



1.0 RESPECTFUL WORKPLACE POLICY AND HARASSMENT PREVENTION PLAN

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The Town of Torbay is committed to providing a work environment in which all individuals are treated with respect and dignity, free of harassment and violence. This philosophy supports our values, promotes equal opportunities, and ensures that Town of Torbay employees and council members are free from harassment and violence.

PURPOSE

The Town of Torbay has adopted a policy to make clear that harassment, which includes violence in the workplace, will not be tolerated. Individuals, regardless of seniority or position within the Town, found to have engaged in conduct constituting harassment will be subject to discipline. More specifically, this Policy is intended to:

- Maintain a working environment that is secure and free from harassment.
- Identify types of behaviors that constitute harassment.
- Establish and set out the mechanisms to deal with both informal and formal complaints of harassment.

APPLICATION

This Policy applies to all Town of Torbay employees and council members including, without limitation, full-time, part-time, contract, hourly or permanent staff, and to all business-related interactions between employees and third parties who deal with the organization (consultants, contractors, service-providers, volunteers and members).

The process covers all forms of harassment prohibited by the *NL Human Rights Act* including harassment based upon race, colour, nationality, ethnic origin, social origin, religious creed, religion, age, disability (including perceived disability), disfigurement, sex (including pregnancy), sexual orientation, gender identity, gender expression, marital status, family status, source of income, political opinion, criminal conviction (unrelated to employment). This Policy also covers harassment in the form of psychological or personal harassment and violence.

Anyone who works at the Town of Torbay or who is on the Town council and believes that he or she has been harassed in the Town of Torbay workplace, or has experienced, or is at risk of workplace violence may use the procedures set out in the Harassment Prevention Plan.

For the purpose of this Policy, the Town of Torbay's workplace includes any place where the business of the Town is being conducted or where social or other functions of the Town occur, including on-line communications and email.

MUNICIPAL CONDUCT ACT

Section 6 of the *Municipal Conduct Regulations* states that bullying provisions referenced in the *Municipal Conduct Act* must be consistent with section 24.1 of the *Occupational Health and Safety Regulations, 2012*. The *Municipal Conduct Act* mandates all municipalities to establish a Code of Conduct for councillors and a Code of Conduct for municipal officials.

Each of these Codes of Conduct contains provisions which address harassment and bullying within the municipal workplace. However, the obligations in these provisions are not intended to fulfill the requirement of a municipality as an employer to implement and maintain a Harassment Prevention Plan, under Section 24.1 of the *Occupational Health and Safety Regulations*. As such, if a complaint relates to harassment and bullying, the Chief Administrative Officer (CAO) shall refer to this adopted Respectful Workplace Policy and Harassment Prevention Plan and, if necessary, contact the Occupational Health and Safety Division for guidance. Depending on the outcome of the process, penalties may be applied pursuant to the *Municipal Conduct Act and Regulations*.

HARASSMENT PREVENTION PLAN

RIGHTS AND RESPONSIBILITIES

The Town of Torbay is committed to eliminating, where possible, or otherwise minimizing the hazard of workplace harassment and violence.

Every employee and council member is entitled to employment free from workplace harassment and violence. Every employee and council member has a responsibility to play a part in promoting a safe and positive workplace and ensuring that the work environment is free from harassment of any type.

Employees and council members are obligated to take reasonable care to:

- Not engage in bullying or workplace harassment.
- Report observations or experiences of bullying and workplace harassment.
- Comply with the Harassment Prevention Plan.

Every employee and council member is responsible for his or her own behavior. However, those in leadership roles have an additional obligation to ensure the health and safety of other employees and council members, including the obligation to comply with the Harassment Prevention Plan, oversee and correct the behaviour of other employees or council members, by leading by example and by taking action whenever they become aware of any potential breach of this Policy.

The CAO, in consultation with the Mayor, is responsible for:

- Discouraging and preventing harassment; this is a continuing responsibility whether or not formal

written complaints of harassment have been brought to the attention of the management of the Town of Torbay.

