

<b>POLICY:</b> Harassment & Discrimination	<b>POLICY NO.:</b> A-2
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### Policy Statement

The Corporation of the Town of Milton is committed to ensuring that every employee is treated with dignity and respect in the workplace. Each individual has the right to work in an environment free of harassment and discrimination. Harassment, discrimination or the creation of a poisoned work environment for any employee while performing their duties, during any function sanctioned by the Town, or of any person doing business with the Town is strictly forbidden.

The Town will not tolerate any form of Harassment or Discrimination as defined in this Policy, the Human Rights Code or the Occupational Health and Safety Act (OHSA). For clarity, any Complaint or Incident related to a Human Rights Code ground will hereafter be referred to as “Human Rights Code Based Harassment or Discrimination”. Any Harassment Complaint or Incident related to the Occupational Health and Safety Act will hereafter be referred to as “Workplace Harassment”.

For the purposes of the Occupational Health and Safety Act, this document is the policy and the program.

### Purpose

The purpose of this policy is to ensure that employees and elected officials are aware that harassment and discrimination are unacceptable practices and are incompatible with the standards of this organization as well as being a violation of the law. This policy outlines the types of behaviour that may be considered offensive and are prohibited.

### Scope

This policy applies to all Employees (including but not limited to full-time, part-time, probationary, temporary, and student employees) service providers, contractors,

volunteers, students involved in work experience programs, and applicants for employment. This is also applicable to elected officials of the Town. Nothing in this policy is intended to detract from the rights and duties of Supervisors to manage and direct the workforce and, if necessary, to discipline Employees in accordance with applicable legislation, collective agreements, or other Town policies.

## **Definitions**

Balance of Probabilities: The standard of proof used in employment and human rights law to establish whether Workplace Harassment and/or discrimination has occurred. It is the determination of whether it is more likely than not that the allegations occurred.

Complainant: The Employee who makes a Complaint to The Town, pursuant to this *Policy*.

Complaint: A written allegation of behaviour, or of a systemic barrier, that is believed by the Complainant to contravene the *Harassment and Discrimination Policy*.

Frivolous: without importance or lacking in substance, factual basis, or proper seriousness.

Human Rights Code Based Harassment or Discrimination: Any form of unequal treatment based on a Human Rights Code ground, whether imposing extra burdens or denying benefits. It may be intentional or unintentional. It may involve direct actions that are discriminatory on their face, or it may involve rules, practices or procedures that appear neutral, but disadvantage certain groups of people. Discrimination may take obvious forms, or it may happen in very subtle ways. Even if there are many factors affecting a decision or action, if discrimination is one factor, that is a violation of this *Policy*.

Incident: Behaviour or a situation of potential Harassment or Discrimination of which The Town or a Supervisor becomes aware in any way other than a direct, written Complaint.

Investigation: The steps taken that are appropriate in the circumstance to determine whether the Complaint or Incident reported has, on the Balance of Probabilities, occurred.

Parties to a Complaint: The Complainant and Respondent identified in the written complaint.

Poisoned Work Environment: When one or a series of vexatious comments or behaviours are of a significant nature or degree, create an offensive or intimidating work climate for individuals or groups. This includes comments or conduct that are condoned

or allowed to continue when brought to the attention of management. To constitute a Poisoned Work Environment, the comments or conduct need not be directed at a specific person and may be from any person, regardless of position or status. An individual does not have to be directly involved to be adversely affected by a Poisoned Work Environment. A single comment or action, if sufficiently serious, may create a Poisoned Work Environment.

**Preliminary Assessment:** The process whereby it is determined whether a Complaint falls within the scope of this *Policy*. This may include, but is not limited to, reviewing documentation, and informal interviews with the Parties to a Complaint.

Prohibited Grounds defined under the *Ontario Human Rights Code* (the *Code*):

Age

Ancestry, colour, race

Citizenship

Ethnic origin

Place of origin

Creed

Disability

Family status

Marital status (including single status)

Gender identity, gender expression

Sex

Sexual orientation

Record of offenses (except where there is a bona fide requirement due to the nature of the employment)

Reasonable Action: Any justifiable action taken by a Supervisor relating to the management and/or direction of a worker or the place of employment. Reasonable Action taken by a Supervisor is not Harassment or Discrimination.

Reprisal: Any act of retaliation or threat of retaliation for making a good faith report of Harassment or Discrimination or participating in the Complaint resolution process (including being a witness) under this *Policy*.

Respondent: The person(s) against whom a Complaint has been made, pursuant to this *Policy*.

