



COMPLAINT RESOLUTION POLICY, 2011

The District of Sooke (“District”) complaint resolution policy is a process whereby Council members, District officers, employees and volunteers can feel confident that complaints about personal or sexual harassment are taken seriously and will be handled fairly, expeditiously and in a manner that respects the rights and dignity of all parties involved in a complaint.

Purpose:

To have a written procedure so all Council members, Council Committee members, District officers, employees and volunteers are aware of options and steps they can take should they have a complaint or are the subject of a complaint of personal or sexual harassment.

Pursuing a complaint under this policy does not preclude a Council member, District officer, employee or volunteer from filing a complaint with the *BC Human Rights Commission* (the “Commission”) or pursuing any other available avenues such as the grievance procedure for unionized employees, where applicable. If a complaint is filed with the Commission, the complaint under this policy will be held in abeyance until the complaint with the Commission is resolved. If an individual chooses to pursue a complaint directly with the Commission, the complaint needs to be based on one of the prohibited grounds covered in the *Human Rights Code*, R.S.B.C. 1996, c. 210, as amended from time to time (the “Human Rights Code”).

Procedure:

1. Confidentiality and Anonymity

- 1.1 Allegations of harassment may require the disclosure of sensitive information. Confidentiality must be maintained to ensure that those who may have been harassed feel free to come forward and are confident that their reputations will be protected throughout the process. It is the responsibility of all parties involved to respect this intent to protect the reputations of all individuals. Confidentiality cannot be guaranteed for individuals who initiate proceedings or make comments if they involve others outside the processes outlined in this policy.

- 1.2 Confidentiality must, however, be distinguished from anonymity. If a complainant wishes to file a formal complaint and proceed with an investigation, the respondent must be made aware of the nature of the harassment complaint, which may include the identity of the complainant. In order to conduct a fair and objective investigation that is in the best interests of all parties, hearsay or anonymous complaints will not be investigated.
- 1.3 Initially, complainants may wish to review this Policy, or discuss a problem without giving the name of potential respondents. There are options to do this in Step 2.1 of this Policy. The confidentiality of both the complainant and potential respondent will be respected until the complainant chooses a resolution process that requires identification.
- 1.4 All written materials, including all notes taken during a formal or informal workplace harassment resolution process and any report prepared in relation to the resolution of a complaint, will be treated as confidential for the purposes of applications under the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.

2. Individual Steps to Resolution

- 2.1 If an individual feels that he or she has been subject to harassment, either personal or sexual, and is comfortable discussing the issue directly with the harasser, he or she should tell the harasser that the behaviour is unwelcome and request that it stop immediately. This is an important step to ensure that the harasser knows that his or her conduct is unwelcome. If disapproval has been made known to the harasser and the harassment persists, a written record of the continuing acts of harassment should be kept. If after discussing a complaint with the harasser, the complaint is dealt with to an individual's satisfaction, the issue is considered to be resolved.
- 2.2 If an individual is unable to talk to the harasser, or if after confronting the harasser the behaviour persists, the individual should involve an advisor.

If you have a concern in this regard or believe that you have been subject to harassment, you have the option of discussing your concern with a number of individuals. The steps to resolution that can be pursued are set out below.

3. Initial Consultation with Advisor

- 3.1 This stage of the complaint resolution process is an avenue to obtain information, voice a concern and develop a means to deal with the problem.
- 3.2 Individuals covered by this policy who consider that they have been subjected to harassment may choose to consult an advisor, as set out in section 2.2.

- a. If the individual is a Council or Committee member, the initial advisor will be the Mayor or Chief Administrative Officer.
 - b. If the individual is a District employee, the advisor will be their immediate supervisor, a member of the employee's departmental management, the Chief Administrative Officer or designate, any member of the District's management team, or another other representative as agreed upon.
 - c. If the individual is a volunteer, the initial advisor will be the Chief Administrative Officer or designate.
- 3.3 Discussions regarding the complainant's concerns will be considered advisory and informal in nature. If the advisor reasonably believes that harassment has occurred, the advisor will determine whether or not the alleged harasser has been made aware of the objectionable or unwelcome conduct. Where this has occurred but the harasser's behaviour has persisted or where this has not occurred but the complainant is not comfortable doing so, the advisor may intervene at the complainant's request and inform the harasser of the objectionable behaviour.
- 3.4 The advisor will also review the *Anti-Harassment Policy* and *Complaint Resolution Policy* with the complainant and discuss various choices to assist the complainant in deciding which course of action is most appropriate.
- 3.5 A complainant's concerns at the Initial Consultation stage will be treated in confidence by the advisor. The only exception to maintaining confidentiality is if the advisor deems the complaint to indicate a possible physical threat to any person. In that case, the advisor must immediately advise the Chief Administrative Officer, or designate, of the complaint and inform the complainant of this requirement to do so. The Chief Administrative Officer or designate will promptly initiate an investigation and keep the complainant aware of the developments.
- 4. Informal Resolution**
- 4.1 If the complainant, after the Initial Consultation, decides to proceed with a complaint of sexual or personal harassment, he or she must provide a written complaint to the Chief Administrative Officer at the earliest possible date. This written complaint will contain full particulars of the facts surrounding the complaint.
- 4.2 If the complainant initially chose not to consult with anyone with respect to an alleged incident of harassment, the written complaint must be initiated within six (6) months of the date of the last alleged incident of harassment. Upon receipt of such a complaint, the Chief Administrative Officer or designate will take whatever

