



*House of Assembly
Newfoundland & Labrador*

Standing Committee on Privileges and Elections

**Final Report to the House of Assembly
on the Development of a Legislature-Specific
Harassment-Free Workplace Policy**

April 2019



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INTRODUCTION

On May 2, 2018, the House of Assembly unanimously passed a Private Members' Resolution directing the Standing Committee on Privileges and Elections to undertake the development of a legislature-specific harassment-free workplace policy. The complete resolution is outlined in the following section (Terms of Reference).

Following the passing of the resolution, the Privileges and Elections Committee (PEC) prepared for the work it would undertake, including extensive cross-jurisdictional research and an analysis of applicable legislative and policy provisions. A significant portion of the work conducted throughout the Summer and Fall 2018 was focused on consultations as required by the resolution with Members, employees, and independent/external groups. Details of the Committee's consultation process are outlined in its Interim Report to the House of Assembly, which was tabled on November 21, 2018. The Interim Report also included a summary of common themes the Committee heard throughout its consultations, and a cross-jurisdictional analysis, along with a preview of directions it would be taking in its final recommendations to the House.

The Privileges and Elections Committee has continued its work over the last several months. It has developed a proposed Harassment-Free Workplace Policy (HFWP) Applicable to Complaints Against Members of the House of Assembly (the Policy) and recommends that it be adopted by the House. In addition to the proposed Policy, the Committee recommends changes to the principles of the Code of Conduct for MHAs; as well as the Code of Conduct provisions outlined in the *House of Assembly Accountability, Integrity and Administration Act (HOAAIA)*. There are also recommendations for other consequential statutory amendments to the *HOAAIA* (Note: if the House concurs in the recommendations of this report, any proposed statutory amendments must be brought to the House as a Bill and debated before coming into force).

PRIVILEGES & ELECTIONS COMMITTEE

Scott Reid (Chair) – St. George's-Humber

Lorraine Michael (Vice Chair) – St. John's East-Quidi Vidi

Keith Hutchings – Ferryland

Pam Parsons – Harbour Grace-Port de Grave

John Finn – Stephenville-Port au Port



TERMS OF REFERENCE

In completing this work, the Privileges and Elections Committee was guided by the Private Members' Resolution of May 2, 2018, which stated the following:

***“BE IT RESOLVED** that this Honourable House support the introduction of a legislature-specific harassment policy, similar in principle to the policy in effect in the Nova Scotia provincial legislature, where elected representatives and their staff are held responsible for inappropriate conduct;*

***BE IT FURTHER RESOLVED** that this Honourable House, through the introduction of a legislature-specific harassment policy, recognize all forms of harassment including bullying, cyber-bullying and intimidation of all forms;*

***AND BE IT FURTHER RESOLVED** that this Honourable House develop this legislature-specific harassment policy through the Privileges and Elections Committee of this House in consultation with all Members and employees of the House and with independent groups who have experience and expertise in handling harassment complaints.”*



UPDATE ON THEMES & DIRECTIONS HIGHLIGHTED IN INTERIM REPORT

The Committee's Interim Report of November 2018 highlighted a number of themes and directions which emerged from the research and consultations it undertook. The Interim Report also included an immediate recommendation regarding mandatory training for all current MHAs. The following section provides an update on the implementation of this recommendation, as well as a summary of how the themes and directions highlighted in the Interim Report are addressed in the PEC's final recommendations.

Mandatory Training for Current MHAs

The following recommendation from the Interim Report of the PEC was adopted, and subsequently became an order of the House, on December 4, 2018:

Adopt the training program proposed by the Gardiner Center for Members of the House of Assembly. This training should be developed and delivered to all current Members as soon as possible, and to newly elected MHAs on an on-going basis. It is recommended that all Members participate in the training together, with no separation by caucus; and that attendance be mandatory.

Over the Winter 2019, all 40 MHAs participated in a mandatory 4-day training program that was developed and delivered by the Gardiner Centre. This program included the following:

- Awareness (e.g. difference between effective conflict vs. harassment/bullying; discrimination based on performance vs. harassment; etc.);
- Creative problem solving;
- Supportive communication;
- Conflict management; and
- Stress management.

Members were invited to provide their feedback at the conclusion of the training, which was positive overall. The feedback provided from the experience of current Members with this training informed the training provisions of the proposed Policy.



Gender-Based Issue/Power Dynamics

Two predominant themes highlighted in the PEC's Interim Report were harassment as a gender-based issue; and the issue of power imbalance, particularly the complexities it presents in terms of dealing with workplace harassment in the legislative context and the work of elected officials. The Committee applied both of these lenses in its development of a proposed HFWP Applicable to Complaints Against MHAs, and in particular highlights the following:

- The definition of harassment in the proposed Policy includes abuse of authority, discriminatory harassment, sexual harassment and bullying. Further, the definition of discriminatory harassment prohibits harassment on the basis of sex, sexual orientation, gender identity, gender expression, marital status, and family status; and the definition of sexual harassment prohibits harassment that is gender-based.
- The proposed Policy recommends the establishment of an Independent Support Advisor to provide advice, support, and guidance to individuals on navigating the process and the options available; and also in understanding and dealing with their feelings and concerns as they deliberate on the course of action best suited to them. This position will be another avenue through which to seek support and guidance relating to gender-based and power imbalance concerns.
- The proposed Policy makes it a requirement for the Intake Officer of the Office of the Citizens' Representative to have specific skill sets to receive and provide advice on complaints of harassment (including gender-based sensitivity and inclusion).
- There are provisions in the proposed Policy that prohibit reprisal/retaliation against any MHA or employee who has alleged harassment, made a complaint, or participated in any proceedings under the Policy. Further, it stipulates that any reprisal/retaliation may be subject to disciplinary action.
- The proposed Policy includes a process for recourse in the event of breaches in confidentiality.
- The proposed Policy will make respectful workplace training mandatory for all MHAs, which must be completed once each general assembly.



Other Directions

The Privileges and Elections Committee outlined a number of other directions in its Interim Report with respect to its final recommendations. The following is an overview of how these are addressed:

1. Separation of harassment/bullying from the Code of Conduct:

- The proposed consequential amendments to the HOAAIA provide that where the Commissioner for Legislative Standards (CLS) receives a complaint (under the Code of Conduct) which is deemed not to be within the Commissioner’s jurisdiction, but rather falls under the Policy, the CLS cannot investigate. The complainant will be notified of the option to proceed under the Policy.
- Further, if a Member proceeds with a complaint under either process (Code of Conduct or the Policy), the proposed consequential amendments provide that where a matter is investigated and reported on, the decision of the applicable statutory officer is final and it cannot be subsequently referred to the other statutory officer.

2. Responsibility for administration of the policy resting with the Office of the Citizens’ Representative (OCR):

- The proposed Policy assigns responsibility for intake of complaints and the resolution process (including formal investigations) to the OCR. Its recommendations for consequential statutory amendments also include an amendment to the HOAAIA to give the requisite authority to the Citizens’ Representative to act in accordance with the Policy.
- The Committee is also recommending that the House of Assembly Management Commission consider the increased mandate/responsibilities of that Office with respect to any budgetary/resource implications.

3. Independent Support Advisor:

- The proposed Policy includes a requirement that a position of Independent Support Advisor be established and that it be independent of the Legislature. The position will provide advice, support, and guidance to individuals on navigating the process and the options available; and also in understanding and dealing with their feelings and concerns as they deliberate on the course of action best suited to them.
- To further ensure its independence from the Legislature, the proposed Policy assigns responsibility for identifying and retaining the services required to implement the position with the Citizens’ Representative. The intent is that it will not be a full-time position within that Office, but rather an external individual/organization retained on a contract basis to provide the service if/when required.



4. Intake of complaints:

- The proposed Policy includes a requirement for the Office of the Citizens' Representative to have a dedicated position for intake of complaints.
- Further, the proposed Policy assigns responsibility to the Citizens' Representative to ensure the Intake Officer has the necessary skills, knowledge, and training to receive and provide advice on complaints of harassment.

5. Timelines for making a complaint:

- The proposed Policy includes a requirement that all complaints must be filed no later than 6 months after the last incident of alleged harassment.

6. Confidentiality:

- The proposed Policy includes provisions that protect confidentiality of complainants and witnesses to the extent possible while complying with principles of natural justice and procedural fairness. The proposed Policy also outlines a process for recourse in the event it is determined that confidentiality has been breached by a Member or an employee.
- The proposed Policy also includes a requirement that:
 - i. The final report of the Standing Committee on Privileges and Elections to the House of Assembly not disclose the identity (including identifying information) of the complainant and witnesses; and
 - ii. Statements in debate regarding a matter related to the Policy must respect the confidentiality of the complainant and witnesses. The PEC is recommending that the Standing Orders Committee determine whether any amendments are necessary to address this matter.

