



*House of Assembly
Newfoundland & Labrador*

Privileges & Elections Committee

Review of Harassment-Free Workplace Policy Applicable to Complaints Against Members

Report to the House of Assembly

April 2022

This report is privileged until tabled in the House of Assembly.



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Committee Members

Privileges and Elections Committee Members:

Bernard Davis, Member for Virginia Waters - Pleasantville (Chair)
Chris Tibbs, Member for Grand Falls-Windsor - Buchans (Vice chair)
Jim Dinn, Member for St. John's - Centre
Krista Lynn Howell, Member for St. Barbe - L'Anse aux Meadows
Paul Pike, Member for Grand Bank

Appointed by motion June 1, 2021.



Transmittal

Speaker,

Pursuant to Section 17 of the Harassment-Free Workplace Policy Applicable to Complaints Against Members (the Policy), I am pleased to present this report respecting a review of the Policy conducted by the Privileges and Elections Committee. I thank Members of the Committee for their diligence and hard work, and I recommend this report to the House of Assembly.

Respectfully submitted,

Bernard Davis, MHA
Virginia Waters - Pleasantville
Chair



Introduction

The Harassment-Free Workplace Policy Applicable to Complaints Against Members (the Policy) was developed by the Privileges and Elections Committee (PEC) on order from the House. It was adopted by the House on December 2, 2019 and came into effect on April 1, 2020. The Policy applies to complaints against a Member of the House of Assembly (i.e., a Member is the respondent) either by another Member or by an employee of the Legislative or Executive Branch (i.e., the complainant is either a Member or an employee).

The PEC has specific duties under the Policy, including responsibility to review its provisions once each general assembly, or as required. The Committee was notified by the Citizens' Representative, who has responsibility for oversight of the complaint and resolution processes under the Policy, of an issue identified in the execution of a process. This initiated the Committee's review of the Policy at this time.



Order of Reference

The Privileges and Elections Committee carried out this work pursuant to Section 17 of the Harassment-Free Workplace Policy Applicable to Complaints Against Members, which states the following:

“Once in each general assembly (or as required), the Standing Committee on Privileges and Elections will review this Policy and its processes, and make any recommendations (as necessary) for amendments. Recommendations of the Committee will be brought forward in a report to the House of Assembly for debate and vote.”



Summary of Work

The Privileges and Elections Committee's work on this matter was undertaken as a result of correspondence referred to the Committee from the Citizens' Representative. The correspondence outlined a potential issue in the confidentiality provisions of the Harassment-Free Workplace Policy Applicable to Complaints Against Members, which was identified in the execution of a process under the Policy.

Section 10 of the Policy states the following:

"The complainant, respondent, and witnesses must sign a confidentiality agreement at the beginning of the process."

The Citizens' Representative detailed a situation where one party to a complaint refused to sign the confidentiality agreement and, as a result, the statutory officer's interpretation was that the process initiated under the Policy could not proceed without further clarity in the Policy.

The Privileges and Elections Committee met on four occasions in its review of this matter, on the following dates:

- February 14, 2022;
- February 28, 2022;
- March 7, 2022; and
- March 24, 2022 .

The Citizens' Representative appeared before the Committee during its review to provide further clarity on the issue identified and to discuss potential options for addressing the matter.



Findings

In the final report of the former Privileges and Elections Committee in its development of the Harassment-Free Workplace Policy Applicable to Complaints Against Members, it is clear that confidentiality was an overarching principle considered by that PEC in its work. The Policy adopted by the House stipulates confidentiality requirements throughout, including specific responsibilities for participants in an investigation.

In concert with the adoption of the Policy by the House of Assembly, and as recommended by the former Privileges and Elections Committee, the House also amended the *House of Assembly Accountability, Integrity and Administration Act* (HOAAIAA) to enact confidentiality requirements. Therefore, confidentiality is also required by law, as follows:

Confidentiality of identity

42.8 The identity of a person making a complaint and any witness to the matter to which the complaint relates shall be kept confidential to the extent permitted by law and consistent with the need to conduct a proper investigation and the requirements of procedural fairness.

Further to this, an accountability provision was also added to the HOAAIAA to create a legal requirement for all Members of the House of Assembly to annually declare that they have read and understood the Policy:

Declaration

42.11 Before February 1 in a year, a member shall file with the clerk a declaration that the member has read and understood the provisions of the policy.

It is the Committee's interpretation that the requirement for a confidentiality agreement is intended to be an added layer of protection in the Policy, as it is not the



only legal instrument requiring confidentiality. The Policy also does not rely only on the execution of a confidentiality agreement to set the confidentiality requirements.



Recommendations

In consideration of its findings, your Committee recommends the following:

1. That Section 10 of the Harassment-Free Workplace Policy Applicable to Complaints Against Members be amended by adding immediately after the sentence “The complainant, respondent, and witnesses must sign a confidentiality agreement at the beginning of the process.” the following:

“Notwithstanding the refusal of a complainant, respondent, or witness to sign a confidentiality agreement, processes under the policy, including an investigation, may proceed and are not affected by the refusal to sign. The Citizens’ Representative shall report the refusal in accordance with the provisions of Section 10.1 as if it were a breach of confidentiality.”