

WORKPLACE BULLYING AND HARRASSMENT POLICY

I. INTRODUCTION:

The Ts'kw'aylaxw First Nation is committed to providing a safe and respectful work environment. Bullying and harassment is not acceptable or tolerated in this workplace. All employees will be treated in a fair and respectful manner and will treat each other in the same manner.

II. HOW TO IDENTIFY HARASSMENT

Harassment includes any behavior that demeans, intimidates, humiliates, or embarrasses a person in any manner that is personal or sexual in nature, and that a reasonable person should have known would cause that person to be humiliated or intimidated. It includes actions, comments, or displays. It may be a single incident or continues over time.

The Canadian Human Rights Act protects employees, and people receiving goods and services, from harassment related to a prohibited ground, namely: race, national or ethnic origin, color, religion, age, sex, marital status, family status, disability, pardoned conviction, or sexual orientation.

Personal harassment is any unwelcome behavior that demeans or embarrasses an employee. The behaviour may or may not be based on one of the protected grounds named above.

Sexual harassment includes offensive or humiliating behavior that is related to a person's sex, as well as behaviour of a sexual nature that creates an intimidating, hostile, or "poisoned" work environment, or that could reasonably be thought to put sexual conditions on a person's job or employment opportunities. A few examples are: questions and discussions about a person's sexual life; touching a person in a sexual way; commenting on someone's sexual attractiveness or sexual unattractiveness; persisting in asking for a date after having been refused; telling a woman she belongs at home or is not suited for a particular job; eyeing someone in a suggestive way; displaying cartoons or posters of a sexual nature; and/or communicating sexually suggestive correspondence.

Sexual harassment is sometimes more about power than about sex. It can occur in situations where there is unequal power between the people involved, and may be an attempt by one person to assert power over the other. The harassment can also occur when an individual is in a vulnerable position because he or she is in the minority - such as the only woman, member of a visible minority, or person with a disability - and is, for example, ostracized by colleagues.

Abuse of authority occurs when a person uses authority unreasonably to interfere with an employee or the employee's job and can amount to bullying and harassment through humiliation, intimidation, threats, and coercion. It does not include normal managerial

activities, such as work direction and management, counseling, performance appraisals, and discipline, as long as these are not being done in a discriminatory manner.

If the person who is accused of harassment should have known that the behaviour was unwelcome, he or she may be considered responsible, even for unintentional harassment. If an employer or manager knew or should have known that an inappropriate situation existed, and did nothing about it, that person may also be held responsible.

III. EXAMPLES OF HARASSMENT:

Some examples of harassment include:

- Unwelcome remarks, slurs, jokes, taunts, or suggestions about a person's body, clothing, race, national or ethnic origin, color, religion, age, sex, marital status, family status, physical or mental disability, sexual orientation; pardoned conviction, or other personal characteristics;
- Unwelcome sexual remarks, invitations, or requests (including persistent, unwanted contact after the end of a relationship);
- Displays of sexually explicit, sexist, racist, or other offensive or derogatory material;
- Written or verbal abuse or threats;
- Leering (suggestive staring) or other offensive gestures;
- Unwelcome physical contact, such as patting, touching, pinching, hitting;
- Abuse of authority that undermines someone's performance or threatens her/his career;
- Vandalism of personal property;
- Spreading malicious rumours; and
- Physical or sexual assault.

IV. EMPLOYEE'S RIGHTS AND RESPONSIBILITIES

1. Respect others:

Each employee has the right to be treated fairly and respectfully in the workplace. Each employee also has the responsibility to treat co-workers and customers in a way that respects individual differences. If you have doubts about whether a joke, comment, or other behaviour will embarrass, humiliate, or degrade someone, don't say or do it.