Sexual and Gender-based Harassment: A form of harassment that may include, but is not limited to:

Gender-related comments about a person's physical characteristics or mannerisms;

Unwelcome physical contact;

Suggestive or offensive remarks or innuendoes about members of a specific gender;

Propositions of physical intimacy;

Gender-related verbal or written abuse, threats or taunting;

Leering or inappropriate staring;  
Bragging, asking questions or holding discussions about sexual activities;  
Offensive jokes or comments of a sexual nature (including rough/vulgar language related to gender);  
Display of sexually offensive pictures or other materials

Supervisor: A person(s) who has charge of a Workplace or authority over a worker.

Support Person: In relation to a person with a disability, another person who accompanies them in order to help with communication, mobility, personal care or medical needs, or with access to goods and services.

Vexatious: Without reasonable or probable cause or excuse.

Workplace: Any location where the Town is represented; offices and buildings, hallways, lounges, washrooms, worksites, vehicles, staff functions. Harassment which occurs outside the workplace, but which has repercussions in the work environment adversely affecting employee relationships may also be defined as workplace harassment for the purpose of this policy. Milton-sanctioned events are also considered the workplace.

Workplace Harassment: Any improper behaviour that a person knows or ought reasonably to have known would be unwelcome, offensive, embarrassing or hurtful is interpreted as offensive by another worker. Harassment is not defined by intent, but rather by the perception of the behaviour. Some examples of behaviour which may be interpreted as harassment include, but are not limited to:

- Remarks, jokes or innuendos related to a person's race, gender identity, gender expression, sex, disability, sexual orientation, creed age or any other ground under the *Code*;
- Patronizing or condescending behaviour or language which reinforces stereotypes;
- Singling out a person for humiliating or demeaning "teasing" or jokes because they are a member of a *Code*-protected group;
- Posting or circulating offensive pictures, graffiti or materials, whether in print form or via email or other electronic means;
- Sexual solicitation;
- Comments ridiculing a person because of characteristics that are related to a ground of discrimination (e.g. comments about a person's attire, speech or diet that may be related to their sex, race gender identity or creed);
- Abuse of authority (e.g. intimidation, sabotage or threat toward someone's career) when in an position of authority over that individual

## **Other Avenues of Recourse**

Nothing in this *Policy* is intended to prevent a Complainant from pursuing the processes of a collective agreement, the *Code*, the *OHSA*, or criminal prosecution.

## **Not Harassment/Discrimination**

This policy is not intended to interfere with acceptable social interaction among employees.

Properly and appropriately conducted Supervisory and Management responsibilities, including performance management and disciplinary action are not considered to be a violation of this policy.

## **Resolving a Concern**

Any employee who feels that they have observed or experienced a violation of this policy is encouraged to first address the issue informally by communicating directly with the individual responsible for such action, where appropriate. The employee should advise the individual(s) that the behaviour is unwelcome and ask that the offensive behaviour stop.

If it is not appropriate to bring the matter to the attention of the other person, or if the unwelcome behaviour continues after the person is asked to stop, the employee should immediately report the Incident(s) to the reporting Supervisor, or Manager, or Director, or Department Head, or the Human Resources Division with details of the complaint.

If the employee's supervisor or reporting contact is the person engaging in the workplace harassment, the employee should immediately report the incident to the Director, Department Head, or Human Resources with details of the complaint.

## **Complaint Procedure**

The following internal procedure is intended to provide employees with a confidential, effective and timely means of reporting alleged violations of this policy without threat of reprisal. Note: The Town must take action when it is made aware of Incidents of Harassment or Discrimination, or is otherwise required by law.

The Human Resources Division shall be notified promptly if a Supervisor, Manager, Director or Department Head has information or knowledge of an Incident or Complaint under this policy.

The written complaint must include:

- A description of the incident(s)
- Indication of how this policy has been violated
- Copies of emails/material relevant in the claim
- Names of any witnesses, if any
- Details of any steps already taken to resolve the matter if applicable
- Desired remedy

Every reported alleged violation of this policy will be subject to a prompt and thorough investigation by the Human Resources Division, or designate, without threat of Reprisal to the Complainant.

The timely resolution of Complaints is important; therefore, Complaints should be filed as soon as possible. It is recommended that a Complaint should be filed within one (1) year of the date of the last occurrence of Harassment or Discrimination.

### **Personal Support**

An employee may have a person for support (such as a friend, colleague, or family member) with them to any meetings related to the Harassment and Discrimination Policy. This does not include legal representation or any other agent who would speak on behalf of the Employee.

### **Support Person and Accommodations**

Employees with disabilities may be accompanied by a support person in order to help with communication, mobility, personal care or medical needs, etc. (as per Accessibility Policy) at any meeting related to the Harassment and Discrimination Policy.

If at any stage an Employee requires Accommodation in order to participate in the process, the Employee should contact HR as soon as possible to make this request.

