

## **Workplace Discrimination and Harassment Policy**

Approved: 5 February 2013

### **I. Purpose**

Mammalian Diving Reflex (MDR) is committed to providing a collegial working environment in which all individuals are treated with respect and dignity. Each individual has the right to work within an environment that promotes equal opportunities and prohibits discriminatory practices. MDR will take every reasonable step to:

- cultivate and sustain a supportive work culture
- prevent workplace discrimination and harassment and promote awareness of rights and responsibilities
- establish a framework for the prevention of workplace discrimination and harassment and effective response to issues of workplace discrimination and harassment
- identify and eliminate workplace discrimination and harassment in a timely manner
- improve and/or restore work environments and work relationships affected by incidents or allegations of discrimination or harassment.

### **II. APPLICATION**

MDR is committed to an inclusive, diverse, equitable and accessible work environment and will not tolerate workplace discrimination or harassment. Every employee has the right to work in an inclusive, respectful workplace free of discrimination and harassment. All employees are responsible for respecting the dignity and rights of co-workers and the public they serve. The prevention of discrimination and harassment is an integral part of all workplace activities, and a shared responsibility requiring cooperation between the employer and employees. All allegations of discrimination and harassment are treated seriously and handled on a confidential basis in accordance with this policy and applicable law with an aim to preserve the dignity, self-respect and rights of all parties.

Responses to discrimination and harassment:

- are provided in a timely manner
- correct identified problems
- restore positive and productive work environments
- prevent future violations of this policy

- hold accountable those who fail to abide by this policy.

Policy enforcement adheres to the principles of procedural fairness and progressive discipline. Disciplinary decisions are consistent, fair and consider mitigating circumstances.

This policy applies to,

- the workplace;
- all those working for MDR, whether part-time, full-time or casual, regardless of their position in the organization including contract staff, temporary workers, paid or unpaid interns, and independent contractors (hereinafter "staff"); and
- all locations where MDR operates.

This policy applies to activities that occur on or off the MDR's premises and during or outside work hours, if the activities are MDR activities. This includes,

- work assignments outside the office;
- office-related internal or external social functions;
- work-related conferences and training;
- work-related travel; and
- telephone calls, faxes or electronic mail.

MDR recognizes that others who have dealings or conduct business with MDR may subject MDR employees to harassment. In these circumstances, MDR will do all in its power to support and assist the person subjected to such harassment. This policy is not intended to constrain social interactions between people at MDR.

### **III. HARASSMENT AND DISCRIMINATION**

#### ***What is discrimination?***

Discrimination is unequal or differential treatment or a denial of equality based on one or more of the enumerated grounds listed below that creates disadvantage, violates the dignity or self esteem of an individual, perpetuates unacceptable stereotypes and/or prejudices or promotes economic and/or social disadvantage.

#### ***What is harassment?***

Harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Prohibited workplace harassment may, but does not have to be, based on one or more of the enumerated grounds.

#### ***Enumerated grounds***

The enumerated grounds are as follows:

- race
- ancestry
- place of origin
- colour
- ethnic origin
- citizenship
- creed
- sex (including pregnancy)
- sexual orientation
- Gender identity
- age (18 years or more)
- record of offences
- marital status
- family status
- disability

The above enumerated grounds are defined in attached Appendix A, Definitions.

### **Harassment and Discrimination**

MDR does not tolerate harassment or discrimination of its employees by others who conduct business with MDR such as clients, customers, vendors, lawyers and paralegals. An employee who believes that he or she has been subjected to such conduct is encouraged to bring the matter to the attention of the HR Representative. MDR will take whatever action is practicable and appropriate in the circumstances.

### ***Reprisal and Bad Faith Complaints***

MDR prohibits reprisal or threats of reprisal against anyone who makes use of this policy or takes part in an investigation under this policy. Retaliation against such a person will be treated in the same manner as harassment or discrimination.

A malicious or bad faith complaint made under this policy amounts to a violation of this policy. It is appropriate to file a complaint, even if the complaint is not successful, if the complaint is made in good faith.

## **IV. ROLES AND RESPONSIBILITIES**

### ***Staff***

All staff must comply with this policy and have a responsibility to ensure that the work environment is free from workplace discrimination and harassment by,

- refraining from any form of workplace discrimination or harassment;
- reporting actions that they genuinely believe violate this policy; and

- co-operating in the investigation and handling of any incident(s) of discrimination or harassment.