steps are considered appropriate with the complainant and the respondent to resolve the matter informally within five (5) working days.

- 4.3 The complainant, with the assistance of the Chief Administrative Officer, will determine the best course of action. Some of the options for the complainant under this policy are as follows:
- a) discuss concerns directly with or write to the respondent;
 - b) discuss concerns directly with the respondent, with the assistance of the Chief Administrative Officer;
 - c) request that the Chief Administrative Officer meet individually with the respondent and discuss the complaint;
 - d) initiate Mutual Resolution;
 - e) initiate a Formal Review;
 - f) file a grievance for bargaining unit employees, if applicable;
 - g) file a complaint with the Commission, provided that the harassment complaint is based on one of the prohibited grounds covered under the *Human Rights Code*.
- 4.4 If the Informal Resolution process proves to be unsuccessful in resolving the harassment complaint, the parties will confirm so in writing to the Chief Administrative Officer within five (5) working days of the final Informal Resolution meeting and advise which further resolution option they wish to pursue. The complainant may, at his or her option, choose to proceed to Formal Review if the parties cannot agree to resolve the complaint through Mutual Resolution.

5. Mutual Resolution

- 5.1 At the request of the complainant and with the agreement of the respondent, and with the assistance of the Chief Administrative Officer, a third party will be selected to act as a mediator to assist the individuals in resolving the complaint through mediation. The role of the mediator is to help the complainant and respondent come to an agreement, and not to advocate a position or impose a decision.
- 5.2 The mediator will be selected by agreement of the complainant and respondent, with the Chief Administrative Officer retaining the right to select a mediator if the complainant and respondent are unable to agree.
- 5.3 Both the complainant and the respondent may be accompanied by a representative of their choice. If the complaint is resolved through Mutual Resolution, a written record of the complaint and the resolution will be given to the complainant, respondent and the Chief Administrative Officer. Should there be recommendations for the employer to consider, the mediator will forward these recommendations as well to the Chief Administrative Officer. The

resolution and recommendations must be kept in confidence by the Chief Administrative Officer.

- 5.4 If Mutual Resolution does not prove to be successful in resolving the complaint, other options may be pursued and must be confirmed by the complainant in writing within five (5) working days of receiving the mediator's report.

6. Formal Review

- 6.1 A request for a Formal Review should be made in writing to the Chief Administrative Officer within five (5) working days of either the conclusion of the Informal Resolution or Mutual Resolution process. The Chief Administrative Officer will convene an ad hoc Investigative Committee within five (5) working days of the request being filed.
- 6.2 The Investigative Committee will be drawn from an established pool of candidates and will consist of three representatives, from whom a Chairperson will be selected. The complainant and respondent will each choose a member from the pool and, in turn, these two representatives will choose a third member from the pool to be Chairperson. The Investigative Committee will do the following:
- a) confirm receipt of the written complaint with the complainant;
 - b) notify the respondent of the allegation(s), provide the respondent with a copy of the *Anti-Harassment* and *Complaint Resolution Policies* and advise the complainant of this notification;
 - c) receive information from any witnesses whom they believe may have information relevant to the complaint. This information may be received through written documentation, interviews, or informal hearings;
 - d) keep both the complainant and the respondent aware of any allegation(s) made against them and ensure that they are given a reasonable opportunity to respond; and,
 - e) inform the complainant and the respondent that they may be accompanied by a representative of their choice during the Formal Review process.
- 6.3 The Investigative Committee is required to ensure all details, dates, conversations and meetings are well documented. Once the investigation has been completed, the Committee Chairperson, on behalf of the Investigative Committee, will prepare a written report and provide the report to the CAO. The report should, at a minimum, contain a description of the allegations, a summary of the evidence of the parties and the witnesses, and a determination of whether

harassment occurred. The report may also provide recommendations with respect to the potential outcome.