7. Enhanced accountability:

- The proposed Policy includes a requirement that all Members of the House of Assembly annually sign a declaration confirming they have read and understood the provisions of the Policy.
- Currently, Members swear/affirm to uphold the Code of Conduct as part of their Oath of Office. In addition to that, the proposed amendments the HOAAIA include a requirement that Members annually sign a declaration reaffirming their commitment to follow the Code of Conduct for Members.



PROPOSED POLICY HIGHLIGHTS

The Standing Committee on Privileges and Elections is pleased to present to the House of Assembly the proposed Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly (as outlined in Appendix A). The Committee has worked diligently over the last number of months to develop a legislature-specific harassment policy that takes into account jurisdictional research; what it heard during the consultation process; and lessons learned through the House of Assembly's recent experience in dealing with complaints of harassment between Members.

The following section provides an overview of various components of the proposed HFWP Applicable to Complaints Against MHAs.

Application of Policy

- The proposed Policy will apply to complaints of harassment filed by an MHA or an employee where a **Member of the House of Assembly is a respondent**.
- As outlined, “employee” means the following:
 - Legislative branch - employees of the House of Assembly Service and Statutory Offices; constituency assistants of MHAs; political support employees in the caucus offices; and political support employees of independent MHAs.
 - Executive branch - employees (including political support employees) of a department created under the *Executive Council Act*, or a branch of the Executive government of the Province; executive assistants of Ministers; and political support employees in the Premier's Office.
- The proposed Policy will apply to **interactions** that an **MHA** has with **other MHAs and employees** in the context of carrying out **that MHA's duties as an elected official**.
- The Executive branch Harassment-Free Workplace Policy (effective June 1 2018) will continue to apply to employees of the Legislature in the context of making a complaint against another employee.



Definition of Harassment

- The proposed Policy outlines a clear definition of harassment, which includes the following elements:
 - Abuse of authority;
 - Discriminatory harassment;
 - Sexual harassment; and
 - Bullying.

Responsibilities

- In addition to outlining the rights and responsibilities of complainants, respondents, and witnesses, the proposed Policy also outlines responsibilities of individuals, positions, and bodies that play a role in implementing processes under the Policy and/or fostering and maintaining a respectful workplace. These include:
 - MHAs and employees;
 - Caucuses;
 - Speaker of the House of Assembly;
 - Independent Support Advisor;
 - Intake Officer (Office of the Citizens' Representative);
 - Citizens' Representative;
 - Standing Committee on Privileges and Elections.

Complaint Process

- The proposed Policy outlines a clear process for submitting complaints, as well as the steps and associated timelines once a formal complaint has been received by the Office of the Citizens' Representative (OCR).
- The proposed Policy also addresses anonymous and bystander complaints, in addition to outlining a process for recourse if it has been determined that accusations involve a falsehood, malicious intent, or are made in bad faith.

Resolution Process

- The proposed Policy includes both informal and formal resolution options, which are complainant-driven (that is, the decision as to which option to pursue rests with the complainant).



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- Informal resolution options include individual intervention, facilitated discussions and mediation. These processes will be coordinated by the OCR, but will be delivered through the engagement of external expertise.
 - The proposed Policy also outlines the principles that will be applied by the Citizens' Representative during an investigation (should a complaint proceed to that stage), as well as the associated timelines. In addition, it outlines the process once an investigation is complete, which involves referring the final investigative report to the Standing Committee on Privileges and Elections. The Committee has the responsibility of recommending sanction (if warranted) for the respondent MHA, which will then be referred to the House of Assembly for debate and vote.
 - The PEC's deliberations of the final investigative report will be conducted *in camera*, and while their final report to the House must identify the respondent MHA, **it will not disclose the identity (or any identifying information) of the complainant or witnesses in the process.**
 - The proposed Policy also outlines specific timelines for the PEC to complete this work and to table its report in the House of Assembly. Timelines for the House in debating/dealing with the report are also outlined.
 - To ensure confidentiality of the complainant and witnesses is protected during debate in the House, the proposed Policy includes a provision to protect the identity of the complainant and witnesses during debate (which would also include any identifying information). Further, the Committee recommends that the Standing Orders Committee consider addressing this matter in the Standing Orders.

Confidentiality

- The confidentiality provisions of the proposed Policy seek to respect confidentiality to the extent possible, keeping in mind the following:
 - People with responsibility for processing the files may disclose information if necessary in that context, and in accordance with the provisions of the proposed Policy.
 - Complainants, respondents, and witnesses called as part of the complaint process have the right to consult the support person of their choice. Although disclosure is permitted under the proposed Policy, it must occur with the greatest possible discretion, respect, and without unjustly tarnishing people's reputations.
- The proposed Policy also includes a process for disciplinary action against an MHA or an employee should it become known that confidentiality has been breached.



Training/Accountability Measures

- Consistent with the PEC’s recommendation from its Interim Report regarding mandatory training for all current MHAs in the 48th General Assembly, the proposed Policy includes a provision that will make this training mandatory for newly-elected MHAs. It also includes a requirement that any Members who have already completed the training attend refresher training once each general assembly.
- In addition to the mandatory training noted above, training on the provisions of the HFWP Applicable to Complaints Against MHAs will also be mandatory and included in the orientation and training provided to Members following a general election or by-election.
- The provisions of the proposed Policy will also make it mandatory for MHAs to annually sign a declaration form (which must be submitted to the Clerk of the House of Assembly by January 31 of each year) confirming they have read and understood the HFWP Applicable to Complaints Against MHAs.

Reimbursement of Legal Fees

- The PEC does not have the authority to recommend policy direction with respect to reimbursement of legal fees, as decisions on financial matters fall outside of its mandate. The authority for these policy decisions rests with the House of Assembly Management Commission (for MHAs and employees of the Legislature), and Treasury Board (for employees of the Executive branch).
- In this regard, the PEC is making recommendations that the Management Commission and Treasury Board (as outlined further in this report) determine policy direction as appropriate on the reimbursement of legal fees under the proposed HFWP Applicable to Complaints Against MHAs.

Automatic Review Mechanism

- The proposed Policy will make it mandatory for the Standing Committee on Privileges and Elections to automatically review the Policy and its processes at least once each general assembly, and make recommendations to the House of Assembly (as necessary) for amendments.



Effective Date & Implementation

- The provisions of the proposed Policy will come into effect at the beginning of the 49th General Assembly. The PEC makes this recommendation based on the following:
 - Several consequential statutory amendments must be passed by the House before the proposed Policy can come into effect.
 - There is an implementation period required, particularly for the Office of the Citizens' Representative, which will have an expanded mandate as a result of the Policy. That office will need time to prepare/plan appropriately.
- The interim process for application of the Executive branch Harassment-Free Workplace Policy to MHAs (as adopted by the House of Assembly Management Commission) will remain in effect for any issues of harassment that may arise prior to the proposed Policy coming into effect. This process can be found at: www.assembly.nl.ca/ManComm/Directives.

Recommendation

- 1. The Privileges and Elections Committee recommends that the House of Assembly adopt the proposed Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly, as outlined in Appendix A.**



CODE OF CONDUCT AMENDMENTS

As part of its work to develop a legislature-specific harassment-free workplace policy, the PEC also reviewed the principles and related legislative provisions of the Code of Conduct for Members of the House of Assembly, particularly in respect of the separation of harassment/bullying from the Code of Conduct (a direction that was outlined in the PEC's Interim Report). The intention is that harassment be separated from the Code of Conduct, and that all harassment-related complaints be dealt with in accordance with the proposed Policy. The Committee is of the view that the sensitive nature of harassment issues requires specific considerations that are different from other matters related to misconduct of Members (e.g. financial, ethical or otherwise).

Code of Conduct Principles

The Code of Conduct currently in effect was developed by the Privileges and Elections Committee, and adopted by the House in May 2008. It states the following:

Commitments:

Members of this House of Assembly recognize that we are responsible to the people of Newfoundland and Labrador and will responsibly execute our official duties in order to promote the human, environmental and economic welfare of Newfoundland and Labrador.

Members of this House of Assembly respect the law and the institution of the Legislature and acknowledge our need to maintain the public trust placed in us by performing our duties with accessibility, accountability, courtesy, honesty and integrity.

