



SEXUAL HARASSMENT POLICY

PABASA is a national voluntary bar association with provincial chapters and Groups established throughout the country. This policy document gives effect to the objects and guiding principles contained in the Constitution and provides mechanisms for the implementation and realisation of the goals of the equality, mutual respect and professionalism of all PABASA members.

REASON FOR AND SCOPE OF THE POLICY

1. PABASA is committed to achieving a harmonious working environment within Groups, in which the human dignity, equality, freedom and individual privacy is respected and is committed to creating and maintaining an environment in which complaints of sexual harassment are taken seriously and grievances are dealt with expeditiously
2. Sexual harassment is a form of unfair discrimination. Sexual harassment has, as its core component, an unequal power relationship which is used to oppress, exclude, intimidate, humiliate, embarrass, coerce and/or exploit another person either overtly or covertly. The unwanted nature of the sexual harassment distinguishes it from behaviour that is welcome, mutual and acceptable. Sexual harassment impairs the dignity of the recipient of such conduct and creates a working environment that is detrimental to the professional development and advancement of the recipient.
3. PABASA recognises that Legal Practice Act, 2017 (LPA) Draft Code of Conduct does not recognise sexual harassment as form of professional misconduct and against which a complaint may be lodged and disciplinary proceeding instituted. PABASA therefore establishes this Policy in terms of which its members choose to adhere to and uphold.

DEFINITIONS

4. The words and phrases below have the following meaning for purposes of interpreting and applying this Policy:



- 4.1. “*Equity Officer*” means a senior member of a Group established under and affiliated with PABASA, appointed by a Group’s governance structure *inter alia* to give effect to and carry out the obligations under this Policy.
- 4.2. “*Group*” means a group of advocates practicing as such from chambers (on a full-time capacity or on the basis of door membership) where the chambers form part of and operate under the auspices of PABASA.
- 4.3. “*national executive committee*” means the members of the PABASA national executive committee as elected at the AGM in accordance with the Constitution.
- 4.4. “*Sexual harassment*” is categorised as any form of conduct as defined clauses 3 and 4 of the Labour Relations Act, 1996 (LRA) Code of Good Practice on Handling Sexual Harassment Cases 1998 and 2005, as amended (the Code).¹ There is no closed list of conduct that may amount to sexual harassment and each situation will be determined in the context of the prevailing circumstances. Previous consensual participation in sexual conduct does not necessarily mean that future conduct is welcome.

CONFIDENTIALITY

5. In all complaints or grievances communicated to the Equity Officer of a Group, the Equity Officer will keep, to the degree practicable, the complaint and the identity of the complainant and the alleged perpetrator confidential from members of the Group during the investigation and any disciplinary procedures that may result.
6. During a disciplinary enquiry only the chairperson(s), complainant, any witnesses, and the alleged perpetrator should be present in the hearing.

¹ The 1998 Code has not been repealed and, as such, both Codes remain in force.



7. In the event a determination of guilt is made following a disciplinary inquiry, the identity of the alleged perpetrator must be communicated to the national executive committee, and may be made public as may be required as a consequence of the sanction imposed.
8. All records of complaints, including notes of meetings, interviews, results of investigations and other relevant material will be kept confidential by a Group, except where disclosure is determined to be required for disciplinary or other remedial processes before the national executive committee or any disciplinary body with jurisdiction under the auspices of the Legal Practice Council (LPC).

VICTIMISATION

9. PABASA is committed to ensuring that no person who brings forward a complaint in good faith under this Policy is subject to any form of reprisal.
10. Any victimisation of a complainant, witness or anyone else involved in the investigation of the complaint will be viewed as professional misconduct reportable to the national executive committee or any disciplinary body with jurisdiction under the auspices of the LPC.
11. The raising of a complaint will not have any adverse consequences for the complainant, particularly in relation to membership of PABASA or decisions on professional development and advancement, housing, or access to services within their Group.

RESOLVING COMPLAINTS OF SEXUAL HARASSMENT

12. On receipt of a complaint, the Equity Officer may adopt one of three procedures to investigate and resolve the complaint:
 - 12.1. informal procedure;
 - 12.2. mediation procedure; and/or
 - 12.3. a disciplinary inquiry.



13. In adopting a procedure, the Equity Officer will consider the wishes of the complainant but the complainant's wishes will not be determinative of the procedure adopted.
14. If necessary, and while observing confidentiality, the Equity Office may discuss the existence of the complaint with the governance structure of the Group prior to determining the appropriate procedure in the circumstances.

