



**Policy No:**

**Responsibility:** Director, Human Resources

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## **Harassment Policy - Employees**

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**Approved by:** Board of Governors

**Effective:** June 14, 2005

**Revisions:**

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### **Statement of Principle**

The Justice Institute of British Columbia (JIBC) and the British Columbia Government and Service Employees Union (BCGEU) are committed to providing a work environment that is free from discrimination, harassment, and misuse of authority and in which individual differences are valued and respected.

The JIBC and the BCGEU do not condone and will not tolerate any discrimination, harassment, or misuse authority that undermines the dignity, self- esteem, and respect of any employee, seconded staff, or contractor.

The JIBC and the BCGEU consider discrimination, harassment, or misuse of authority by any individual to be a serious breach of policy that requires immediate action. Such action may include disciplinary measures up to and including dismissal or expulsion.

### **SCOPE**

This policy applies to all employees of the JIBC, seconded staff, and contractors. The policy covers complaints made by employees, seconded staff, or contractors of alleged discrimination, harassment, or misuse of authority by:

- a) any employee, seconded staff, or contractor;
- b) any person having a business relationship with the JIBC (e.g. student, vendor).

This policy applies to any location where the business of the JIBC is being conducted, including

- a) the workplace itself (e.g. cafeteria, meeting rooms, offices, training simulations);
- b) other locations and situations such as business travel, off-site meetings, or any other event or place related to employment or where the employee, seconded staff, or contractor is present in the course of employment.

This policy applies to all workplace communications: in-person, by telephone, using computer equipment, in writing, or through other mediums used within the JIBC.

### **Commitment to Prevention**

The Justice Institute of British Columbia is committed to:

- a) making employees, seconded staff, and contractors aware of behaviours that may be considered discriminatory, harassing, or misusing authority;
- b) ensuring employees, seconded staff, and contractors are aware of the procedure to have concerns and complaints dealt with.

Respect is the cornerstone of our working relationships. All employees, seconded staff, and contractors share responsibility for creating a working environment that is free of discrimination, harassment, and misuse of authority.

## **Definitions**

### **Discrimination**

Discrimination refers to unfair treatment on the basis of any of the prohibited grounds in the BC Human Rights Code: race, colour, ancestry, place of origin, religion, family status, marital status, physical disability, mental disability, sex, age, sexual orientation, political belief, or conviction of criminal or summary offence unrelated to employment, except where there is a bona fide occupational requirement.

### **Personal Harassment**

Personal harassment is defined as unwelcome behaviour that denies an individual her or his dignity or respect by creating an intimidating, humiliating, hostile, or offensive work environment and that may constitute discrimination on the basis of any of the grounds prohibited under the BC Human Rights Code.

Personal harassment may consist of repeated or persistent behaviour or may be a single serious incident.

### **Sexual Harassment**

Sexual harassment is sexually oriented conduct which an individual would reasonably find to be unwanted or unwelcome and which detrimentally affects the work environment or leads to adverse job-related consequences.

The behavior may be verbal, physical, written, or by innuendo.

Sexual harassment may consist of repeated or persistent behavior or may be a single serious incident.

Sexual harassment may be accompanied by an expressed or implied threat of reprisal or promise of reward.

Sexual harassment refers to behavior initiated by both males and females and may be directed toward members of the same or opposite sex, and is not restricted to interactions between supervisors and subordinates

### **Misuse of Authority**

Misuse of authority takes place when a person who supervises or is in a position of authority exercises that authority in a manner that serves no legitimate work purpose and that a reasonable person ought to know is inappropriate.

Misuse of authority does not include actions occasioned through the exercise, in good faith, of the employer's managerial/supervisory rights and responsibilities (e.g. application of policies, work rules and standards, performance reviews, assignment of work). Nor does it include a single incident of a minor nature where the harm, by an objective standard, is minimal.

### **Harassment Advisors**

Harassment Advisors are people trained to explain the options available to the complainant under the JIBC policy and to recommend a course of action to the complainant. Harassment Advisors have no authority to investigate a complaint or to attempt to mediate a resolution.

