

City of Melfort Policy Manual

<i>POLICY TITLE:</i> Harassment in the Workplace Policy	<i>POLICY NUMBER:</i> 1.5.10	<i>EFFECTIVE DATE:</i> December 6, 1993
<i>ORIGIN:</i> Administration	<i>ADOPTED BY COUNCIL ON:</i> December 6, 1993	<i>DATE AMENDED:</i> May 13, 2013

1. PURPOSE

The City of Melfort is committed to having a harassment-free workplace for its employees. *The Occupational Health and Safety Act, 1993*, provides that every worker is entitled to employment free of harassment. It requires that all employers commit to making every reasonable practicable effort to ensure that no worker is subjected to harassment, requires all workers to refrain from causing or participating in the harassment of another worker, and requires all employers to develop an anti-harassment policy.

2. DEFINITIONS

2.1 “**Harassment**” is defined in *The Occupational Health and Safety Act, 1993*, as follows:

Part I

~~2~~(1)(l) **harassment** means any inappropriate conduct, comment, display, action or gesture by a person:

(i) that either:

- (a) is based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age nationality, ancestry or place of origin; or
- (b) subject to subsection (3) and (4), adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated; and

(ii) that constitutes a threat to the health or safety of the worker;

(3) To constitute harassment for the purposes of paragraph (i)(b)

(a) repeated conduct, comments, displays, action or gestures must be established; or

(b) a single, serious occurrence of conduct, or a single, serious comment, display, actions or gesture, that has a lasting, harmful effect on the worker must be established.

(4) For the purpose of paragraph (i)(b), harassment does not include any reasonable action that is taken by an employer, or a manager or supervisor employed or engaged by an employer, relating to the

management and direction of the employer's workers or the place of employment.+

Harassment may take a number of forms. Some common examples are:

- verbal abuse; slurs, gestures or name-calling;
- unwelcome banter, teasing, jokes or insults;
- innuendoes about or taunting a person; staring, leering, ogling or other gestures;
- refusing to work with or have contact with persons;
- unwelcome physical contact, such as touching, patting, pinching;
- denigrating adornments or rituals associated with religious beliefs;
- bullying; threats, intimidation or use of any physical force or violence;
- condescending or patronizing behaviour or comments with undermine self-respect;
- displaying of pornographic or explicitly discriminatory material, such as derogatory or offensive pictures or graffiti; and
- unwelcome invitations, requests or demands, whether indirect or explicit, to engage in behaviour of a sexual nature.

For greater certainty, social interaction is not to be confused with harassment. Social interaction is based upon mutual respect, consent and attraction and no intimidation is involved or intended.

- 2.2 **“Complainant”** means the person or persons who believe they have been subjected to harassment.
- 2.3 **“Respondent”** means the person or persons alleged to have harassed the complainant.
- 2.4 **“Employee”** means any individual employed by the City of Melfort.
- 2.5 **“General Public”** means any individual or group of individuals, other than employees in the course of their employment, participating in or accessing the services offered by the City of Melfort.
- 2.6 **“Workplace”** means any place where business or work-related activities are conducted. It includes, but is not limited to, the physical work premises (offices or plants), work-related social functions, work assignments outside the City's offices or plants, work-related travel and work-related conferences or training sessions.

3. **POLICY**

Every employee of the City of Melfort has the right to a workplace free from harassment. Harassment undermines employees and creates a hostile and unproductive work environment. Everyone in the workplace has a responsibility to ensure that harassment does not occur.

The City of Melfort does not condone and will not tolerate harassment in the workplace by any of its employees or the general public. Employees who engage in harassment will be held accountable for their behaviour which may include discipline up to and including dismissal. Members of the general public who engage in harassing behaviour against an employee may incur consequences for their actions up to and including denial of access to services offered by the City of Melfort.

4. PROCESSES AND PROCEDURES

While the City of Melfort is committed to resolving harassment concerns internally, nothing in this Policy prohibits an employee from pursuing another remedy or legal process in respect of an alleged harassment.

Employees who believe (i) an employee has been harassed by another employee (ii) a member of the public has been harassed by an employee or (iii) an employee has been harassed by a member of the general public, have a responsibility to bring these concerns to the attention of their supervisor.

Supervisory and management staff are responsible to take appropriate action to stop any harassment in the workplace.

4.1 **Informal Resolution Process**

Any of the informal processes described in this policy may be used at any time and are not required to be utilized in the order set below.

- (1) Employees are encouraged to try to resolve the concern initially with the respondent directly by requesting that the comments, conduct or behaviour stop. It may be helpful to ask a neutral third party to assist in developing a plan to approach the other employee. Keep a written record of the date, time, details of the conduct and witnesses, if any.

If you are the respondent accused of harassment, you need to seek to understand the concern and be prepared to change your behaviour. It is not up to you to define what is uncomfortable for another person. Document the date, time location, names of witnesses and your interpretation of the incident(s) in the event you are formally accused of harassment.

- (2) Employees who are not comfortable approaching the respondent directly or if the complainant has approached the respondent directly but the unwelcome comments, conduct or behaviour continues, the complainant is encouraged to discuss his/her concerns with their supervisor or, if more appropriate, their department head, a different manager or the City Manager.

Any of the above-described persons may, with the permission of the complainant, discuss the complainant's concerns, on a confidential basis, with any other person for purposes of advice on how best to proceed.

Exception: Such permission shall not be required when there are issues of safety inherent in the complaint or concern, or if the complaint or concern is so serious or of such a nature that the City is obliged at law to deal with it, or it is in the best interest of the employee to deal with it.

