



GA XX Harrasment and Discrimination Policy

Classification:	General Administration
Responsible Authority:	Manager, Human Rights & Equity
Executive Sponsor:	Vice President Finance & Administration
Approval Authority:	President
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PURPOSE

St Francis Xavier University does not tolerate Harassment and Discrimination. StFX is committed to maintaining a positive and respectful learning, living and working environment that respects the rights of StFX community members to learn, study, live and work free from Harassment and Discrimination.

The purpose of this Policy is to:

- I. Prohibit all forms of Harassment and Discrimination at StFX;
- II. Establish and maintain a climate and culture at StFX in which all members of the StFX University community enjoy a safe and respectful learning, living and working environment; and
- III. Establish a procedure to respond promptly and seriously to complaints of Harassment and Discrimination in a manner that is procedurally fair, and treats all persons involved with dignity and respect

SCOPE

This Policy applies to all Members of the StFX Community, including but not limited to students, staff, administrators, faculty, librarians, members of the Board of Governors, adjunct or visiting faculty and postdoctoral fellows.

Behaviour which constitutes Harassment or Discrimination and which impacts the work, study, university related activity or the on campus living environment of a member of the University community is covered by this Policy, whether or not the behavior occurs on campus. The StFX Sexual Violence Response Policy addresses disclosures and formal reports of Sexual Violence, including Sexual Harassment and Sexual Assault (as those terms are defined in the StFX Sexual Violence Response Policy) and therefore are not within the scope of this Policy.

This Policy replaces the StFX Student Code of Community Conduct in cases involving Harassment and Discrimination.

DEFINITIONS

Discrimination is distinctive treatment, whether intentional or not, on the basis of a prohibited ground of discrimination that is not exempted by section 6 of the *Human Rights Act* and that has the effect of imposing a burden, obligation or disadvantage on an individual or a class of individuals not imposed upon others, or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals.

Harassment is offensive or objectionable conduct or comment directed toward another person or persons, the instance or persistence of which is known or ought reasonably to be known, from the perspective of a reasonable person in the position of the Complainant, to be intimidating, offensive or unwelcome. Such conduct or comment includes but is not limited to that on the basis of any Prohibited Ground, which has the effect of creating an intimidating, unwelcome or offensive work, study or living environment.

Harassment may:

- (a) be the result of a repeated course of conduct or comment occurring over time; however, in exceptional circumstances, if the conduct is of a very serious nature, one incident may constitute harassment;
- (b) be the result of repeated Microaggressions;
- (c) be expressed verbally, physically, visually or electronically;
- (d) come from a colleague, peer, supervisor or subordinate;
- (e) involve one person or a group;
- (f) be either deliberate or unintentional.

Balance of Probabilities: Proving a case on a "balance of probabilities" is a civil burden of proof, meaning that there is evidence to support the allegation that the comments or conduct "more likely than not" took place, and that the behaviour was harassment/discrimination within the meaning of this Policy.

Complaint: means an allegation that a Member of the StFX Community has committed discrimination or harassment in breach of this Policy. A Complaint does not automatically result in a formal investigation.

Complainant: means a person who alleges that a Member of the StFX Community has committed discrimination or harassment in breach of this Policy.

Days: means Monday to Friday inclusive, except where the University is closed for a holiday.

Member of the StFX Community: includes, but is not limited to, students, staff, administrators, faculty, librarians, members of the Board of Governors, adjunct or visiting faculty and postdoctoral fellows

Microaggressions are subtle slights, intentional or not, including statements, actions, minimizations, and invalidations, serving to trivialize one's gendered, racialized, or other identity-based experiences by those who do not share those same experiences, thus denying their significance (Nadal, 2010; Sue, 2017; Sue, Capodilupo, & Holder, 2008; Sue, Capodilupo, Nadal, & Torino, 2008).

