

THE CORPORATION OF THE CITY OF WINDSOR POLICY			
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Department:	Human Resources	Approval Date:	December 5, 2005
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HUMAN RIGHTS POLICY

1.0 Policy Statement

- 1.1** It is the policy of the Corporation of the City of Windsor (the Corporation) to take all reasonable steps to provide its elected representatives, employees, appointees, people under contract, students, and volunteers with a work and service environment that is free of any form of discrimination, including harassment, and that respects the dignity, self-worth and human rights of every individual in accordance with the Ontario Human Rights Code.
- 1.2** This policy applies to discrimination and harassment at any location and any time where the business of the Corporation is conducted and can include acts of discrimination and harassment of persons outside Corporation hours where those actions may have an adverse effect on the working environment.
- 1.3** The City Administration, on behalf of the City of Windsor, is committed to providing a work place and service environment that is conducive to creating a climate of mutual respect that reinforces opportunity and allows for each person to contribute fully to the development and well being of the Corporation. The Human Rights Policy is an integral part of the Respectful Workplace Program.
- 1.4** This policy is administered by the Diversity and Accessibility Officer.

2.0 Policy Intent

2.1 Responsibility

Everyone is responsible for ensuring that the Corporation maintains a Respectful Workplace. This means that all employees, managers, volunteers and labour unions and associations should not engage in, allow, condone or ignore behaviour or rules and procedures that are contrary to this policy. Anyone aware of actions, rules or procedures that are contrary to this policy is encouraged to contact their manager or supervisor or the Human Rights Policy Co-ordinator.

2.2 Fairness and Due Process

This policy also ensures that where a complaint of discrimination cannot be resolved on an informal basis, the investigation of the complaint will have regard to the principles of fairness, due process, confidentiality and the rights agreed to in any applicable collective agreement.

2.3 Informal Procedures

This policy establishes a problem solving approach to deal with harassment and discrimination issues. It provides for an internal complaint resolution process where every effort will be made to facilitate an early resolution. It is recognized that the most effective way to deal with harassment and discrimination is through preventative action, including information, education and good management.

2.4 Mediation

At any point in the complaint process the Human Rights Policy Co-ordinator or either party may request that mediation be used to assist the resolution of the complaint. If both parties are agreeable, and the Human Rights Policy Coordinator assesses mediation as a viable step to help resolve the conflict, the Corporation will arrange for a mediator to conduct the mediation. The mediator shall be entitled to determine the process to be followed for the mediation.

2.5 Alternative Procedures

Nothing in this policy is intended to prevent a complainant from using an alternative policy or process including a grievance under an applicable collective agreement, a complaint under another policy within the Respectful Workplace Program or a complaint to the *Ontario Human Rights Commission*. Where another process is being used, the Human Rights Policy Co-ordinator may, in his or her discretion, terminate or suspend the use of this policy in respect of the complaint.

2.6 Properly Discharged Supervision

Properly discharged supervisory responsibilities by managers and supervisors do not constitute harassment. Performance appraisals, counselling, discipline and the proper enforcement of high standards, provided that such standards are not arbitrary and are applied in a non-discriminatory manner, are not contrary to this policy.

2.7 Bona Fide Occupational Requirement

A bona fide occupational requirement is a rule or procedure of the corporation which may exclude, restrict, or privilege a person based on a prohibited ground but which can be demonstrated to be reasonable and rationally connected to the job.

2.8 Social Interaction

The Corporation recognizes that it is natural and common for people to develop social relationships through the workplace. This policy is not meant to interfere with mutually agreeable social interactions that are an important part of a comfortable working environment. Where social interactions are unwelcome they may form the basis for a violation of this policy.

2.9 Reprisal or Retaliation

Retaliation against an individual for filing a complaint, participating in any procedure under this policy or being associated with a person who filed a complaint under this policy shall be treated as harassment, and will not be tolerated. In the case of a reprisal

or retaliation, the Human Rights Policy Co-ordinator, in his or her discretion, may commence an investigation under this policy as if a formal complaint had been made.

