

What Is Sexual Harassment?

Sexual harassment is a complex issue involving men and women, their perceptions and behaviour, and the social norms of the society. Sexual harassment is not confined to any one level, class, profession or employment. Sexual harassment may be an expression of power or desire or both. Whether it is from supervisors, co-workers, or customers, sexual harassment is an attempt to assert power over another person.

Sexual harassment is any sexual-oriented practice that endangers an individual's continued employment, negatively affects his/her work performance, or undermines his/her sense of personal dignity.

Chief Justice Dickson of the Supreme Court of Canada put it this way in Janzen v. Platy Enterprises, et. al 1989 1 S.C.R. 1252:1284; 59 D.L.R. (4th) 352:375:

"Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it . . . sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being;"

Sexual harassment is not merely a private dispute between two individuals which is susceptible of "resolution" or "settlement"; it is a "workplace offence" in respect of which the employer has disciplinary responsibilities. The focus of any personnel policy regarding sexual harassment in the workplace should be on the responsibility of the employer to take investigative and disciplinary action whenever there is an allegation of employment-related sexual harassment - in just the same way as if there were an allegation in the workplace of assault or theft.

Numerous recent studies in Canada have indicated convincingly that sexual harassment is a widespread problem in the workplace.

Sexual Harassment and the Law

Freedom from sexual harassment in the workplace is a human right.

The *Human Rights Act*, R.S. 1989, c.214 (the "Act") recognizes the inherent dignity of all persons and that human rights must be protected by the rule of law. Section 5(2) of the Act provides that no person shall sexually harass an individual. It defines in Section 3 (o) sexual harassment to mean:

- "(i) Vexatious sexual conduct or a course of comment that is known or ought reasonably to be known as unwelcome;
- (ii) a sexual solicitation or advance made to an individual by another individual where the other individual is in a position to confer a benefit on, or deny a benefit to, the individual to whom the solicitation or advance is made, where the individual who makes the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- (iii) a reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance.

The Act provides for offences and penalties in Section 38 as follows:

"Every person who does anything prohibited by this Act or who refuses or neglects to comply with any order made under this Act is guilty of an offence and is liable on summary conviction to:

- (a) if an individual, a fine not exceeding five hundred dollars; and
- (b) if a person other than an individual, a fine not exceeding one thousand dollars."

The Act continues the Human Rights Commission which is charged with the administration and enforcement of the Act. Section 29 provides that the Commission shall instruct its Director or some other officer to inquire into and endeavour to effect a settlement of any complaint of an alleged violation of the Act where:

- (a) the person aggrieved makes a complaint in writing; or
- (b) the Commission has reasonable grounds for believing that a complaint exists.

This, of course, includes complaints of sexual harassment as defined in the Act.

The Commission may under Section 32A appoint a board of inquiry to inquire into a complaint, and such a board is required by Section 34 to conduct a public hearing into the complaint. The Board has all the powers and privileges of a commission under the *Public Inquiries Act*. Where the complaint is settled by agreement among all parties, the board shall report the terms of settlement in its decision with any comment it deems appropriate. Where the complaint is not so settled, it shall continue the inquiry and the board may order any party who has contravened the Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons, or to make compensation therefor.

Why Sexual Harassment Policies Are Needed

Freedom from sexual harassment in the workplace is human right in Nova Scotia. It is a public policy that can be legally enforced under the *Human Rights Act*. Municipal governments should consider how they can act in accordance with this policy and guarantee this human right to all persons in their own working environments. Persons, including municipalities, who employ staff should consider the steps they can and should take to avoid sexual harassment in municipal workplaces. Sexual harassment in the working environment can lead to greater absenteeism, stress and damaged morale, all of which may translate into lost productivity and increased inefficiency and additional costs.

The best approach to the problem of sexual harassment is education and the implementation of a complaints procedure in the municipality. Municipalities are encourage to consider the preparation and distribution of a personnel policy dealing with employment-related sexual harassment.

A municipality that puts such a policy in place takes an important step towards implementing public policy and eradicating a form of harassment that is illegal, offensive and degrading. The municipality will also be able to convince the Human Rights commission, should it ever become necessary, that it has taken reasonable steps to meet its obligations under the *Human Rights Act*.

Essential Elements of a Sexual Harassment Policy

A sexual harassment policy should address the employer's commitment to provide and maintain a working environment in which all employees are treated with respect and dignity. It should also provide a procedure for dealing effectively with complaints of sexual harassment.

This policy should ensure that the procedures and disciplinary actions are clearly set out and applied even-handedly among all employees.

A commitment to education and training of advisors appointed under the policy is essential.

