

LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK RESPECTFUL WORKPLACE AND HARASSMENT POLICY

1. INTRODUCTION

This policy establishes the written code of practice for harassment in the Legislative Assembly of New Brunswick (Legislative Assembly) in compliance with the *New Brunswick Regulation 91-191 under the Occupational Health and Safety Act, Part XXII.I Violence and Harassment Codes of Practice, Section 374.4(1)*.

The Legislative Assembly is committed to a policy that respects and protects the human rights and dignity of all Members of the Legislative Assembly (Member[s]) and employees of the Legislative Assembly (employee[s]). Every Member and employee has the right to work in an environment that is free from harassment.

All Members and employees share a common responsibility to ensure that all persons in the workplace are treated with respect. A respectful workplace values diversity and inclusion, courteous conduct, equality, positive communication and professional working relationships.

The Legislative Assembly will not condone or tolerate any actions, attitudes or behaviours that constitute harassment. This Policy covers harassment which includes conduct at the Legislative Assembly and outside the Legislative Assembly where employment responsibilities or employment relationships are conducted.

This Policy has been established by the Legislative Administration Committee.

2. CONTEXT

Everyone has a right to be treated with respect and has a responsibility to treat others with respect. It is in the best interests of everyone to foster a workplace that supports respect and dignity and seeks to prevent and address harassment by promoting the awareness of this Policy and the early informal resolution of harassment complaints.

To prevent harassment, all communication and interaction should be professional and respectful. Behaviour considered harmless by one person may be considered offensive by another. Individuals should be aware of how others react to their remarks and behaviour. Body language is important; non-verbal behaviour, such as facial

expressions, posture, tone of voice or silence, may indicate that another person is not comfortable with the behaviour.

3. WORKPLACE

The workplace is any place where the business of the Legislative Assembly is being carried out including, but not limited to:

- all offices, premises and locations that are used by persons identified at Section 4 of this Policy as their workplace;
- all premises where the business of the Legislative Assembly is being conducted; and
- all locations and situations, including on-line communications and email, business travel, conferences, training sessions and work-related social gatherings, where Legislative Assembly related activities are carried out.

4. APPLICATION

This Policy applies to:

- every elected Member;
- every staff person, be they permanent, contract, casual, intern, page or other, whose salary or remuneration is paid from the budget of the Legislative Assembly;
- any contract staff person whose salary is paid from budgets other than the Legislative Assembly budget and who works at the workplace defined above including security and custodial staff; and
- volunteers who work with MLAs.

For greater certainty, this Policy does not apply to debates and proceedings in the Legislative Assembly and does not apply to debates and proceedings before any committee of the Legislative Assembly.

5. PURPOSE

The purpose of this Policy is to:

- encourage open communication to ensure that the workplace is free from harassment and that persons in the workplace are respectful of each other;
- prevent harassment between persons to whom this Policy applies;
- encourage early identification and reporting of harassment complaints;
- promote and encourage both informal and formal reporting of instances of harassment;
- initiate early and informal resolution of harassment situations, whenever possible;
- ensure that any allegation of harassment is taken seriously and provide procedures for prompt and effective resolution of allegations;
- make everyone aware of each person's responsibilities;
- ensure confidentiality throughout the complaint resolution process, unless otherwise provided for in this Policy;
- provide, in situations where harassment is found to have occurred, remedial, corrective or disciplinary measures, up to and including dismissal in the case of employees or volunteers, and in the case of Members, recommendations and a referral by the Legislative Administration Committee to the Legislative Assembly.

This Policy is not intended to limit or constrain the right of the Legislative Assembly to manage its employees. Performance reviews, work evaluations and disciplinary measures taken by the employer for any valid reason do not constitute harassment in the workplace.

6. ASSISTANCE

Persons wishing to obtain further information or guidance with respect to this policy may contact the office of the Director of Finance and Human Resources.

Counselling and other resources are available to help persons with the emotional and psychological effects of harassment. Confidential information and assistance on a wide range of issues, including workplace harassment, is available from Homewood Health Employee and Family Assistant Program (EFAP). Employees wishing to access EFAP can contact Human Resources personnel, visit Homeweb.ca or call 1-800-663-1142.

7. HARASSMENT

For the purposes of this Policy, harassment in the workplace includes personal and sexual harassment, poisoned work environment and abuse of authority and also includes the elements contained in the definition of harassment in the New Brunswick Regulation 91-191: *“Harassment, in a place of employment, means any objectional or offensive behavior that is known or ought reasonably to be known to be unwelcome, including bullying or any other conduct, comment or display made on either a one-time or repeated basis that threatens the well-being, health or safety of an employee, but does not include reasonable conduct of an employer in respect of the management and direction of employees at the place of employment.”*

7.1 Personal Harassment

Personal harassment means any objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome. It includes objectionable conduct, comment, gesture, contact or display made either on a one-time or continuous basis that demeans, belittles, or causes personal humiliation or embarrassment.

