



Newfoundland and Labrador Association of Municipal Administrators

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HARASSMENT POLICY.....Where to from here?

Please note: All information presented in this document was provided by the professional expertise of Jamie Martin, Roebathan McKay Marshall Law Office.

The harassment policy has been circulated by NLAMA, your town has adopted it, but where to from here?

The information presented is intended to give you some insight into the implementation of the policy, and direction on the steps to follow if a harassment claim is filed.

1. **Transparency**

It is important to emphasize that the policy should be transparent and that it is consistently applied throughout the organization. With some municipalities employing only one staff person, there will inevitably be insufficient resources to deal with a harassment complaint and/or insufficient monies to retain external resources to properly implement the policies. However, regardless of the resources, the municipality should, to the extent possible, attempt to deal with complaints in a prompt, serious and complete manner.

2. **Fair Process**

Upon receipt of a complaint, the individual complainant should be interviewed as should the alleged harasser. The seriousness of the commitment should be reflected in the process being done in a confidential manner and being handled in a discreet manner resulting in a situation where neither the employee nor the alleged harasser should fear reprisals from participating in the interview process necessary to assess the complaint.

Also, to the extent possible, the process should be complete with an internal investigation with the complainant and the alleged harasser and the option on conducting a further investigation with other witnesses. This should result in the completion of a report for the consideration of the complainant and the alleged harasser.

3. **Accountability/Awareness of Policy**

Employees should be advised up front, whether they are new employees or current employees, about the existence of the policy and the process to be followed upon receipt of a complaint.

Municipalities should appreciate the importance of a harassment policy and promote and enhance its awareness in a number of ways, including, but not limited to:

- The recruitment process;
- The orientation of new employees;
- Conducting orientation sessions with existing employees;
- Audits of the work environment; and
- Conducting interviews of individuals who leave the organization to determine if there were any harassment issues within the organization.

The employer has an ongoing responsibility to initiate the policy and to promote awareness within the organization.

4. **Investigation**

The investigation of a harassment complaint is one of the most critical parts of the process. Some steps to follow include:

1. First obtain a written detailed complaint;
2. Review the complaint and determine all the allegations;
3. Choose an experienced impartial investigator, if possible;
4. Conduct the investigation as soon as possible and ensure it is strictly confidential;
5. Except where otherwise impossible, obtain signed written statements by parties and witnesses;
6. Allow the parties to be accompanied during the interviews;
7. The interim report will contain only allegations and facts;
8. The final report should contain the allegations, facts, analysis and a conclusion as to whether each of the allegations is founded or unfounded.

5. **Composition of Investigation Committee**

In small municipalities, where there may only be one employee present, the investigating committee could be made up of a councillor and an outside person, for example, and accountant. However, the councillor should be viewed as independent and should have no prior knowledge of the matter(s) under investigation. The same of course would apply to the accountant although the constraints of a small town are fairly obvious in this regard.

You are encouraged to consider using the resources of industry associations such as yours or share staff with neighboring municipalities on the conduct of harassment investigation hearings. In these circumstances, it is even more important to indicate to employees as part of the policy, the availability of other avenues of relief such as the Human Rights Commission where applicable, and explain their right to independent legal advice. Eg; Free legal referral services available through NLAMA.

6. **Sanctions**

Consistent with the principle of transparency and upon a complete review of the facts, in the event there is some form of disciplinary action necessary, the employees and the alleged harasser and in fact, all employees should be aware, early on in the process, of the range of sanctions that can be implemented. These include, but are not limited to:

- a. A written letter of apology to the complainant;
- b. Requirement to participate in harassment sensitivity training;
- c. Verbal warning;
- d. Written letter of warning;
- e. Suspension with or without pay;
- f. Demotion; and
- g. Termination.

7. **Sanctions Against Councillors**

To a certain extent, you could, provided there is a proper resolution passed by council, impose some form of sanction along the lines of (a) and (d) above. The issue is really the extent to which a councillor is prepared to accept the sanction and the penalties, if any, for their non-adherence to the harassment.

Council would not be able to discipline elected councillors in the same manner as they would an employee. There are specific procedures outlined in Section 6 of the *Municipal Affairs Act* SN 1995 c.

M-220.1 as amended. Under that section, the Minister can dismiss a councillor upon the report of an inspector, appointed under the Act if the Minister is satisfied that the affairs of the municipal authority are managed in an “irregular, improper or improvident manner”.

The issue then becomes whether the harassment by a councillor of an employee is consistent with the “irregular, improper or improvident” handling of the Town’s activities. Given the considerable rights afforded employees in the workplace, there is an expectation that they will be able to work in a safe and peaceful environment. There is furthermore considerable deference given by employers to their employees in the engaging of the activities. Therefore, it is viewed that harassment actions by a councillor against an employee, warrant the consideration of an investigation to the Minister for alleged behaviour. The problem, however, is that if this Section is used too frequently, there may be a “flood gates” of requests made to the Minister, and it would then be up to the Minister to come up with clearly established guidelines as to the circumstances in which the offending behaviour would be investigated and sanctions imposed. Councillors need to understand that there are disciplinary options for them.

One other issue municipalities can indicate to councillors engaging in harassment, is the potential liability for the Town if the employee maintains a constructive dismissal law suit. In these circumstances, the employee would claim the harassment has resulted in their workplace becoming intolerable, thereby causing their resignation and a request for damages. This is the “hammer” that council can use against councillors engaging in this type of behaviour and its effectiveness will, of course, depend on the individual circumstances and the severity and duration of the actions being complained of.

There is also the issue as to whether council can be held liable for the actions of an individual councillor, especially if they (council) have taken measures as outlined earlier, to limit the offending behaviour.

Please be aware that even outside of a constructive dismissal situation, employers have been held liable for allowing persistent harassment to take place in the workplace. It is emphasized that the possibility of damages of a financial nature to be awarded against a small municipality with limited resources, should act as a deterrent to individuals and councillors from engaging in ongoing abusive treatment of their staff.

We (NLAMA) hope that you have found the information presented to be helpful and beneficial to your municipality, employees, and elected officials. It is through a unified relationship between all, that a strong local government can be realized.

If you have any questions, please feel free to contact Jamie Martin, Reobothan McKay Marshall, at 753-5805 or toll free at 1-800-565-5563