- 6.4 After reviewing the report of the Investigative Committee, the CAO will make a decision on the appropriate disciplinary action, if any, and take such action as the CAO considers appropriate in the circumstances. In determining the appropriate disciplinary action in the context of harassment, the following factors will be considered:
- a) the degree and nature of the conduct;
 - b) whether the harassment was a single or repeated act;
 - c) whether the respondent was told that the conduct was unwelcome or offensive, and nonetheless continued the conduct;
 - d) the nature of the work relationship of the complainant and the respondent, and whether the respondent was in a position of authority over the complainant, such that the degree and nature of the conduct was thereby exacerbated by an abuse of power;
 - e) the impact of harassment on the complainant;
 - f) the respondent's acknowledgment of wrongdoing;
 - g) the respondent's history of other harassment; and
 - h) the nature of the respondent's employment relationship with the District, including length of service and position.
- 6.5 Where the Investigative Committee concludes that harassment has occurred, the District must endeavour to protect the complainant from any subsequent harassment, discrimination or reprisal within the District's jurisdiction. The District also recognizes its responsibilities to protect the rights of the harasser and to see that no reprisal takes place.
- 6.6 Where the Investigative Committee finds that the original complaint was initiated in bad faith or with intent to harm, the CAO will take appropriate disciplinary action against the complainant.
- 6.7 The CAO's decision pursuant to section 6.4 will be in writing and provided to the complainant and respondent within ten (10) working days of the receipt of the report from the Chairperson of the Investigative Committee. The CAO's report will also include the findings of the Investigate Committee. The CAO will determine if any further release of any information contained in the report is necessary and, if so, will respond accordingly.
- 6.8 A copy of the Investigate Committee's Report and the CAO's decision will be retained in a confidential file maintained by the Chief Administrative Officer.
- 6.9 The District reserves the right to proceed with the Formal Review even if the complainant withdraws the complaint.

In the case of a complaint against the CAO, the Mayor or an appointed representative of Council would assume the responsibilities assigned to the CAO as a part of the complaint process.

7. Other Options

If a complaint falls under the prohibited grounds of the *Human Rights Code*, an option for union or management workers would be to file a complaint with the Commission or seek private legal counsel.

8. Third Party Reprisal

Reprisals against either the complainant or the respondent will be considered serious and appropriate disciplinary action will be taken against any Council member, District officer, employee or volunteer found to be conducting themselves in an inappropriate manner against a complainant or respondent.

9. Discipline

- 9.1 For the purpose of this Policy, disciplinary action for District officers or employees may include verbal or written warnings, training or education, transfer, suspension or termination of employment.
- 9.2 Disciplinary action for volunteers may include warning or discontinuation of volunteer opportunities and associated privileges.
- 9.3 Disciplinary action for Council members may include written warnings, censure, training or education, limited access to the workplace, or, under circumstances deemed appropriate under the *Local Government Act*, removal from office.

10. Complaints against Council Members

Where a complaint is made against a Council Member, the following procedure applies:

- 10.1 A written complaint may be filed with the Chief Administrative Officer. The Chief Administrative Officer is required to report the complaint to the Corporate Officer.
- 10.2 The Corporate Officer will include on the agenda of the next closed meeting of Council an item in relation to the complaint that has been made. The Corporate Officer will provide the Council with the following information:
 - a) the existence of a complaint;
 - b) confirmation of the nature of the complaint; and,
 - c) the individual Council Member against whom the complaint is made.

- 10.3 Council will authorize an investigation of the complaint and appoint an outside consultant to carry out the investigation. The consultant shall be directed to make findings of fact and to decide whether those facts amount to harassment.
- 10.4 The consultant shall prepare a report in writing setting out the findings of fact and his or her conclusion as to whether the facts constitute harassment. The consultant's report will be presented to Council at a closed meeting for discussion.
- 10.5 Council must then pass a motion receiving the report and make any other directions as it sees fit to both the CAO and to the Respondent Council Member.

11. General

- 11.1 This policy will be posted in visible and accessible locations within the Municipal Hall and on the District's website.
- 11.2 In the event that any portion of this policy is inconsistent with a binding District collective agreement or federal or provincial legislation, that portion and only that portion of this policy will have no application to the extent of that inconsistency and all other portions of the policy will continue in full force and effect.
- 11.3 This policy is to be read in conjunction with other applicable District policies as they are amended from time to time.
- 11.4 Any questions related to the interpretation of this policy should be directed to the Chief Administrative Officer or his/her designate.