

HUMAN RESOURCES POLICY #9

Date Adopted June 13, 1994
Date Amended; March 11, 2002

SUBJECT: HARASSMENT AND DISCRIMINATION IN THE WORKPLACE

POLICY STATEMENT

The Corporation of the City of Brantford is committed to fostering an environment that is free from any of the forms of discrimination and harassment which are prohibited under the Ontario Human Rights Code.

Discrimination and harassment are unacceptable within the City administration in any form and at any level.

Discrimination and harassment will not be tolerated and is subject to appropriate action. What is appropriate will depend on the circumstances of the particular case. Where the offender is an employee of the City, the appropriate action may mean disciplinary proceedings up to and including termination. Where the offender is a volunteer or an appointee on a City committee, other appropriate action may be taken.

TO WHOM DOES THIS POLICY APPLY?

1. Persons governed by this Policy

This Policy governs all employees of the City of Brantford (including volunteers, part-time employees, casual employees, and full-time employees) in their work relations:

- (a) Between one another;
- (b) With members of Council and members of local Boards and Committees;
- (c) With Volunteers; and
- (d) With Citizens of the City and members of the public at large.

For purposes of the foregoing, volunteers will include persons who volunteer to serve on City Committees, either on an ad hoc basis or as formal appointees.

2. Persons who may take advantage of this Policy

Anyone who alleges that they have suffered discrimination or harassment by a person governed by this policy may make a complaint in accordance with this policy.

DEFINING HARASSMENT

Harassment takes on many forms but can be generally defined as behavior such as conduct or comments which are unwelcome and inappropriate or otherwise offensive to an individual or group of individuals thus creating an uncomfortable work environment and both males and females can be victims of it. The Ontario Human Rights Code defines harassment as:

“...engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.” (Section 10).

Under the Code, every employee has a right to be free from harassment in the workplace on the following grounds:

- | | | |
|-----------------------------|---------------|--------------------|
| Race | Ancestry | Place of Origin |
| Colour | Ethnic Origin | Citizenship |
| Creed | Age | Disability |
| Marital Status | Family Status | Record of Offences |
| Same-sex partnership status | | |

All employees also have a right to be free from harassment on the basis of sex and to be free from sexual solicitation and reprisals for refusing or rejecting sexual advances.

Harassment may be one incident or a series of incidents and may also exist systemically as part of the work environment.

For purposes of this policy, harassment will be interpreted in a manner consistent with the Human Rights Code, which does contain some exceptions and interpretive provisions.

TYPES AND EXAMPLES OF HARASSMENT

Behaviours which fall within the above definition range in terms of the type or grounds (e.g., racial, sexual, personal), whether it is directed at an individual or non-directed, or whether it is intentional or unintentional.

Examples of Directed and Intentional Harassment

Offensive behaviours, gestures, comments or conduct which are directed specifically at an individual are often quite obvious and consequently, readily detectable. Examples of this type of harassment may include:

- racial or ethnic slurs including racially derogatory nicknames;
- unwelcome remarks, jokes, innuendoes or taunting about a person's body, age, marital status, gender, ethnic/racial origin, religion, accent, or disabilities;
- practical jokes which cause awkwardness or embarrassment, endanger an employee's safety or negatively affect work performance;
- persistent leering (suggestive staring) or other obscene/offensive gestures;
- unwanted and inappropriate physical contact such as touching, kissing, patting, pinching, brushing up against a person;
- unwelcome sexually oriented remarks, invitations, requests, jokes or requests whether indirect or explicit;
- unwelcome inquiries or comments about a person's sex life, sexual preferences;
- physical assault (including sexual assault);

Examples of Undirected and Unintentional Harassment

Harassment may also include behaviours, conduct, comments or activities which are not directed specifically at an individual but which nonetheless create a degrading or offensive “poisoned” work environment. Examples of this type of harassment are much more subtle and may include:

- displaying of materials which are sexually explicit or degrading, racist, ethnic or religious in a degrading or derogatory manner;
- displaying of graffiti which is sexually explicit or degrading, racist, ethnic or religious in a degrading or derogatory manner;
- Patronizing behavior, language or terminology which reinforces stereotypes and undermines self-respect or adversely affects work performance or working conditions.