The HR Representative, as defined in the company's Personnel policy, is accountable for the implementation and application of this policy, including:

- that all staff receive education on the content and the scope of the policy;
- coordinating the investigation of complaints;
- determining actions to be taken as a result of the findings of an investigation;
- maintaining supporting documentation;
- reviewing the policy as often as necessary, but at least annually; and
- including the policy in a conspicuous place in the workplace.

## **V. REVIEW**

The Policy will be reviewed as often as necessary, but at least annually.

## **VI. AMENDMENTS**

MDR reserves the right to amend this Policy at any time as required.

# **Appendix A - Definitions**

The following definitions are applied for the purposes of this policy.

- Age means an age that is eighteen years or more.
- Creed or religion is a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God or gods, or a single Supreme Being or deity is not required.
- Disability means that the person has or has had, or is believed to have or have had:
  - any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness;
  - a condition of mental impairment or a developmental disability;
  - a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
  - a mental disorder; or
  - an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997.
- Family status means the status of being in a parent and child relationship.
- Marital status means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage.
- Ancestry is a type of identity by which individuals are sorted according to the cultural and/or racial backgrounds of their parents and/or grandparents. Ancestry may refer to cultural, ethnic, national, linguistic, racial, religious and/or place of origin.

- Citizenship refers to an identity based on common allegiance and responsibility to a particular country. Although citizenship is most often associated with a specific country, it can sometimes be associated with a region, province, municipality or locality.
- Colour is a type of identity based on references to skin colour. It may refer to a particular combination of skin hue and depth of colour gradation. Colour identities intersect with race as a basis for identification.
- Ethnic origin is defined by beliefs, values, knowledge, traditions, symbol systems and way of life shared by a group of people. It is reinforced through social interaction, transmitted from generation to generation, and changes over time.
- Place of origin sorts individuals according to the part of the world from which they come.
- Race was defined as a natural or biological division of the human species based on physical distinctions including skin colour and other bodily features. There is no legitimate scientific basis for racial classification. It is now recognized that notions of race are primarily centred on social processes that seek to construct differences among groups with the effect of marginalizing some in society.
- Record of offences means a conviction for an offence in respect of which a pardon has been granted under the Criminal Records Act (Canada) and has not been revoked, or an offence in respect of any provincial enactment.
- Sex The Ontario Human Rights Commission has indicated that it includes pregnancy (including breastfeeding).
- Gender identity refers to characteristics that are linked to an individual's intrinsic sense of self. Gender identity often refers to the intrinsic sense of being male or female and includes transgender, transsexual and intersex individuals.
- Sexual orientation The Ontario Human Rights Commission defines sexual orientation as the choice of sexual partners. It is distinct from gender identify.

## **MDR Workplace Harassment and Discrimination - PROCEDURES**

The following procedures are to be followed when an employee or employees feel that they, or someone else, have been subjected to harassment or discrimination covered by the MDR Workplace Harassment and Discrimination Prevention Policy ("the Policy") policy.

### **I. PROCEDURES FOR FILING A COMPLAINT**

#### ***Confidentiality***

To the extent practicable and appropriate under the circumstances, confidentiality will be maintained throughout the process, including confidentiality of records of

complaints, content of meetings, interviews, results of investigations and other relevant materials.

### ***Initial Action by Complainant***

When an employee (the complainant) feels that he or she, or someone else, has been subjected to harassment or discrimination, he or she is encouraged to take one of the following actions:

- If comfortable and able to do so, bring the matter to the attention of the person responsible for the conduct (the respondent) and ask that the behaviour stop.
- If unable or unwilling to take that action or where it has not been successful, approach:
  - the HR Representative
  - the Board President

The immediate supervisor will immediately notify the HR Representative of the complaint.

When a complaint is made, the HR Representative is required to take immediate action, even without the consent of the complainant.

Proceeding with a complaint under this policy does not preclude staff from pursuing other avenues, such as filing a complaint with the Human Rights Tribunal of Ontario.

It is not necessary, when a complaint is filed under this policy, for a complainant or a respondent to be represented by legal counsel. However, if the employee chooses to be represented by legal counsel, an employee of MDR cannot represent him or her. MDR does not pay for the expense of legal representation for the complainant, respondent or witnesses.