### **Preliminary Assessment**

Once the Incident has been received, Human Resources or a designate will conduct a Preliminary Assessment to determine if, at face value, the Complaint is a matter of Harassment, Discrimination and/or demonstrates a Poisoned Environment whether under the Human Rights Code, the Occupational Health and Safety Act or this Policy.

If the Preliminary Assessment determines that the Complaint is not a matter of Harassment, Discrimination, and/or does not demonstrate the existence of a Poisoned

Environment, the Complainant and Respondent, (where appropriate), will be informed of the decision.

If the Preliminary Assessment determines that the Complaint is, at face value, a matter of Harassment, Discrimination and/or demonstrates the existence of a Poisoned Environment, where possible and appropriate informal resolution or an Investigation that is appropriate in the circumstance will be conducted.

### **Interim Measures**

Throughout the investigation The Town will respect the confidences and sensitivities of all persons involved in the reported Incident, where possible. In some circumstances, interim measures may be implemented on the advice of the Human Resources Division, pending the outcome of informal resolution or investigation. In some cases this may include changing work locations, reporting structures or instituting a paid leave of absence for affected individuals, for the investigation period.

The Human Resources Division will inform the Supervisor of the affected workplace of the necessary interim measures. The Human Resources Division will work with the Supervisor to facilitate the implementation of the interim measures.

### **Informal Resolution**

Wherever possible and appropriate, the Human Resources Division will attempt to facilitate informal resolution of Complaints and Incidents under this Policy.

Complaints and Incidents of Human Rights Code Based Harassment and Discrimination may be investigated, but the conflict may be resolved, where appropriate, at any time during the investigation, through informal resolution.

Informal Resolution requires that all parties voluntarily engage in the process. It may be determined that Informal resolution is inappropriate depending on the circumstance.

Note: In accordance with the Occupational Health and Safety Act, The Town is required to conduct an investigation (appropriate in the circumstances) into all Incidents and Complaints of Workplace Harassment.

### **Investigation**

An Investigation appropriate in the circumstances will be conducted into all Complaints and Incidents of Workplace Harassment.

An Investigation appropriate in the circumstances will be conducted into all Complaints and Incident of Human Rights Code Based Harassment, Discrimination and/or Poisoned Environment that have not been resolved through informal resolution or in instances where informal resolution was not possible or inappropriate.

A Complainant may choose to withdraw a formal Complaint of Workplace Harassment, Human Rights Code Based Harassment or Discrimination at any time. However, The Town may continue to act on the issues identified in the Complaint in order to comply with its obligations under this *Policy*, The Town's policies, or as otherwise required by law.

All Town Employees are required to cooperate with any Investigation and/or resolution process initiated under this *Policy*.

Where an individual fails to fully participate in the Investigation process, the investigator may continue the Investigation without the benefit of the individual's participation and make a finding of fact with the available information.

### **Investigator**

Investigations will be conducted by the Human Resources Division, or where appropriate, the Human Resources Division will arrange for a knowledgeable external investigator, depending on the circumstances of the Complaint or Incident.

The Investigator will not be an individual about whom the allegations have been made.

The Investigator will not be under the direct authority of the individual about whom the allegations have been made, or a person who is otherwise in a conflict of interest.

### **Witnesses**

Interviews will be arranged and completed with witnesses and any other individuals who may have information pertinent to the Investigation.

### **Evidence**

The Investigator will consider all information gathered and decide whether or not there has been a violation of this *Policy*.

The Investigator has the authority to access documents relevant to the Complaint, including but not limited to:

Documents and Records



All telephone and computer systems (including hardware, software for which The Town is the licensee or owner, and storage space)

Photographs

Audio and video recordings (such as phone messages, or security camera video, for example)

## **Investigation Process**

- Notification to the parties that interviews will take place;
- Providing information of the complaint to the respondent including the name of the complainant(s);
- Providing the written complaint to the respondent in advance of the interview and inviting written response;
- Providing copies of this policy to all interviewed parties;
- Interviewing separately: the complainant, respondent, and any witnesses (Parties to the Complaint may bring a Personal Support individual to the meeting(s));
- Having interviewed parties review the investigative notes recorded from a meeting and sign an acknowledgement;
- Reviewing records and documentation provided in the course of the investigation;
- Reviewing records available to the Town (e.g. emails, workstation contents, social media);
- Re-interviewing parties, as needed

## **Investigation Timelines**

The Investigator may set timelines for individuals to respond to requests for interviews, or for the production of relevant documents in an effort to ensure that the Investigation is completed in a timely manner.

## **Notification of findings**

Once the Investigation is complete, the Investigator will make a finding of fact using the standard of a Balance of Probabilities. The Investigator will provide the Director, Human Resources with a report of the findings, which may include recommendations.

