

Racial/Ethnocultural/Religious Harassment: Is prohibited by the Code and generally involves written, verbal and/or physical actions which express negative attitudes, derogation, and/or hate for a person or group of persons based on their race, ancestry, place of origin, colour, ethnic origin, citizenship or creed. Racial/ethnocultural/religious harassment may include, but is not limited to, the following behaviours:

- demeaning comments, unwelcome remarks, jokes, innuendoes or taunting about a person's or group of persons' race, ancestry, place of origin, colour, ethnic origin, citizenship, creed;
- displaying of racist, derogatory or offensive pictures or sexually explicit materials, either through printed copy or personal computer;
- denial of normal co-operation with an employee or student because of that individual's racial or ethnic background;
- insulting gestures or practical jokes based on racial or ethnic grounds which cause embarrassment or awkwardness;
- demeaning remarks about a racial/cultural group in the presence of any individual (not necessarily a member of the group mentioned) that creates a poisoned work/learning environment;
- using pejorative names based on race or ethnic origin.

Sexual Harassment: Is prohibited by the Code and may be based on gender (including transgendered persons) or may involve the use of overt sexual language or sexual innuendo which makes an individual feel uncomfortable. Sexual harassment includes, but is not limited to, the following:

- any deliberate and unsolicited sexual comment, suggestion or physical contact that creates an uncomfortable learning/working environment for the recipient and is made by a person who knows or ought reasonably to know that such action is unwelcome;
- a sexual advance or solicitation made by a person where the person making the advance or solicitation knows or ought reasonably to know that it is unwelcome;
- a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person;
- unwelcome remarks, jokes, sexual innuendoes or taunting about a person's body, attire, sex, personal or social life;
- practical jokes of a sexual nature which cause awkwardness or embarrassment;
- displaying and/or distributing pornographic pictures or other offensive material of a sexual nature, either through printed copy or personal computer;
- leering (suggestive staring) or other gestures;
- unnecessary physical contact such as touching, patting or pinching;

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- expressions of gender bias which may include remarks that are discriminatory, degrading or derogatory and create a poisoned work environment;
- requests for sexual favours; and/or
- sexual assault.

Note 1: Relationships between consenting adults which are voluntary and based on mutual attraction do not constitute sexual harassment unless one of the parties has communicated to the other that he/she wishes the relationship to end and the other thereafter engages in conduct which is harassing in nature.

Note 2: In romantic and sexual relationships between faculty members and students or between supervisors and employees or students, a power differential may exist. Abuse of that power differential creates a negative environment for work and study and casts doubt on the validity of the consent to such relationships. Such relationships could be construed as a Breach of Trust in one's employment with the College as a faculty member or supervisor, the student-teacher relationship being a professional one, which involves a significant issue of trust in regards to both the institution and students. Sexual intimacy between faculty and student removes all professional boundaries between them and creates a perception of bias in the eyes of the institution, faculty and other students, thus distorting and damaging the learning environment.

Systemic Discrimination (Indirect Discrimination): Describes a type of discrimination that occurs indirectly as a result of the application of a factor, requirement or qualification (which includes any policies, practices, procedures, actions or inactions) that does not directly discriminate, but has the effect of negatively impacting or giving preference to a group identified on a protected ground under the *Ontario Human Rights Code, 1962*. However, the Code also provides that a factor, requirement or qualification that would otherwise be found to be indirect discrimination will be permitted if it is reasonable and bona fide in the circumstances and cannot be accommodated without undue hardship. Some examples of indirect discrimination are:

- imposition of minimum height or weight requirements as a precondition where such requirements are not necessary for the performance of a job;
- failure to provide reasonable access to buildings and premises for employees or students with disabilities;
- an exam schedule that conflicts with an important religious holiday. The exam may have been scheduled without thinking about the religious holiday—without any intent of violating a group's religious rights. In this case, the schedule is discriminatory because of its adverse effect on a particular religious group. Since an alternate day can be scheduled for a student whose religious observance would be interfered with, accommodation without undue hardship is possible.

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Without Prejudice (Off the Record): The course of mediation and/or conversations will not be tendered as evidence in court.

Workplace/Learning Environment: Wherever an employee or student attends for the purpose of work or study involving activities sanctioned by the College, including a virtual or cyberspace environment.

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APPENDIX B

Discrimination and Harassment

COMPLAINT FORM

(To be completed by the Complainant)

This is a complaint alleging violation of my rights on the basis of discrimination/harassment.

Complainant's Name:

Address:

Phone No.:

Constituency:

Student Support Staff Administrative Staff Faculty
 Other _____

Respondent's Name/s:

Constituency:

Student Support Staff Administrative Staff Faculty
 Other _____

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Witness(es) if applicable:

1. Name: _____

Address: _____

Name: _____

Address _____

A detailed description of the situation or incident(s) giving rise to this complaint (add pages if space is insufficient).

Suggested Resolution: (See Appendix 1 for examples)

Complainant's Signature

Received By

Date

Date