The Harassment Advisors will reflect the diversity of the workforce. The criteria for and selection of Harassment Advisors will be agreed between the JIBC and the BCGEU. A current list of Harassment Advisors will be maintained on the JIBC intranet.

## Resolving a Complaint

### 1) Take Direct Action

If an individual believes he or she has been subjected to discrimination, harassment, or misuse of authority, he or she may wish to make his or her objection or unease known to the person in order to resolve the issue prior to seeking mediation.

If dealing directly with the person is not an option or is unsuccessful, the individual may seek the confidential advice of a Harassment Advisor, the Union (if applicable), Human Resources, or his or her respective Director.

### 2) Mediation Procedure

The intent of mediation is to provide an alternative to the investigation procedure (section C below) and to promote early intervention and the use of mediation as a means to resolve allegations of discrimination, harassment, or misuse of authority as defined above. Where mediation occurs it will be conducted without prejudice to any further action by either party.

Either party to the mediation may withdraw from the mediation process at any time.

#### a) Requesting Mediation

Requests for mediation may be initiated through a Harassment Advisor, the Union (if applicable) or Human Resources. Requests will be accompanied by a signed written complaint, which should include the following, where applicable:

- i) name(s) of the complainant(s) and the respondent(s)
- ii) a description of the action(s), conduct, events, or circumstances
- iii) date, time, and place of incident(s)
- iv) name(s) of witnesses
- v) prior attempts to resolve the situation
- vi) remedy sought

#### b) Mediation Process

- i) Within five (5) days of receipt of a written request, a mediator will be assigned. Mediators will be agreed to by the Union (if applicable) and the Employer. Costs associated with the mediators will be borne by the Employer.
- ii) The mediation will be completed within ten (10) working days from the date of assignment or as soon thereafter as practicable.
- iii) Union members may be accompanied by a union representative to provide support.
- iv) The mediator will, in situations where the mediation results in a resolution, generate a Settlement Agreement within five (5) working days of the conclusion of the mediation. The Settlement Agreement will be signed by and exchanged by both parties with copies going to the Area Office of the Union (if applicable) and the Director, Human Resources.
- v) Should either party to the Settlement Agreement within the first six (6) months of the agreement be of the opinion that the agreement has been breached, he or she will make his or her views known to the Union Representative (if applicable) and the Director, Human Resources who will work with the parties in an effort to restore the agreement. This may involve referring the parties back to the original mediator.

- vi) Any issue arising between the parties to the Settlement Agreement beyond the first six (6) months of the agreement will be deemed to be a new issue and will be dealt with through the appropriate mechanism.
- vii) In situations where, in the opinion of the mediator, a resolution is not to be found, the mediator will conclude the mediation. This will be done in consultation with the Union Representative (if applicable) and the Director, Human Resources. The mediator will, within ten (10) working days of the conclusion of mediation, issue a report to the Union Representative (if applicable) and Director, Human Resources outlining the reasons for concluding the mediation.

In the event that this process does not resolve the complaint, the individual may pursue it through the investigation procedure.

### **3) Investigation Procedure**

#### **a) Natural Justice and Fairness**

The following procedures will comply with the principles of natural justice and fairness. This means that all parties to the discrimination, harassment, or misuse of authority complaint, including the complainant, respondent and witnesses, will be given the opportunity to fully explain what happened from their perspective, to have their explanations and concerns fully considered, and to challenge any evidence that is being or has been considered.

#### **b) Investigation Process**

Where an individual chooses not to pursue a complaint through Taking Direct Action or the Mediation Procedure (as described above), the following shall apply:

- i) An individual (complainant) who wishes to pursue a concern arising from alleged discrimination, harassment, or misuse of authority may submit a complaint in writing within six (6) months of the latest alleged occurrence directly to the Director, Human Resources. Where the complaint is against the Director, Human Resources, it shall be submitted to the President. Upon receipt of the written complaint, the Employer shall notify in writing the designated Union Representative (if applicable). Complaints of this nature shall be treated in strict confidence by both the Union (if applicable) and the Employer.
- ii) The Director, Human Resources has the discretion to waive the six (6) month time restriction where there are extenuating circumstances.
- iii) An alleged harasser (respondent) shall be given notice of the substance of such a complaint under this clause and shall be entitled to attend, participate in, and be represented at any hearing pursuant to (viii) below.
- iv) The Director, Human Resources will designate an Employer representative to investigate the complaint and submit his or her report to the Director, Human Resources in writing within fifteen (15) days of receipt of the complaint. The Director, Human Resources shall within ten (10) days of receipt of the report take the appropriate action to resolve the issue as contained in the report. The Union Representative (if applicable), the complainant, the respondent, and the respective Director(s) shall be apprised of the resolution.