Without limiting the above, personal harassment includes harassment within the meaning of the New Brunswick *Human Rights Act*, i.e. harassment on the basis of the following prohibited grounds: race, colour, national origin, ancestry, place or origin, creed or religion, age, physical disability, mental disability, marital status, family status, sex, sexual orientation, gender identity or expression, social condition, political belief or activity or any other grounds covered by the New Brunswick *Human Rights Act*.

7.2 Sexual Harassment

Sexual harassment means any conduct, comment, gesture, contact or display of a sexual nature, whether on a one-time basis or a series of incidents:

- a. that might reasonably be expected to cause offence or humiliation; or
- b. that might reasonably be perceived as placing a condition of a sexual nature on employment, an opportunity for training or promotion, receipt of services or a contract.

Examples of behaviour that can constitute sexual harassment include, but are not limited to:

- conversation, physical touching, or leering that could be construed as a sexual advance;
- conversation about an individual's sexual behaviour including sexualized banter;
- inappropriate or unwelcome focus/comments on a person's physical attributes or appearance;
- comments with sexual overtones;
- inappropriate, lewd or sexually offensive written, graphic, or behavioural displays, including gender-based insults or jokes;
- a reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance; and
- sexual assault.

7.3 Poisoned Work Environment

A poisoned work environment is characterized by an activity or behaviour, not necessarily directed at anyone in particular, that creates a hostile or offensive workplace. A poisoned work environment can be created by a person in a position of authority or amongst employees who may or may not have a reporting relationship with each other. Examples of a poisoned work environment include but are not limited to: bullying, sexual, racial or religious insults, jokes or graffiti, abusive treatment of an employee and the display of pornographic or other offensive material.

7.4 Abuse of Authority

Abuse of authority is where an individual improperly uses the power and authority inherent in a position to endanger a person's job, undermine the performance of that job, threaten the person's economic livelihood, or in any way interfere with or influence a person's career. It is the exercise of authority in a manner which serves no legitimate work purpose and ought reasonably to be known to be inappropriate. Examples of abuse of authority include, and are not limited to: misuse of power, intimidation, threats, blackmail or coercion, inappropriate use of power (with a subordinate) for sexual purposes.

8. PROCEDURE

8.1 Informal Procedure

Complainants and managers may use the informal complaint procedure to attempt to resolve workplace harassment unless it is inappropriate to do so.

- a. The objective of informal resolution is to correct any situation, problem or conflict as soon as possible and in a fair and respectful manner. Every effort should be made to resolve the problem as promptly as possible with open communications and cooperation. Participation in an informal resolution process is voluntary.
- b. If a person believes that they have been harassed and that person chooses to address the matter informally, the following actions should be taken:
 - make it known to the other party as soon as possible that such conduct is offensive in an attempt to resolve the problem before it can escalate; and
 - if the problem is not resolved or if the Complainant does not wish to speak directly with the other person, the Complainant should meet with their immediate supervisor or the Director of Finance and Human Resources.
- c. Every effort to resolve the issue between the parties as promptly as possible is to be made.
- d. Problem resolution mechanisms such as coaching, guided conversations, counselling, facilitation and mediation can in many instances resolve the issue and prevent the situation from escalating to the point where a formal complaint is filed.
- e. Where mediation is an option, the Complainant and the Respondent must both agree on a mutually acceptable mediator before mediation can take place. The mediation process is voluntary and must be kept strictly confidential by all participants. Where a resolution is reached, the Complainant and the Respondent must agree in writing to the resolution and the matter will then be considered concluded.

- f. Nothing in the informal procedure prevents the immediate supervisor of the Complainant or the Director of Finance and Human Resources from recommending to the Clerk that the matter be investigated through the formal procedure or if the informal complaint procedure is not successful from recommending further action.

8.2 Formal Procedure

If informal resolution is not successful, or is not desired or considered appropriate by either party, the Complainant may choose to file a formal complaint.