2. Speak up:

If someone behaves in a way that offends, harms, humiliates, or degrades you, do not put up with it. First, if you feel that you can speak to that person, do so. Let him or her, in a business-like fashion, know how you feel. Tell the person the behaviour is inappropriate. If the behaviour continues, or if you do not feel you can speak directly to the person, you have several options, from speaking to a member of management to filing a formal complaint. For more details, see the Procedures section of this policy.

3. Report harassment:

If you observe a co-worker or other person behaving in a way that seems to be embarrassing or harassing someone else, you must report the harassing behavior to a manager. You can also let the person know in a respectful way that you think the behaviour is inappropriate. If you think someone is being harassed, you can let him or her know you support him or her in ending the situation. Depending on the circumstances, you may want to say something as the behaviour is happening, or you may decide to speak privately with either of the people involved.

4. Co-operate and respect confidentiality:

All staff has a responsibility to co-operate in the investigation of a harassment complaint. Anyone who gives evidence in an investigation, or who is otherwise involved in the process, must keep this information confidential, except as is necessary to deal effectively with the complaint. These are serious issues, and people's privacy must be respected. Even once a complaint is resolved, confidentiality and respect are important.

V. MANAGERS, BAND MANAGER, CHIEF AND COUNCILORS RESPONSIBILITIES

Specific information about how to handle an informal or formal harassment complaint, or what to do if there has been no complaint, is in the Procedures section, below:

1. Put a stop to harassment:

The Ts'kw'aylaxw First Nation is responsible to ensure the work environment is free from harassment. All managers, Councilors and the Band Manager also have a responsibility to stop harassment. If you become aware of harassment in your work area, or elsewhere in the workplace, you should intervene to stop it, whether or not a complaint has been made.

2. Being aware of the following things can help alert you to problem situations:

- a) An unexplained change in an employee's performance;
- b) Someone suddenly taking more sick leave;
- c) An employee isolating her or himself, seeming distracted, not participating in office socializing;
- d) Rumors, or awkwardness or discomfort between two or more employees.

If something doesn't seem right, talk to the employee you are worried about. Often, having someone listen can help a person talk about a problem. Of course, managers must be sensitive to employees' rights and dignity, and must keep these discussions confidential. And any ensuing discussions are confidential, except as is necessary to deal effectively with a complaint.

VI. HARASSMENT PROCEDURES:

If you are being harassed:

1. Speak up.

The first thing to do if you are being harassed is to tell the person harassing you to stop, if possible. Explain that you are embarrassed, humiliated or demeaned by what the person is doing or saying. Make notes. You could speak to the person directly, or write a letter. If you write a letter, date it and keep a copy. If you speak, you may want to tell a trusted friend what you have done and why. You should also make a note of what the bothersome behaviour was, the date it happened, how you felt, what you did about it, who else was present, and whether there were witnesses. Ideally, the harassment will stop. If it does not, continue to keep notes.

2. Informal procedures.

Speak to a manager, the Band Manager, the Chief or a Councilor. It may be that communicating directly with the person will not be enough, or that you feel unable to deal with her or him directly. The person you speak to will ask you for details of what happened, will make sure you understand the policy, and will ask how you want to proceed. You may ask for help to write a letter or to speak to the harasser on your behalf. You may ask to arrange for mediation between you and the person whose behaviour offends you. If these attempts to resolve the situation don't work, you can also ask the manager to help you file a formal complaint. The informal procedures are optional. You may also immediately file a formal complaint or, if you feel that would not be productive; you may go directly to the Canadian Human Rights Commission.

3. Mediation.

If the circumstances permit it, mediation can come before a formal investigation. Mediation is a process by which a neutral third party helps the people involved reach a solution that is acceptable to both parties. If you want to work toward a mediated settlement, the Band Manager (or the Chief if the Band Manager is a party to the complaint) will appoint a qualified Mediator, who is acceptable to both parties, is not otherwise involved in the complaint, and who will not be asked to represent the Band at any stage of any future proceedings related to the complaint.