Principles:

1. Members shall inform themselves of and shall conduct themselves in accordance with the provisions and spirit of the Standing Orders of the House of Assembly, the *House of Assembly Accountability, Integrity and Administration Act*, the *Members' Resources and Allowances Rules*, the *Elections Act, 1991*, the *House of Assembly Act* and this Code of Conduct and shall ensure that their conduct does not bring the integrity of their office or the House of Assembly into disrepute.



2. It is a fundamental objective of their holding public office that Members serve their fellow citizens with integrity in order to improve the economic and social conditions of the people of the province.
3. Members reject political corruption and refuse to participate in unethical political practices which tend to undermine the democratic traditions of our province and its institutions.
4. Members will act lawfully and in a manner that will withstand the closest public scrutiny. Neither the law nor this code is designed to be exhaustive and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.
5. Members will not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices.
6. Members will carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.
7. Members will base their conduct on a consideration of the public interest. They are individually responsible for preventing conflicts of interest and will endeavour to prevent them from arising. Members will take all reasonable steps to resolve any such conflict quickly and in a manner which is in the best interests of the public.
8. In performing their official duties, Members will apply public resources prudently and only for the purposes for which they are intended.
9. Members will not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.
10. Relationships between Members and government employees should be professional and based upon mutual respect and should have regard to the duty of those employees to remain politically impartial when carrying out their duties.
11. Members should promote and support these principles by leadership and example.
12. This Code of Conduct has a continuing effect except as amended or rescinded by resolution of the House of Assembly.

In reviewing the Code of Conduct and its related processes to ensure that moving forward all complaints of harassment be dealt with in accordance with the proposed Harassment-Free Workplace Policy Applicable to Complaints Against MHAs, the Committee is recommending that principle 10 be amended. The proposed amendment removes the reference to “relationships



between Members and government employees”, but retains the idea of Members having regard for the duty of impartiality of public service employees, as follows:

Members should have regard to the duty of public service employees to remain politically impartial when carrying out their duties.

The PEC is of the view that maintaining principle 10 as it currently exists could result in a situation where a complaint of harassment (which is relationship-based) would have to be investigated under the Code of Conduct (should a complaint be received under that process). Amending principle 10, along with other proposed statutory amendments (outlined further in this report), will ensure that complaints of harassment (which are relationship-based) are dealt with in accordance with the process outlined in the proposed Policy, which was developed taking into account the sensitive nature of harassment/relationship-based issues.

Recommendation

2. The Privileges and Elections Committee recommends that the House of Assembly amend principle 10 of the Code of Conduct for Members, as outlined in Appendix B.

Code of Conduct Process

Sections 36 to 42 of the *HOAAIA* outline processes related to the Code of Conduct including how opinions can be requested; the process and timelines for conducting inquiries; the reporting process once inquiries are completed; and the process and timelines for the House in dealing with the reports. As part of its review, and given the experience of the Legislature in recent months with the Code of Conduct, the Committee is proposing a number of statutory amendments to change that process.

The Code of Conduct process in the Act currently provides **four ways** for an investigation to be initiated (Section 36):

1. Any Member of the House of Assembly by request to the Commissioner;
2. The Commissioner, on his/her own initiative;
3. The House of Assembly, by resolution; or
4. The Premier by request to the Commissioner.

Further, Section 38 of the Act sets out the process for reporting once an inquiry under the Code of Conduct has concluded. When an investigation is initiated by the Premier, it follows a different



process than if it is initiated by a Member, the Commissioner, or the House of Assembly (which are dealt with by resolution).

Any Member of the House of Assembly (including the Premier) has the ability to request an opinion of the Commissioner about another Member as it relates to the Code of Conduct. Therefore, the Committee is of the view that it is not necessary for the Premier to have the ability to initiate a review that would follow a different reporting process than if it was initiated by any other Member. For this reason, the Committee is proposing an amendment to the *HOAAIA* (as outlined in the proposed Bill in Appendix C) to repeal subsections 36(4) and 38(2) [Note: these subsections relate to the Premier's authority to initiate a review and the related reporting process for review's initiated by the Premier].

In addition to the proposed amendments outlined above, the Committee is also proposing the following:

- An amendment to Section 35 making it mandatory for Members to annually file a declaration with the Clerk reaffirming their commitment to follow the Code of Conduct.
- The addition of Section 40.1 regarding confidentiality of the identity of the person requesting an opinion (Note: the proposed amendment mirrors what exists in the whistleblower provisions of the Act).

Recommendation

- 3. The Privileges and Elections Committee recommends that the House of Assembly concur in its recommendation regarding proposed amendments to the Code of Conduct provisions of the *House of Assembly Accountability, Integrity and Administration Act*, as outlined in the proposed Bill at Appendix C.**



OTHER CONSEQUENTIAL STATUTORY AMENDMENTS

In order to give effect to the proposed HFWP Applicable to Complaints Against MHAs, and to ensure that all harassment-related complaints are dealt with under the proposed Policy (not the Code of Conduct), the Committee is recommending a number of consequential statutory amendments to the *HOAAIA*, which include:

- Definitions related to the proposed HFWP Applicable to Complaints Against MHAs (Section 42.1);
- Separation of what is investigated under the proposed Policy versus Code of Conduct (Section 42.2);
- Authority of the Citizens’ Representative to carry out work in accordance with the Policy, and the process for final investigative reports (Sections 42.3 and 42.4);
- Role of the Privileges and Elections Committee and the options available to the Committee for recommending penalties/sanction (Sections 42.5 and 42.6);
- Confidentiality of the complainant and witnesses (Section 42.7); and
- Process where the complainant is the Citizens’ Representative (Section 42.8).

All of the proposed amendments are outlined in Appendix C.

Recommendation

- 4. The Privileges and Elections Committee recommends that the House of Assembly concur in its recommendation regarding proposed amendments to *House of Assembly Accountability, Integrity and Administration Act*, as outlined in the proposed Bill in Appendix C.**



OTHER RECOMMENDATIONS

To facilitate successful implementation of the proposed HFWP Applicable to Complaints Against MHAs, the PEC is making a number of recommendations related to, but not strictly within, the mandate outlined in the resolution directing this work. These are as follows:

5. The Privileges and Elections Committee recommends that the House of Assembly concur in the following recommendations to the Standing Orders Committee:

- a) That the Committee consider amendments to the Standing Orders that will ensure the spirit and intent of the proposed HFWP for Complaints Against MHAs are respected during debate in the House of Assembly.
- b) That the Committee consider whether the expanded mandate of the Privileges and Elections Committee with respect to the proposed Policy and its processes warrants an amendment to the Standing Orders to increase the number of Members on the PEC.
- c) That the Committee review the Standing Orders with a view to adding a mechanism to protect the identity of the complainant and witnesses during debate (which would also include any identifying information).

6. The Privileges and Elections Committee recommends that the House of Assembly concur in the following recommendations to the House of Assembly Management Commission:

- a) That the Management Commission determine policy direction with respect to reimbursement of legal fees under the proposed HFWP Applicable to Complaints Against MHAs for Members and employees of the Legislative branch.
- b) That the Management Commission consider the expanded mandate of the Office of the Citizens' Representative with respect to the Policy and provide appropriate resources to that Office as required.
- c) That the Management Commission rescind Directive 2018-001 (Interim Application of Executive Branch Harassment-Free Workplace Policy for Complaints When the Respondent is a Member of the House of Assembly) when the proposed HFWP Applicable to Complaints Against MHAs comes into effect.



7. The Privileges and Elections Committee recommends that the House of Assembly concur in its recommendation that Treasury Board determine policy direction with respect to reimbursement of legal fees under the proposed HFWP Applicable to Complaints Against MHAs for employees of the Executive branch.

8. The Privileges and Elections Committee recommends that the House of Assembly concur in its recommendation to the Minister Responsible for the Human Resource Secretariat that an addendum to the Executive branch Harassment-Free Workplace Policy (effective June 1 2018) be considered to specify that a complaint by an employee against a Member of the House of Assembly must proceed under the proposed HFWP Applicable to Complaints Against MHAs.



CONCLUSION

The Privileges and Elections Committee is pleased to present its final report to the House of Assembly on the development of a legislature-specific harassment-free workplace policy, which includes the proposed policy along with recommendations related to the Code of Conduct for Members and other consequential statutory amendments. It recommends that the House concur in this report and its recommendations.

The final report of the Committee follows many months of analysis, consultations, and deliberations. The PEC has given this matter the utmost attention and consideration. It recognized the importance of this work, as well as the expectation that the Legislature must lead by example in this area. The PEC worked diligently to develop a policy applicable to complaints against elected officials that creates a clear process; provides options for resolution; is complainant-driven; and protects confidentiality. The proposed Policy is intended to create a cultural shift; foster a better work environment; and hold elected officials to the highest standard of behaviour.