### ***Advice to be given to Complainant***

Where appropriate, the complainant will be informed of:

- the right to lay a formal written complaint under this policy;
- the right to be accompanied by a person of choice, such as a friend, colleague, coworker or peer, at any stage of the process;
- the right to decline to participate in any further action in connection with the complaint at any stage;
- other avenues of recourse available to the complainant such as the right to file a complaint with the Ontario Human Rights Tribunal. Complainants should be informed that the Tribunal might decide not to deal with a complaint when the facts occurred more than one year before the complaint was filed.

The complainant may withdraw at any stage of the process. However, if the HR Representative believes that there has been discrimination or harassment, he or she has a responsibility to remedy the situation and should inform the complainant of that responsibility and of the fact that the issues may be addressed without the consent of the complainant.

### **Outcome of Meeting with Complainant**

A complainant may discuss the issue directly with the person against whom the complaint is made (the "respondent"), with or without the HR Representative, or the HR Representative may offer to meet with the respondent with a view to arriving at a solution to the situation. The HR Representative will keep a written record that the meeting occurred and of the resolution, if any.

Where the complainant and the respondent are satisfied that they have achieved an appropriate resolution, the HR Representative will make a confidential written record of the resolution, to be kept by the HR Representative in a locked filing cabinet.

The HR Representative will follow up to ensure that the resolution is working.

If the complainant and respondent reach a resolution without the assistance of the HR Representative, both parties will inform the HR Representative involved in the matter.

### ***Respondent may Seek Advice***

A respondent may seek the advice of a Directing Mind who will, where appropriate, inform the respondent of,

- the complainant's right to lay a formal written complaint under this policy;
- the right to be accompanied by a person of choice, such as a friend, colleague, coworker or peer, at any stage of the process.

### **Laying of Formal Written Complaint**

A formal written complaint may be filed with the HR Representative at any stage of the process, whether or not the HR Representative is of the opinion that the conduct constitutes harassment or discrimination under this policy.

When a formal complaint has been filed, the HR Representative should:

- provide a copy of the complaint to the complainant and to the respondent;
- provide a copy of the policy to the respondent and advise the respondent that he or she has the right to be accompanied by a person of choice at any stage of the process.
- Advise the respondent of the right to make a formal written response.

The HR Representative may seek a meeting with the respondent to attempt to resolve the issue.

The HR Representative should advise both parties that even if the matter is resolved to the satisfaction of the complainant, the HR Representative may be obliged under the policy to determine if there are reasonable grounds to proceed with a formal investigation. The HR Representative will record any resolution reached between the parties.

## **II RESOLUTION MECHANISMS AVAILABLE**

### ***Direct Management Action***

When direct management action is determined by the HR Representative to be the appropriate resolution mechanism, he or she must take appropriate actions to resolve the complaint within 30 working days of receiving the complaint. Direct management action may include remedial or disciplinary action, issued by the HR Representative and Board President or his/her designate. Respondents must be given the opportunity to respond to allegations before remedial or disciplinary action is taken.

### ***Alternate Dispute Resolution***

When ADR is determined by the HR Representative to be the appropriate resolution mechanism as a result of the preliminary assessment, he or she must seek the agreement of the complainant and the respondent within 30 days of receiving the complaint. ADR must only proceed with the expressed agreement of the complainant, respondent and the HR Representative. When ADR is not effective or appropriate, the HR Representative can initiate an investigation or take direct management action to resolve the complaint.

### ***Investigation***

Full and complete cooperation in the investigation of workplace discrimination or harassment is required when an internal or external investigation is determined by the HR Representative to be the appropriate resolution mechanism.

### ***Internal Investigation***

An internal investigation must be completed within 90 working days of receiving a complaint, unless there are extenuating circumstances. The HR Representative must decide on appropriate remedies, and notify the parties of the outcome of the internal investigation within 15 working days of the completion of the investigation.

### ***Workplace Restoration***

The HR Representative must take appropriate steps to improve and/or restore work environments and work relationships affected by incidents or allegations of discrimination or harassment by employing workplace restoration strategies.

The HR Representative must review workplaces affected by incidents or allegations of discrimination or harassment no later than six months after the conclusion of the complaint resolution process to determine whether additional workplace restoration strategies should be engaged.

### **III. EXTERNAL INVESTIGATION**

The HR Representative will review the complaint and determine if there are reasonable grounds to proceed with an external investigation under the policy.

The investigation process will follow accepted principles of fairness, including,

- impartiality of the process;
- the right of the parties to know the allegation and the defence;
- the right of the parties to offer evidence and witnesses; and
- the right of the parties to rebut relevant evidence.

The investigation will be completed within six months of the appointment of an investigator, unless delays occur in good faith and no substantial prejudice results to any person affected by the delay.

The investigator will provide a written summary of findings, including,

- the allegations of harassment or discrimination;
- the facts;
- the findings.

The summary of findings will be provided to the complainant and to the respondent.

The investigator will file a formal report with the HR Representative, based on his or her summary of findings and on any replies from the complainant and the respondent.

### **IV. ACTION TO BE TAKEN AS A RESULT OF FINDINGS BY INVESTIGATOR**

Based on the findings of the investigation, the HR Representative, with the Board's President or his/her designate, shall make a decision about whether the policy has been violated and what action will be taken as a result of the findings. The complainant and the respondent will be informed of the outcome of the investigation and the decision made by the HR Representative and Board President or designate about whether the policy has been violated and what action will be taken as a result of the findings.

## **V. TYPES OF RESOLUTION**

If it is determined, after any of the resolution mechanisms in this policy, that an employee has violated this policy, appropriate consequences will be determined and, depending on the severity of the violation, can include education, counseling, verbal or written reprimand, suspension without pay or dismissal up to and including dismissal without notice. Specific consequences will depend on the nature and severity of the incident(s).

Where the results of an investigation find that there was a violation of this policy, the record of disciplinary action may be placed in the respondent's employee file. Where the results of an investigation find that a complaint was malicious or retributive, a record of the complaint may be placed in the complainant's file. With those exceptions, no documentation under this policy will be placed in any employee's file. All other documentation under this policy will be kept in a secure and separate place.

## **VI. REPORT TO THE BOARD OF DIRECTORS**

The HR Representative may provide a brief summary of the outcome of an external investigation (which may but is not required to be the executive summary of the report), including the final decision, to the Board, for information purposes, subject to the exception immediately following. If the HR Representative decides that the investigation warrants that an employee be terminated, the full report shall be presented to the Board President, or his/her designate, *in camera*, in order for the Board to consider and provide advice to the HR Representative.

## **VII. COMPLAINT AGAINST THE EXECUTIVE DIRECTOR OR BOARD MEMBER**

Where the complaint involves the conduct of the HR Representative, the complainant shall immediately report the incident to the President or his/her designate of the Board of Directors. In this case, the President of the Board of Directors, or his or her designate, shall assume the responsibilities of the HR Representative under this policy and have carriage of the complaint process. The procedures and timelines set out in this policy will apply.

Where the complaint involves the conduct of an MDR Board member, the complainant shall immediately report the incident to the HR Representative who shall advise the Organizational Development Committee of the Board. The Organizational Development Committee shall assume the responsibilities of the HR Representative under this policy. If the complaint is against a member of the Organizational Development Committee, then he or she shall not participate in discussions relating to the complaint, except as a respondent under this policy.

## **VIII. COSTS**

The Board has no authority to award costs to any party.

## **IX. WORKPLACE MONITORING**

The HR Representative will be responsible for monitoring the situation following harassment or discrimination complaints.

## **X. TEMPORARY ACCOMMODATION DURING INVESTIGATION PROCESS**

The complainant may, at any time after a formal complaint has been filed, make a written request to the HR Representative for temporary accommodation during the investigation process. Every effort will be made to reasonably accommodate the complainant.

## **XI. WITNESS STATEMENTS**

MDR understands that it is difficult to come forward with a complaint of discrimination or harassment and recognizes a complainant's interest in keeping the matter confidential. To protect the interests of the complainant, the respondent, and any others who may report incidents of harassment or discrimination, confidentiality will be maintained throughout the investigation process to the extent practicable and appropriate under the circumstances. In order to ensure confidentiality, the following principles should be respected by all of the parties involved.

### ***Confidentiality of the Complaint***

The complainant and the respondent will not discuss the complaint with other staff during the informal or formal resolution efforts, unless directed to do so as part of a resolution or investigation process.

### ***Confidentiality of Identity of Witness***

Confidentiality of witnesses identified for an investigation will be maintained throughout the process to the extent practicable and appropriate under the circumstances. Witnesses identified for an investigation will be contacted individually and will meet with the investigator alone.

Witnesses should not discuss with other employees the fact that they have been asked to act as a witness in an investigation or the content of their statement.

### ***Identification of Witnesses***

Identified witnesses will be contacted and informed that there is an investigation underway and that they have been identified as a witness. Each witness may be asked to meet with the investigator individually. Each witness will be informed that he or

she must keep confidential their participation, including their role as a witness and the content of their statement, from other employees and their supervisor.

### ***Meeting with an External Investigator***

The investigator and the witness will meet in a neutral area. Usually, the investigator will describe the investigation process and the incident he or she is investigating and question the witness about the incident. The investigator will provide a written copy of the witness's statement to the witness. The witness can verify and modify the written copy to accurately reflect his or her statement.

The witness will be asked to sign the statement, which acknowledges that he or she agrees with its content. As an employee of MDR, the organization asks witnesses to assist in any external investigation by providing a witness statement and by signing that statement indicating its accuracy.

### ***Who has Access to the Statement***

Generally, the only person who has access to the witness statement is the investigator. When the investigator provides his or her final report, he or she does not refer to witnesses by name. The witness statements, signed or unsigned, will be provided, in a sealed envelope, by the investigator to the HR Representative. The statements are to be filed, together with the investigation report, in a sealed envelope. It will be kept in a designated cabinet. The witness statements are not kept in the witness's employee file.

If someone requires access to the witness statements, the HR Representative will access the statements. This is not normal practice and should happen only in rare circumstances.

## **XII. REVIEW**

The Board of Directors will review these Procedures as often as necessary.

## **XIII. AMENDMENTS**

MDR reserves the right to amend these Procedures at any time as required.

## **Appendix A – Frequently Asked Questions**

### ***Q. Is workplace violence covered under the Workplace Harassment and Discrimination Prevention Policy?***

A. Workplace violence is covered under a separate MDR policy that specifically addresses workplace violence. Workplace violence is defined as,

- physical force by a person against a worker, in the 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; or
- a statement or behavior that it 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.

**Q. What type of incidents would be considered workplace harassment?**

A. The following types of behaviour or conduct would be workplace harassment and prohibited:

- harassment on the basis of human characteristics such as physical appearance, socio economic background or occupational group;
- bullying (if the bullying leads to threat of violence or violence, MDR policy that addresses workplace violence may apply);
- the abuse of authority; and
- behaviour that is physically and/or verbally abusive, demeaning or degrading.

**Q. What if harassment is not directed against a specific person, is it still prohibited?**

A. Harassment may be subtle, direct, or indirect. It may be a single event, or a series of events. It is behavior that is known or ought reasonably to be known to be unwelcome. The intention to harass need not be established. By its nature, harassment typically creates a hostile, intimidating, abusive, humiliating, or threatening work environment.

Prohibited harassment includes the creation of a poisoned or hostile work environment that is not directed at a specific person.

**Q. What are examples of harassment or discrimination?**

A.

- unwelcome remarks, jokes, slurs, innuendoes or taunting, that are general in nature or based on a person's gender, race, sexual orientation, disability
- sexually suggestive or obscene comments or gestures or derogatory racial or ethnic slurs
- inappropriate communication via electronic mail or attainment and distribution of improper information from the internet
- displaying of derogatory or offensive pictures or material

- unnecessary physical contact such as touching, brushing against, pinching inappropriate, leering, staring or sexual flirtations
- unwelcome sexual advances (verbal, written or physical)
- a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance
- unwelcome comments or inquiries about a person's sex life
- demands for sexual favour
- refusing to work or interact with an employee because of her or his disability, sexual orientation or racial or ethnic background
- inappropriate comments or gestures about a person's racial or ethnic background, sexual orientation or disability

**Q. What is NOT harassment?**

A. Harassment does NOT include,

- management and supervisory responsibilities, including training, performance management, counselling and disciplinary action;
- social interaction, good natured joking and banter that is mutually acceptable and appropriate