- (3) After speaking with one of the persons listed in 4.1(2), the complainant may ask that person to accompany him/her when the complainant speaks directly to the respondent about the concerns. Alternatively, the complainant may ask the person listed in 4.1(2) to address the matter informally with the respondent on their behalf. Verification from the complainant to have a representative speak on their behalf is required either by electronic form or hard copy form.

- (4) This consultative process between the complainant, the respondent and their representatives, if any, may result in counseling, mediation, an education component and/or discipline. This process may be utilized in situations involving the general public with such modification as necessary.
- (5) These informal processes shall be utilized as quickly as reasonably possible once a concern has been raised by the complainant. The complainant and respondent shall be kept informed as to how the concern is being addressed.
- (6) In any of the informal resolution processes, both the complainant and the respondent have the right to consult with and be represented by their union representative.
- (7) The complainant may decide to make a formal complaint under this policy without having pursued the Informal Resolution Process or where the Informal Resolution Process has not satisfactorily resolved the issue for the complainant.

4.2 Formal Resolution Process

- (1) The complainant's complaint must be in writing and must contain the details of the alleged harassment (what, where, when and who). If requested, one of the persons described in 4.1(2) may assist the complainant to prepare his or her formal complaint.
- (2) The City Manager or designate may, on behalf of the employee or the City, conduct an investigation without the complainant's consent when:
 - i) there is an issue of safety inherent in the complaint or concern;
 - ii) the employee is apprehensive about what may happen if the employee makes the complaint (e.g. retaliation, intimidation, etc.);
 - iii) the complaint or concern is so serious or of such a nature that the City is obliged to deal with it, it is in the best interest of the employee to deal with it, or where deemed appropriate at the discretion of the City.
- (3) The complaint shall be submitted to the City Manager who may then delegate the handling of the complaint to the appropriate individual within the Corporation. The individual handling the complaint shall undertake such preliminary investigations as are required to make an assessment of whether (i) informal processes should be recommended and attempted; (ii) further investigation or action is or is not warranted; (iii) a formal investigation is warranted.
- (4) If a formal investigation of the harassment complaint is warranted, an investigation shall be undertaken by such internal or external person as may be appointed by the City Manager.
- (5) The investigator shall provide a written report of findings with respect to the harassment complaint to the City Manager. The respondent will see the complainant's statement and the complainant will see the respondent's statement. No witness statement will be shared with the complainant or the respondent. A copy of the report shall be provided to the complainant, the

respondent and the supervisor or department head if deemed appropriate. The City Manager shall determine the actions to be taken as a result of the findings of the investigator.

4.3 General Principles during Resolution Processes

- (1) In any investigation, the respondent must be informed of the alleged complaint. The respondent shall receive fair treatment, including appropriate supports, and be kept informed throughout the process, including being given access to the formal complaint or statements made by the complainant.
- (2) At any stage of a formal investigation, both the complainant and the respondent have the right to consult with and be represented by their union representative.
- (3) Anyone who retaliates or threatens to retaliate in any way against a complainant or a witness for making a complaint or taking part in an investigation of a complaint will be subjected to disciplinary action, up to and including dismissal.
- (4) An informal resolution process may be converted to a formal resolution process (or vice versa) if it is appropriate to do so in the circumstances, or steps may be condensed if appropriate in the circumstances.
- (5) Unless no other reasonable or practicable solution exists, the City of Melfort shall not uproot a complainant from his or her workplace during the investigation or change a complainant's working conditions as a result of remedial action taken against a respondent.
- (6) Malicious or frivolous complaints may result in disciplinary action being taken against the complainant.
- (7) The City of Melfort has a statutory duty to maintain a harassment-free workplace and to investigate complaints of harassment. As such, the City of Melfort may proceed with an investigation when a complaint or concern is raised that is so serious or of such a nature that the City is obliged to deal with it or it is in the best interest of the workplace to deal with it.

5. CONFIDENTIALITY

Confidentiality will be maintained throughout the investigatory procedure to the fullest extent possible in order to protect the interests of the complainant, the respondent and any others who may report incidents of harassment.

All records will be kept confidential except where disclosure is required for the purpose of investigating the complaint, taking disciplinary or corrective actions or for some other remedial process, or as required by law. See 4.2(5) for distribution of documents. No record of a complaint will be held in an employee's personnel file, except in the case of individuals who have received disciplinary action as a result of a substantiated complaint, or as a result of a malicious or frivolous complaint.

Confidentiality must be distinguished from anonymity. It is fundamental that a respondent who is subject to possible sanctions be informed of the allegations, including the identity of the complainant.

6. RESPONSIBILITIES

6.1 City Manager

- (1) Responsible for the administration and the review and revision of this policy.

6.2 Department Heads, Managers, Supervisors

- (1) Create a work environment free from harassment and take appropriate action if harassment occurs in their work area, including incidents involving the general public.
- (2) Ensure that their conduct sets a positive example by not engaging in harassment.
- (3) Treat complaints seriously, including ensuring a complaint is investigated and appropriate action is taken when a harassment complaint is raised in their work area.
- (4) Communicate and reinforce the Corporate Policy and Procedure on harassment to current and new employees and the general public.
- (5) Take immediate steps, including ensuring a complaint is investigated and appropriate disciplinary action is taken, to prevent or stop actions that may lead to complaints of harassment.

6.3 Employees

- (1) Ensure that their conduct sets a positive example by not engaging in harassment.
- (2) Report harassment they are experiencing, including incidents involving the general public.
- (3) Subject to Section 4.1(2), let respondents know their behaviour is inappropriate.

6.4 Union Representatives

- (1) Ensure that their conduct sets a positive example by not engaging in harassment.
- (2) Support this Policy through cooperating with the investigation of complaints.
- (3) Assist employees (complainants) when appropriate.
- (4) Cooperate with the process of investigation and stopping inappropriate behaviour.