- a. The Legislative Assembly is committed to reviewing all complaints, however, it is in the Clerk's discretion whether or not to investigate a complaint.
- b. If the complaint is not filed within a year of the alleged circumstance leading to the complaint, it is the Clerk's discretion whether or not to investigate the complaint, unless exceptional circumstances warrant an extension.
- c. A formal complaint must be written and signed. It should give an accurate account of the incident or incidents of harassment including times, places and parties involved, and the names of witnesses, if applicable. The information should be precise and describe any attempts to resolve the situation. When completed, the complaint is submitted to the Clerk. If the Complainant deems it inappropriate to file a complaint with the Clerk, a complaint may be filed with the Director of Finance and Human Resources. Anonymous complaints will not be accepted.
- d. When there is a direct reporting relationship between the Complainant and the Respondent, it may be in the best interest of all parties for them to be physically and hierarchically removed from one another for the period of the investigation. If there is no reporting relationship, the employer shall determine if the parties should be physically removed from one another for the period of the investigation. The Clerk shall consider operational requirements, health and safety of individuals and other employment factors in the decision to reassign or relocate either party.

- e. The Clerk may, upon reviewing the written complaint and interviewing the Complainant, determine whether or not the Complainant has a *prima facie* complaint under this Policy which merits further investigation. The Clerk shall inform the Complainant whether or not the investigation will be pursued and may take action to resolve any workplace issues identified through the complaint.
- f. In the event the Clerk determines that an investigation is appropriate, the Clerk shall investigate or shall appoint an investigator to ensure the complaint is investigated in a confidential and expeditious manner.
- g. The Respondent shall be informed of the complaint, presented with a written statement of allegations and afforded an opportunity to respond.
- h. Unless directed otherwise, the investigator shall gather and analyze the information, summarize the findings and determine whether the complaint is substantiated, in whole or in part, or unsubstantiated. The investigator may also propose corrective action or make recommendations, when specifically requested to do so by the Clerk.
- i. The investigator shall report the findings and recommendations, when applicable, to the Clerk who shall determine the next steps as follows:
 - i. if the Respondent is a Member, and the investigator finds that the complaint, or a portion thereof, is substantiated then the matter is referred to the Legislative Administration Committee for consideration; or
 - ii. otherwise, determine whether the Respondent has committed a violation of this Policy and take or recommend appropriate corrective and disciplinary action up to and including dismissal from employment.
- j. A person who files an unsubstantiated complaint under this Policy that involves a deliberate falsehood or malicious intent or is otherwise made in bad faith, as determined by the investigator, shall be subject to appropriate disciplinary action.

- k. The parties to the complaint must be informed in writing whether the allegations were substantiated or unsubstantiated.

8.3 Formal Procedure - Referral to Legislative Administration Committee

- a. The Legislative Administration Committee (Committee) shall consider any matter that is referred by the Clerk or Director of Finance and Human Resources and shall hold its proceedings *in camera*.
- b. The Committee shall determine whether all or part of the final investigation report or a summary of it:
 - may be utilized by the Committee
 - may be disclosed to the Complainant; or
 - may be disclosed to the Respondent.
- c. The Respondent shall have the opportunity to appear before the Committee prior to a final recommendation being made, with the conditions the Committee deems appropriate under the circumstances.
- d. The Complainant may be provided the opportunity to appear before the Committee prior to a final recommendation being made, with the conditions the Committee deems appropriate under the circumstances.
- e. At the conclusion of the Committee's consideration of the matter, it shall make recommendations to the Respondent and/or the Legislative Assembly with respect to corrective and/or disciplinary action, where appropriate.
- f. If the Respondent does not accept the recommendations, the Respondent may appeal any recommendation decision of the Committee to the Legislative Assembly within ten (10) days following the receipt of the above recommendation. In the event of an appeal, the Committee shall prepare a report from the Committee to the Legislative Assembly that shall contain a summary of the final investigation report and a recommended corrective and/or disciplinary action.

8.4 Other Options

- a. Complaints to the New Brunswick Human Rights Commission:

New Brunswick *Human Rights Act* complaints should normally be filed within one year from the time the harassment occurred. Complaints are investigated by the New Brunswick Human Rights Commission. For more information, call the New Brunswick Human Rights Commission.

b. Complaints under the *Criminal Code*:

Sexual and other forms of assault are covered under the *Criminal Code*. In these instances, the police may lay criminal charges. Sexual and other forms of assault are serious criminal offenses that should be reported to the police.

9. RIGHTS AND RESPONSIBILITIES

While all Members and employees share responsibility for preventing and addressing harassment in the workplace, it is important to recognize that, under law, those in a supervisory capacity carry more responsibility than other employees. Members, managers and supervisors, by virtue of their authority, carry a greater responsibility for creating and maintaining a harassment-free work environment.