- Overseeing informal and/or formal resolution options as appropriate.
- Providing guidance and support to persons who are subjected to harassment.
- Where harassment is found to have taken place, formally acknowledging such harassment to the person harassed.
- Imposing appropriate disciplinary and/or rehabilitative measures, when a complaint of harassment is found to have been substantiated, regardless of the seniority or position at the Town of Torbay or the offender.
- Regularly reviewing the procedures of this Policy to ensure that they adequately meet the Policy objectives.
- Maintaining records as required by this Policy.
- Making all employees and council members of the Town of Torbay aware of the issues and the existence of the procedures available under this Policy.

DEFINITIONS

“Complainant” means any person making a complaint under the Town of Torbay Respectful Workplace Policy and Harassment Prevention Plan.

“Respondent” is the person to whom the complaint was made against.

Types of harassment include discriminatory, sexual, or personal.

Discriminatory Harassment includes being subjected to comment or physical conduct related to one or more of the prohibited grounds of discrimination, which is intimidating, offensive, embarrassing or humiliating, interferes with work performance or job security, or creates an intimidating, hostile or offensive working environment, by someone who knows, or ought reasonably to know, that the comment or conduct is unwelcome.

By way of example, Discriminatory Harassment can include:

- Comments or conduct which disparages or ridicules a person’s race, ethnicity, colour, language, religion.
- Stereotyping.
- Racial, ethnic or religious jokes, slurs, nicknames, or mimicry (oral, written or graphic).
- Persisting with comments or jokes after becoming aware that the behavior is unwelcome.
- Refusing to work with people because of a prohibited ground of discrimination.

Sexual Harassment is a specific form of discriminatory harassment related to the prohibited grounds of sex, sexual orientation, gender identity or gender expression. Sexual harassment includes any unwelcome sexual advances, requests for sexual favors when such conduct might reasonably be expected to cause insecurity, discomfort or humiliation to another person; when submission to such conduct is made either explicitly or implicitly a condition of employment; when submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, matters of promotion, compensation, job security or benefits affecting the employee); when such conduct has the purpose or effect of interfering with an employee’s work performance or creating an intimidating, hostile or offensive work environment, or when such conduct is demeaning to a person.

By way of example, Sexual Harassment can include:

- Unwelcome flirtations, advances, propositions, requests for sexual favors, lewd or suggestive comments or other vocal activity such as catcalls, whistles and kissing sounds.
- Vulgar or sexual jokes (oral, written or graphic).
- Continuing to express sexual interest after becoming aware that the interest is unwelcome.
- Physical touching, blocking or impeding movements.
- Indecent exposure or sexual assault.

Personal Harassment means being subjected to objectionable conduct or comment, which serves no legitimate work purpose, and creates an intimidating, humiliating, hostile or offensive work environment. Personal harassment includes workplace harassment, and is defined as engaging in a course of vexatious comment or conduct against an employee in a workplace that is known or ought reasonably to be known to be unwelcome.

By way of example, Personal Harassment can include:

- Spreading malicious rumors, gossip, or innuendos that are not true.
- Intimidating a person, verbal abuse, threats, belittling or humiliating a person.
- Deliberately not speaking to someone thereby ostracizing him/her.
- Yelling or using profanity.
- Refusing to work with a person.
- Giving unwarranted (or undeserved) punishment.
- Tampering with a person's personal belongings or work equipment.
- Making jokes that are obviously offensive (written or oral).
- Undermining or deliberately impeding a person's work.
- Other objectionable behaviour designed to torment, pester or abuse someone.

It is sometimes hard to know if Personal Harassment is happening in the workplace. It is important to remember, normally, when a person with the proper authority gives appropriate/objective guidance, feedback or instruction in the workplace, or takes appropriate disciplinary action or performance management, it will not be considered Personal Harassment, but rather this is intended to assist employees with their work.

Harassment typically involves a course of conduct or a pattern of behaviour, including more than one incident. However, one single incident, if sufficiently serious, can constitute harassment.

Workplace Violence is the attempted or actual use of physical force against an individual, or any threatening statement or behavior that gives the individual reasonable cause to believe that physical force will be used. Violence also includes "family" violence that gives rise to the threat of violence in the workplace, including threatening calls, emails or unwelcomed visits at the workplace.

WHAT TO DO ABOUT HARASSMENT AND WORKPLACE VIOLENCE

This Policy outlines both informal and formal options available to any employee or council member who believes that he or she has been harassed by any other employee or council member. Workplace violence will always be formally investigated.

