

**DISCRIMINATION AND HARRASSMENT POLICY**  
**Council Policy No. 42/00**

**POLICY:**

The City of Fort St. John is committed to creating a climate of understanding and mutual respect for the basic human rights of all individuals.

Employees and prospective employees have the right to be treated without discrimination with regard to employment or any term or condition of employment, and to work in an environment free from discrimination and personal harassment of any kind.

**PURPOSE OF POLICY:**

The purpose of this Policy is to provide a means for reporting and investigating complaints of individual violations, to establish consistent procedures for prompt, fair and equitable handling of such complaints, and to establish guidelines for the administration of discipline.

**DEFINITIONS:**

**Discrimination**

Discrimination is behaviour consisting of differential treatment of an individual based on any of the prohibited grounds in the British Columbia Human Rights Code. These grounds are race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

Discrimination does not have to be intentional. Unlawful discrimination can result from policies or practices that seem neutral or are well-intentioned, but which have a discriminatory effect, or are unwelcome.

This section does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

**PERSONAL HARASSMENT:**

Personal harassment is a form of discrimination, but harassment can occur when there is no specific discriminatory factor involved (as outlined in the Discrimination section). While discrimination can be hidden or indirect, harassment generally involves concrete actions by one person against another person or group of persons. Personal harassment will be considered to have taken place where a reasonable person ought to have known that the behaviour was unwelcome and offensive.

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PERSONAL HARASSMENT: (continued)

Personal harassment includes a conduct that unreasonably interferes with a person's work performance or creates a hostile, intimidating, or offensive work environment. Specific examples of harassment may include, but are not limited to:

- Written or verbal abuse or threats;
- Racial or ethnic slurs;
- Unwelcome and deliberate gestures, comments, questions, representations, or other behaviour which serves no work-related purpose;
- Displaying offensive or derogatory pictures;
- Practical jokes which cause awkwardness or embarrassment;
- Condescending or patronizing behaviour;
- Abuse of authority which undermines employee morale or performance, or which threatens the career of an employee or employees.

Harassment does not include actions occasioned through exercising good faith the City's managerial or supervisory rights and responsibilities.

SEXUAL HARASSMENT:

Sexual harassment is a serious form of personal harassment. It is deliberate and unsolicited, and generally takes the form of unwelcome and offensive sexual comments, gestures, or physical contact on a one-time basis or in a series of incidents.

Examples of sexual harassment may include, but are not limited to:

- A person in authority asking an employee for sexual favours in return for being hired or receiving promotions or other employment benefits;
- Sexual advances with actual or implied work related consequences;
- Unwelcome remarks, questions, jokes or innuendo of a sexual nature; including sexist comments or sexual invitations; verbal abuse, intimidation, or threats of a sexual nature; leering, staring, or making sexual gestures; display of pornographic or other sexual materials;
- Offensive pictures, graffiti, cartoons or sayings;
- Unwanted physical contact such as touching, patting, pinching, hugging;
- Physical assault of a sexual nature.

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SEXUAL HARASSMENT: (continued)

This definition of sexual harassment is not meant to inhibit interactions or relationships based on mutual consent or normal social contact between employees. Similarly, sexual harassment is not the accepted social banter that often occurs in the work environment, nor is it related to flirtation or a relationship between two consenting persons. These relationships are considered consensual, based on mutual attraction and no intimidation is involved or extended. Sexual harassment is coercive, one-sided, and both males and females can be victims of it.

SCOPE OF POLICY:

**Individual Covered by Policy**

All staff (including employees, volunteers and elected officials), and persons having a business relationship with the City (e.g. Contractors and consultants) are covered by this Policy, and may be found guilty of discrimination and harassment.

**Off-Premises Harassment**

If the conduct occurs away from work but has workplace impact, or if the conduct is committed within the course of the employment relationship, it may be covered by the Policy.

GUIDELINES FOR EMPLOYEES:

The following suggestions are intended for employees who have been harassed or who have witnessed harassment and wish to attempt to resolve the problem themselves. These suggestions are not pre-conditions for filing a formal complaint.

**Ask the harasser or person using discrimination to stop**

If the complainant is comfortable in doing so, they should immediately ask the person to stop the discrimination or harassment. They can do this verbally or in writing, stating that they disapprove or feel uneasy about the person's behaviour and/or actions. If the complainant is not comfortable confronting the individual, they may contact their Supervisor, Department Head, or City Manager.