Every policy should contain the following:

1. A policy statement that the municipality is committed to providing a working environment free from sexual harassment.
2. A statement setting out persons covered by the policy.
3. An outline of the municipality's purposes in implementing the policy.
4. A comprehensive definition of sexual harassment including examples of types of behaviour which constitute sexual harassment.
5. A statement of the responsibilities of management under the policy.
6. A declaration of the municipality's intention to take disciplinary action whenever a complaint of sexual harassment is substantiated.
7. Assurances of confidentiality.
8. Provisions for the appointment of an Administrator and an Advisor.
9. A comprehensive procedure for dealing with complaints of sexual harassment by an employee or officer or elected official of the municipality.

10. A conclusion reiterating the municipality's commitment of the objectives set out in the policy.

(Draft Suggested for Consideration)

**Personnel Policy Relating to
Employment-Related Sexual Harassment**

Note: "Municipality" means the specific city, town, or municipality under the *Municipal Act*, and when referring to Halifax County Municipality, that municipal unit.

"Administrator" means the official appointed by the Municipality to administer this policy.

"Advisor" means an advisor appointed under this policy.

Policy Statement

1. The Municipality is committed to providing a working environment in which all individuals are treated with respect and dignity. Each individual has the right to work in an atmosphere which promotes equal opportunities and prohibits discriminatory practices.

Sexual harassment is prohibited in Nova Scotia by the *Human Rights Act*, R.S. 1989, c. 214 (the "Act") and is illegal.

Sexual harassment is offensive, degrading and threatening. The Municipality has adopted this personnel policy to make clear that sexual harassment will not be tolerated in the Municipality. Individuals, regardless of seniority, found to be engaged in conduct constituting sexual harassment may be severely disciplined.

2. This policy applies to all those working, full or part time, for the Municipality. The Municipality will not tolerate sexual harassment whether engaged in by fellow employees, supervisors, officers or elected officials.

The Municipality recognizes that its employees, officers or elected officials may be subjected to sexual harassment by residents, ratepayers, or others who have business with the Municipality. In these circumstances, the Municipality acknowledges its responsibility to do all in its power to support and assist the person subjected to such harassment.

The Municipality encourages reporting of all incidents of sexual harassment, regardless of who the offender may be.

3. Notwithstanding the existence of this policy, every person continues to have the right to seek assistance from the Nova Scotia Human Rights commission, even when steps are being taken under this policy.

Purposes

4. The purposes of this policy are:
 - (a) to maintain a working environment that is free from sexual harassment;
 - (b) to alert all employees, officers and elected officials of the Municipality to the fact that sexual harassment in the workplace is an offence under the law;
 - (c) to set out the types of behaviour that may be considered offensive;
 - (d) to establish a mechanism for receiving complaints of sexual harassment and to provide a procedure by which the Municipality will deal with these complaints; and
 - (e) to provide an example of the steps the Municipality can take towards maintaining a working environment in which members and employees treat each other with mutual respect.
5. This policy is not intended to constrain social interaction between people employed by or serving or dealing with the Municipality.

Definitions

6. (a) For the purposes of this policy, and subject to the Act, sexual harassment is defined as one or a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature

- (i) when such conduct might reasonably be expected to cause insecurity, discomfort, offence of humiliation to another person or group; or
 - (ii) when submission to such conduct is made either implicitly or explicitly a condition of employment; or
 - (iii) 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, raise in salary, job security and benefits affecting the employee); or
 - (iv) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile or offensive work environment.
- (b) Types of behaviour which constitute sexual harassment include, but are not limited to:
- sexist jokes causing embarrassment or offence, told or carried out after the joker has been advised that they are embarrassing or offensive, or that they are by their nature clearly embarrassing or offensive;
 - leering;
 - the display of sexually offensive material
 - sexual degrading words used to describe a person
 - derogatory or degrading remarks directed towards members of one sex or one sexual orientation

- sexually suggestive or obscene comments or gestures
 - unwelcome inquiries or comments about a person's sex life
 - unwelcome sexual flirtations, advantages or propositions
 - persistent unwanted contact or attention after the end of a consensual relationship
 - requests for sexual favours
 - unwanted touching
 - verbal abuse or threats
 - sexual assault.
- (c) Sexual harassment most commonly occurs in the form of behaviour of men towards women; however, sexual harassment can occur also between men, between women or as behaviour by women towards men.
7. For the purposes of this policy, retaliation against an individual
- (a) for having invoked this policy (whether on behalf of oneself or another individual); or
 - (b) for having participated or cooperated in any investigation under this policy; or
 - (c) for having been associated with a person who has invoked this

policy or participated in these proceedings will be treated as sexual harassment.