DISCRIMINATION

Discrimination is not defined by the Ontario Human Rights Code, however Section 5(1) of the Act reads as follows:

“Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, or disability .”

For purposes of this policy, discrimination will be interpreted in a manner consistent with the Human Rights Code, which does contain some exceptions and interpretive provisions.

Decisions under the Code have recognized that discrimination may be direct or “constructive”. Direct discrimination is easily recognized but constructive discrimination is more subtle, and includes situations where occupational requirements effectively exclude individuals by race, ancestry, place of origin, etc.

DEFINING THE WORKPLACE

The workplace is not confined to the offices and buildings of the Corporation. “Workplace” has been interpreted broadly by the Ontario Human Rights Commission and by recent case law and as applied to the City would include:

- any location where the business of the Corporation is being carried out (e.g. Civic Center, Works Yards, Cafeteria, meeting rooms), and;
- other locations and situations in the course of employment, such as during business travel, work-related functions or other locations where the prohibited behaviour may have a subsequent impact on the work relationship, environment or performance.

Conduct, comments or behaviours which constitute harassment and occur in locations covered by this definition are subject to investigation under this policy.

CONFIDENTIALITY

The Corporation, through its management staff and the Human Resources Department, must ensure that complaints are investigated and handled in a manner so that the identities of the persons involved are kept confidential.

It must be recognized that, to the extent that the complainant chooses to initiate proceedings or make comments outside the Corporation’s internal harassment complaint procedures, confidentiality cannot be guaranteed. It must also be recognized that information collected and retained is subject to release under the **Municipal Freedom of Information and Protection of Individual Privacy Act, 1989**, the **Ontario Human Rights Code** or the rules governing court proceedings.

The investigation process will involve the direct and indirect collection of personal information in relation to the complainant and the person against whom any complaint is advanced. Persons investigating discrimination or harassment on behalf of the Corporation are expressly authorized to collect any such personal information as may be required to properly conduct the investigation.

COMPLAINT HANDLING PROCESS

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 and guidelines is critical to ensure that all complaints are dealt with in a consistent and fair manner which allows flexibility to accommodate different situations, circumstances and needs.

PROCEDURE FOR DEALING WITH HARASSMENT AND DISCRIMINATION

The Corporation has established a procedure to permit complaints of discrimination and harassment to be dealt with internally. All complaints so advanced will be taken seriously, and will be acted upon quickly and in a confidential manner.

Remedies may also be available under the Ontario Human Rights Code, through normal grievance procedures under any applicable collective agreement, or under the dispute resolution mechanisms of any other applicable employment agreement. Everyone is encouraged to fully examine the various options which are available. The pursuit of a complaint under the internal complaint mechanism does not preclude an employee from filing a complaint with the Ontario Human Rights Commission or pursuing any other available forms of relief. It should be noted that time limits apply to complaints which are taken to the Ontario Human Rights Commission, and persons contemplating making such complaints are urged to contact the Commission immediately so that these time limits are not missed.

In all cases, it is important that complaints should be advanced as soon as possible. Complainants are advised to make and retain for future use written notes of the events upon which the complaint is based. Such notes should include times, dates, locations, and names of any witnesses. Any relevant documents should be collected and retained.

There are two ways an employee may choose to deal internally with a complaint under this policy:

1. Self-Help:

A harasser or a person practicing discrimination may not realize that his or her behaviour is unwelcome and offensive. In many instances, simply explaining the problem and asking the offender to stop will resolve matters satisfactorily.

The Corporation recognizes that in some situations it may be difficult or inappropriate to deal directly with the offender, or the individual may have told the offender to stop but the offensive behaviour continues. In such cases, the employee should take immediately action as outlined below.

2. Making a Complaint:

Employees of the Corporation who experience discrimination or harassment and have chosen not to deal directly with the offender, either because such attempts were unsuccessful in the past or because they feel that the direct approach is inappropriate for them, may choose to have the matter dealt with on a formal or informal basis with the assistance of others.