SUMMARY OF RECOMMENDATIONS

1. The Privileges and Elections Committee recommends that the House of Assembly adopt the proposed Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly, as outlined in Appendix A.
2. The Privileges and Elections Committee recommends that the House of Assembly amend principle 10 of the Code of Conduct for Members, as outlined in Appendix B.
3. The Privileges and Elections Committee recommends that the House of Assembly concur in its recommendation regarding proposed amendments to the Code of Conduct provisions of the *House of Assembly Accountability, Integrity and Administration Act*, as outlined in the proposed Bill at Appendix C.
4. The Privileges and Elections Committee recommends that the House of Assembly concur in its recommendation regarding proposed amendments to *House of Assembly Accountability, Integrity and Administration Act*, as outlined in the proposed Bill in Appendix C.
5. The Privileges and Elections Committee recommends that the House of Assembly concur in the following recommendations to the Standing Orders Committee:
 - a) That the Committee consider amendments to the Standing Orders that will ensure the spirit and intent of the proposed HFWP for Complaints Against MHAs are respected during debate in the House of Assembly.
 - b) That the Committee consider whether the expanded mandate of the Privileges and Elections Committee with respect to the proposed Policy and its processes warrants an amendment to the Standing Orders to increase the number of Members on the PEC.
 - c) That the Committee review the Standing Orders with a view to adding a mechanism to protect the identity of the complainant and witnesses during debate (which would also include any identifying information).



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6. The Privileges and Elections Committee recommends that the House of Assembly concur in the following recommendations to the House of Assembly Management Commission:
- a) That the Management Commission determine policy direction with respect to reimbursement of legal fees under proposed HFWP Applicable to Complaints Against MHAs for Members and employees of the Legislative branch.
 - b) That the Management Commission consider the expanded mandate of the Office of the Citizens' Representative with respect to the Policy and provide appropriate resources to that Office as required.
 - c) That the Management Commission rescind Directive 2018-001 (Interim Application of Executive Branch Harassment-Free Workplace Policy for Complaints When the Respondent is a Member of the House of Assembly) when the proposed HFWP Applicable to Complaints Against MHAs comes into effect.
7. The Privileges and Elections Committee recommends that the House of Assembly concur in its recommendation that Treasury Board determine policy direction with respect to reimbursement of legal fees under the proposed HFWP Applicable to Complaints Against MHAs for employees of the Executive branch.
8. The Privileges and Elections Committee recommends that the House of Assembly concur in its recommendation to the Minister Responsible for the Human Resource Secretariat that an addendum to the Executive branch Harassment-Free Workplace Policy (effective June 1 2018) be considered to specify that a complaint by an employee against a Member of the House of Assembly must proceed under the proposed HFWP Applicable to Complaints Against MHAs.



APPENDICES

1. Proposed Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly
2. Proposed amendments to the principles of the Code of Conduct for Members
3. Proposed consequential statutory amendments to *House of Assembly Accountability, Integrity and Administration Act*



APPENDIX A

The following is the proposed Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly.

*This is a draft version proposed by the
Standing Committee on Privileges and Elections
to the House of Assembly, April 2019*

HARASSMENT-FREE WORKPLACE POLICY APPLICABLE TO COMPLAINTS AGAINST MEMBERS OF THE HOUSE OF ASSEMBLY

April 2019



House of Assembly – Newfoundland & Labrador

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1.0 INTRODUCTION

The House of Assembly of Newfoundland and Labrador is committed to a safe and respectful work environment for Members and employees that is free from harassment, bullying and violence. It is everyone's responsibility to foster a healthy work environment; to promote a culture of civility; to demonstrate respect; and to recognize every person's right to be protected and supported.

The Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly (the Policy) is the result of recommendations from the Standing Committee on Privileges and Elections to the House of Assembly, which was mandated to complete this work by an Order of the House. The Committee worked diligently to develop a policy applicable to complaints against elected officials that creates a clear process; provides options for resolution; is complainant-driven; and protects confidentiality. The Policy is intended to create a cultural shift; foster a better work environment; and hold elected officials to the highest standard of behaviour.

2.0 APPLICATION

This policy applies to complaints of harassment **brought against** a Member of the House of Assembly (MHA) by:

- a) Another Member of the House of Assembly;
- b) An employee of the Legislative branch¹; or
- c) An employee of the Executive branch².

¹ This means employees of the House of Assembly Service and Statutory Offices; constituency assistants of MHAs; political support employees in the caucus offices; and political support employees of independent MHAs.

² This means employees (including political support employees) of a department created under the *Executive Council Act*, or a branch of the Executive government of the Province; executive assistants of Ministers; and political support employees in the Premier's Office.

The **policy applies to interactions** that an **MHA** has with other **MHAs and employees** in the context of carrying out that MHA's **duties as an elected official**.

While it is recommended that the spirit and intent of this Policy be observed during debate, **parliamentary precedents, traditions, and the Standing Orders apply to proceedings in the House of Assembly and its Standing and Select Committees**.

3.0 HARASSMENT

Harassment is defined as any objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome. Harassment may be intended or unintended.

Harassment will normally involve a series of incidents; however, a single incident may constitute harassment if it would be considered egregious or severe to a reasonable person taking into account the circumstances of the incident.

Forms of **harassment** include:

- **Abuse of authority** – harassment that occurs through a use of authority serving no legitimate work purpose.
- **Discriminatory harassment** – harassment that is based on an actual or perceived prohibited ground of discrimination as outlined in the *Human Rights Act, 2010*, such as race, colour, nationality, ethnic origin, social origin, religious creed, religion, age, disability, disfigurement, sex, sexual orientation, gender identity, gender expression, marital status, family status, source of income, or political opinion.
- **Sexual harassment** – harassment which is gender-based or of a sexual nature.
- **Bullying** – a repeated pattern of abuse or mistreatment aimed at a specific person or group, including by electronic means.

4.0 DEFINITIONS

Complaint – a complaint, which has been confirmed in writing, against an individual or group of individuals whose alleged behaviour contravenes the Policy. All complaints will be dealt with under the provisions of the Policy and related processes.

Complainant – any Member of the House of Assembly or employee who has filed a complaint under the Policy alleging harassment or bullying.

Day – for the purpose of the Policy, a day means a business day, not including statutory holidays. Days in which the process is held in abeyance in accordance with the Policy are excluded in the timeline requirements.

Employee – an employee of the Province of Newfoundland and Labrador as follows:

- a) Legislative Branch – employees of the House of Assembly Service and Statutory Offices; constituency assistants of MHAs; political support employees in the caucus offices; and political support employees of independent MHAs.
- b) Executive Branch – employees (including political support employees) of a department created under the *Executive Council Act*, or a branch of the Executive government of the Province; executive assistants of Ministers; and political support employees in the Premier’s Office.

Exceptional circumstance – circumstances beyond the control of the Intake Officer, the Citizens’ Representative, the Standing Committee on Privileges and Elections, and/or the Speaker, as the case may be, which affect their ability to comply with timelines outlined in the Policy.

Independent support advisor – a position independent of and external to the Legislature and its statutory offices, including the Office of the Citizens’ Representative, that is responsible for providing support, advice, and guidance to individuals involved in dealing with and resolving issues of harassment.

Intake officer – the position dedicated within the Office of the Citizens’ Representative that is the main point of contact for filing complaints of harassment under the Policy.

Investigation – the systematic and objective examination of the facts relevant to a harassment complaint. An investigation may involve interviewing and obtaining signed statements from complainants, respondents, and witnesses, as well as a review of relevant documentary evidence.

Member of the House of Assembly (MHA) – an individual elected (pursuant to the *Elections Act, 1991*) to one of the 40 seats established in the *House of Assembly Act*.

Parties – the complainant(s) and respondent(s) to a complaint.

Procedural fairness – includes the right to be heard, the right to be treated without bias, the right to be informed of allegations being made and to be provided with an opportunity to respond to them, and the right to information regarding the status of the complaint.

Respondent – any Member of the House of Assembly against whom allegations of harassment are made under the Policy.

Reprisal/retaliation – any negative or inappropriate action taken against an employee or a Member of the House of Assembly as a result of an allegation of harassment, the filing of a complaint, or any participation in a resolution mechanism under the Policy.

5.0 RESPONSIBILITIES

5.1 Members of the House of Assembly & Employees

It is the responsibility of all Members of the House of Assembly and employees to:

- Act respectfully in dealings with all Members of the House of Assembly and employees;
- Respect the diversity brought to the workplace by others;
- Challenge inappropriate behaviour/objectionable conduct when it happens and refuse to participate in that behaviour;
- Report inappropriate behaviour/objectionable conduct to someone in authority;
- Be aware of the Policy for preventing and addressing harassment;
- Cooperate and share openly and honestly in investigations; and
- Respect the confidentiality of all processes under the Policy.