**Keep a record**

The complainant should keep a written record of dates, times, places, the nature of the behaviour and the names of any people who may have witnessed the incidents, and should also indicate what action they took to stop the harassment.

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GUIDELINES FOR EMPLOYEES: (continued)

**Take Action**

If the harassment or discrimination does not stop after the complainant has spoken to the person responsible for it, an employee who believes he or she has a complaint of harassment or discrimination may approach their supervisory personnel, union steward, or other contact person to discuss potential means of resolving a complaint and to request assistance in resolving the matter before proceeding to the formal complaint and mechanism. If the matter is resolved to the complainant's satisfaction the matter is deemed to be resolved.

**Employee Support**

Manager of Human Resources and/or a Union Representative will assist in obtaining personal supportive counseling for employees experiencing discrimination and harassment in the workplace.

FORMAL COMPLAINT PROCESS:

If the informal attempts at resolving the problem are not appropriate or prove ineffective, a formal complaint and investigation may be required.

**Reporting a Complaint**

Although employees may first choose to make a verbal complain, it is in the best interest of all concerned to have a written summary of allegations.

Complaints should normally be reported within six (6) months of the action or behaviour being complained about. Promptness in reporting a complaint protects the rights of both the person making the complaint and the person complained against.

A letter of complaint should contain a brief account of the offensive incident(s), when it occurred, the person(s) involved, the names of the witnesses, if any, and any attempts to resolve the situation. The letter should also include the remedy sought and be signed and dated by the person complaining.

A complaint under this policy can be submitted to any manager, director, Department Head, or the Manager of Human Resources.

**Who May Complain**

A complaint should be filed by the actual victim of alleged harassment or discrimination, however, complaints can also be made by a group of people who may have been subjected to the same offensive treatment, by co-workers who witnessed the incidents, or by a third party complaining on behalf of the victim.

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**FORMAL COMPLAINT PROCESS:**

**Who May Complain** (continued)

Anonymous complaints will be accepted only if a complete investigation can be conducted without identifying the source of the complaint. For example, it is not necessary to know who has complained in order to resolve a complaint about several people being harassed or about a certain policy that may be discriminatory.

Employees filing a complaint may be accompanied by a representative of their choice throughout the complaint process.

**Appointment of Investigator**

After receiving a complaint, the Manager of Human Resources will investigate to resolve the complaint. In certain circumstances, it may be necessary and/or desirable to assign an outside investigator to resolve the complaint.

Under this Policy, the investigator has the Department's Head's authority to speak with anyone, examine any documents, and enter any work locations which are relevant to the complaint.

**Investigation**

As soon as possible after receiving a complaint the Manager of Human Resources or the named investigator will notify the person(s) being complained against. All persons named in the complaint have the right to reply to the allegations against them and the right to be accompanied by a representative of their choice in any meeting with the investigator. Employees have a duty to participate in any investigation pursuant to this Policy while the investigation is occurring.

Persons not named in the complaint who may have some personal knowledge about the incidents will also be interviewed. These witnesses, too, may be accompanied by a representative of their choice.

Depending on the circumstances, the Manager of Human Resources may decide that it is necessary to separate the employee and the alleged harasser physically and/or operationally until the investigation is completed.

The matter will be investigated and steps taken to resolve the concern as appropriate within thirty (30) days of an employee's complaint.

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FORMAL COMPLAINT PROCESS: (continued)

**Settlement and Mediation**

Depending on the circumstances, it is often possible to resolve the matter without further investigation or laying of blame. For example, it may be sufficient to circulate a memo to employees indicating what is, or is not, acceptable.

With the consent of the employee complaining and the person accused, the investigator may attempt to mediate a settlement of a complaint at any point prior to, or during an investigation.

Any settlement would have to be satisfactory to both the employee complaining and the person accused and must be approved by the Department Head and City Manager in consultation with the Manager of Human Resources.

**Findings and Recommendations**

Once the investigation is complete, the investigator will prepare a written report summarizing investigation findings and recommending corrective action if necessary.

Conclusions about whether a specific incident of discrimination or harassment did or did not occur are based upon the balance of probabilities; the same standard used in human rights inquiries and labour arbitration.

If the findings do not support the complaint, the investigator will recommend that no further action is necessary.

**Final Decision**

Both the person who filed the complaint and those named in the complaint have the right to review and comment on the investigator's findings and recommendations.