The Director of Human Resources will designate a contact person within the Department of Human Resources to whom responsibility will be delegated for the receipt of such complaints. Persons who wish to make a formal or informal complaint should do so through the designated contact person within the Human Resources Department. Such complaints may be registered either personally, through a union or association representative, or through a solicitor or agent.

Such contact will have three possible outcomes:

- (a) The complainant may decide, after discussing the matter with the contact person, that no discrimination or harassment occurred. If this happens, no further action will be taken and no record will be made in any file;
- (b) The complainant may have evidence of harassment or discrimination, but may not wish to lay a formal complaint. If this happens:

- (i) If the complainant agrees, the contact person may choose to take no further action with respect to the allegations where this would be appropriate in the circumstances;
- (ii) The contact person and the complainant may agree on an informal means of resolving the issue which may include informal meetings or other communications with the person against whom the allegations are made;

or,

- (iii) The contact person may recommend to the Director of Human Resources and the applicable department head that an investigation should nevertheless occur as though a formal complaint was in fact laid, even where that recommendation is contrary to the wishes of the complainant. The Director of Human Resources and the applicable Commissioner shall jointly consider this recommendation in consultation with the Legal Department.

- (c) The complainant may decide to lay a formal complaint. A formal complaint must be in writing and may be in the format set forth in Schedule “A” to this policy. The complaint must contain a concise statement of the material facts on which the claim of harassment is based, the identity of the person or persons against whom the allegations are made, the identity of any witnesses, copies of any relevant documents, and a description of the steps (if any) which the complainant may already have taken to attempt to resolve the matter.

All formal complaints shall be investigated and, where appropriate, disciplinary action will be taken.

Copies of all formal complaints will be given without delay to the person against whom the complaint is laid and the complainant (and to their respective agents or solicitors), the Director of Human Resources, the applicable Commissioner, the City Solicitor, and to the CAO/Commissioner through the Commissioner of Corporate Services.

The investigation will be conducted by a member of the Human Resources Department designated by the Director of Human Resources, an optional further person designated by the applicable Commissioner, and a solicitor from the Corporation's legal department. Pursuant to the stated guidelines of the Ontario Human Rights Commission for internal dispute resolution mechanisms, the investigation shall not be conducted by the Director of the Human Resources Department or by any person who exercises supervisory responsibilities over the complainant or the person against whom allegations have been made.

The findings of the investigation shall be compiled in the form of a written report to the Director of Human Resources, who shall receive the report and recommend the appropriate disciplinary action (if such action is warranted by the results of the report) to the applicable Commissioner. The complainant shall be advised of the outcome of the investigation and any disciplinary action taken. In the event that the complainant is not satisfied with the disciplinary action taken by the Corporation, the complainant shall be reminded that, subject to the possible expiration of time limits, there is a continuing right to file a complaint with the Ontario Human Rights Commission.

The findings of the investigation may also include other relevant recommendations of the investigators in relation to the matter in question. For instance, the investigators may recommend certain administrative changes to correct deficiencies which were noted during the investigation. In addition, the investigators may recommend in an appropriate case that either the Complainant or the person under investigation be recompensed for their out of pocket expenses in connection with the matter. Any such compensation would be considered as a discretionary matter on a case by case basis and it is not the purpose of this policy to create any legal entitlement to such compensation, or to create any legal obligation to make any such payment.

Any persons being interviewed during the course of an investigation shall be entitled to have legal counsel or a representative of his or her union or association present at their expense during any questioning. The person against whom allegations have been made shall be specifically warned prior to any questioning in the formal investigation that serious allegations have been brought, that his or her answers will be recorded and may be used against him or her, and that he or she is entitled to have a solicitor or union

or association representative present at his or her expense during any questioning.

All employees of the City and Members of Council shall cooperate with any investigations commenced under this policy, and shall provide full and frank disclosure of what they know to any staff performing an investigation under this policy.

CONFLICTS OF INTEREST

The Corporation recognizes that it is possible for allegations to be advanced against the very persons required or permitted to investigate or deal with complaints under this policy. In such cases, a person who wishes to make a formal or informal complaint may contact any member of the Corporation's management with whom the complainant is comfortable. The manager so contacted shall bring the conflict of interest to the attention of senior management who shall ensure that the complaint is investigated by persons who come as close as possible to meeting the requirements of this policy but who have no conflict of interest, and in such circumstances this policy shall permit all necessary substitutions.