8. For the purposes of this policy "employment-related sexual harassment" means sexual harassment by an employee, officer or elected official of the Municipality which occurs
- (i) in the working environment, or
 - (ii) anywhere else as a result of employment responsibilities or employment relationships.

It includes, but is not limited to, sexual harassment

- at the office
- outside the office
- at office-related social functions
- in the course or work assignments outside the office
- at work related conferences or study sessions
- during work-related travel
- over the telephone

Responsibilities

9. The Administrator _____ is responsible for:

- (a) discouraging and preventing employment-related sexual harassment; this is a continuing responsibility, whether or not formal written complaints of sexual harassment have been brought to the attention of the Administrator;
- (b) investigating every formal written complaint of sexual harassment;
- (c) imposing strict disciplinary measures, when a complaint of employment-related sexual harassment is found to have been substantiated, regardless of the seniority of the offender;
- (d) doing all in his/her power to support and assist any employee, officer or elected official of the Municipality who complains of sexual harassment by a person who is not an employee, officer or elected official of the Municipality, but is a resident, ratepayer or other individual having business with the Municipality;
- (e) provide advice and support to persons who are subjected to sexual harassment;
- (f) formally acknowledging to a person who have been found to have been sexually harassed that sexual harassment has taken place;
- (g) regularly reviewing the procedures of this policy to ensure that they adequately meet the policy objectives;
- (h) maintaining record as required by the policy;
- (i) making all employees, officers and elected officials of the Municipality aware of the problem of sexual harassment and the existence of the procedures available under this policy; and

- (j) appointing an Advisor, and providing the training and resources for the Advisor to fulfil the Advisor's responsibilities under this policy.
10. Every employee, officer or elected official of the Municipality has a responsibility to play a part in ensuring that the working environment is free from sexual harassment. This responsibility is to be discharged by avoidance of any conduct which might constitute sexual harassment. In addition, any such person who believes that a colleague has experienced or is experiencing sexual harassment, or retaliation for having brought forward a complaint of sexual harassment, is encouraged to notify the Advisor appointed under this policy.

Disciplinary Action

11. Employees and officers of the Municipality against whom a complaint of employment-related sexual harassment is substantiated may be severely discipline, up to and including dismissal, except where because of statutory tenure dismissal cannot be imposed, up to and including public censure by the Council of the Municipality.

Confidentiality

12. The Municipality understands and appreciates that it is difficult of come forward with a complaint of sexual harassment and recognizes a complainant's interest in keeping the matter confidential.
13. To protect the interests of the complainant, the person complained against and any others who may report incidents of sexual harassment, confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances.

14. All records of complaints, including contents of meetings, interviews, results of investigative and other relevant material will be kept confidential by the Municipality except where disclosure is required by a disciplinary or other remedial process or by an order of a court or tribunal of competent jurisdiction.

Advisors

15. The Municipality shall appoint a person who shall be an employee or officer of the Municipality to serve as Advisor under this policy.
16. In carrying out this policy, the Advisor will be directly responsible to the Administrator.
17. The Municipality will arrange for the Advisor to receive appropriate initial and continuing training as well as other institutional support and assistance for carrying out the Advisor's responsibilities under this policy.

Procedure

18. (a) A person who considers that she or he has been subjected to sexual harassment or retaliation for having brought forward a complaint of sexual harassment is encourage to bring the matter to the attention of the person responsible for the conduct. For convenience, such a person who has been so subjected is hereinafter referred to as the "Complainant" even though the individual may not lay a formal written complaint.
- (b) Where the complainant does not wish to bring the matter directly to the attention of the person responsible, or where such an approach is attempted and does not produce a satisfactory result, the complainant should seek the advice of the Advisor.

- (c) The Advisor will advise the complainant of:
 - (i) the right to lay a formal written complaint under this policy when the alleged harasser is an employee, officer or elected official of the Municipality;
 - (ii) the availability of counselling and other support services supplied by the Municipality;
 - (iii) the right to be represented by legal counsel or other person of choice at any stage of the process when the complainant is required or entitled to be present;
 - (iv) the right to withdraw from any further action in connection with the complaint at any stage - even though the Municipality may continue to investigate the complaint.
 - (v) other avenues of recourse such as the right to file a complaint with the Human Rights Commission, or, where appropriate, the right to lay an information under the Criminal Code; and
 - (vi) any time limits which may apply to such other avenues of recourse.

- (d) Where the alleged harasser is an employee, officer or elected official of the Municipality, there are three possible outcomes to a meeting between a complainant and an Advisor:
 - (i) where the complainant and the Advisor agree that the conduct does not constitute sexual harassment, the Advisor

- will take no further action and will make no record in any file;
- (ii) where the complainant brings evidence of sexual harassment but does not wish to lay a formal written complaint, and does not lay such a complaint, the complainant may not wish to take any further action, or the complainant may want the Advisor to speak to the person whose conduct has caused offence. In such cases where the Advisor has received prima facie evidence of sexual harassment, the Advisor must decide whether or not to lay a formal written complaint, even if the decision is contrary to the wishes of the complainant.

Where the Advisor decides that the laying of a formal complaint would not be appropriate, the Advisor will make no record in any file unless the Advisor decides to speak to the person whose conduct has caused offence, in which case the Advisor will keep a written record of what the Advisor said to that person.

Where the Advisor decides that the evidence and the surrounding circumstances are such as to require the laying of a formal written complaint, the Advisor will:

- (A) issue a formal written complaint signed by the Advisor;
- (B) provide copies of the complaint, without delay, to the person against whom the complaint is laid and to the person who was the subject of the alleged harassment; and
- (C) without delay, file the complaint with the

Administrator.

- (iii) where the complainant decides to file a formal written complaint after meeting with the Advisor, including the situation where the Advisor is of the opinion the conduct in question does not constitute sexual harassment as defined in this policy, the Advisor will:
 - (A) assist the complainant to draft a formal written complaint which must be signed by the complainant; and
 - (B) give copies of the complaint, without delay, to the person against whom the complaint is laid and to the complainant; and
 - (C) without delay, file the complaint with the Administrator.
- (e) Where the Advisor gives a copy of the complaint to the person against whom the complaint is laid, the Advisor will include with the complaint a copy of this policy and a notice that the person has the right to be represented by legal counsel or other person of choice at any stage of the process when the person against whom the complaint is laid is required or entitled to be present.
- (f)
 - (i) where the complainant decides to lay a formal written complaint, the Advisor may, if the complainant consents, seek a meeting with the person against whom the complaint is laid with a view to obtaining an apology or such other resolution as will satisfy the complainant.
 - (ii) where, in accordance with (i) above, the Advisor meets with the person against whom the complaint is laid, the Advisor will advise both parties that, even if the matter is resolved to the satisfaction of the complainant, the Administrator is nonetheless obliged under this policy to pursue the investigation and to take whatever

disciplinary action is appropriate.

- (g) When a formal written complaint, whether issued by the Advisor or by a complainant, is filed with the Administrator, a copy will be filed in the personnel file of the person against whom the complaint is laid.
- (h)
 - (i) the Administrator will investigate every formal written complaint and where appropriate take disciplinary action.
 - (ii) the investigation may be undertaken by the Administrator or by a person or persons, appointed by the Administrator.
 - (iii) the Advisor will not undertake such investigations.
- (i) Where the investigation results in a finding that the complaint of sexual harassment is substantiated, the outcome of the investigation, and any disciplinary action will be recorded in the personnel file of the person against whom the complaint was laid. The written records will be retained for six years unless new circumstances dictate that the file should be kept for a longer period of time.
- (j) Where the investigation results in a finding that the complaint of sexual harassment is not proved, all record of the complaint shall be removed from the personnel file of the person against whom the complaint was laid.
- (k) The complainant will be informed of the outcome of the investigation and any disciplinary action taken by the Administrator. If the complainant is not satisfied with the outcome of the investigation or the disciplinary action taken, the complainant will be reminded of the continuing right to file a

complaint with the Human Rights Commission.

**Procedure Where A Person Believes
That a Colleague Has Been Harassed**

19. Where a person believes that a colleague has experienced or is experiencing sexual harassment, or retaliation for having brought forward a complaint of sexual harassment, and reports this belief to an Advisor, the Advisor shall meet with the person who is said to have been subjected to sexual harassment and shall then proceed in accordance with this policy.

**Harassment By Persons Who Are Not
Employees, Officers or Elected Officials
of the Municipality**

20. An employee, officer or elected official who considers that she or he has been subjected to sexual harassment by a person who is not an employee, officer or elected official of the Municipality should seek the advise of the Advisor.
21. The Advisor will take whatever action is necessary to ensure that the Municipality fulfils its responsibility to support and assist the person subjected to such harassment.

Conclusion

22. The Municipality has developed this policy because all employees, officers and elected officials have the right to work in an environment free from sexual harassment. All formal written complaints received under this policy will be thoroughly investigated. Anyone found guilty of sexual harassment may be subject to severe discipline.

I wish the Advisor to meet with (name of alleged harasser) with a view to achieving a satisfactory resolution (delete if unapplicable).

Signed at _____ on _____.

Complainant's Signature

NOTE: The complainant should sign three originals: one to remain with the complainant, one to be forwarded to the Advisor, and the other to be left with the Advisor who will, without delay, file it with the Administrator.