However, either party has the right to refuse mediation. Those immediately involved are the only ones who can decide if mediation is appropriate. If mediation does occur, each person has the right to be accompanied and assisted during the sessions by someone with whom they feel comfortable.

4. Formal Complaints.

If the informal route for resolving a harassing situation does not succeed or is not appropriate, the Ts'kw'aylaxw First Nation supports its employees in filing a formal complaint. Complaints must be submitted in writing to the Band Manager (or, if that person is the alleged harasser) or the Chief. It will be investigated, either by a specially

trained person from within the organization or a consultant. The person is referred to as the investigator, and he or she will investigate the complaint thoroughly. He or she will interview the complainant, the alleged harasser, and any witnesses. All employees have a responsibility to co-operate in the investigation.

The investigator will need to know:

1. Your (the complainant's) name and position;
2. The name and position of the alleged harasser;
3. Details of what happened;
4. Dates, times, and how often these things occurred;
5. Where they happened; and
6. The names of any witnesses.

You will need to be prepared to supply this information.

If you are the complainant, you have the right to:

1. File a complaint and have it dealt with promptly, without fear of embarrassment or reprisal;
2. Have a person of your choice accompany you during the process;
3. Be informed about the progress of your complaint; and
4. Receive fair treatment.

VII. YOU ARE ACCUSED OF HARASSMENT:

1. Informal procedures:

If someone complains to you informally about your behaviour, take a good and serious look at it. It may be that without intending to you have spoken or acted in a way that has offended, humiliated, or degraded another person or group of people. It is your responsibility to change your behaviour if it is harassing or offensive to others. You may also want to consider apologizing.

Keep written notes of any conversation you have where someone suggests you have harassed. Record the conversation and the date it happened, how you felt, and what you did, if anything. Also make notes of your version of the alleged harassment, the date it occurred, who else was present, and if there were any witnesses.

If you and the person who is complaining are unable to resolve the situation, you can turn to a manager, the Band Manager, the Chief or a Council for advice.

2. Mediation:

If you have not been able to resolve the situation informally, mediation is a possible next step. Mediation may make a formal complaint unnecessary. You can ask for mediation; or you may agree if it is suggested to you. You do not have to agree, however, if you think that you are being pressured into something that does not feel right to you.

If you want to work toward a mediated settlement, the Band Manager (or the Chief if the Band Manager is a part of the complaint) will appoint a qualified mediator, who is acceptable to both parties. If mediation does become part of the informal process, each person has the right to be accompanied and assisted during the sessions by some of his or her choosing.

3. Formal Complaints:

If someone files a formal complaint about your behaviour, you will have to participate in the investigation. You will be expected to co-operate, give your perspective on what happened, and, if the investigation shows that you did harass another person or group of people, you must change your behaviour. You may also be subject to disciplinary action up to and including termination of employment, for just cause.

If you are an individual accused of harassment, you have the right to:

1. Be informed of the complaint;
2. Be given a written statement of the official allegations and to respond to them;
3. Have a person of your choice accompany you during the process;
4. Be informed about the progress of the complaint; and
5. Receive fair treatment.

4. Other Employees:

All employees are expected to cooperate in the investigation of complaints and efforts to resolve them. Employees should be mindful of the sensitivities of the parties and must keep any information related to complaints confidential.

VI. THE INVESTIGATION AND SUBSEQUENT ACTION

1. Written report

The investigator will submit a written report to the Band Manager (or the Chief if the Band Manager is involved in the complaint) (the "Investigator's Report"). The investigator will decide whether, on a balance of probabilities, the complained of behaviour occurred. He or she will try to identify all reasonable possibilities for resolving the situation. The Investigator's Report will be provided to the complainant and the alleged harasser and both parties will be invited to make submissions (oral or written) with respect to the findings in the report.