5.2 Caucuses

It is the responsibility of all Caucuses to:

- Monitor the caucus and watch for signs that harassment may be taking place;
- Encourage early and open dialogue before inappropriate behaviour escalates;
- Address instances of inappropriate behaviour that may occur in the caucus as soon as they are known, even in the absence of a complaint;
- Ensure all Members and employees of the caucus act appropriately in the context of harassment situations;
- Ensure Members and employees of the caucus are aware of the Policy for preventing and addressing harassment;
- Monitor situations where complaints have been made, including after corrective measures have been taken;
- Ensure Members and/or employees of the caucus are not subject to retaliation for their involvement in a process under the Policy; and
- Respect the confidentiality of all processes under the Policy.

5.3 Speaker of the House of Assembly

It is the responsibility of the Speaker of the House of Assembly to:

- Lead by example in promoting and fostering a respectful workplace for all Members of the House of Assembly and employees of the Legislature;
- Ensure all Members of the House of Assembly and employees of the Legislature are aware of the Policy for preventing and addressing harassment;
- Ensure applicable mandatory training as outlined in Section 15.0 is developed and delivered to all Members of the House of Assembly;
- Coordinate the attendance of Members of the House of Assembly at mandatory training;
- Notify the Citizens' Representative of any decision voted on in the House of Assembly under the Policy; and
- Respect the confidentiality of all processes under the Policy.

5.4 Independent Support Advisor

It is the responsibility of the Independent Support Advisor to:

- Support, advise, and guide individuals in dealing with and resolving issues of harassment;
- Provide advice and guidance to individuals on navigating the process and the options available;
- Counsel individuals in understanding and dealing with their feelings and concerns as they deliberate on the course of action best suited to them;
- Work to increase the comfort level of individuals as they navigate, deal, and cope with harassment issues; and
- Respect the confidentiality of all processes under the Policy.

5.5 Intake Officer (Office of the Citizens' Representative)

It is the responsibility of the Intake Officer to:

- Receive harassment complaints from Members of the House of Assembly and employees;
- Assist the Citizens' Representative in reviewing complaints and identifying whether allegations are within scope of the Policy;
- Advise complainants, making use of specialized skills, knowledge, and training, on the process and the options available (informal and formal) to address harassment complaints;
- Confirm, in writing, to the complainant the option selected to address his/her complaint;
- Advise the respondent of the complaint and outline the resolution process;
- Advise any party or witness related to a complaint on matters pertaining to the Policy;
- Coordinate aspects of the informal resolution process when informal resolution has been selected to deal with a complaint of harassment;
- Notify the Citizens' Representative when formal resolution (investigation) has been selected by the complainant;
- Maintain records of all harassment complaints and track progress through to resolution/conclusion; and
- Respect the confidentiality of all processes under the Policy.

5.6 Citizens' Representative

It is the responsibility of the Citizens' Representative to:

- Identify and retain the services required to establish the position of Independent Support Advisor;
- Oversee the work of the Intake Officer, and ensure the incumbent has the necessary skills, knowledge, and training to receive and provide advice on complaints of harassment;
- Review complaints with the Intake Officer to identify whether allegations are within scope of the Policy;
- Conduct investigations if/when a complaint proceeds to the formal resolution stage. In that regard, the Citizens' Representative has a responsibility to:
 - Inform the complainant, respondent, witnesses, and support persons of the process that will be followed and their roles in the investigation, including the process for disclosure of statements/evidence in accordance with the principles of procedural fairness;
 - Conduct the investigation in a fair and impartial manner;
 - Respect confidentiality at all times;
 - Interview the parties and witnesses and prepare written statements;
 - Review all statements and evidence collected in the investigation;
 - Prepare an investigative report that provides an analysis of the evidence gathered and findings as to whether harassment has occurred in accordance with the Policy;
 - Provide written notification to the complainant and respondent on the status of the investigation processes throughout the course of the investigation.
- Submit the final investigative report to the Standing Committee on Privileges and Elections, and be available to that Committee as necessary to discuss the report and its findings;
- Notify the complainant of any decision voted on in the House of Assembly under the Policy;
- Develop and administer documentation to support the Policy;
- Provide interpretation and guidance regarding the Policy;
- Act as a subject matter resource for the development of orientation, training, and information programs with respect to the policy; and
- Respect the confidentiality of all processes under the Policy.

5.7 Standing Committee on Privileges and Elections

It is the responsibility of the Standing Committee on Privileges and Elections to:

- Receive investigative reports from the Citizens' Representative;
- Review investigative reports and findings, and determine a recommendation for sanction (if applicable) against the respondent MHA;
- Prepare a report for the House of Assembly outlining the recommended sanction of the respondent MHA (if applicable), and any details of the final investigative report to provide rationale for the recommendation. **Note: While the respondent MHA will be named, the identity of the complainant and witnesses will not be disclosed in the report to the House of Assembly – see Section 9.2 for further details.**
- Provide an opportunity for the complainant and/or respondent to be heard by the Committee with respect to a recommendation for sanction;
- Table the report in the House of Assembly and provide notice of the proposed motion in the report with respect to a sanction recommendation (through the Chair);
- Conduct a review of the Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly once each general assembly (or as necessary), and make recommendations to the House of Assembly on revisions to the Policy as required; and
- Respect the confidentiality of all processes under the Policy.

6.0 RIGHTS & RESPONSIBILITIES – COMPLAINANTS, RESPONDENTS & WITNESSES

6.1 Complainants

Complainants have the **right** to:

- Access confidential support/advice through the Independent Support Advisor;
- Make a complaint under the Policy;
- Be notified of their options for resolution of the complaint;
- Be accompanied by a support person of choice (at own expense) during interview(s), provided the person is not a witness to the complaint, and provided the person selected is not in a potential conflict of interest position by virtue of involvement;
- Not be identified in the final report of the Standing Committee on Privileges and Elections to the House of Assembly; and
- Not be subject to retaliation for the reason of having made a complaint under the Policy.

It is the **responsibility** of Complainants to:

- Submit a complaint within 6 months following the last incident;
- Follow all requirements of the Policy;
- Cooperate with all those responsible for dealing with the informal resolution and/or investigation of the complaint; and
- Respect the confidentiality of all processes under the Policy.

6.2 Respondents

Respondents have the **right** to:

- Access confidential support/advice through the Independent Support Advisor;
- Be informed that a complaint has been filed and by whom;
- Be presented with the complaint and be afforded an opportunity to respond; and

- Be accompanied by a support person of choice (at own expense) during interview(s), provided the person is not a witness to the complaint, and provided the person selected is not in a potential conflict of interest position by virtue of involvement.

It is the **responsibility** of Respondents to:

- Follow all requirements of the Policy;
- Cooperate with all those responsible for dealing with the informal resolution and/or investigation of the complaint; and
- Respect the confidentiality of all processes under the Policy.

6.3 Witnesses

Witnesses have the **right** to:

- Access confidential support/advice through the Independent Support Advisor;
- Be accompanied by a support person of choice (at own expense) during interview(s), provided the person is not a witness to the complaint, and provided the person selected is not in a potential conflict of interest position by virtue of the person's involvement;
- Not be identified in the final report of the Standing Committee on Privileges and Elections to the House of Assembly; and
- Receive a copy of their statement only.

It is the responsibility of **Witnesses** to:

- Follow all requirements of the Policy; and
- Respect the confidentiality of all processes under the Policy.

7.0 SUPPORT

A position of Independent Support Advisor will be established, which is external to and independent of the Legislature and its Statutory Offices, including the Office of the Citizens' Representative.

This position does not receive formal complaints, but can provide advice, support, and guidance to individuals on navigating the process and the options available; and also in understanding and dealing with their feelings and concerns as they deliberate on the course of action best suited to them. The primary intent of this position is to increase the comfort level of complainants and other individuals as they navigate, deal, and cope with harassment issues.

8.0 COMPLAINTS

8.1 Submitting a Complaint

A Member of the House of Assembly or employee may contact the Intake Officer of the Office of the Citizens' Representative with respect to allegations of harassment. Contact with the Intake Officer does not mean that a formal complaint must be filed at that point (i.e. individuals may ask questions with respect to the process and options available, and seek advice on a particular situation before making a decision to proceed with a formal complaint under the Policy). No detailed records related to inquiries are captured, only a record for statistical purposes to track number of inquiries made.