Procedural Fairness: means a process

- I. Based on impartiality and absence of bias
- II. Where the Respondent is informed of the allegations
- III. Where the the Complainant is informed of the Respondent's response
- IV. Which includes a meaningful opportunity for each party to know the evidence against them and respond
- V. In which both parties are given sufficient notice of interviews or meetings where they are expected to present or respond to evidence gathered as part of the process
- VI. Leading to a written decision that includes a sufficiently detailed explanation of the facts and analysis to enable the parties and any reviewing body to understand the decision and the basis for the decision.

Prohibited ground means a ground protected by the *Nova Scotia Human Rights Act*. It is against the law to discriminate against protected identities under the *Nova Scotia Human Rights Act*. They include: age, race, colour, religion, creed, sex, sexual orientation, gender identity, gender expression, physical disability or mental disability, irrational fear of contracting an illness or disease, ethnic, national or aboriginal origin, family status, marital status, source of income, political belief, affiliation or activity. It is also illegal to discriminate against individuals who associate with members of the protected groups listed above.

Respondent: means a person who is alleged to have engaged in discrimination or harassment in breach of this Policy.

Responsible Authority: refers to the individual(s) designated under this Policy with the authority and responsibility to assess and impose immediate measures, review the Investigator's Report, and determine and impose Discipline or Remedial Measures. The Responsible Authority is:

- For Students: VP Students
- For Non-Academic Employees: VP Finance & Administration
- For Faculty, Librarians, Coady Institute and Academic Employees: Academic VP & Provost
- For Vice Presidents and Board of Governors: President or designate
- For the President: Chair of Board of Governors or designate

Systemic Discrimination is discrimination that arises as the effect of workplace policies or practices, as opposed to the discriminatory actions of an individual.

Unionized employee means all employees of StFX who are subject to a collective agreement between StFX and a union.

POLICY

- 1.1 StFX does not tolerate Harassment and Discrimination.
- 1.2 StFX acknowledges its obligation to maintain a non-discriminatory university environment under the Nova Scotia *Human Rights Act*.
- 1.3 StFX recognizes that Harassment and Discrimination are matters of both human rights and health and safety which can have an impact on the physical, psychological and emotional wellbeing of an individual and on the overall culture of the University.
- 1.4 The prevention of Harassment and Discrimination through a process of educating and informing the campus community is necessary and forms an integral part of the University's prevention strategy.
- 1.5 StFX is committed to reducing the barriers to reporting Harassment and Discrimination at StFX to the extent possible. This includes a commitment to creating a diverse and inclusive campus.
- 1.6 StFX's Harassment and Discrimination Policy and procedures are based on principles of fairness and due process for Complainants and Respondents.
- 1.7 All members of the StFX community have the right to express legitimate concerns about incidents of Harassment and Discrimination that they are experiencing in their education, work or residence at StFX 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.
- 1.8 The Policy shall not be applied in such a way as to detract from the right to engage in the frank discussion of potentially controversial matters that are legitimate topics within the University setting. The Policy shall not be applied so as to have the effect of limiting appropriate discussion of controversial matters or prohibiting *bona fide* instructional techniques, such as the use of irony, the use of conjecture and refutation, or the assignment of readings that advocate controversial positions, provided that such discussion and instruction are conducted in a mutually respectful and non-coercive manner.
- 1.9 In the event that a formal Complaint is made alleging systemic discrimination, the University will be named as Respondent. The President may appoint a person to act a Respondent in regard to the complaint process.
- 1.10 Where the Respondent is a StFX Unionized Employee, the applicable Collective Agreement will be followed when the terms of the Collective Agreement conflict with this policy.
- 1.11 In the event of any human rights complaint, grievance or other legal proceeding arising from substantially the same circumstances as a complaint made under this Policy, the complaint

process set out below may, at the University's discretion, be suspended until the conclusion of such action.

- 1.12 When two or more Complaints have been lodged against the same Respondent arising out of essentially the same conduct or incident, these Complaints can be handled at the same time unless the Human Rights and Equity Advisor (HREA) concludes that prejudice might thereby result to the Complainants or Respondent.
- 1.13 In the event that a Complaint under this Policy engages issues under other policies, the Investigator's terms of reference may include consideration of all other relevant and appropriate intersecting issues and policies

Roles and Responsibilities

2.1 Human Rights & Equity Advisor (HREA)

The University, through the HREA shall provide human rights information, assistance, education, training, and formal and informal complaint resolution to all Members of the University community with regard to Harassment and Discrimination. The HREA determines whether a Report falls within the scope of this Policy.