- v) Both the complainant and respondent shall be given the option of having a Union Steward (if applicable) present at any meeting held pursuant to the above investigation.
  - vi) Pending determination of the complaint, the Director, Human Resources may take interim measures to separate the parties concerned if deemed necessary. Such action will not be deemed disciplinary in nature, or seen as presumption of guilt or innocence.
  - vii) In certain situations, it may be in the best interest of all concerned that the parties be reassigned or removed from all job sites pending the determination of the complaint. Such a decision will be made by the Director, Human Resources in consultation with the complainant, respondent, the Union (if applicable), and the respective Director(s). Every effort will be made to reassign the respondent unless the complainant requests reassignment. In cases where an employee, seconded staff, or contractor cannot be reassigned, the individual shall be considered to be on a leave of absence without loss of pay until the matter is finally resolved.
  - viii) Where either the complainant or the respondent, in conjunction with the Union (if applicable), is not satisfied with the Employer's response, the complaint will be put, within thirty (30) days, before an agreed upon, independent adjudicator who specializes in this field. The adjudicator shall work with the parties to achieve an acceptable resolution and if this is not achieved, the adjudicator shall have the right to:
    - dismiss the complaint; or
    - determine the appropriate level of discipline to be applied to the harasser;
    - make such further recommendations as are necessary to provide a final and conclusive settlement of the complaint.
  - ix) Where the complaint is determined to be of a frivolous, vindictive, or vexatious nature, the Employer will take appropriate action, which may include discipline up to and including termination.
  - x) This procedure does not preclude an individual filing a complaint under the BC Human Rights Code.
  - xi) Complaints dealt with using these procedures, including related documentation, shall be treated in strict confidence by all parties involved.
  - xii) The complainant may withdraw the complaint at anytime during this process by notifying the Director, Human Resources, in writing.
- c) List of Mediators and Independent Adjudicators  
 A list of mediators and independent adjudicators will be maintained and posted on the JIBC intranet. The parties may agree to use mediators or independent adjudicators not on this list in the interest of proceeding with the investigation in a timely manner.

#### **4) Confidentiality**

No documentation of the discrimination, harassment, or misuse of authority, including any materials resulting from mediation or investigation process, such as reports from the mediator, investigator, or independent adjudicator, will be placed on an employee's personnel file.

Where a complaint has been filed, the names of the complainant(s) and respondent(s) and the circumstances of the complaint will not be disclosed to any person except where disclosure is necessary for the purpose of investigating and resolving the complaint, or where disclosure is required by law.

In the event that an investigation concludes that discrimination, harassment, or misuse of authority did occur and where disciplinary action was taken, a letter indicating the level of discipline will be the only documentation to appear on an employee's personnel file. All other documentation related to the investigation shall be maintained in a confidential manner by Human Resources and the Union (if applicable).

All parties who are privy to information or in possession of documentation pertaining to matters/incidents in the course of dealing with a complaint of discrimination, harassment, or misuse of authority shall hold that information in strict confidence. This shall include refraining from discussions and from releasing information in any form, beyond that contained in this policy or as required by law.

**5) Retaliation**

Retaliation against any individual who has filed a complaint, or who has been named as a respondent or witness in the complaint or who investigates the complaint according to the procedures outlined, will itself be an incident of discrimination, harassment, or misuse of authority and will be dealt with in accordance with these procedures.

**Conclusion**

The JIBC policy and procedures demonstrate the commitment of the JIBC and BCGEU to ensuring that all employees, seconded staff and contractors of the JIBC can work in an environment free from discrimination, harassment, and misuse of authority.