If a Member or employee wishes to proceed with a formal complaint:

1. The complaint should be filed as soon as possible, but must be filed **no later than 6 months** after the **last incident of alleged harassment**; and
2. The complaint **must be in writing**, and include the following:
 - Signature of the complainant;
 - A description of the nature of the alleged harassment and the identity of the respondent; and

- Detailed information including, but not limited to, time, date, and location of alleged harassment, and identification of any witnesses.

8.2 Anonymous Complaints

Anonymous complaints will not be addressed under the Policy. Anonymity cannot be granted when complaints are filed, as respondents have the right to know and to respond to any allegations that have been made against them.

8.3 Bystander Complaints

Individuals who witness behaviour that contravenes the Policy have a responsibility to take appropriate action and report the behaviour to someone in authority. A bystander who reports behaviour which contravenes the Policy will not be considered as a Complainant. However, he or she may be interviewed as a witness in the event that there is an investigation into the concerns raised.

A bystander can report alleged harassment by contacting the Intake Officer of the Office of the Citizens' Representative to submit a bystander complaint. Where a bystander complaint is received under the Policy, the Intake Officer will contact the subject of the alleged harassment to discuss the bystander complaint, and offer to meet to discuss options for resolution under the Policy. If the subject of alleged harassment wishes to explore resolution options under the Policy, the process for submitting a personal complaint (as outlined in section 8.1) must be followed by the subject.

8.4 Complaint Process

The following outlines the steps and associated timelines once a formal complaint has been submitted under the Policy. Should **delays in the process** be unavoidable **due to exceptional circumstances** (as defined in the Policy), the complainant and respondent will be advised in writing by the Intake Officer or Speaker (as the case may be) of the reasons for the delay and the impact on the required timelines.

Step	Timelines
Intake Officer to determine, in consultation with the Citizens' Representative, whether the complaint falls within the scope of the Policy.	Upon receipt of complaint.
Intake Officer to acknowledge complaint (in writing), and schedule meeting with complainant to review resolution options under the Policy. Note: Following this meeting, written communication will be sent to the complainant to reiterate these options and confirm the option that has been selected for resolution of the complaint.	5 days following receipt of complaint.
Intake Officer to provide written notification of the complaint to the respondent, including the name of the complainant. A meeting with the respondent is also scheduled to review the complaint and outline the resolution process selected by the complainant.	5 days following meeting with complainant.
Intake Officer to notify the Speaker of the House of Assembly that a complaint has been filed under the Policy. Note: The Speaker will be provided with the name of both the complainant and respondent, but no other details of the complaint.	5 days following notification to complainant and respondent.
Speaker of the House of Assembly to notify the following of the complaint (the name of both the complainant and respondent will be provided, but no other details): <ul style="list-style-type: none"> – Leader of the caucus to which the complainant is affiliated, if any (if the complainant is an MHA). If the complainant is the Leader of a Caucus, notification is given to the caucus House Leader; OR – Clerk of the House of Assembly, if the complainant is an employee of the Legislative Branch; OR 	5 days following receipt of notification from the Intake Officer.

Step	Timelines
<ul style="list-style-type: none"> – Clerk of the Executive Council, if the complainant is an employee of the Executive Branch; AND – Leader of the caucus to which the respondent MHA is affiliated. If the respondent is the Leader of a Caucus, notification is given to the caucus House Leader. <p>Note: As outlined in Section 10.0, while confidentiality must be respected to the extent possible, there may be circumstances where a Caucus Leader and/or Clerk will be required to disclose limited information, if necessary, to arrange any special accommodations (e.g. alternate work assignments, alternate seating/office arrangements, etc.) that may be required for complainants and/or respondents.</p>	

8.5 False Allegations

Accusations that are found to involve a falsehood, malicious intent, or made in bad faith will not be tolerated and will be considered a violation of the Policy. A complaint will not be deemed to be false, malicious, or made in bad faith solely because it is unfounded.

Members of the House of Assembly who have made such accusations may be subject to appropriate disciplinary action. If it is determined by the Citizens’ Representative that a false accusation has been made by an MHA, the Citizens’ Representative will notify the Standing Committee on Privileges and Elections, who will review the matter and recommend any sanctions (if necessary) available to the House of Assembly to be brought forward to the House for debate and vote.

Employees who have made such accusations may be subject to appropriate disciplinary action. If it is determined by the Citizens’ Representative that a false accusation has been made by an employee, the Citizens’ Representative will notify either the Clerk of the House of Assembly (if the employee is from the Legislative Branch) or the Clerk of the Executive Council (if the employee is from the Executive Branch). Human Resources and the employee’s supervisor/manager will be engaged to determine appropriate disciplinary action (if necessary) by the employer.

9.0 RESOLUTION PROCESS

Complainants can choose to resolve their complaint through informal or formal resolution options. Informal resolution refers to mechanisms by which complaints can be resolved by means other than investigation, such as self-resolution, facilitated discussions, or mediation. Formal resolution refers to the investigative process which involves an impartial investigator (Citizens' Representative) determining whether there has been a breach of the Policy. **Selection of the formal resolution option does not preclude complainants from later deciding to pursue informal resolution or vice versa.**

9.1 Informal Resolution

There are several options available for informal resolution as follows **(the informal resolution process will be coordinated by the Intake Officer through engagement of external expertise):**

- **Individual Intervention:** The complainant may choose to approach the respondent, either in person or in writing, to advise that the respondent's behaviour is objectionable and unwelcome and request that the behaviour cease. The matter may be resolved at this point and no further action required.
- **Facilitated Discussions:** These are typically less formal and less structured than mediation, but provides a safe environment for a constructive conversation. The process is conducted by an impartial facilitator who assists the complainant and respondent in reaching a resolution in a respectful manner. The facilitator will first meet individually with each person involved to assess readiness and provide information on the process. If deemed appropriate, a facilitated discussion will be scheduled.
- **Mediation:** The mediation process is conducted by an impartial mediator who assists the complainant and respondent in reaching a resolution in a respectful manner. The mediator will first meet individually with each person involved to assess readiness and provide information on the mediation process. If deemed appropriate, mediation will be scheduled.

Once the informal resolution option has been selected by the complainant, the process **must be initiated by the Intake Officer within 15 days**. Timelines for the informal resolution process will **vary by situation** (determined by experts involved in consultation with the complainant and respondent).

9.2 Formal Resolution (Investigation)

The complainant may choose to pursue resolution through a formal investigation, which involves an impartial/independent investigator (the Citizens' Representative) determining whether there has been a breach of the Policy. The investigator will ensure that the **right to procedural fairness** of all persons involved in an investigation is respected, including the complainant, witnesses, and respondent.

Once investigation has been chosen as a resolution option by the complainant, the investigation **must be commenced within 5 days**, and **completed within 90 days** (i.e. investigative report presented to the Standing Committee on Privileges and Elections).

Should **delays in the process** be unavoidable due to **exceptional circumstances** (as defined in the Policy), the complainant and/or respondent will be **advised in writing** by the Citizens' Representative of the reasons for the delay and the **impact on the required timelines**.

Suspension of Investigation

The investigator is not required to investigate a complaint, and may cease an investigation where the investigator is of the opinion that:

- a) the complaint reveals allegations that are frivolous or vexatious, or the complaint has not been made in good faith;
- b) the complaint does not provide adequate particulars about the alleged harassment as required under Section 8.0 of the Policy; or
- c) there is another valid reason for not investigating the complaint.

9.3 Referral of Final Investigative Report to Privileges and Elections Committee

Once the final investigative report is completed, the Citizens' Representative refers it to the Standing Committee on Privileges and Elections (PEC).

In the event the complainant or respondent is a member of the PEC, the Citizens' Representative will notify the Speaker, who in turn will notify the Government House Leader requesting the Committee member (who is either the complainant or respondent) be replaced with another Member of the House of Assembly within 5 days. The replacement is for the purpose of dealing with the report only.

The final investigative report of the Citizens’ Representative is a report prepared for a Committee of the House. Parliamentary privilege extends to Committees of the House; therefore releasing the final investigative report publically by any individual provided with a copy of the report in accordance with the Policy may be considered a violation of that privilege.

The following outlines the steps and associated timelines of the Committee in reviewing the final investigative report. Should **delays in the process** be unavoidable **due to exceptional circumstances** (as defined in the Policy), the complainant and respondent will be **advised in writing** by the Committee Chair of the reasons for the delay and the **impact on the required timelines**.

