# Sussex POLICY

| Subject | Number |
|---|---|
| WORKPLACE HARASSMENT & VIOLENCE | C-20 |
| **Date** OCTOBER 23, 2023 | **Approved by** COUNCIL [X] OTHER(S) [ ] **Date** NOVEMBER 25, 1996 |
| **Signature** | **Date of Revision** OCTOBER 17, 2019 |
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## 1. APPLICATION

This policy applies to all personnel of Sussex including customers, clients, contractors, supervisors, co-workers, elected officials and members of the public.

## 2. AUTHORITY

This policy has been implemented by authority of the Municipality of Sussex.

## 3. POLICY STATEMENT

Sussex is committed to providing a work environment where all workers are treated with respect and dignity. Workplace harassment and violence will not be tolerated from any person in the workplace including customers, clients, contractors, supervisors, co-workers and members of the public.

## 4. PURPOSE

**4.1.** The purpose of this Workplace Harassment Policy is:

4.1.1. to maintain a working environment that is free from all types of harassment and violence;

4.1.2. to alert all employees and management to the fact that workplace harassment and violence is against the law;

4.1.3. to establish a process for receiving complaints of harassment and violence and to provide a mechanism to deal with those complaints effectively; and

4.1.4. to provide an example of the steps that can be taken towards maintaining a working environment in which all employees treat each other with mutual respect.

## 5. DEFINITIONS

**5.1. Advisor:** Advisor means a JHSC member who has been selected and trained to act as advisors to employees on issues related to workplace harassment and violence

**5.2. Complainant:** The complainant is the individual against whom the alleged harassment and/or violence has taken place and/or is the individual who has lodged a complaint relating to the situation.

**5.3. Investigator(s):** Investigators are qualified individuals who are selected and trained to conduct investigations. Depending on the nature of the complaint these may include:

- Members of the Joint Health & Safety Committee
- WorkSafe NB
- Other outside organizations designated by the Municipality to conduct investigations under this policy

**5.4. Respondent:** Respondent means any employee against whom a complaint has been lodged.

**5.5. Witness(es):** A witness is a person who sees an event take place, or has knowledge of (an event or incident) from personal observation or experience.

**5.6. Workplace Harassment:** Workplace Harassment in a place of employment, means any objectionable 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 health or safety of an employee, and includes sexual harassment, but does not include reasonable conduct of an employer in respect of the management and direction of employees at the place of employment.

Examples include, but are not limited to:

- Offensive or intimidating comments or jokes
- Bullying or aggressive behaviour
- Displaying or circulating offensive pictures or materials
- Inappropriate staring
- Workplace sexual harassment*
- Isolating or making fun of a worker because of gender identity or other personal characteristics

**Workplace sexual harassment includes unwelcome solicitation or advances*

**5.7. Violence:** "Violence", in a place of employment, means the attempted or actual use of physical force against an employee, or any threatening statement or behaviour that gives an employee reasonable cause to believe that physical force will be used against the employee, and includes sexual violence, intimate partner violence and domestic violence.

## 6. RIGHTS AND RESPONSIBILITIES

### 6.1 Shared Responsibility

It is recognized that the Municipality has the primary responsibility and the accountability to achieve a harassment-free and violence-free workplace.

The Joint Health and Safety Committee is responsible for implementing this policy and will investigate and deal with all complaints or incidents of workplace harassment and violence fairly, respectfully and timely. The investigator will ensure investigations are kept confidential, unless necessary to conduct the investigation or as required by law. The investigator will remind the worker who reported the incident, the respondent(s) and any witness(es) of confidentiality requirements under this policy.

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Managers and Supervisors have a responsibility to discourage harassment and violence and may be held accountable for failing to do so. Failure to act may be interpreted as condoning misconduct and a contravention of this policy. The accountability extends to anyone in management or supervisory positions.

### 6.2 Complainant:

An employee has the right to file a complaint and to obtain a review of that complaint without fear of retaliation, through the procedures established according to this policy.

An employee may be accompanied by a person of the employee's choice (unrelated to the complaint), at no expense to the Municipality, during any interviews and investigative proceedings.

Employees are encouraged to take action should they feel they are being subjected to any type of harassment or violence by:

a) Advising the respondent that the behavior is not welcome, is offensive and must cease immediately.

b) Where the complainant does not wish to bring the matter to the attention of the respondent, or where such an approach has been attempted and did not produce a satisfactory result, the complainant may approach a JHSC representative to seek advice on other options.

Employees should

a) maintain a record of times, dates, witnesses, nature of the behavior, and retain for future reference.

b) Cooperate fully with all stages of the investigation process.

6.2.1 It is the right of the complainant, if so desired, to drop the allegations, made in good faith, without resolution, as long as the decision was made without coercion.

6.2.2 The complainant understands that:

- where reasonable suspicion or definite evidence of harassment or violence exists, the Investigator will be required to complete the investigation. In this situation intervention on the part of the Municipality will occur if the situation is serious in nature.

- If the complainant wishes to drop a complaint but the respondent insists an investigation proceed for the purpose of establishing that no harassment or violence occurred, an investigation should proceed.