The Town of Torbay encourages reporting of all allegations of harassment, regardless of who the offender may be. While the Town is committed to resolving harassment concerns internally, the Harassment

Prevention Plan is not intended to discourage an employee or council member from exercising his or her rights under the *NL Human Rights Act, 2010*, the *Criminal Code (Canada)* or any other law of the province or of Canada.

INFORMAL RESOLUTION OPTIONS

In many situations, simply informing the person that his/her comment or conduct is unwelcome will resolve the issue. A person who considers that she/he has been subjected to harassment is encouraged to bring the matter to the attention of the person responsible for the conduct. The employee or council member should keep notes for themselves of the discussion including dates, times, location and names of any witnesses.

If the individual finds it too difficult to speak to the person directly, or if the individual has spoken to the person but the unwelcome comment or conduct persists, or if the individual feels that as a result he or she has been subjected to retaliatory behavior, the individual is encouraged to make a written record of the date, time, details of the conduct, and witnesses (if any) and discuss his or her concerns with the CAO. Council members are encouraged to speak to the Mayor.

The employee or council member may wish to withdraw from any further action in connection with the complaint. However, in particularly serious circumstances, for example, where there are previous complaints or incidents involving the person complained of or in cases involving allegations of inappropriate physical contact, the CAO or Mayor may still initiate a formal investigation of the matter despite the fact that the person has withdrawn from any further action, if it is believed that continued investigation is appropriate in the interest of ensuring that the Town of Torbay is free from harassment. In every case where the matter is addressed informally, the employee or council member will be kept apprised of how the matter is being addressed and of any proposed resolution initiatives.

This informal procedure will be completed as soon as possible, normally within 14 days of the complaint being made, unless a longer period is appropriate in the circumstances. In this case, the CAO or Mayor will notify the employee or council member of the proposed time frame.

FORMAL COMPLAINT OPTION

An employee or third party may make a formal written complaint to the CAO. In the case of council members, the written complaint would go to the Mayor. In the event a council member wishes to file a complaint against the Mayor, they may file their complaint with the Deputy Mayor, and the Deputy Mayor will act as the CAO for the purposes of this Policy. Where the complaint is against the CAO, the written complaint would go to the Mayor, and the Mayor will act as the CAO for the purposes of this Policy.

The complaint should include the following information:

- The name and contact information of the person filing the complaint (complainant),
- The name and contact information of the person(s) alleged to have acted contrary to this Policy (respondent),
- The name and contact information of any witnesses to the alleged actions,
- The date and time of the incident or incidents,
- A detailed description of the actions that led to the complaint,
- A statement indicating whether you wish to proceed by way of informal or formal process, and
- Any other information deemed to be relevant to the complaint.

A formal written complaint may be made, whether or not the individual has already spoken to the CAO or Mayor, in an attempt to deal with the matter by way of the informal process. The complainant may also make a formal written complaint in the event the informal process does not resolve the matter to the person's satisfaction.

Upon receipt of a formal written complaint, the CAO or Mayor, as appropriate, shall determine whether the conduct falls within the scope of this Policy. In the event it does not, the CAO or Mayor, as appropriate, would advise the complainant accordingly and take no further steps under this Policy.

EXTERNAL THIRD PARTY

Where the respondent is a council member, the Mayor or the CAO, the complainant may report the harassment to an external third party designated by the Town of Torbay.

For the purposes of this Policy, the Town of Torbay has designated Ruth Trask and Stephen Penney with the law firm of Stewart McKelvey as the external third parties. Their contact information is as follows:

Ruth Trask
(709) 570-8893
rtrask@stewartmckelvey.com

Stephen Penney
(709) 570-8881
spenney@stewartmckelvey.com

INVESTIGATION OF FORMAL COMPLAINT

The CAO or Mayor, as appropriate, will initiate an investigation whenever he or she receives a formal written complaint which falls within the scope of this Policy.

The CAO or Mayor, as appropriate, may also initiate an investigation in other circumstances where an investigation would be appropriate in the interest of ensuring that the Town of Torbay is free from harassment, should he/she be made aware of an incident by a person who does not wish to make a complaint, but who describes a serious allegation.

In the case of a Town of Torbay employee, the investigation will ordinarily be conducted by the CAO, and any other person(s) that may be designated by the CAO to assist in the investigation. If the CAO chooses to designate another person(s) to assist in the investigation, these individuals will be external to the Town of Torbay, with due regard being given to the nature of and parties to the complaint.

In certain circumstances, the CAO may designate someone external to the Town to conduct the entire investigation. In all circumstances with complaints against council members, formal investigations will be done by an external investigator.

If the complaint is against the CAO by an employee, it must be made in writing to the Mayor. The Mayor will designate someone external to the Town of Torbay to investigate the matter in accordance with the formal procedure. In this instance, the Mayor will receive the investigative findings and follow through with the process.

If the complaint is made by a council member, it will be made in writing to the Mayor. If the complaint

is against the Mayor, it will be made in writing to the Deputy Mayor. The Deputy Mayor will designate someone external to the Town of Torbay to investigate the matter in accordance with the formal procedure.

The investigation will normally be completed, and the appropriate resolution decided upon within 30 days of the CAO or Mayor, as appropriate, receiving a formal written complaint, or upon either electing to, or being directed to, initiate a complaint, unless a longer period is appropriate in the circumstances. In this case, the CAO or Mayor, as appropriate, will notify the complainant and the respondent of the proposed time frame.

At any stage during the process, the complainant has the right to withdraw from any further action in connection with the complaint. The CAO or Mayor, as appropriate, however, remains obligated to pursue the matter if he or she believes that continued investigation is appropriate in the interest of ensuring that the Town of Torbay is free from harassment or violence.

All procedural and administrative matters arising during the course of the investigation will be facilitated by the CAO, unless the complaint is made against the CAO, in which case such matters will be facilitated by the Mayor.

In the course of the investigation, the investigative team will:

- Investigate the complaint by interviewing the complainant, respondent and other individuals where appropriate.
- Share the content of the written complaint to the respondent or advise the respondent in writing of the allegations.
- Provide the respondent with an opportunity to respond to the complaint and share the content of the response with the complainant.
- Provide a report of the investigative findings to the CAO (or Mayor where the complaint is against the CAO and Deputy Mayor where the complaint is against the Mayor).

Upon receipt of the report, where the complaint is substantiated, the CAO or Mayor, as appropriate, will:

- Advise the complainant and respondent of the outcome of the investigation, as per the following procedure:
 - Provide a written summary of the conclusions and the findings of the report to the complainant and the respondent, by way of email, at the same time and no later than 48 hours after receipt of the report.
 - Provide an opportunity for the complainant and the respondent to meet with the CAO or Mayor, as appropriate, to discuss the conclusions and findings and any appropriate disciplinary or rehabilitative actions that may be considered. These meetings should be held separately, but no later than 48 hours after the email referenced above. This time frame may be extended by mutual agreement of the parties. In the event the complainant and/or the respondent chooses not to meet with the CAO/Mayor, the CAO/Mayor shall proceed as below.
- Initiate appropriate disciplinary or rehabilitative action within 48 hours of meeting with the respondent. Immediately advise the complainant, by way of email, that appropriate disciplinary or rehabilitative actions have been initiated.
- Create a confidential record of the investigative proceedings.

Where a complaint is not substantiated, no further action will be taken. The complainant and respondent will be informed of the outcome of the investigation, by way of email, no later than 48 hours after receipt of

the report. The complainant and respondent shall be provided with an opportunity to meet with the CAO or Mayor, as appropriate, to discuss the conclusions and findings.

DISCIPLINARY AND REHABILITATIVE ACTION

Disciplinary and rehabilitative action may include one or more of the following:

For employees, normally determined by the CAO:

- A formal apology.
- Counseling and/or attendance at educational seminars on harassment.
- A verbal warning to the person who was deemed to have engaged in the harassment, and documentation of the conversation kept in Human Resources.
- A written warning to the person who was deemed to have engaged in harassment, and placed in that person's personnel file.
- Suspension with or without pay.
- Termination.

For council members, as determined by the Mayor:

- A formal apology.
- Counseling and/or attendance at educational seminars on harassment.
- A verbal warning to the person who was deemed to have engaged in the harassment.
- A written warning to the person who was deemed to have engaged in harassment, and a copy of the documentation kept in the Human Resources Division.
- A request by the Mayor to resign from the Town Council, with formal notification to the Department of Municipal and Provincial Affairs.

Disciplinary actions may not follow the order listed above, as it will depend upon the severity of the issue and/or if the behaviour is repeated. In all cases where disciplinary or rehabilitative action is warranted, the CAO or Mayor, as appropriate, is responsible for taking all reasonable measures to ensure that there is no retaliatory behaviour.

CONFIDENTIALITY

The Town of Torbay understands that it is difficult to come forward with a complaint of harassment and recognizes a complainant's interest in keeping the matter confidential.

To protect the interests of the complainant, the person complained against and any others who may report incidents of harassment, confidentiality will be maintained throughout the process to the extent practicable and appropriate under the circumstances. Any information obtained relating to workplace harassment, including personal information, will not be disclosed unless it is necessary for the purpose of an investigation, corrective action relating to the complaint, or where required by law.

Where a complaint has been made, the complainant, the respondent and all those involved in the process have an obligation to maintain the confidentiality of the matter and not disclose any details pertaining to the complaint and the fact of the complaint except to the CAO or Mayor and any other persons investigating the complaint on behalf of the Town of Torbay.

All records of complaints, including the content of meetings, interviews, results of investigations and other relevant material will be kept confidential by the Town of Torbay, except where disclosure is required by a disciplinary or other remedial process.

NO RETALIATION

All employees and council members have a right to make a complaint or enforce their rights under this Policy without retaliation or threat of retaliation. The Town shall protect employees and council members from retaliation and provide support to them when workplace harassment occurs.

Retaliation against a person who makes a complaint or who enforces any right under this Policy or who takes part in an investigation under this Policy will be treated in the same manner as harassment and be subject to the same disciplinary actions if the allegations of retaliation are confirmed.

PROCEDURE WHERE AN EMPLOYEE OR COUNCIL MEMBER BELIEVES THAT A COLLEAGUE HAS BEEN HARASSED

Any employee or council member who believes that a colleague has experienced or is experiencing harassment, or retaliation for having brought forward a complaint of harassment, is encouraged to notify the CAO or Mayor, as appropriate.

Where a person believes that an employees or council member has experienced or is experiencing harassment or retaliation for having brought forward a complaint, and reports this to the CAO or Mayor, they shall meet with the person who is said to have been subjected to harassment and shall then proceed in accordance with the established procedures above.

If the Town of Torbay becomes aware of domestic violence that would likely expose an employee or council member to physical injury in the workplace, the Town of Torbay will take every precaution reasonable in the circumstances for the protection of the employee or council member.

HARASSMENT BY PERSONS OUTSIDE OF THE TOWN OF TORBAY

The Town of Torbay recognizes its responsibility to support and assist any employee or council member who believes that he or she has been harassed by a person outside the Town of Torbay during the course of their business-related interaction with the Town. This includes volunteers, consultants, contractors, and service providers.

If an employee or council member believes that he or she has been harassed by a person outside the Town of Torbay in the course of his/her business-related interaction with that person, he/she may bring the concerns to the attention of the CAO or the Mayor, who will investigate the matter.

PROVISION OF INFORMATION TO AN EMPLOYEE OR COUNCIL MEMBER AT RISK

Employees and council members will be provided with information, including personal information, if there is risk of workplace violence from a person with a history of violent behavior, if the employee or council member can be expected to encounter that person in the course of his or her work and the risk of workplace violence is likely to expose the employee or council member to injury. In these circumstances, the disclosure of personal information will be limited to what is reasonably necessary to protect the employee or council member from physical injury.

COMPLAINTS MADE IN BAD FAITH

In the event that a complaint was made in bad faith – in other words, the person making it had absolutely no basis for the complaint and deliberately and maliciously filed the complaint – that person

will be disciplined, and a record of the incident will be put in her or his file.

Disciplinary actions for someone who complains in bad faith will be the same as for a case for harassment or violence and will depend on the seriousness of the situation.

Compensation for the person falsely accused may include steps to restore any lost reputation, and any of the remedies that would be available in a case of harassment or violence.

A person who submits a complaint in good faith, even where the complaint cannot be proven, is not in violation.

REVIEW

This plan shall be reviewed annually or sooner by the CAO as may be necessary.

Signature of Mayor:



Signature of CAO:

