



## Harassment and Discrimination Free Workplace Program

### Introduction

The Town of Newmarket is committed to maintaining a work environment free of harassment and discrimination in the firm belief that such workplace guarantees the dignity of every employee. This program implements the Harassment & Discrimination Free Workplace Policy HR.13-04.

The Town will investigate and address incidents, complaints or concerns of harassment and discrimination in the workplace.

### Purpose

This set of measures and procedures will outline how an employee can report an incident of workplace harassment, workplace sexual harassment or discrimination and how the Town will address the incident.

The successful resolution of concerns and complaints is often determined by the way in which they are handled. The existence of a process with detailed procedures is critical to ensure that complaints are dealt with in a consistent and fair manner while allowing some flexibility to accommodate different types of circumstances and needs.

This Harassment & Discrimination Free Workplace Program includes:

- Measures and procedures for employees to report incidents, complaints or concerns of workplace harassment, workplace sexual harassment or discrimination.
- Measures and procedures to investigate and address complaints, concerns or incidents of workplace harassment, workplace sexual harassment and discrimination.
- Methods of providing appropriate information and instruction to employees regarding workplace harassment, workplace sexual harassment and discrimination policy and program.

### Definitions

"Workplace Harassment" – The Occupational Health & Safety Act defines workplace harassment as:

“Engaging in a course of vexatious comment or conduct against a worker in a



workplace behaviour that is known or ought reasonably to be known to be unwelcome.”

- This definition of workplace harassment is broad enough to include harassment prohibited under the Ontario Human Rights Code, as well as what is often called “psychological harassment” or “personal harassment.”
- Workplace harassment can involve unwelcome words or actions that are known or should be known to be offensive, embarrassing, humiliating or demeaning to an employee or a group of employees. It may be one serious incident or a series of incidents and may also exist systemically as part of the work environment and can include behaviour that intimidates, isolates or even discriminates against the targeted employee(s).

Examples of workplace harassment includes, but is not limited to:

- making remarks, jokes or innuendos that demean, ridicule, intimidate or offend;
- displaying or circulating offensive pictures or materials in print, electronic or any other form;
- bullying;
- repeated offensive or intimidating phone calls or e-mails; or inappropriate sexual touching, advances, suggestions or requests.

Workplace harassment should not be confused with legitimate, reasonable management actions that are a part of the normal work function and does not include:

- measures to correct performance deficiencies
- imposing discipline for workplace infractions
- requesting medical documents in support of an absence from work.

“Workplace sexual harassment” – The Occupational Health & Safety Act defines workplace sexual harassment as:

(a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or

(b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.



“Discrimination” – Is defined as:

The unequal treatment of a person based on one of the prohibited grounds identified in the Ontario Human Rights Code which include race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, sex, sexual orientation, disability, marital status, family status, or record of offences.

“Workplace” - Is defined as:

The Occupational Health & Safety Act defines a workplace as “any land, premises, location or thing at, upon, in or near which a worker works.”

- It should be noted that workplace harassment and discrimination can occur at off-site business-related functions (conferences, trade shows), at social events related to work, in residents homes or away from work but resulting from work (a threatening telephone call to your home from a client, customer, resident etc.).

For the purpose of this program, the following defines the roles of employees with respect to incidents, complaint or concerns of workplace harassment and discrimination.

Complainant – Refers to an employee that has raised a concern, complaint, or incident of harassment or discrimination in the workplace.

Respondent – Refers to an employee or group of employees who is the alleged harasser. Where the alleged harasser is not an employee, the Workplace Violence and Harassment Coordinator may implement different investigation methods.

Supervisor – Refers to an employee who directly supervises the complainant or respondent.

Workplace Violence & Harassment Coordinator - The Workplace Violence & Harassment Coordinator will undertake or coordinate investigations of workplace harassment incidents; inform department heads of workplace harassment incidents, as appropriate; and may secure external resources as appropriate.

## **Procedures**

### **Addressing an Incident:**

There are three ways that an incident, complaint or concern can be resolved or addressed internally under this program:



The complainant can:

- Option A: Deal directly with the respondent to resolve the issue on their own; or
- Option B: Request informal action and resolution; or
- Option C: File a formal complaint to seek resolution.

If the complainant chooses Option B or C, the incident should be reported immediately (either verbally or in writing) to the Workplace Violence and Harassment Coordinator as well as the employee's immediate (or another) supervisor and/or their Human Resources Business Partner.

Reporting a complaint using any of these options does not preclude an employee from filing a complaint with the Ontario Human Rights Commission or pursuing any other available avenues.

Additional consideration should be given to employees covered by a collective agreement. Unionized employees are advised to consult their collective agreement with respect to union involvement when reporting incidents of workplace harassment, workplace sexual harassment or discrimination.

#### Option A: Dealing Directly With The Respondent

An employee who experiences harassment or discrimination should attempt to make it known to the employee(s) responsible that the behaviour is offensive and unwelcome, and contrary to the Town's policy and request that it stop. The respondent(s) may not realize the behaviour is unwelcome and offensive. In many instances this will stop the offensive behaviour.