6.2.3 Before making a decision on how to proceed, the complainant may seek advice and assistance from any or all of:

- Any other person the complainant chooses
- A member of the JHSC
- The appropriate collective bargaining unit
- The New Brunswick Human Rights Commission

## 6.3 Respondents

Respondents are entitled to and shall:

- Be informed as soon as practical that a complaint has been filed;
- Be presented with a statement of allegations and be afforded an opportunity to respond to them;
- Have the right to speak to an impartial advisor, to review options;

- Be accompanied by a person of the respondent's choice, at no expense to the Municipality, during any interviews and investigative proceedings;
- Cooperate fully with all stages of the investigation process.
- If the complainant wishes to drop a complaint the respondent may request that an investigation proceed for the purpose of establishing that no harassment or violence occurred.

### 6.4 Witnesses:

a) Employees are obligated to meet with the Investigators and to cooperate with all those responsible for the investigation of the complaint.

b) No employee shall be subjected to retaliation because that employee has participated as a witness.

### 6.5 Advisors

The rights and responsibilities of the Workplace Harassment Advisors include:

- Provide information confidentially to affected employees on the application and scope of this policy, upon request;
- Explain informal and formal options available to employees seeking to address instances of harassment and violence in the workplace;
- Assist the complainant in drafting a written complaint to be signed by the complainant, if necessary;
- Utilize the Harassment & Violence Complaint Form (Appendix A) for documenting information on the reported situation. This form can then be used, once signed, as a part of the Formal Complaint Resolution should that stage be required;

- Provide information to both the complainant and the respondent about related support services that are available;
- The Advisors are not responsible for conducting investigations or for mediating issues between complainants and respondents.
- Assist Complainant with informal resolution measures (inform respondent of issues)

### 6.6 Investigators:

The rights and responsibilities of the Workplace Harassment Investigators include:

- Acceptance and review of all complaints filed as a result of workplace harassment and violence;
- Informing the complainant and the respondent as soon as possible that the complaint is being investigated;
- Informing Supervisory Staff that an investigation is active, and that various staff may be required to participate in the investigation.
- Recommend short-term operational changes to Supervisory Staff that may be necessary while the investigation in ongoing.
- Investigating complaints including interviewing all witnesses as well as the complainant(s) and the respondent(s)
- On the conclusion of an investigation to present a report to the Chief Administrative Officer. Where the Chief Administrative Officer is the subject of the investigation, the report will be filed with the Council of the Municipality.

- Complete the final report and recommendations within 90 days of the formal complaint being filed. An extension will only be considered under exceptional circumstances.

## 7. Complaint Resolution

**INTERNAL**

### 7.1. Informal Resolution Stage (Harassment Only):

Informal resolution of complaints is encouraged. Any employee who feels that he/she has experienced harassment is encouraged to communicate his or her concerns directly to the respondent by telling the person that the behavior is **unwelcome** and **must stop**, preferably in the presence of a witness.

7.1.1. An employee may request the assistance of his or her supervisor, a JHSC advisor, or another employee in the informal resolution of a Workplace Harassment complaint. This approach may include a mediation process to assist the parties in voluntarily reaching an acceptable solution.

7.1.2. Where the complainant does not wish to personally bring the matter to the attention of the respondent, or where such an approach has been attempted and did not produce a satisfactory result, the complainant may approach the Advisor to seek advice on other options.

7.1.3. At any point in the Informal Resolution Stage the complainant may seek advice from any of the sources listed in Section 6.2.3

7.1.4. If the Informal Resolution Stage is not successful or if the situation warrants omission of this stage, the Advisor will provide information on the Formal Resolution Process.

7.1.5. At the informal resolution stage it is not necessary that the complainant present his or her concerns or allegations in written form in order for them to be acted upon. It is sufficient to invoke the procedures outlined in this policy that the complainant present such concerns or allegations verbally.

### 7.2. Formal Resolution Stage (Harassment and Violence):

7.2.1. Any employee may choose the formal resolution process:

1) as a first step; or

2) if the informal resolution process was not successful.

Although the employer is committed to responding to all complaints, it is recognized that the complaints not filed within a reasonable time may be difficult to investigate or substantiate.

7.2.2. To proceed to the Formal Resolution Stage, the complaint must be submitted in writing on the approved Harassment and Violence Complaint Form, refer to Appendix "A" and signed by the complainant. It should give an accurate account of the incident(s) of harassment and/or violence including times, places and parties involved. When completed, the complaint is submitted to a member of the JHSC for investigation.

7.2.3. If the complainant deems it appropriate, a complaint may also be filed using one or more of the "External Options" listed in Section 8.

7.2.4. On receipt of a complaint, the JHSC shall choose one of the following options to investigate the complaint.

a. Appoint a team from within the JHSC, or
b. Request an investigator from another Municipality, or
c. Request that the Municipality obtain an investigation from the Private Sector.

7.2.5. The respondent shall be given a copy of the complaint and afforded an opportunity to respond.

7.2.6. When there is a direct reporting/working 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.

7.2.7. The investigator shall report the findings of whether an employee has committed an act or acts constituting harassment, in writing, to the Chief Administrative Officer. Where the Chief Administrative Officer is the respondent, the report will be filed with the Council of the Municipality.