2.10 Vexatious, or Made in Bad Faith Complaints

Complaints, which are found to be vexatious or made in bad faith, will result in a penalty against the complainant. The severity of the penalty will be determined based on the seriousness and impact of the complaint following an investigation.

3.0 Preventing Discrimination – Information and Education

3.1 The primary purpose of this policy is to prevent harassment and discrimination. To this end the Corporation is committed to ensure that those groups covered by the policy are informed through an ongoing program of information, education and training. This program will include:

- a) making copies of this policy or explanatory information about the policy readily available to employees and elected and appointed officials.
- b) referencing the policy in materials prepared for volunteers and contractors, associated with the corporation;
- c) providing regular and detailed training for all supervisors and managers on the content and application of the policy;
- d) providing education sessions for all other employees to provide them with an overview of the policy and its application.

4.0 DEFINITIONS

4.1 Discrimination

Discrimination is any distinction, whether intentional or not, but based on *prohibited grounds*, which has the effect of imposing burdens, obligations or disadvantages on an individual that are not imposed on others, or which withholds or limits access to opportunities, benefits and advantages available to others. Harassment, including sexual harassment based on *prohibited grounds* is a form of discrimination.

4.2 Discriminatory Harassment based on prohibited grounds

A course of vexatious comment or conduct directed toward an individual or group of individuals that is known or ought reasonably to be known to be unwelcome or unwanted. Discriminatory harassment consists of comments or conduct linked to one of the *prohibited grounds*, which are insulting, intimidating, humiliating, malicious, degrading or offensive. **Single acts of sufficient severity may constitute harassment.**

Harassment which is not connected to a *prohibited ground* is considered a form of Personal Harassment and is dealt with under the *Workplace Violence and Harassment Policy* of the *Respectful Workplace Program*.

4.3 Sexual Harassment

One or a series of comments or conduct of a gender-related or sexual nature, that is

known or ought reasonably to be known to be unwelcome/unwanted, offensive, intimidating, hostile or inappropriate. Sexual harassment can take place between males, between females or between females and males.

4.4 Prohibited Grounds

The prohibited grounds refer to those personal attributes that are recognized as the most common targets of harassing and discriminatory actions. For offensive behaviour to be considered discrimination or harassment, the focus of the comment or conduct must be directed toward one of these aspects of your background:

Age	Ancestry
Citizenship	Colour
Creed or religion	Disability
Ethnic or national origin	Record of offences (federal or provincial)
Marital/family status	Receipt of Public Assistance
Place of origin	Race
Sex including pregnancy and transgender	Sexual orientation

4.5 Poisoned or negative environment

Behaviour, including derogatory comments, insults, postings or jokes relating to one of the prohibited grounds, though not necessarily directed at anyone in particular, having the effect of creating or maintaining an offensive, or intimidating climate. A person does not have to be a direct target to be adversely affected by a negative environment. *An example of an act that may result in a poisoned environment is the posting of a sexist or racist poster in the workplace.*

4.6 Complainant

The person who believes that they are a victim of discrimination. Complainant will be used to refer to this person whether or not a formal complaint has been filed.

4.7 Respondent

The person alleged to have discriminated against the complainant. Respondent will be used to refer to this person whether or not a formal complaint has been filed.

4.8 Time Limitations

Consistent with the procedures of the *Ontario Human Rights Code*, all complaints filed under this policy must be **initiated within six months** of the last incident occurring. In extenuating circumstances the Corporation may consider a complaint filed beyond the six month limitation.

4.9 Human Rights Policy Coordinator

The Diversity and Accessibility Officer, or his or her designate, will act as the Human Rights Policy Co-ordinator. Where the Human Rights Policy Co-ordinator is a party to a complaint under this policy, the Executive Director of Human Resources will be designated Human Rights Policy Co-ordinator for that complaint.

5.0 COMPLAINTS AND INVESTIGATIONS

5.1 Stage One – Optional - Ask the person to stop

Recognizing that it is in the best interests of all parties to resolve human rights conflicts quickly and amicably, a complainant should, when possible, discuss their concerns with the respondent.