THE INFORMAL PROCEDURE

15. The Policy is aimed at respecting the wishes of the complainant and establishes a non-adversarial and inquisitorial approach to a complaint, unless circumstances indicate that this approach will not lead to resolution of the complaint.
16. The complainant or the Equity Officer (if requested to do so by the complainant) may address the problem directly with the person engaging in the alleged unwanted conduct by making it clear (either verbally or in writing) that the behaviour is unwelcome, offensive and unacceptable.
17. If the matter is resolved to the complainant's satisfaction it will be determined as finalised.
18. If the matter remains unresolved, the Equity Officer, taking into account the views of the complainant, will decide whether to proceed with mediation or a disciplinary inquiry.

MEDIATION

19. The Equity Officer may select a mediator within the Group or an independent person, subject to the views of both the complainant and the person against whom the complaint is laid, who will serve as mediator.
20. The purpose of the mediation is to ensure that any offensive behaviour does not recur and that the complainant will not experience reprisals.
21. The role of the mediator is to assist in the informal resolution of the complaint. This may involve:



- 21.1. informing the alleged perpetrator or assisting the complainant to inform the alleged perpetrator that the conduct in question is not welcome, that it offends the complainant, makes him/her feel uncomfortable and that it interferes with his/her work; or
 - 21.2. approaching the alleged perpetrator without revealing the identity of the complainant and explaining to him/her that certain forms of conduct constitutes sexual harassment, are offensive and unwelcome and makes the complainant feel uncomfortable and interferes with his/her work and/or personal life.
22. If the matter is resolved to the complainant's satisfaction it will be determined as finalised.
 23. Should the mediator find that the allegations are shown to be unfounded, the complainant will be requested to withdraw the allegations.
 24. If the matter remains unresolved, the mediator will advise the Equity Officer and both parties in writing of his/her findings and recommendations. The complainant or the alleged perpetrator may then elect to follow the formal procedure set out below.

DISCIPLINARY INQUIRY

25. Should the informal and/or mediation procedures fail to resolve the dispute or the complainant or Equity Officer has elected to follow the disciplinary inquiry; the complainant must lodge a formal complaint in writing to the Group governance structure.
26. A disciplinary inquiry will comprise the following stages:
 - 26.1. investigation stage:
 - 26.2. the hearing; and
 - 26.3. in the case of a finding of guilt, the sanction and remedial action.
27. Each Group will determine, in accordance with its policies and disciplinary procedure, the procedures involved in each of stage of the disciplinary action.



COUNSEL WHO ARE MEMBERS OF OTHER GROUPS

28. If the investigation reveals that counsel who is not a member of the Group or is not a member of PABASA has engaged in conduct prohibited by this Policy and, which has harmed a complainant who is a member, pupil or employee of the Group, the Equity Officer will, if deemed appropriate and subject to the complainant's consent, inform the Group leader who will inform the group leader of the group to which the alleged preparator belongs about the behaviour and request that appropriate action be taken.

ADDITIONAL STEPS

29. Should a complainant be of the opinion that the matter has not been satisfactorily resolved in terms of the Group's internal procedures or this Policy, the complainant may refer the matter to the national executive committee or any disciplinary body with jurisdiction under the auspices of the LPC for further resolution.

30. A complainant's rights to initiate and pursue separate criminal and/or civil proceedings against an alleged perpetrator is not affected by this Policy.

EFFECTIVE DATE

31. This Policy was approved by the national executive committee and is effective September 2019.



EXTRACT: Clause 3 and 4 of the Code of Good Practice on Handling Sexual Harassment Cases, 1998 and 2005

3. Definition of sexual harassment.—

- (1) Sexual harassment is unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.
- (2) Sexual attention becomes sexual harassment if—
 - (a) the behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and/
 - (b) the recipient has made it clear that the behaviour is considered offensive; and/or
 - (c) the perpetrator should have known that the behaviour is regarded as unacceptable

4. Forms of sexual harassment.—

- (1) Sexual harassment may include unwelcome physical, verbal or non-verbal conduct, but is not limited to the following examples:
 - (a) Physical conduct of a sexual nature includes all unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of the opposite sex.
 - (b) Verbal forms of sexual harassment include unwelcome innuendoes suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or to them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling at a person or group of persons.
 - (c) Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects.
 - (d) Quid pro quo harassment occurs where an owner, employer, supervisor, member of management or co-employee undertakes or attempts to influence or influences the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employee or job applicant in exchange for sexual favours.
- (2) Sexual favouritism exists where a person who is in a position of authority rewards only those who respond to his or her sexual advances, while other deserving employees who do not submit to sexual advances are denied promotions, merit rating or salary increases.