Step	Timelines
Chair sets initial meeting date for the Committee to review investigative report. Note: meeting(s) will be held <i>in camera</i>.	Initial meeting must be held within 30 days following receipt of final investigative report by Chair (or within 30 days of a substitution if the complainant or respondent is a member of the Committee).
The Committee (through the Chair), contacts the complainant and respondent, inviting them to appear in person before the Committee and/or provide a written submission on an appropriate sanction (if any), further to the findings outlined in the final investigative report. Note: Complainant and respondent may be accompanied by a support person (at own expense).	Chair to contact complainant and respondent (in writing) within 10 days of receipt of final investigative report. Complainant and respondent to notify the Committee (in writing, through the Chair) of their intention to appear or provide written submission within 10 days of notification from Chair.

Step	Timelines
<p>The Committee reviews final investigative report; hears from complainant and/or respondent (if required); and recommends any sanctions (if necessary) available to the House of Assembly of Newfoundland and Labrador to address its findings. A report is prepared to be referred to the House of Assembly which includes:</p> <ol style="list-style-type: none"> 1. Name of the respondent Member; 2. A recommendation with respect to sanctions (if any); 3. A summary of the reasons for any conclusions or recommendations; 4. A motion prepared in accordance with the Standing Orders of the House of Assembly that outlines the recommendation of the Committee for consideration of the House of Assembly. <p>NOTE: The report to the House of Assembly will not disclose the identity (or any identifying information) of the complainant or witnesses in the process.</p>	<p>Within 90 days following receipt of final investigative report by Chair.</p>
<p>The Committee provides a copy of their report to the House to the complainant and respondent.</p> <p>Note: The report is privileged and the complainant and respondent <u>MUST</u> keep it confidential until it is tabled in the House of Assembly.</p>	<p>Within 5 days following completion of Committee's report to the House of Assembly.</p>

9.4 Referral to House of Assembly

Once the final report of the Standing Committee on Privileges and Elections is ready for presentation to the House of Assembly, the Chair tables the report and gives notice of the proposed motion in the report. If the House is sitting, the report **must be tabled and notice of the motion given within 5 days**. If the House is not sitting, it **must be tabled and notice of motion given within 5 days of the beginning of the next sitting**.

Once notice of the motion is given, the House must deal with/dispose of the matter **within six months**.

Statements in debate regarding a matter related to the Policy **must respect the confidentiality of processes** under the Policy, as well as the **privacy of the complainant and witnesses**.

Once the House of Assembly has voted on a matter related to the Policy, the Speaker of the House of Assembly shall immediately notify the Citizens' Representative who will then notify the complainant and respondent of the decision of the House.

10.0 CONFIDENTIALITY

Respect for privacy is an important aspect of a respectful work environment, and any person directly or indirectly involved in a situation governed by this Policy must adhere to the principle of confidentiality.

However, the obligation to maintain confidentiality to which the Policy refers is not absolute. For example:

- People with responsibility for processing the files may disclose information if necessary in that context and in accordance with the provisions of the Policy; and
- Complainants, respondents, and witnesses called as part of the complaint process have the right to consult the support person of their choice. Although disclosure is permitted under the Policy, it must occur with the greatest possible discretion, respect, and without unjustly tarnishing people's reputations.

Information about a complaint, including the identities of the complainant, respondent, and witnesses, must be kept confidential by all parties, including those involved in the complaint process. **The complainant, respondent, and witnesses must sign a confidentiality agreement at the beginning of the process.**

The final investigative report of the Citizens' Representative is a report prepared for a Committee of the House. Committees of the House are subject to parliamentary privilege; therefore releasing the final investigative report publically by any individual provided with a copy of the report in accordance with the Policy may be considered a violation of that privilege.

The final report of the Standing Committee on Privileges and Elections to the House of Assembly is also subject to parliamentary privilege; therefore releasing the final report publically before it is tabled in the House may be considered a violation of that privilege.

10.1 Breaches in Confidentiality

Members of the House of Assembly and employees who breach confidentiality throughout a process under the Policy may be subject to disciplinary action.

If it is determined that confidentiality has been breached by an MHA during the investigation process, the Citizens' Representative will immediately notify the Standing Committee on Privileges and Elections. If it is determined that confidentiality has been breached by an MHA during another process under the Policy, it should be brought to the attention of the Speaker of the House of Assembly, who will immediately notify the Standing Committee on Privileges and Elections. In either case, the Committee will review the matter and recommend any sanction (if necessary) available to the House of Assembly to be brought forward in a report to the House for debate and vote.

If it is determined that confidentiality has been breached by an employee during the investigation process, the Citizens' Representative will immediately notify either the Clerk of the House of Assembly (if the employee is from the Legislative Branch); or Clerk of the Executive Council (if the employee is from the Executive Branch). If it is determined that confidentiality has been breached by an employee during another process under the Policy, it should be brought to the attention of the Speaker of the House of Assembly, who will immediately notify either the Clerk of the House of Assembly or the Clerk of the Executive Council. The applicable Clerk will engage human Resources and the employee's supervisor/manager to review the matter and determine appropriate disciplinary action (if necessary) for the employee.

11.0 REPRISAL/RETALIATION

Reprisal or retaliation against any Member of the House of Assembly or employee who has alleged harassment, made a complaint, or participated in any proceedings under the Policy is prohibited and may result in disciplinary action.

12.0 REPRESENTATION

12.1 Support Person

Complainants, respondents, and witnesses may be accompanied by a support person of their choice when attending meetings regarding a complaint (at own expense), provided the person is not a witness to the complaint, and provided the person selected is not in a potential conflict of interest position by virtue of involvement.

The support person shall not interfere with the proceedings in any way, as his/her primary role is to provide support and guidance to the person being interviewed. Support persons must also comply with the confidentiality requirements of the Policy.

12.2 Legal Costs

Any reimbursement of legal expenses for Members of the House of Assembly and employees of the Legislative Branch under this Policy is subject to a policy decision of the House of Assembly Management Commission. Any reimbursement of legal expenses for employees of the Executive branch under this Policy is subject to a policy decision of Treasury Board.

13.0 EFFECT OF DISSOLUTION & RESIGNATION

The processes outlined in the Policy may be impacted by the resignation of a Member and/or the dissolution of the Legislature, as follows:

- If the complainant's seat (if the complainant is an MHA) becomes vacant as a result of resignation or dissolution, there is no impact on the resolution process (sanctions, if any, can still be imposed as the respondent is still an MHA).
- If a respondent's seat becomes vacant as a result of resignation or dissolution, the Committee's report to the House of Assembly will only report on what the sanction recommendation would have been if the respondent was still an MHA (the

recommendation cannot be voted on or enforced by the House as the respondent is no longer a Member).

Any of the procedural steps of the Policy may be postponed during a period of dissolution at the discretion of the Citizens' Representative. The Chair of the Standing Committee on Privileges and Elections cannot be presented with an investigative report during a period of dissolution. Dissolution will not affect the standing of any case under the Policy if the respondent is re-elected to the House of Assembly.

If a complainant who is an employee resigns/leaves prior to conclusion of the resolution process, it will not affect the standing of any case under the Policy if the respondent is still a Member.

14.0 RESTORING THE WORK ENVIRONMENT

When allegations of harassment are made, all efforts must be taken to re-establish a respectful and productive work environment. Early engagement in the restoration process is an important responsibility of management and/or leadership within a respective caucus. Restoring the workplace will also require cooperation of Members of the House of Assembly and employees. Management and/or caucus leadership may consult with the Office of the Citizens' Representative regarding appropriate actions, which may vary dependent on specific circumstances and could include interim measures pending resolution of a complaint. Resources will be made available should it be deemed that professional expertise is required to provide group/team support and intervention.

15.0 TRAINING

15.1 Members of the House of Assembly

All Members of the House of Assembly are required to complete **mandatory respectful workplace training**, which includes such elements as:

- Awareness (e.g. difference between effective conflict vs. harassment/bullying; discrimination based on performance vs. harassment; etc.);
- Creative problem solving;

- Supportive communication;
- Conflict management;
- Stress management;
- Team building;
- Power and influence management.

The training is to be developed and delivered by expertise that is external to the Legislature (including its Statutory Offices) and the provincial government; and can be up to **three (3) days** in length. It must be completed by all **MHAs elected** to the House of Assembly for the **first time within 6 months of election**. All Members who have **previously completed the training** will be required to complete refresher training **once each general assembly**.

In addition to the respectful workplace training noted above, **mandatory training** on the Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly will be delivered to all MHAs as part of the orientation and training following a general election or by-election.

The Speaker of the House of Assembly will be responsible for coordinating the delivery of all mandatory training for MHAs under the Policy.

15.2 Employees

Respectful workplace training for employees can be arranged through the Respectful Workplace Division, Public Service Commission.

Training for employees on this Policy and its processes can be arranged by contacting the Speaker of the House of Assembly.