This stage is optional and failure to ask the person to stop will not prevent a complainant from filing a formal complaint.

5.2 Stage Two — Optional - Get advice

If approaching the respondent is not possible, or if after talking to the respondent the offensive behaviour continues, the complainant should discuss the allegation, in confidence, with his/her immediate supervisor, another supervisor, manager, union steward, association representative or the Human Rights Policy Coordinator for advice and assistance on how to resolve the situation.

This stage is optional and failure to get advice under this section will not prevent a complainant from filing a formal complaint.

5.2.1 The person giving advice will provide information to the complainant regarding the policy and procedure including:

- (a) the emphasis of the policy on informal resolution
- (b) the various options available to address the issues other than this policy including the *Workplace Violence and Harassment Policy*, any relevant collective agreement, mediation and the *Ontario Human Rights Commission*
- (c) the right to file a formal written complaint
- (d) the availability of counselling and the Employee Assistance Program
- (e) the applicability of the *Workplace Violence and Harassment Policy* where violence may be an issue
- (f) the right to withdraw from any further action at any point
- (g) the time limits which apply to this process as well as others
- (h) the confidentiality of the process

5.3 Stage Three — Formal Complaint

- a) At any point in the process a formal complaint may be submitted to the Human Rights Policy Coordinator on the Human Rights Policy Complaint Form.
- b) Within **five business days** of receipt of a written complaint the Human Rights Policy Coordinator shall acknowledge receipt of the complaint in writing, and shall inform the complainant whether, as a matter of jurisdiction, the complaint will be pursued under this policy, and, if not, the reasons for not pursuing the complaint. Where a formal complaint is not pursued under this policy, the Human Rights Policy Co-ordinator shall advise the respondent that a formal complaint was made including a copy of the complaint and a statement of the reasons for which the complaint was not pursued. The Human Rights Policy Co-ordinator may direct that the complaint be dealt with under another aspect of the Respectful Workplace Program.

- c) Within **ten business days** of receipt of a written complaint, where it has been determined that the complaint will be addressed under this policy, the Human Rights Policy Co-ordinator shall inform the respondent in writing of the complaint, providing a copy of the Human Rights Policy, a copy of the Complaint Form and the Respondent's Response Form. The Human Rights Policy Coordinator will also inform the respondent of his/her rights and responsibilities under the policy, including the right to be assisted by a representative and the importance of confidentiality.
- d) The Respondent shall return the Response Form to the Human Rights Policy Co-ordinator within **10 business days** of receipt. If the Response Form is not received in this time, the Human Rights Policy Co-ordinator may, in his or her discretion, proceed with an investigation without the Response Form.
- e) Within **five business days** of receipt of the Response Form, the Human Rights Policy Co-ordinator shall deliver a copy to the complainant and shall deliver copies of both the Complaint Form and the Response form to the Executive Directors of the complainant and respondent, respectively. Where one of the parties to the complaint is the Executive Director, the Complaint Form and Response Form shall be delivered to the General Manager.
- f) Within ten business days of delivery to the complainant of the Response Form, the Human Rights Policy Coordinator shall contact the complainant and respondent to arrange for separate interviews to clarify the details of their submissions and to identify any steps that have been taken to attempt to resolve the matter. During the interview each of the complainant or respondent may have one (only) support person or representative present.
- g) Within **ten business days** of completing the interviews in section 5.3(f), where the complaint has not been resolved, the Human Rights Policy Co-ordinator must:
 - a. Dismiss the complaint as failing to disclose a violation of the Human Rights Policy, or,
 - b. Recommend mediation to the parties and facilitate the mediation or retain a third party mediator, or,
 - c. Appoint an investigator to prepare a report pursuant to section 5.3 (h) below.
- h) Where the Human Rights Policy Co-ordinator appoints an investigator pursuant to section 5.3(g) above, the Human Rights Policy Co-ordinator may, in his or her sole discretion:
 - a. Appoint himself or herself as investigator, or
 - b. Appoint an employee of the Corporation who has experience doing investigations or a member of the Critical Incident Response Team under the *Workplace Violence and Harassment Policy* and who is not otherwise connected to the matters contained in the complaint, or
 - c. Appoint a third party investigator, or
 - d. Appoint a team of up to three investigators who may be any combination of employees and non-employees.

- i) A complainant has the right to withdraw a complaint at any stage of the complaint process. The Corporation may continue to take action on the issue or issues identified in the complaint in order to comply with the Corporation's legal obligations.

5.4 Stage Four — Investigation

- a) Within **five business days** of being appointed the investigator(s) shall commence an investigation into the complaint.
- b) The investigator(s) may seek the advice or assistance of the Critical Incident Response Team as designated under the *Workplace Violence and Harassment Policy*.
- c) The investigator(s) may interview witnesses, examine work areas, review documents or take any other steps which they consider in their sole discretion would further the investigation. Where an employee who is alleged to have committed the act of discrimination is interviewed, he or she will be entitled to have one (only) representative of his or her union or association present.
- d) The investigator(s) shall advise any witnesses that any agreements made as to the confidentiality of information may be overridden by an order made by any person hearing a disciplinary grievance.
- e) The investigator(s) may, in his or her discretion, attempt to achieve an informal resolution of the incident by agreement or mediation. Any informal resolution will be subject to the acceptance of the Human Rights Policy Co-ordinator to ensure the resolution was freely agreed to and is appropriate in all the circumstances.
- f) The investigator(s) shall have reference to the following principles in the conduct of the investigation:
 - a. The privacy and reputations of the individuals involved and
 - b. The rights of the employees and the relevant union or association
 - c. The possibility for achieving an informal or mediated resolution
 - d. The integrity of this policy and the Respectful Workplace Program.

5.5 Stage 5 - Investigation Reports

- a) The investigator(s) shall prepare a report, as soon as possible but in any event no later than **30 business days** after commencing the investigation. The investigator may, in appropriate circumstances, request an extension of time to complete the investigation.
- b) The report shall set out the nature of the alleged incident(s) of discrimination, the nature of the investigation conducted and any findings of fact reached by the investigator.

- c) The investigator will not make recommendations with respect to discipline or future conduct of any employee in the report.
- d) Where the investigator was able to resolve the matter informally or through mediation, the investigator will report on the form of resolution achieved.
- e) Where the investigator determines that there are systemic discrimination issues in the worksite, the investigator may make non-binding recommendations about ways to prevent future occurrences of discrimination. It will be the responsibility of the Human Rights Policy Co-ordinator to address any systemic recommendations.
- f) The report of the investigation will be delivered to the Human Rights Policy Co-ordinator.

5.6 Stage Six – Acting on Investigation Reports

5.6.1 Decision by Human Rights Policy Co-ordinator

- a) Within **ten business days** of receipt of the investigation report the Human Rights Policy Co-ordinator shall issue a written decision as to whether there has been a violation of the Human Rights Policy. The written decision will be delivered to the complainant, the respondent and their respective Executive Directors. Where one of the parties to the complaint is the Executive Director, the decision will be delivered to the General Manager.
- b) Where it has been determined that there was a violation of the Human Rights Policy, the Executive Director or General Manager shall follow the procedures set out in section 5.6.2 below.
- c) Where it has been determined that there was not a violation of the Human Rights Policy, either the complainant or the respondent may appeal that decision to the CAO as per section 5.6.4 below.

5.6.2 Discrimination by an Employee

- a) The Executive Director, or the General Manager if one of the parties is an Executive Director, of the employee alleged to have committed an act of discrimination is entitled to determine the appropriate remedy including but not limited to:
 - a. Acceptance or rejection of an informal or mediated resolution
 - b. Changes in the worksite
 - c. Training for any or all employees in the worksite
 - d. Recommendations for EFAP assistance for any or all employees in the worksite.
 - e. Compensation or other restorative remedy.
 - f. Discipline.