NO REPRISAL

Everyone who submits a complaint has a right to be free from reprisals or threats of reprisals as a result of filing a complaint or being a party to a complaint. Anyone who provides evidence in the course of the investigation of a complaint, or who actually performs the investigation of a complaint has a right to be free from reprisals or threats or reprisals as a result of their involvement in the investigation process.

Acts of reprisal will be viewed as extremely serious breaches of the requirements of this policy.

The Corporation recognizes that an investigation may properly result in a determination that no discrimination or harassment occurred, and that such a determination is not in itself evidence of any impropriety in the making of the complaint. It is possible, however, that in certain rare cases an allegation of harassment or discrimination may be advanced which not only lacks any foundation, but which also was put forward with full knowledge that there

was no foundation to the complaint and with a malicious intent to harm the reputation of the persons against whom the complaint was laid. In such cases, the person aggrieved shall be entitled to advance a complaint under this policy, and the investigation of this complaint and any disciplinary action which may result therefrom is not regarded by the Corporation as any form of reprisal.

WHAT TO DO IF YOU ARE ACCUSED OF HARASSMENT OR DISCRIMINATION

If you are asked by a co-worker to stop offensive behaviour, assess your behaviour seriously. Understand that even if you did not mean to offend, your behaviour has been perceived as offensive. If at all possible, cease the behaviour that the person finds offensive and apologize. Failure to cease in this behaviour will leave you more vulnerable to a formal complaint which could lead to disciplinary action if the complaint is substantiated.

If a formal complaint is laid and you believe the complaint is unfounded and/or made in bad faith, you will be given every opportunity to express your point of view in the investigation process. You should obtain advice as soon as possible from your union or association representative, or from your solicitor, and you will be entitled to continuing assistance from them during the course of the investigation.

In any event, document your version of the alleged incident, including times, places, what happened and any witnesses.

OBLIGATIONS AND RESPONSIBILITIES

HARASSMENT-FREE WORKPLACE POLICY

Everyone governed by this policy is responsible for ensuring that all City operations are free from discrimination and harassment.

COMMISSIONERS

The Commissioners are specifically responsible for ensuring that the policy is accessible and supported. They are responsible for ensuring that their Directors, Managers and Supervisors are given the appropriate support, encouragement, opportunity and resources to fulfil their respective roles.

DIRECTORS, MANAGERS, AND SUPERVISORS

Directors, Managers and supervisors have specific responsibilities to create and maintain a workplace which is free from discrimination and harassment. They are critical to the success of the policy. They are specifically responsible for ensuring that the policy is communicated and understood by all staff and that it is supported and encouraged and are also responsible for preventing the development, escalation or recurrence of discrimination/harassment.

HUMAN RESOURCES STAFF

Human Resources staff are responsible for ensuring that the policy, once implemented, is supported and developed.

Human Resources staff are also responsible for conducting investigations of all formal harassment and discrimination complaints and making recommendations. As well, they are responsible for ensuring that the environment is free from systemic problems which create or support harassment.

Human Resources staff will act as a neutral source of information and advice for all employees and advise and assist management throughout the process.

Finally, Human Resources staff are responsible for training and education programs which further the understanding of the policy and issues of harassment and general human rights.

UNIONS AND ASSOCIATIONS

The policy anticipates an active and supportive role of the various unions and associations which represent the employees. All union/association employees are encouraged to seek the assistance and advice of their union/association representatives prior to engaging in, or at any time throughout, the complaint process.

I request that a formal investigation in respect of the foregoing complaint be undertaken pursuant to Human Resources Policy __9____. I understand and acknowledge that this investigation will involve the collection of personal information about me, and I consent to the collection of this information.

SIGNATURE

DATE

NOTE: Personal information on this form is collected pursuant to the Municipal Act and Bylaw 93 of the Corporation of the City of Brantford. Questions about the collection of this information should be directed to the Director of Human Resources.