The Town recognizes that in some incidents dealing with the respondent may be difficult or inappropriate, or the employee may have told the respondent to stop but the offensive behaviour continues. In this case, the employee is advised to take immediate action as outlined in Option B.

However, when a supervisor becomes aware of a concern, he/she must ensure that the concerns are addressed and resolved in a prompt and confidential manner, as much as possible.

#### Option B: Handling a Concern in an Informal Manner

An employee who experiences harassment or discrimination and has unsuccessfully tried to deal directly with the respondent or who feels that a direct approach is inappropriate may choose to have the matter dealt with on an informal basis with the assistance of management or Human Resources prior to proceeding with a formal complaint.



The incident should be reported immediately (either verbally or in writing) to the employee's:

- immediate or another supervisor;
- Workplace Violence and Harassment Coordinator; and/or
- Human Resources Business Partner.

Once a supervisor has been informed of a concern about an incident of workplace harassment or discrimination and the employee wishes to handle the concern informally, the supervisor is obligated to treat the conversation or written complaint as serious and attempt to resolve the matter in a confidential manner. It is important to clarify the concern that is being raised and take notes to record the particular information pertinent to the concern.

The employee will be asked what remedies might address the incident and satisfy the potential complaint. Proceeding informally may produce a quick and simple solution without having to engage in a full investigation. Once the supervisor has all the relevant information the supervisor can attempt a mutually agreeable resolution.

The supervisor will document the situation and ensure that the Department Head and the Workplace Violence and Harassment Coordinator are notified. All documentation will go into a separate file with the Workplace Violence and Harassment Coordinator.

Where attempts to achieve a resolution at this stage are unsuccessful or unsuitable, a formal written complaint may be filed as outlined in Option C.

#### Option C: Initiating a Formal Complaint

Formal complaints must be filed with the Workplace Violence & Harassment Coordinator and the formal complaint must be in writing and include a description of the incident, witnesses, and steps, if any, already taken to date.

Formal complaints will be investigated by the Workplace Violence & Harassment Coordinator, designate or a third party depending on the circumstances. Where an employee is unable, or under the circumstances it is unreasonable to request a written complaint, assistance will be made available to ensure that the complaint is documented on their behalf. The complaint may be documented by the Workplace Violence & Harassment Coordinator and verified in writing, by the complainant.

The respondent will be notified of the complaint where it is determined reasonable cause exists.



The Workplace Violence & Harassment Coordinator will schedule a confidential meeting with the employee to discuss and clarify the incident and identify steps taken to date. The employee may request the support of another employee.

The Workplace Violence & Harassment Coordinator or designate will conduct an investigation as outlined in the next section.

### **Investigation of an Incident, Complaint or Concern**

File Opening:

Where a formal complaint is received a file will be opened by the Workplace Violence & Harassment Coordinator.

Where it is determined that reasonable cause exists, the Workplace Violence & Harassment Coordinator or designate will investigate complaints or will arrange to have the investigation carried out by a neutral third party. The Workplace Violence & Harassment Coordinator may request additional resources to assist with an investigation.

The investigative process involves three primary steps; fact finding, preliminary findings and further investigations as outlined below.

Step 1 - Fact Finding:

The Workplace Violence & Harassment Coordinator or designate will conduct confidential interviews with relevant parties to obtain information and clarify the details of the reported incident. The complainant and the respondent will have an opportunity to identify witnesses or others to be interviewed. All interviews will be conducted confidentially and in a manner that respects the nature of the work environment.

Step 2 - Preliminary Findings:

Where the information revealed early in the investigation suggests a reasonable possibility of resolution, the Workplace Violence & Harassment Coordinator may make resolution recommendations prior to conducting the entire investigation. In these instances, the Workplace Violence & Harassment Coordinator will meet with the complainant and the respondent involved discussing preliminary findings of the investigation and informing participants of the possibility and nature of an early resolution.

Where mutual agreement is reached to the satisfaction of all parties, the Workplace Violence & Harassment Coordinator will prepare a summary report for the appropriate Department Head and CAO.



### Step 3 - Further Investigations:

Where, as a result of preliminary findings and a more intensive review is warranted, a resolution cannot be reasonably proposed or achieved, or where the Workplace Violence & Harassment Coordinator determines that file closure at this point would not be appropriate, further investigation will be conducted.

Upon completion of further investigation and mutual agreement for resolution of the incident is reached to the satisfaction of all parties, the Workplace Violence & Harassment Coordinator will prepare a summary of the complaint and results of the investigation and provide a copy to the Commissioner or Department Head, the parties affected by the outcome, and the CAO.

## **Results of Investigations and Mediation**

### Complaint Supported

Where the results of the investigation support a specific complaint of harassment or discrimination, or where the results suggest the existence of systemic problem(s) in the work environment which caused or contributed to the incident, the following, without limitation, may be recommended forms of remedial action:

- Education and training;
- Review and modification of policies, procedures, programs and practices;
- Disciplinary action up to and including dismissal;
- Documentation on employee's personnel file, as appropriate; and/or
- Continuous monitoring.