2. Confidential and privileged legal advice:

The Investigator's Report will be provided to the Ts'kw'aylaxw First Nation's legal counsel. Together with advice from legal counsel, the Ts'kw'aylaxw First Nation will decide if harassment has occurred, what remedies will be provided to the complainant, the disciplinary action to be imposed on the harasser; and whether the people in question can continue in their current work areas. Communications and/or

advice between the Ts'kw'aylaxw First Nation and its legal counsel are privileged and confidential and as such will not be disclosed to the complainant, the alleged harasser or any other interested parties.

3. Decision:

The Band Manager (of the Chief if the Band Manager is a party to the complaint) will inform the complainant and the alleged harasser of any disciplinary action, remedies, corrective action, and/or changes in work. Every attempt will be made to complete the investigation within a two-week time frame.

4. Separation of the complainant and alleged harasser:

If the complainant and the alleged harasser work in the same area the Band Manager may decide to assign one or both of them to a different work area during mediation or investigation or to place either or both of the complainant and alleged harasser on a paid leave of absence.

VIII. REMEDIES/DISCIPLINARY ACTION:

A person who has been harassed may receive one or more of the following remedies, depending on the severity of the harassment and what he or she lost because of it:

- a) An oral or written apology from the harasser and/or the Ts'kw'aylaxw First Nation.
- b) Compensation for lost wages;
- c) A job or promotion that was denied;
- d) Compensation for any lost employment benefits, such as sick leave;
- e) Compensation for hurt feelings; and/or
- f) A commitment that he or she will not be transferred, or will have a transfer reversed, unless he or she chooses to move.

No record of the complaint, investigation or decision will be placed on the complainant's personnel file, so long as the complaint was made honestly and in good faith. In such circumstances, any unfavorable work review or comments that were placed in the complainant's personnel file because of the harassment will be removed from the file.

Any harasser will be subject to one or more of the following forms of discipline. Disciplinary actions will be proportional to the seriousness or repetitiveness of the offence.

- a) Written reprimand;
- b) Fine;
- c) Suspension, with or without pay;
- d) Transfer, if it is not reasonable for the people involved to continue working together;
- e) Requirement to attend counseling or an educational session;

- f). Demotion; or
- g) Dismissal.

If the investigation report does not support the complaint, there will be no documentation concerning the complaint placed in the file of the alleged harasser. When the investigation reveals that harassment occurred, the incident and the discipline that is imposed on the harasser will be recorded in the harasser's file. The report may or may not be placed on his or her file.

IX. UNSUBSTANTIATED COMPLAINTS:

If a person, in good faith, files a harassment complaint that is not (on a balance of probabilities) supported by evidence gathered during an investigation, that complaint will be dismissed, and no record of it will be put in the alleged harasser's file. As long as the complaint was made in good faith, there will be no penalty to the person who complained, and no record placed on her or his file.

If it is determined that the complaint was made in bad faith - in other words, the person making it had no reasonable basis for filing it, that person will be disciplined and a record of the incident will be put in her or his file.

Penalties for someone who complains in bad faith will be the same as for a case of actual harassment and will depend on the seriousness of the situation. Remedies for the person falsely accused may include any of the remedies that would be available in a case of harassment.

X. CONFIDENTIALITY

The Ts'kw'aylaxw First Nation will not disclose a complainant's or alleged harasser's name or any circumstances related to a complaint, to anyone, except as necessary to investigate the complaint or take disciplinary action related to the complaint, or as required by law. Managers involved in a complaint are required to keep all information confidential, except in the above circumstances.

XI. RETALIATION

Retaliation is considered a serious disciplinary breach. Anyone who retaliates in any way against a person who has complained of harassment, given evidence in harassment, will face disciplinary action.

XII. THE CANADIAN HUMAN RIGHTS COMMISSION

A complainant may file a complaint with the Canadian Human Rights Commission if the harassment was because of race, national or ethnic origin, color, religion, age, sex, marital status, family status, physical or mental disability, pardoned conviction, or sexual orientation. Information on filing a complaint can be obtained by phoning the Commission's toll free number 1-888-214-1090.