- 2.2 The HREA shall not act as an advocate for Complainants or Respondents with respect to individual complaints of Harassment or Discrimination against another member of the University.

- 2.3 The HREA will inform the relevant Responsible Authority of all requests to investigate.

- 2.4 The HREA shall be the investigator unless the Responsible Authority appoints a designate.

2.5 Human Resources

The HREA will liaise with the Human Resources Director to provide support, advice and guidance on matters relating to Harassment and Discrimination complaints involving employees.

2.6 Student Life

The HREA will liaise with the Student Life Director and the Manager, Restorative Practices and Student Conduct to provide support, advice and guidance on matters relating to Harassment and Discrimination Complaints involving students.

2.7 Managers/Supervisors/Department Heads

Members of the University who have managerial or supervisory authority over others shall foster an environment that is free of Harassment and Discrimination. They shall seek appropriate advice and support from the HREA and respond in a timely, proactive and diligent manner if they become aware of any violation of this Policy.

2.8 Responsible Authority

The Responsible Authority will assess and impose immediate measures, review the Investigator's Report, and determine and impose Discipline or Remedial Measures. The Responsible Authority will also determine whether the University has a duty to investigate when it becomes aware of Harassment or Discrimination but no Complaint has been filed.

CONFIDENTIALITY

- 3.1 Following a Complaint, information about the investigation and Complaint will only be shared as is necessary for the purposes of the immediate measures, resolution procedures or investigation.
- 3.2 StFX recognizes that a Respondent may need to share some information in order to facilitate their response and identify witnesses; a Complainant may need to share some information in order to identify witnesses and assist the investigation; and both parties may need to rely on their respective circles of support, such as close friends, family, therapists or legal counsel.
- 3.3 StFX encourages Complainants and Respondents to ensure that any communications about an incident(s) of Harassment and Discrimination during a reporting process do not taint or undermine the integrity or fairness of the process. If communications adversely impact the integrity of the investigation, the outcome of the process may be negatively impacted.
- 3.4 All recorded personal information with respect to a Complaint shall be kept confidential in accordance with the Nova Scotia *Freedom of Information and Protection of Privacy (FOIPOP) Act*. Such personal information may be subject to disclosure as required by law.

IMMEDIATE MEASURES

- 4.1 Threats and safety concerns should be reported immediately to either the HREA, the Director of Human Resources (for employee related concerns) and/or the Director of Student Life (for student related concerns). If the concerns involve a member of the general public, they can be reported, if relevant, to the Director of Risk Management.
- 4.2 While the procedures under this Policy are underway, the University may take non-disciplinary steps for the safety or well-being of parties, to minimize disruption to the learning, living or working environment or to maintain the integrity of the investigation. These steps include but are not limited to, separating the parties in the classroom, workplace or residence, or requiring parties not to communicate directly with each other. In exceptional cases, the University may remove the Respondent from the classroom, workplace, or residence while the allegations are fully investigated. This does not constitute a disciplinary measure and is not to be viewed as judgement of the credibility of the Complainant or Respondent or eventual disposition of the Complaint.

INFORMAL RESOLUTION PROCEDURES

- 5.1 In appropriate circumstances, a Complainant may wish to resolve the matter without an investigation, or prior to the conclusion of the formal investigation process. A Respondent may also seek to initiate an alternative resolution process.
- 5.2 At no time should either Complainant or Respondent be pressured to participate in an alternative resolution process. Alternative resolution will only be explored with the consent of the Complainant, Respondent and StFX.
- 5.3 Parties that engage in alternative resolution, do so on a 'without prejudice' basis. In other words, either the Complainant or Respondent may withdraw from the process at any time and any information or admissions shared in the process cannot be used against either party in an investigation under this Policy or in any other proceeding at StFX unless the parties have all mutually agreed to the use of the information in such other proceeding.
- 5.4 The foundational principle and starting point of an alternative resolution is the Respondent's acceptance of responsibility for causing harm.
- 5.5 The goals of the process are mutual understanding, safety and education/remediation.
- 5.6 The outcomes of a facilitated alternative resolution process may include a voluntary apology letter from the Respondent, a written agreement that includes behavioural expectations, and/or education or training, such as related to anti-violence, anti-oppression or cultural safety or a voluntary agreement by the Respondent to other measures.
- 5.7 Alternative resolution is presumptively inappropriate where previous Complaints have been made about the Respondent or where StFX has received multiple Complaints about the Respondent.
- 5.8 A record of the alternative resolution shall be maintained by the HREA for a period of four years or for as long as the students are part of the StFX community whichever is longer, and in the employee files of StFX employees in accordance with the terms of any collective agreement or applicable employee policies.

INVESTIGATION

- 6.1 The formal procedure for dealing with Complaints of Harassment and Discrimination is by means of an investigation.

Request to Investigate

- 6.2 An investigation may be initiated by:
- i. making a written or verbal statement setting out the full particulars of the alleged Discrimination or Harassment, a summary of relevant evidence available (documents, witnesses etc.), and the requested outcome or remedy. When a verbal statement is made, the HREA shall prepare a written summary to be signed and approved by the Complainant; or
 - ii. A brief written or oral statement that contains the name of the Respondent, the date(s) and general nature of the allegations, and a request that the details be taken by the Investigator, so as to avoid the Complainant having to tell their story on multiple occasions.
- 6.3 There is no deadline for making a Complaint under this Policy. StFX recognizes that the Complainant may require time to make a Complaint or request an investigation. The Complainant is encouraged to make a Complaint as soon as they have made the decision and are able to do so, so as to minimize any loss of evidence due to the passage of time. If the Respondent is no longer a Member of the StFX Community, StFX is not required to investigate under this Policy.
- 6.4 StFX may be unable to investigate an anonymous Complaint or a Complaint filed by someone other than the Complainant due to a lack of information available to the investigator.
- 6.5 A request to investigate is normally made by the Complainant. However, the Responsible Authority may determine that StFX is required to undertake its own investigation where:
- i. There is a serious risk of harm to self or others;
 - ii. There is a risk to the safety of the university and/or broader community;
 - iii. Multiple Complaints have been made against the same person; or
 - iv. There is objective evidence of Discrimination or Harassment , such as evidence in the public realm (e.g. a video posted on social media) or otherwise recorded or documented and available to StFX;

The Responsible Authority may appoint a person to act as a Respondent for the complaint process.

Appointment of Investigator

- 6.6 The HREA or designate will conduct the investigation. The designate may be internal or external to the University. The HREA shall not conduct the investigation when the HREA attempted to facilitate an alternative resolution process. Internal designates include the Manager, Restorative Practices and Student Conduct (in cases involving students) and the Director of Human Resources (in cases involving employees).

The Investigator's Mandate

6.7 The objective of the formal investigation is to carry out an inquiry and make factual findings on a balance of probabilities and to determine whether the Respondent's conduct falls within the definition of Discrimination or Harassment.

Investigator May Summarily Dismiss Report

6.8 The Investigator may dismiss the allegations summarily, if the Investigator finds that the Complaint is frivolous, vexatious or made in bad faith or there is not a prime facie case. In cases where the Investigator dismisses the Complaint summarily, the Investigator's Report shall provide the factual basis and reasons for the summary dismissal. There is no appeal to this decision.

Role of Support Persons

6.9 Complainants and Respondents may be supported by a trusted person, including legal counsel, in the investigation.

6.10 Support persons may not speak for the party. Evidence about what happened, whether in written or oral form, must be provided by the party directly. Letters or written submissions on behalf of a party will not be received as evidence in the investigation.