The Director, Human Resources or their designate will inform the Chief Administrative Officer, the Strategic Management Team member and the Leadership Management Team member of the affected area(s) of the findings.

The Strategic Management Team member or the Leadership Management Team member will work with the Human Resources Division to implement any recommendations and manage the circumstances resulting from the Investigation.

The Investigator will meet separately with the Complainant and the Respondent to provide them with a written summary of the findings. Thereafter, any corrective action taken to address the Complaint or Incident shall also be communicated to the Complainant and Respondent, verbally or in writing, as appropriate.

## **Resolution**

Where a claim under this policy is substantiated, resolutions may include but are not limited to mediated discussions, dispute resolution, training and restructuring.

## **Informal Resolution and Alternative Dispute Resolution (ADR)**

Complaints and Incidents of Workplace Harassment will be investigated, and a summary of findings will be made available to the Complainant and Respondent, but mediation and other Alternative Dispute Resolution (ADR) options will remain available, where appropriate, should the parties voluntarily request such resolution after the Investigation is complete.

## **Discipline**

Any Employee who is found to have violated this *Policy*, including failing to participate in an Investigation, may be disciplined up to and including dismissal. Disciplinary action shall be determined in consultation with the Human Resources Division, and in accordance with applicable collective agreements.

## **Human Rights Tribunal of Ontario**

The Corporation respects every person's right to lodge a complaint with the Human Rights Tribunal of Ontario within the one (1) year limitation period established by the Tribunal. This may occur at any point before, during or after the internal investigation. When this right is exercised the procedures of the Ontario Human Rights Commission shall be recognized as part of the formal written complaint procedure established by this policy.

## **Right to Withdraw a Complaint**

A Complainant has the right to withdraw a Complaint at any stage of the process. However, The Town may continue to act on the issue identified in the Complaint as required by this *Policy*, other The Town policies, or as otherwise required by law.

## **Unsubstantiated, Frivolous, or Bad-Faith Complaints**

If an Employee, in good faith, discloses or files a Complaint that is not supported by evidence gathered during the Complaint resolution process, that Complaint will be unsubstantiated and therefore dismissed.

Complaints that are found following the Investigation to be frivolous, may result in disciplinary action, up to and including termination of employment, subject to any relevant collective agreements.

Any Employee found to have made a false, malicious or bad-faith Complaint, or for any other vexatious purpose, will be subject to disciplinary action up to and including termination of employment, subject to any relevant collective agreements.

## **Good Faith Disclosure and Prohibition of Reprisal or Threat of Reprisal**

Employees are encouraged to report in good faith the reasonable belief of the existence of a Poisoned Work Environment, and/or an incident or complaint of Workplace Harassment or Discrimination. The Town will not tolerate Reprisal against any Employee who, in good faith and on the basis of reasonable belief, makes a report or files a Complaint under this *Policy*.

Employees who engage in Reprisal or threats of Reprisal may be disciplined up to and including termination of employment, subject to any relevant collective agreements.

## **Management/Supervisor Responsibility for Prevention**

A person who has the authority to prevent or discourage behaviour that contravenes this policy but fails to act may be considered responsible for failing to exercise such authority and be subject to disciplinary action up to and including dismissal. This is separate from any penalties levied by the Human Rights Tribunal of Ontario, if applicable.

## **Confidentiality**

The Town respects and maintains the confidentiality of all persons, including the Complainant, Respondent, and Witnesses. Information provided by any party to a Complaint is treated as confidential, but maybe shared as reasonably necessary to investigate the Complaint and/or as may be required by The Town policy and/or applicable law.

All information obtained about Complaints, Incidents, Poisoned Environments and Investigations under this *Policy*, including identifying information about any individuals involved is confidential. Employees who are involved in any way in the resolution of Complaints or Incidents of Workplace Harassment and Discrimination must not disclose the details of the Complaint or Incident, or any information regarding the Investigation process unless:

- disclosure is necessary for the purposes of investigation; or
- disclosure is for the purposes of taking corrective action with respect to the Complaint or Incident; or,
- disclosure is necessary to protect the safety of one or more of the involved parties; or,
- disclosure is necessary to protect the safety of any employee of The Town; or,
- disclosure is otherwise required by law.

Confidentiality extends to all records relating to Complaints or Incidents, including but not limited to, records of meetings, interviews, and Investigation results.

Breaches of confidentiality may be subject to appropriate disciplinary action up to and including dismissal.

The Human Resources Division will retain documentation related to Complaints in a secure file for three (3) years from the date that the file is closed.

## **Training**

The Town will provide regular training, as deemed necessary, to remind employees of their rights and obligations under this policy.

## **Annual Review**

The Town of Milton will review this policy at least annually in consultation with the Joint Occupational Health and Safety Committees.