Where deemed reasonable and appropriate, the Workplace Violence & Harassment Coordinator in consultation with the parties involved in the complaint, may propose and develop a more comprehensive strategy for the elimination and/or prevention of workplace harassment and discrimination to improve the culture of the overall workplace.

In an effort to ensure that the incident has been addressed, the investigation file will remain open for a reasonable period of time to allow for the monitoring of actions to be taken and subsequent updates, as appropriate, to be placed on the file.

### Complaint Unsupported

Where the results of the investigation do not support the allegations of harassment or discrimination made by the complainant, the complaint shall not





proceed and there will be no documentation placed in the employee's file.

Where the results of the investigation do not support the specific complaint, but where the investigation suggests the existence of systemic problems in the work environment which may cause, contribute to, or encourage harassment, the Workplace Violence & Harassment Coordinator may further investigate and make recommendations for change.

### Malicious Complaints

Where it is determined that the complaint was made maliciously or in bad faith with reasonable knowledge of and intent to harm, disciplinary action may be taken against the complainant. Documentation regarding this disciplinary action will be placed in the employee's personnel file.

The complainant (now respondent to allegation of malicious complaint) will be notified in writing of this decision including the reasons.

### File Retention and Disposal

Upon determination and notification of a complaint supported or non-supported decision, the file will be closed and retained in Human Resources for a period not less than five years from the date of closing unless subsequent issues arise.

### Reopening of Files

Reopening of a closed file may occur in the following circumstances:

- New and relevant information regarding a closed case has been brought forward to the Workplace Violence & Harassment Coordinator;
- A new incident of harassment has taken place post-closure by the same respondent; or
- A reprisal from a closed case is alleged to have occurred.

### Monitoring

Where complaints have been supported, follow-up is a critical component of effective complaint resolution. The Workplace Violence & Harassment Coordinator in conjunction with the relevant supervisor will ensure that an effective monitoring plan is developed, as appropriate.

### Implementation of Resolutions

Where, as a result of the monitoring process, or through other means, it is determined that there are difficulties in implementing or executing the solutions





recommended from the investigation, or where actions have been taken but are deemed ineffective, inappropriate or untimely; the Workplace Violence & Harassment Coordinator or designate, in consultation with the Department Head, shall determine what further actions and/or support can be provided to ensure that the terms of resolution can be met more effectively and efficiently.

### Anonymous Complaints

Complaints that have been made anonymously do not carry an immediate right of investigation. An anonymous complaint is difficult if not impossible for the Town to adequately investigate and take appropriate action. The Workplace Violence & Harassment Coordinator has the discretion whether to act based on the information provided and extent to which a respondent would have an opportunity to reasonably respond to the allegation.

Any complaint made by an employee must be signed off. If an employee has specific concerns about filing a complaint he/she is strongly encouraged to contact the Workplace Violence & Harassment Coordinator.

### **Information and Instruction**

Information and instruction on the Harassment and Discrimination Free Workplace Policy and Program regarding workplace harassment and discrimination will be communicated to all employees.

Management will receive training in the following:

- Intent and content of the Harassment & Discrimination Free Workplace Policy and Program.
- Obligations of supervisors under the Harassment & Discrimination Free Workplace Policy and Program and relevant legislation.
- Investigation procedures related to harassment and discrimination incidents and/or complaints.

Employees will receive training in the following:

- Intent and content of the Violence Free Workplace and Harassment Free Workplace Policy and Program.
- How to report an incident of workplace harassment, workplace sexual harassment and discrimination.
- How the employer will investigate and deal with incidents, complaints or concerns.



## **Confidentiality of Complaints and Investigations**

The Corporation recognizes the sensitive nature of harassment and discrimination complaints and will keep all complaints confidential, to the extent that it can do so. The Corporation will only release as much information as is necessary to investigate and respond to the complaint or incident or if required to do so by law.

Out of respect for the employees involved in a complaint, it is essential that the complainant, respondent, witnesses and anyone else involved in the investigation of a complaint maintain confidentiality throughout the investigation and afterwards.

It must also be recognized that information collected and retained is subject to release under the Municipal Freedom of Information and Protection of Employee Privacy Act, the Ontario Human Rights Code or the rules governing court proceedings.

Refer to the attached diagram for an overview of the process.

## **Legislative and Cross References**

Provincial and federal legislation such as the Ontario Occupational Health & Safety Act, Canada Criminal Code, Ontario Human Rights Code, Municipal Freedom of Information and Protection of Privacy Act, as amended from time to time.

Employee Code of Conduct CAO.3-01

Progressive Discipline HR.4-01

Employee Complaint HR.4-02

Resignation/Termination of Employment HR.4-03

Alcohol and Drug Policy HR.5-02

Violence Free Workplace HR.13-03

Harassment & Discrimination Free Workplace HR.13-04

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