- b) Where discipline is issued as a result of an investigation, the Executive Director or General Manager will have regard to the applicable process and law in respect of union or non-union employees.
- c) If there is a grievance following discipline issued under section 5.6 a)f), the person hearing the grievance at any level may make an order, in his or her sole discretion, that the contents of the investigation report may be disclosed to all parties to the grievance notwithstanding any agreements previously made regarding confidentiality. In exercising his or her discretion, the party hearing the grievance will have reference to the following principles;
 - a. The privacy and reputations of the individuals involved
 - b. The reasonable expectations of any witnesses
 - c. The rights of the employees and the relevant union or association
 - d. The possibility for achieving an informal or mediated resolution.
 - e. The integrity and intention of this policy and the *Respectful Workplace Program*.

5.6.3 Discrimination by a Non-Employee

- a) The Executive Directors(s) of the employee(s) alleged to have been victims of an act of discrimination from a non-employee is(are) entitled to determine the appropriate remedy including but not limited to:
 - a. Acceptance or rejection of an informal or mediated resolution
 - b. Report to the Police or application for a restraining order
 - c. Barring of the non-employee from a worksite
 - d. Changes in the worksite
 - e. Training for any or all employees in the worksite
 - f. Recommendations for EFAP assistance for any or all employees in the worksite.
- b) Where a report is made to the Police or a restraining order is sought, the supervisor(s) shall seek the input and assistance of the Corporate Legal Department.

5.6.4 Appeal of a decision by the Human Rights Policy Co-ordinator

- a) Within **ten working days** of receiving the decision of the Human Rights Policy Co-ordinator, the complainant or respondent may appeal the decision to the CAO by filing a submission in writing with the CAO and delivering a copy to the Human Rights Policy Co-ordinator and the other party to the complaint. The other party shall have **5 working days** to file a reply in writing with the CAO.
- b) The CAO may review the investigation report, the original complaint and response forms and request a submission from the Human Rights Policy Co-ordinator.

- c) The CAO may, in his or her discretion, request an information meeting with any person or persons whom the CAO believes may be of assistance to his or her decision.
- d) Within **fifteen business days** of receiving all the appeal materials, the CAO shall issue written reasons for upholding or overturning the decision of the Human Rights Policy Co-ordinator.
- e) The decision of the CAO is final and may not be appealed.
- f) Where the CAO decides that the Human Rights Policy Co-ordinator was in error in finding that there was no violation of the Human Rights Policy the CAO may refer the matter back to the Human Rights Policy Co-ordinator for investigation under section 5.4 above or to the Executive Director or General Manager for determination of a remedy under section 5.6 above.

6.0 ADMINISTRATION

6.1 Discretion to amend time limits

The Human Rights Policy Co-ordinator may in his or her sole discretion, may extend the time required for completing any of the requirements in this policy. The Human Rights Policy Co-ordinator shall immediately advise all parties of a decision to extend the time required for any requirement.

6.2 Costs

The Corporation shall be responsible for the costs of the administration of this policy including the costs of any mediation services. All parties retaining legal or any other assistance shall be solely responsible for the cost involved.

6.3 Forms

The forms applicable to this policy are:

- a) Complaint Form
- b) Response Form
- c) Guidelines for Drafting a Complaint
- d) Human Rights Policy Flowchart

6.4 Records

All documentation related to complaints made under this policy shall be filed in one centralized location, separate from any personnel files, with the Human Rights Policy Coordinator, to ensure confidentiality. Records will be destroyed in accordance with the record retention requirements of the Municipal Freedom of Information and Protection of Privacy Act.

6.5 Policy Review

This policy shall be reviewed by the Corporate Joint Health and Safety Committee and approved by the AAG or its equivalent every three years from the date of approval by City Council. In the event of any significant change in human rights law or policy in the province of Ontario, or a determination that any part of this policy is contrary to law, the

policy shall be reviewed and revised.

6.6 Communications

The Human Rights Policy Co-ordinator is responsible for a plan of communications to inform managers and employees about the existence of this policy and how to effectively use it.

6.6 Annual Report

The Human Rights Policy Co-ordinator shall prepare an annual report for the CAO of the number of complaints received and processed, the nature of the complaints, the resolution of the complaints, and all recommendations made. The identity of the persons involved will not be disclosed in the report.