The Manager of Human Resources will review these comments and the investigator's report before making a final decision. The Manager of Human Resources may approve, change or reject any of the investigator's recommendations. The Manager of Human Resources shall notify the person who filed the complaint and the persons complained against in writing of the final decision and the corrective actions to take place.

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FORMAL COMPLAINT PROCESS: (continued)

**Discipline**

Depending upon the circumstances, a founded complaint under this Policy will be considered a form of employee misconduct.

As in any other case of misconduct, corrective action may include discipline, which can carry from verbal counseling or a written reprimand to suspension or discharge.

In keeping with the commitment of the City to the elimination of sexual harassment and intimidation in the workplace, it is understood and implied that remedial action is intended in all cases to be appropriate to the situation. The goal of the Policy is prevention.

COMPLAINTS INVOLVING MANAGER OF HUMAN RESOURCES OR MEMBERS OF CITY COUNCIL:

**Outside Consultant**

The making and resolution of complaints under this Policy by or against the Manager of Human Resources or member of Council will be contracted to a qualified outside human rights consultant reporting directly to the City Manager and the Mayor.

**Notification of Complaint**

The Consultant shall notify the City Manager and Mayor in conference of all complaints immediately upon receipt.

The Consultant shall notify the persons named in the complaint of the specific allegations against them as soon as possible thereafter.

**Authority and Duties of the Consultant**

The Consultant has the authority of the City Manager and Mayor to investigate and/or attempt to settle the complaint, and to speak with anyone, examine any documents and enter any work location relevant to the complaint for the purposes of investigation or settlement. These duties shall be carried out in accordance with the preceding provisions of this Policy.

The Consultant may make interim reports to the City Manager and Mayor, as required, to address instances of interference, obstruction, or retaliation encountered by the Consultant while dealing with a complaint under this Policy.

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COMPLAINTS INVOLVING MANAGER OF HUMAN RESOURCES OR MEMBERS OF CITY COUNCIL: (continued)

**Consultant's Final Report**

The City Manager and Mayor shall be presented with a final report outlining the findings, terms of settlement, if any, or recommended corrective action within ninety (90) days of making of the complaint. The City Manager may grant an extension of time upon the request of the Outside Consultant.

**Final Decision**

The City Manager and Mayor will review the final report and any comments received before making any decision on the matter. The City Manager and Mayor may approve, change or reject any proposed terms of settlement or recommended corrective action.

GENERAL PROVISIONS:

**Avenues of Complaint**

Nothing in this Policy should be interpreted as denying or limiting access to other avenues of redress available under the law (e.g. Criminal complaint, civil suit, or a complaint with the Human Rights Commission). However, the City may decide to postpone, suspend or cancel any investigation into a complaint under this Policy if it is believed that the investigation would duplicate or prejudice such a proceeding, or if the applicable collective agreement so provides.

**Right to Complain**

All employees have the right to complain about situations that they believe to be harassment or discrimination under this Policy.

This Policy strictly prohibits reprisals against employees because they have complained or have provided information regarding a complaint. Alleged reprisals are subject to the same complaint procedures and penalties as complaints of discrimination and harassment.

**Bad Faith Complaints**

The City will take the misuse of this Policy seriously. Given the serious nature of accusations of harassment and discrimination, false accusations can have serious effects on innocent men and women. Therefore, deliberate false accusations will result in severe disciplinary action.

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GENERAL PROVISIONS: (continued)

**Time Frame**

Complaints will be dealt with on an urgent basis. In most cases the investigation process shall be completed within six (6) months of the date the complaint was received by the Department.

**Confidentiality**

All persons involved with a complaint must ensure the matter remains strictly confidential, and that such detail will only be disclosed as is absolutely necessary to investigate the complaint, and provide the alleged harasser an opportunity to reply.

In accordance with the *Freedom of Information and Protection of Privacy Act*, the investigator will only release information on a need-to-know basis. Whenever possible, investigation reports are presented in a summary format without the names of witnesses.

**Records**

Discrimination and harassment complaints will be treated in complete confidence. Information related to complaints will not be kept on either the complainant's or the alleged offender's personnel file, but will be retained in a locked confidential file accessible only to those who need to know, and with the approval of the City Manager.

Records of a complaint will only be placed on an employee's personal file when corrective action requires discipline of the employee. This record of discipline is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*.

**Collective Agreement**

This policy will govern complaints of discrimination and harassment except where inconsistent with an applicable collective agreement, in which case the collective agreement will govern.