9.1 Senior Management and House Leaders

Senior managers and House Leaders are responsible for ensuring that provisions of this policy are implemented in their respective offices, including the Member's constituency offices. This responsibility includes:

- ensuring that all Members, supervisors and employees are informed of the policy and advised of their rights and responsibilities;
- providing leadership in the prevention of harassment by maintaining a high standard of personal conduct and fostering a climate of mutual respect;
- ensuring that prompt and appropriate action is taken when they become aware of instances of harassment;
- ensuring fair and equitable procedures for all parties to a complaint of harassment; and
- providing opportunities for education and training related to workplace harassment.

9.2 All Employees and Members

All employees and Members are responsible for:

- treating all persons in the workplace in a manner that is free of harassment and that respects individual differences;
- maintaining a high standard of personal conduct in their dealings with employees, colleagues and clients;
- changing their own behaviour when given indications that the behaviour is offensive or harassing to others;
- taking action, where possible, should they feel they or another person are being subjected to harassment; and
- cooperating fully with all those responsible for dealing with a complaint of harassment.

9.3 Clerk of the Legislative Assembly

The Clerk of the Legislative Assembly is responsible for the implementation and administration of this Policy.

With respect to a complaint, the Clerk, or their designate, shall:

- review written complaints and interview Complainants to determine whether or not a Complainant has a *prima facie* complaint under this Policy which merits further investigation;
- investigate, or appoint an investigator or investigators, as soon as possible;
- set, or consult with the investigator or investigators to set, a reasonable time frame for the completion of the investigation;
- make, or review, the findings and, if applicable, recommendations;
- if applicable, determine the outcome and the appropriate action to be taken; and
- ensure the parties are informed of the outcome in a timely fashion.

9.4 Complainants

Complainants have the right:

- to make a complaint and have the complaint reviewed;
- to be accompanied by a person of their choice (unrelated to the complaint) during the interview;
- to be informed of the outcome of the investigation; and
- not to be subject to retaliation for having made a complaint under this Policy.

It is the responsibility of Complainants:

- to immediately make known to the individual, if possible, that their behaviour is unwelcome;
- to follow all procedures under this Policy;
- to cooperate with all those responsible for dealing with the investigation of the complaint; and
- to maintain confidentiality.

9.5 Respondents

Respondents have the right:

- to be informed that a complaint has been filed and will be investigated;
- to be presented with a written statement of allegations and to be afforded an opportunity to respond to them; and
- to be accompanied by a person of their choice (unrelated to the complaint) during their interview.

It is the responsibility of Respondents:

- to follow all procedures under the Policy;
- to cooperate with all those responsible for dealing with the investigation of the complaint; and
- to maintain confidentiality.

A Respondent shall not retaliate or threaten retaliation against any Complainant or witness because that individual has been a participant in the process under this Policy. For greater certainty, retaliation includes, but is not limited to, the taking of an adverse measures against an individual.

9.6 Witnesses

Witnesses have the right:

- not to be subject to retaliation for participating as a witness.

It is the responsibility of the witness:

- to meet with the investigator and to cooperate with all those responsible for the investigation of the complaint; and
- to maintain confidentiality.

9.7 Investigator(s)

The investigator shall:

- ensure the Respondent has received a written statement of the allegations;
- ensure all parties involved have been informed of their rights and responsibilities;
- interview the parties and relevant witnesses;
- collect all pertinent evidence;
- where the investigator believes that mediation is appropriate, they shall advise the Clerk;
- prepare a full written report;
- ensure the investigation is completed in a timely manner taking into account particular circumstances - (usually up to 3 months); and
- maintain confidentiality.

10. CONFIDENTIALITY

- a. Any person directly or indirectly involved in a situation governed by this Policy must adhere to the principle of confidentiality. However, the obligation to

maintain confidentiality to which the Policy refers is not absolute: individuals who deal with situations brought to their attention may disclose information if necessary in the context of processing the file.

- b. Information about a complaint, including the identities of the parties and witnesses, must be kept confidential by all parties, including those involved in the complaint process.
- c. Records of a formal complaint and any supporting documentation will be kept in confidential files, which can only be accessed by the Director of Finance and Human Resources or the Clerk, and those that need the file for investigative purposes. Only in the event of discipline will any record of the complaint be kept on the applicable personnel file.

11. TRAINING

- a. All employees must complete Respectful Workplace Training. Respectful Workplace Training will also be provided to Members.
- b. The Clerk shall maintain all employee and Member training records.

EFFECTIVE: MAY 28, 2019, REVISED JULY 24, 2023

APPLIES TO: ALL EMPLOYEES AND MEMBERS OF THE LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK

CONTACT: CLERK OF THE LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK