



Policy Title:	Harassment Policy	Policy Number:	01-1-103-20
Department:	Administration	Approval/Effective Date:	April 27, 2020

1. Purpose

The purpose of this policy is to ensure that all employees of the Town of Kensington are provided with a workplace that is free of harassment which when not addressed can lead to increased risk of accidents, increased absenteeism, increased turnover, increased stress, decreased productivity, decreased morale, poor customer service and potential legal expenses.

2. Policy Statement

The Town of Kensington is committed to a healthy, safe and supportive workplace and is committed to providing a work environment that values diversity and where all persons are treated with respect and dignity. It is the right of all employees to work in an environment free from harassment, sexual harassment, and discrimination.

Harassment, sexual harassment, and discrimination (offensive behaviour) affect the workplace and the well-being of individuals and will not be tolerated. Whether the source of the offensive behaviour comes from within the municipality or outside, any allegation of offensive behaviour will be taken seriously and dealt with promptly. This policy promotes awareness, prevention, and prompt resolution of offensive behaviour.

It is the intent of this policy to promote employee involvement in resolving situations. Resolution through the informal process is encouraged, as is the use of mediation, at any stage.

3. Definitions

For the purposes of this policy, harassment in the workplace includes personal and sexual harassment, poisoned/toxic work environment and abuse of authority.

3.1 Personal Harassment

Personal harassment means any objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome. It includes inappropriate conduct, comment, display, action or gesture or any bullying that the person responsible for the conduct, comment, display, action or gesture or the bullying knows, or ought reasonably to know, could have a harmful effect on a worker's psychological or physical health or safety that was made on either a one-time or continuous basis that demeans, belittles, or causes personal humiliation or embarrassment.

Without limiting the above, personal harassment includes harassment within the meaning of the Prince Edward Island Human Rights Act, i.e., harassment on the basis of the following prohibited grounds of discrimination: age, colour, creed, disability, ancestry or place of origin, nationality, family status, marital status, gender expression, gender identity, political belief, race, religion, sex, sexual orientation, physical size or weight, pregnancy or source of income of any individual or class of individuals;

Examples of behavior that can constitute harassment include, but are not limited to:

- Such acts that intimidate, threaten, coerce or belittle an individual including “bullying”.
- Any discrimination or jokes about an individual’s race, ethnic origin, physical characteristics, sexual orientation or disability which can damage a persons’ self-esteem.
- Acts which isolate, exclude or marginalize an individual from workplace activities.
- Verbal attacks, including swearing, that are threatening to the individual

3.2 Sexual Harassment

Sexual harassment means any inappropriate sexual conduct that is known, or ought reasonably to be known, to the person responsible for the conduct to be unwelcome, including, but not limited to, sexual solicitations or advances, sexually suggestive remarks, jokes or gestures, circulating or sharing inappropriate images, or unwanted physical contact, whether on a one-time basis or a series of incidents, that might reasonably be expected to cause offence or humiliation or that might reasonably be perceived as placing a condition of a sexual nature on employment, an opportunity for training or promotion, receipt of services or a contract.

Examples of behaviour that can constitute sexual harassment include, but are not limited to:

- The display of pornographic pictures, photographs or cartoons, unwanted touching, patting, pinching, grabbing, hugging, kissing, brushing against or leering.
- Verbal abuse, intimidation or threat of a sexual nature.
- Physical or sexual assault.
- Inquiries or comments about a person's sex life.
- Telephone calls with sexual overtones.
- Gender-based insults, taunting or jokes causing embarrassment or humiliation.
- Repeated unwanted social or sexual invitations.
- Inappropriate or unwelcome focus/comments on a person's physical attributes or appearance.

3.3 Poisoned/Toxic Work Environment

A poisoned/toxic work environment is characterized by an activity or behaviour, not necessarily directed at anyone in particular, that creates a hostile or offensive workplace. Examples of a poisoned/toxic work environment include but are not limited to: graffiti, sexual, racial or religious insults or jokes, abusive treatment of an employee and the display of pornographic or other offensive material.

3.4 Abuse of Authority

Harassment also includes abuse of authority where an individual improperly uses the power and authority inherent in a position to endanger a person's job, undermine the performance of that job, threaten the person's economic livelihood, or in any way interfere with or influence a person's career. It is the exercise of authority in a manner which serves no legitimate work purpose and ought reasonably to be known to be inappropriate. Examples of abuse of authority include, but are not limited to, such acts or misuse of power as intimidation, threats, blackmail or coercion.

3.5 Exception

A reasonable action taken by an employer or supervisor relating to the management and direction of the workers or of the workplace is not workplace harassment.

3.6 Workplace

The workplace includes but is not limited to the physical work site, washrooms, training sessions, business travel, conferences, work related social gatherings, the employee's home, etc.

3.7 Complainant

An employee(s) who has made a complaint under this policy, whether formal or informal, alleging that offensive behaviour has occurred. Complainant includes a third-party complainant.

3.8 Discrimination

Means discrimination as defined under Prince Edward Island Human Rights Act.

3.9 Chief Administrative Officer or "CAO"

Means the administrative head of the Municipality as appointed by Town Council under subsection 86(2)(c) of the Prince Edward Island Municipal Government Act or his/her designate.

3.10 Employee

Means any person directly employed by the Town of Kensington, including the CAO and supervisors.

3.11 Town Council

Means the duly elected Mayor and other members of the Council of the Town of Kensington.

3.12 Mayor

Means the duly elected Mayor of the Town of Kensington.

3.13 Formal Complaint

A written allegation of offensive behaviour is to be submitted to the immediate supervisor or the CAO (where the supervisor is the subject of the complaint) on the approved complaint form. A complaint may include a third-party complaint.

Written allegations of offensive behaviour against the CAO shall be made directly to the Mayor, who may appoint a third-party investigator. The complaint process will follow the same procedure as outlined below for the CAO's handling of complaints.

3.14 Informal Complaint

An allegation of offensive behaviour, that is brought to an immediate supervisor or the CAO which is dealt with through an informal process and may include a third-party complaint.

3.15 Non-Employee

Refers to a person who is engaged in work activities at the municipal workplace who is not a direct employee of the municipality. This includes, but is not limited to, volunteers (including, but not limited to, the Mayor, Councillors and committee members), temporary employees, students and contractors.

3.16 Offensive Behaviour

Means harassment, sexual harassment, or discrimination.

3.17 “Reasonably ought to know or have known”

The “reasonably ought to know or have known” standard refers to an objective assessment of how a specific behaviour might generally be received.

3.18 Respondent

An employee(s) against whom allegations of offensive behaviour are made through the formal or informal complaint process and includes a manager who is alleged to have failed to take reasonable action in the circumstances, to protect an employee from offensive behaviour.

3.19 Retaliation

Taking or threatening to take an unjustified employment action against an employee who has made a complaint or participated in an investigation under this policy. Retaliation may include any negative changes in the terms and conditions of an employee's employment, including transfers, changes in work schedule or assignments, negative performance evaluations, unwarranted discipline, harassment, denial of promotion or work schedule requests, or denial of training. Retaliation may also include any offensive behaviour towards the employee by another employee.

Retaliation does not include a complaint or a response to a complaint, made in good faith, under this policy.

4. Accountability

4.1 CAO or Designate

The CAO is responsible for the implementation and administration of this policy. The CAO shall:

- Appoint an investigator or investigators as soon as possible, if deemed required.

- Consult with the investigator or investigators to set a reasonable time frame for the completion of the investigation.
- Review the findings and recommendations.
- Determine the outcome and the appropriate action to be taken.
- Ensure the parties are informed of the outcome in a timely fashion.

4.2 Supervisors

Supervisors are responsible for:

- modeling respectful behavior and ensuring respectful behavior is practiced by employees.
- attending appropriate mandatory respectful workplace training.
- ensuring all employees are provided with an opportunity to attend mandatory respectful workplace training.
- taking action to protect employees and others from offensive behaviour.
- responding to allegations of offensive behaviour through the informal complaint process.
- determining whether an informal complaint is appropriate for resolution under this policy.
- making decisions, with support from the CAO, as to appropriate resolution options.
- determining whether further action is required where an individual wishes to abandon an informal complaint.

5. Guidelines

5.1 Recommended Informal Action

a. 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.

- Tell Harasser to Stop. If possible, the harasser should be told that the behaviour is offensive and against this policy.
- Keep a Record. The employee should make a note about the incident, including when it happened, and who was present.

- Tell immediate supervisor. In some situations, objecting may be difficult or objections may be ignored. Employees should then bring any concerns to the CAO (if their own immediate supervisor is the harasser).
- The incident and its effects should be explained to the immediate supervisor. A plan of action should be agreed upon and a follow-up meeting scheduled.
- Seek advice. The CAO or designate is available for confidential advice and assistance in resolving discrimination and harassment.
- Victim Support. The resources of the Employee Assistance Program are also available to provide personal supportive counselling for employees experiencing discrimination and harassment in the workplace.

b. Management/Supervisory Responsibilities

The Town Council, CAO and supervisors are responsible for providing a workplace free from discrimination and harassment and for intervening when these problems occur.

The following is a list of measures and informal actions which can often prevent or resolve problem situations without a formal complaint and investigation:

- Set a good example. Supervisors should let their staff know that they take the issue of workplace human rights seriously by supporting this policy and not participating in or ignoring discrimination and harassment.
- Approach employees if something is suspected. Employees may be embarrassed and reluctant to approach their supervisor. Symptoms of harassment or discrimination may include: reduced productivity, changes in behaviour, rumours, increased sick leave, increased resignations, or sudden changes in performance evaluations. Once a victim is aware that these changes have been noticed, he or she may be more willing to discuss the problem.
- Seek Advice. If it is not clear that the employee's problem involves discrimination or harassment, discuss the matter with the CAO or designate. A formal complaint may be needed if the complaint involves: several incidents of harassment over a long period of time, situations which may not be easily corrected, or behaviour which may require discipline.
- Discuss the situation with the alleged harasser. They may be unaware that their behaviour is offensive. Even if the allegations are denied, the discussion should be treated as a warning that inappropriate workplace behaviour will not be tolerated.
- Keep a Record. Supervisors should keep a personal record of all discussions with the victim and alleged harasser, as well as their response to the situation. These notes may be needed later should the behaviour continue or lead to a formal complaint.

c. Complaints Made in Bad Faith

To falsely accuse someone of harassment is a serious offense. When the allegation is determined to be malicious, disciplinary action deemed appropriate will be taken against the individual making the malicious allegations.

d. Complaints Made in Good Faith

No disciplinary action will be taken against an employee for making a complaint of harassment in good faith, whether or not the claim is substantiated.

6. Formal Complaint Process

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

6.1 Avenues of Complaint

Employees may decide to have their complaint dealt with by either their own immediate supervisors. Immediate supervisors also have the choice of handling a complaint themselves or request that the CAO deal with the matter on their behalf. Complaints of harassment against supervisors shall be made directly to the CAO.

6.2 Right to Complain

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

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

6.3 Reporting a Complaint

Formal complaints under this policy shall be made in writing on the form provided in Appendix A. and shall contain a written summary of allegations, when the incident(s) occurred, the person(s) involved and the names of witnesses, if any, and the remedy sought. The complaint form shall be signed and dated by the person complaining.

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.

6.4 Who May Complain

A complaint should be filed by the actual victim of alleged harassment or discrimination; however, complaints can also be made by co-workers who witnessed the incidents, or by a third party complaining on behalf of the victim.

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.

6.5 The Investigation

Within 5 working days of receiving a complaint, the supervisor, or the CAO as the case may be, will conduct an investigation in an effort to resolve the complaint. An external, third party investigator may be appointed to complete the investigation.

A complaint against the CAO shall be made directly to the Mayor. Following the receipt of the complaint, the Mayor may appoint a third-party investigator.

Under this Policy, the supervisor, CAO and/or third-party investigator has the authority to speak with anyone, examine any documents, and enter any work locations which are relevant to the complaint.

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 supervisor, CAO or third-party investigator.

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

Depending upon the circumstances, it may be necessary to separate the employee and the alleged harasser physically and/or operationally until the investigation is completed.

6.6 Settlement

Depending upon the circumstances, it is often possible to resolve the matter without further investigation or laying of blame. For example, a complaint regarding the circulation of racist cartoons may be resolved simply by circulating a memo in that workplace specifically banning such a practice.

Any settlement would have to be approved by the CAO.

6.7 Confidentiality

All persons involved with a complaint must ensure the matter remains confidential.

In accordance with Freedom of Information and Protection of Privacy legislation, the supervisor, CAO or designate will only release information on a need-to-know basis.

Nothing in this section shall restrict the supervisor or CAO from consulting with an external investigator or legal council.

6.8 Findings and Recommendations

Once the investigation is complete, the CAO 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 CAO will recommend that no further action is necessary and the matter will be closed.

If, however, it can be concluded that any of the discriminatory incidents or harassment probably happened, the CAO will recommend measures to correct the situation. For example, if a person was denied an interview, they may be given an interview. If someone was harassed, the harassment must cease and the staff of the work unit may also need an information session about their rights and responsibilities under this policy. Corrective action may also include monetary sanctions (e.g., lost wages).

6.9 Final Decision

The person who filed the complaint, those named in the complaint, and the supervisors have the right to review and comment on the findings and recommendations of the CAO.

The CAO will review the report and the comments before making a final decision. The CAO may approve, change or reject any of the recommendations.

6.10 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 vary from verbal counselling or a written reprimand to suspension or discharge.

6.11 Time-frame

Complaints will be dealt with on an urgent basis. In most cases the investigation process should be completed within 30 days of the date the complaint was received by the immediate supervisor or CAO.

6.12 Records

No records of a complaint will be placed in the personnel file of an employee who files a complaint or the files of any of the witnesses. The only time a record of a complaint will be placed on the file of a person involved in a complaint is when the resulting corrective action includes discipline of the employee involved in the complaint. This record of discipline is subject to the provisions of the collective agreement. The CAO shall ensure accurate records are kept of all complaints made, and details of remedial actions taken under this Policy.

7. Options

Complainants may, instead of the complaint procedures under this policy, file a complaint under any of the following options where applicable:

- **Grievance Procedure** - bargaining unit employees may file a grievance pursuant to the applicable collective agreement. For additional information about the grievance procedure, employees may contact their union.
- **complaint to the Prince Edward Island Human Rights Commission.**
- **complaint under the Criminal Code.**

Town of Kensington – Harassment Policy

Date of Passage: April 27, 2020

I certify that this policy was adopted by Town Council as indicated above.



[Signature]
Chief Administrative Officer

April 28, 2020
Date

Appendix A – Complaint Form

Complainant Information		
Complainant Name	Job Title	Date Form Submitted
Complainant Phone #	Supervisor Name	Supervisor Phone #

Information about the alleged harassment		
Date of Incident	Name of Alleged Harasser	Job Title of Alleged Harasser
Is the harassment a repeat occurrence? If yes, please provide date of incidents.		
Has the complainant advised the alleged harasser that they do not like the behaviour and wants it to stop? If no, please explain why? If yes, what was the response?		
Were there any witness(es) to the alleged harassment? If yes, please complete the table below.		

Appendix A – Complaint Form

In your own words, describe the conduct, comments or display you found unacceptable. Give details of date and location of the incident(s) that is/are the basis of your complaint.

Declaration

I hereby confirm the statement(s) contained in this complaint are true to the best of my knowledge. I understand a copy of this complaint will be provided to the alleged harasser(s) for the purpose of investigating this complaint.

Signature: _____ Date: _____

I acknowledge receipt of this complaint.

Supervisor's Signature: _____ Date: _____