6.11 The role of legal counsel or a support person may include:

- i. Emotional support for the Complainant or Respondent;
- ii. Supporting the Complainant or Respondent in preparing to tell their evidence to the Investigator;
- iii. Assisting the Complainant or Respondent in interview(s) with the Investigator, as permitted by the Investigator, for example by asking questions where the Complainant or Respondent forgets key information due to the stress of the process;
- iv. Observing the investigation interview(s), including with a view to issues of procedural fairness;
- v. Asking questions of the Investigator relating to timing and next steps in the process, however, the Investigator may refuse to permit such process-type questions from a support person who unduly interrupts or is otherwise disruptive to the investigation.

Procedure

6.12 The investigator shall provide written notice to the Respondent which includes:

- i. A summary of the allegations and that an investigation will be initiated;
- ii. A copy of this Policy;
- iii. A direction that any direct or indirect reprisal against the Complainant constitutes a disciplinable breach of this Policy; and
- iv. A direction to keep the investigation confidential in accordance with Section 3 of this Policy in order to maintain the integrity of the process.

- 6.13 The Investigator shall independently develop the approach to the investigation, which will include interviewing the parties and any witnesses as determined by the Investigator.
- 6.14 The Investigator shall communicate with the Complainant, Respondent and witnesses to schedule interviews and receive documents, if any.
- 6.15 The Investigator may conduct multiple interviews with each party and witnesses.
- 6.16 If the parties have relevant copies of texts, emails, social media, video recordings or campus security or residence incident reports or other similar documents related to the allegations, these should be produced to the Investigator.
- 6.17 The Investigator may require production of relevant documents from the parties or witnesses, such as texts, emails, or other social media or recorded evidence prior to the interview. If a party does not produce relevant documents prior to the interview after being requested to do so, the Investigator may refuse to accept the evidence or may draw an adverse inference against the party in question.
- 6.18 As a principal of procedural fairness, each party has the right to know and respond to the relevant evidence. The Investigator will provide both parties with a reasonable opportunity to respond to any relevant new information obtained during the Investigation, including statements of witnesses and documentary evidence.
- 6.19 The Investigation is a non-adversarial fact-finding process. In addition to the opportunity to know and respond to the evidence, each party will have the opportunity to pose questions to the Investigator, that the Investigator may consider asking of the other party or witness. The Investigator will determine whether those questions are relevant, appropriate and/or will assist in the investigation.
- 6.20 The Investigation should be completed in as timely a way as possible, with the goal of completing the Investigation within 30 days following the appointment of an Investigator. StFX recognizes, however, that timelines cannot be fixed due to numerous factors that may impact the progress of an Investigation, including the health of the participants.
- 6.21 If the Investigation is not complete 30 days following the appointment of the Investigator, the Investigator shall update the Responsible Authority and the parties on the progress of the Investigation on the 30th day following the appointment, and every two weeks thereafter.

Investigator's Report

- 6.22 At the completion of the Investigation, the Investigator shall prepare a report that contains:
- i. A description of the relevant evidence of all witnesses and any documentary evidenced relied on;
 - ii. A discussion of the findings of fact;
 - iii. A discussion of the findings of credibility with reference to the evidence;
 - iv. A determination as to whether, on a balance of probabilities, any act of Harassment or Discrimination prohibited by this Policy occurred; and

- v. The reasons for the findings of fact and any finding of breach of this Policy (and any related policy).
- 6.23 A copy of the Investigation Report shall be provided to the Responsible Authority. The Responsible Authority may seek further information or clarification from the Investigator before accepting the Investigator's Report. The report will indicate where it has been amended in response to a request from the Responsible Authority for further information and clarification.
- 6.24 The Investigator shall then provide copies of the Report to the Responsible Authority, the Complainant and the Respondent. Copies of the report provided to the parties shall be redacted of identifying information of any person other than the person receiving the Report.
- 6.25 In cases where there are multiple Reports, each Complainant will only receive the portion of the Investigator's Report that relates to their allegation(s).
- 6.26 In a circumstance in which an Investigation Report has not been prepared (for example, the Respondent employee quit or was terminated without the necessity of a full investigation), the Complainant shall be advised that no Investigation Report was prepared.

DECISION BY RESPONSIBLE AUTHORITY

- 7.1 If the Responsible Authority determines:
- i. There was a serious procedural error that caused prejudice to one of the parties;
 - ii. The Investigator's findings of facts are clearly unsupported on the evidence; or
 - iii. The Investigator's decision as to whether a breach of the Policy occurred is clearly unsupported on the basis of the findings of facts in the Investigation Report.
- Then the Responsible Authority may:
- i. Refer the matter back to the Investigator for reconsideration;
 - ii. Require that a fresh investigation be undertaken and appoint a new Investigator ;
 - iii. Order that any mediation in place during the investigation continue;
 - iv. Determine whether any Immediate Measures should be imposed pending the re-investigation, and/or
 - v. Suspend any discipline or remedial measures ordered as a result of the finding.
- 7.2 Within seven days of receipt of the Investigation Report, the parties may make written submissions to the Responsible Authority with respect to appropriate discipline and/or remedies, if a breach of this Policy was found to have occurred. A Complainant may include in the submission the impact of the Harassment or Discrimination on the the Complainant.
- 7.3 Upon receiving the Investigator's Report and the parties' written submissions, the Responsible Authority will review the Report and determine the appropriate discipline and/or remedial measures.

- 7.4 In making this determination, the Responsible Authority may consult with other persons as necessary while maintaining confidentiality of the complainant in accordance with this policy.
- 7.5 The Responsible Authority has the exclusive jurisdiction to impose discipline and remedial measures.
- 7.6 When the Respondent is not an employee, the Responsible Authority will issue a written decision to the Respondent setting out disciplinary and/or remedial measures ordered by StFX within two (2) days of receipt of submissions from the parties. The decision will include the reasons for the measures imposed and the information relied on in making that decision. A copy of the decision shall also be provided to the Complainant. Confidential information about any previous discipline may be redacted from the copy of the decision provided to the Complainant. The Complainant shall keep the decision confidential, except to the extent that it is necessary to share information to enforce the disciplinary/remedial measures
- 7.7 When the Respondent is an employee, the Responsible Authority will issue a written decision to the Respondent setting out disciplinary and/or remedial measures ordered by StFX within two (2) days of receipt of submissions from the parties. The decision will include the reasons for the measures imposed and the information relied on in making that decision. The Complainant shall be informed of the disciplinary and remedial measures imposed in response to their Complaint. The Complainant shall keep the disciplinary and remedial measures confidential except to the extent that it is necessary to share information to enforce the disciplinary/remedial measures.

RECORDS AND USE OF INFORMATION

- 8.1 Subject to any exceptions provided for in this Policy and to the extent required by law, all written and oral information that is created, gathered, received or compiled through the course of a complaint is to be treated as confidential by both the Respondent and the Complainant, their representatives, witnesses, and University officials. The parties to informal or mediated complaint resolution may agree to disclose information for the purpose of restoring a work unit to effective functioning. All recorded personal information with respect to a complaint shall be kept confidential in accordance with the Nova Scotia Freedom of Information and Protection of Privacy (FOIPOP) Act. Such personal information may be subject to disclosure as required by law.
- 8.2 The Human Rights & Equity Office is the office of record for all matters related to the application of this Policy. The complaint file (including the investigation file and record of disposition of the complaint) shall be preserved and kept confidential by the HREA for a minimum period of four years or for as long as any of the students involved are part of the StFX community whichever is longer. If discipline is imposed, a record will be placed in the Respondent's personnel file in keeping with any applicable collective agreement or University policy.

Retroactivity

- 9.1 This Policy shall apply to all Complaints made on or after the Date First Approved, including Complaints where the Harassment and Discrimination is alleged to have occurred prior to the Date First Approved.

SUPPORTING DOCUMENTATION

RELATED POLICIES

[StFX Community Code of Conduct](#)

[StFX Sexual Violence Response Policy](#)

RELATED MATERIALS

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