16.0 ACCOUNTABILITY

All Members of the House of Assembly will be required to **annually sign a declaration** confirming they have **read and understood the provisions of this Policy**. The declaration form must be submitted to the Clerk of the House of Assembly by **January 31 of each year**.

17.0 REVIEW OF POLICY

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.

18.0 EFFECTIVE DATE

This Policy and its related processes will come into effect at the beginning of the 49th General Assembly, or by resolution of the House (where the required consequential statutory amendments were not passed in the 48th General Assembly).



APPENDIX B

The following is the revised Code of Conduct for Members, which includes the proposed amendment to principle 10:

Commitments:

Members of this House of Assembly recognize that we are responsible to the people of Newfoundland and Labrador and will responsibly execute our official duties in order to promote the human, environmental and economic welfare of Newfoundland and Labrador.

Members of this House of Assembly respect the law and the institution of the Legislature and acknowledge our need to maintain the public trust placed in us by performing our duties with accessibility, accountability, courtesy, honesty and integrity.

Principles:

1. Members shall inform themselves of and shall conduct themselves in accordance with the provisions and spirit of the Standing Orders of the House of Assembly, the *House of Assembly Accountability, Integrity and Administration Act*, the *Members' Resources and Allowances Rules*, the *Elections Act, 1991*, the *House of Assembly Act* and this Code of Conduct and shall ensure that their conduct does not bring the integrity of their office or the House of Assembly into disrepute.
 2. It is a fundamental objective of their holding public office that Members serve their fellow citizens with integrity in order to improve the economic and social conditions of the people of the province.
 3. Members reject political corruption and refuse to participate in unethical political practices which tend to undermine the democratic traditions of our province and its institutions.
 4. Members will act lawfully and in a manner that will withstand the closest public scrutiny. Neither the law nor this code is designed to be exhaustive and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.
-



5. Members will not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices.
 6. Members will carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.
 7. Members will base their conduct on a consideration of the public interest. They are individually responsible for preventing conflicts of interest and will endeavour to prevent them from arising. Members will take all reasonable steps to resolve any such conflict quickly and in a manner which is in the best interests of the public.
 8. In performing their official duties, Members will apply public resources prudently and only for the purposes for which they are intended.
 9. Members will not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.
 10. Members should have regard to the duty of public service employees to remain politically impartial when carrying out their duties.
 11. Members should promote and support these principles by leadership and example.
 12. This Code of Conduct has a continuing effect except as amended or rescinded by resolution of the House of Assembly.
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APPENDIX C

The following is a draft Bill which includes the proposed amendments to the *House of Assembly Accountability, Integrity and Administration Act*.

April 2, 2019

EXPLANATORY NOTES

This Bill would amend the *House of Assembly Accountability, Integrity and Administration Act* to give legal effect to the Harassment-free Workplace Policy Applicable to Complaints Against Members of the House of Assembly as approved by the House of Assembly.

A BILL

AN ACT TO AMEND THE HOUSE OF ASSEMBLY ACCOUNTABILITY, INTEGRITY AND ADMINISTRATION ACT

Analysis

- | | |
|---|--|
| 1. S.35 Amdt.
Code of conduct | 42.5 Roles of Privileges and Elections Committee |
| 2. S.36 Amdt.
Request for opinion | 42.6 Penalties |
| 3. S.38 Amdt.
Report | 42.7 Concurrence of House of Assembly |
| 4. S.40.1 Added
Confidentiality of identity | 42.8 Confidentiality of identity |
| 5. Ss.42.1 to 42.11 Added
42.1 Definitions
42.2 Harassment
42.3 Authority
42.4 Report | 42.9 Where complainant is citizens' representative
42.10 Protection from liability
42.11 Declaration |
| | 6. Commencement |

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

SNL2007 cH-10.1
as amended

1. Section 35 of the *House of Assembly Accountability, Integrity and Administration Act* is amended by adding immediately after subsection (3) the following:

(4) Before February 1 in a year, a member shall file with the clerk a declaration reaffirming the member's commitment to follow the code of conduct for members.

2. Subsection 36(4) of the Act is repealed.

3. Subsection 38(2) of the Act is repealed.

4. The Act is amended by adding immediately after section 40 the following:

Confidentiality of
identity

40.1 The identity of a person requesting an opinion under section 36 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.

5. The Act is amended by adding immediately after section 42 the following:

Definitions

42.1 In sections 42.2 to 42.11,

- (a) "citizens' representative" means the citizens' representative appointed under the *Citizens' Representative Act*;
- (b) "harassment" means harassment as defined in the policy; and
- (c) "policy" means the Harassment-free Workplace Policy Applicable to Complaints Against Members of the House of Assembly recommended by the Privileges and Elections Committee and concurred in by the House of Assembly, and includes any amendments to it.

Harassment

42.2 (1) Notwithstanding sections 36 to 42, where a matter relates to a complaint of harassment against a member, that matter shall not be dealt with under sections 36 to 42, but shall be investigated and reported upon by the citizens' representative in accordance with the policy.

(2) Notwithstanding subsection (1), where a complaint has been made to the citizens' representative under the policy but the citizens' representative is of the opinion that the matter does not fall within his or her jurisdiction, a complainant who is a member may make a request for an opinion to the commissioner under section 36.

(3) Where a request for an opinion has been made to the commissioner under section 36 but the commissioner is of the opinion that the matter does not fall within his or her jurisdiction under sections 36 to 42, a complainant is not prohibited from making a complaint on the matter in accordance with the policy.

(4) Where a matter has been referred to either the commissioner or the citizens' representative under this Act or the policy and the commissioner or the citizens' representative, as appropriate, has issued a report or discontinued an investigation of that matter, the decision of the commissioner or citizens' representative, as appropriate, is final and

the matter may not be subsequently referred to the statutory officer who has not yet heard it.

Authority

42.3 (1) The citizens' representative shall conduct an investigation of an allegation made in a complaint under the policy in accordance with the policy.

(2) The investigation of an allegation made in a complaint under the policy shall be conducted as informally and expeditiously as possible in accordance with the policy.

(3) The citizens' representative shall ensure that the right to procedural fairness of all persons involved in an investigation is respected, including the complainant and the respondent.

Report

42.4 The citizens' representative shall report his or her findings to the Privileges and Elections Committee in accordance with the policy.

Roles of Privileges and Elections Committee

42.5 The Privileges and Elections Committee may do those things and exercise those powers assigned to it under the policy, and nothing in the policy, this section or sections 42.1 to 42.11 shall be taken to derogate from the powers, privileges and immunities of the House of Assembly, of its members or of the Privileges and Elections Committee under this or under any other law.

Penalties

42.6 (1) Where, in a report under section 42.4, the citizens' representative determines that a complaint against a member is substantiated, the Privileges and Elections Committee may recommend to the House of Assembly that

- (a) the member be reprimanded;
- (b) the member make restitution or pay compensation;
- (c) the member be suspended from the House of Assembly, with or without pay, for a period specified in the report; or
- (d) the member's seat be declared vacant.

(2) Before making a recommendation under subsection (1), the Privileges and Elections Committee shall, in accordance with the policy, provide the complainant and respondent with an opportunity to appear before the committee or to make a written submission to it re-

specting the sanction, if any, that the committee may recommend to the House of Assembly.

Concurrence of House of Assembly

42.7 (1) A report of the Privileges and Elections Committee under the policy shall be taken up and disposed of by the House of Assembly within 6 months of its being tabled, or a longer period that the House of Assembly may determine.

(2) A recommendation of the Privileges and Elections Committee shall not take effect unless it is concurred in by resolution of the House of Assembly.

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.

Where complainant is citizens' representative

42.9 Where the person making a complaint under the policy is the citizens' representative, the commissioner may exercise the powers of the citizens' representative under the policy and sections 42.1 to 42.8 as if the commissioner were the citizens' representative.

Protection from liability

42.10 A civil action or proceeding shall not be brought against an employee, the speaker, the clerk, the commissioner, the citizens' representative, an investigator, a member of the Privileges and Elections Committee or a person acting on behalf of or under the direction of any of them for a thing done or not done in good faith relating to the performance or intended performance of a duty or the exercise or intended exercise of a power under the policy or sections 42.1 to 42.9.

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.

Commencement

6. (1) This Act comes into force at the beginning of the 49th General Assembly.

(2) Notwithstanding subsection (1), the citizens' representative may, before the coming into force of this Act and the effective date of the policy, hire those people and do those things that may be required to give effect to the requirements of this Act and the policy.

2019

House of Assembly Accountability, Integrity and Administration (Amendment) Act

Bill

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