7.2.8. If the complaint is not founded but through the course of the investigation certain workplace problems are identified, the Investigators may recommend appropriate action to the Department Head.

## 8. EXTERNAL REPORTING OPTIONS

### 8.1. Complaints to the New Brunswick Human Rights Commission

**At any point** in the complaint procedures, the complainant has the right to file a complaint with the New Brunswick Human Rights Commission.

*New Brunswick Human Rights Act* complaints should normally be filed within one year from the time the incident occurred. This does not, however, preclude the filing of the complaint at any time. Complaints are investigated by the New Brunswick Human Rights Commission. For more information, the complainant may call the New Brunswick Human Rights Commission at (506)453-2301.

### 8.2. Complaints under the Criminal Code:

Sexual and other forms of assault are covered under the Criminal Code. In these instances, the police can be asked to investigate. Sexual and other forms of assault are serious criminal offenses that should be reported to the police, either directly or through any of the options listed in Section 6.2.3.

### 8.3. Grievance Procedures

**At any time** throughout the complaint procedure, the complainant has the right to file a grievance with the appropriate bargaining unit.

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## 9. CONFIDENTIALITY

All information regarding complaints shall remain confidential, at all levels. This confidentiality clause includes, but is not limited to, all files, notes, memos, correspondence, and the identities of the complainant and respondent. Information will not be disclosed except as required by law.

## 10. NO RETALIATION

Retaliation in any form against any party involved in an investigation is **strictly prohibited**. For the purposes of this policy, retaliation against employee:

1. For having invoked the policy (whether on behalf of him or herself, or another individual), or;
2. for having been identified as the respondent, or;
3. For having participated or cooperated in any investigation under this policy, or;
4. For having been associated with a person who has invoked this policy or participated in these proceedings;

will be considered as workplace harassment and subject to investigation, and where warranted, disciplinary action.

## 11. DISCIPLINARY ACTION

**11.1.** As workplace harassment and violence are serious matters, appropriate disciplinary action will be imposed where the complaint is substantiated. Each case will be assessed on its own merits and sanctions may range from written warnings to dismissal per Policy P7 – Employee Discipline, and the current Collective Bargaining Agreement.

## 12. REDRESS

**12.1.** When the decision regarding a workplace investigation is rendered, the complainant(s) and respondents(s) will be informed of both the decision and their right to appeal the results of the investigation.

12.2. Respondents who have been disciplined have the right to lodge a grievance under the appropriate collective agreement.

## 13. ADMINISTRATIVE PROCEDURES

Due to the seriousness of allegations of harassment and violence, it is vitally important that strict procedures are followed to protect confidentiality and keep accurate records for tracking incidents and their frequency.

### 13.1. Filing of Written Information and Resolutions:

13.1.1. All files of the complaint process must be kept in a **separate, locked** and secure storage area.

13.1.2. Access to file information is to be restricted to those individuals directly involved with the investigation process.

13.1.3. In the case of founded allegations, the complaint and the disciplinary actions imposed will be included in the respondent's personnel file.

13.1.4. In the case of unfounded allegations, no record will be included in the respondent's personnel files unless requested by the respondent. .

13.1.5. Regardless of whether the allegation is founded or unfounded, no information regarding the complaint will appear in the complainant's file as long as the complaint was made in good faith.

13.1.6. Any discipline imposed as a result of an employee lodging a complaint maliciously or in bad faith shall be documented on that employee's personnel file and shall be retained thereon for two (2) years.

### 13.2. Length of Time Information Remains in Personnel Files:

Complaints and disciplinary actions against the respondent, the complainant for bad faith allegations, or, the supervisors for condoning harassment will remain on personnel files for two (2) years.

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### 13.3. Length of Time Other Information is Kept on File:

All other files and information that have been collected as a result of a complaint being lodged, whether held by the Advisors or the Investigators, shall be retained in accordance with the *Municipal Records Authority* regulations in effect at the conclusion of the event(s).

All such files are to be classified **Confidential.**

WORKSAFE TRAVAIL SÉCURITAIRE NB

# Appendix A - Harassment/ Violence Complaint Form

**Name and contact information of worker who is reporting workplace harassment/ violence (your name and information):**

**Your name** _____

**Your contact information:**

**Work** _____

**Residence** _____

**Cell** _____

**Address** _____

_____

**Name of respondent(s)*** _____

**Contact information of respondent(s):**

**Work** _____

**Residence** _____

**Cell** _____

**Address** _____

_____

*Respondent is the person against whom the complaint is directed.

**Details of the complaint:**
Please describe in as much detail as possible the incident, names of parties involved, names of witnesses, date(s), time(s) and location(s) of the incident(s) and any other details. Attach additional pages if needed).

**Documents/Evidence**
Include any supporting documents (emails, notes, photographs, physical evidence, etc). If you are unable to attach documents and they are relevant please list them below.

**Employee Signature** _____

**Date of Report** _____