

Subject: Policy for the Protection of Pupils
Effective: September 26, 1996
Revised: September 1998, November 2004

1.0 PURPOSE

This policy is intended to:

- protect pupils from non-professional conduct by adults to which pupils may be exposed by virtue of being pupils, including physical, sexual, and emotional abuse and discrimination;
 - ensure that adults in the public education system understand the magnitude of the responsibility conferred upon them when parents and communities entrust their children to the public education system; and
 - eliminate non-professional conduct through the defining of acceptable standards of behaviour, prevention and effective intervention.
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2.0 APPLICATION

2.1 To whom does this policy apply?

This policy protects all pupils who are registered in public schools in New Brunswick regardless of their age. This policy applies to all adults whose job or role within the public school system places them in contact with pupils. This includes, but is not limited to, all school personnel, contract and casual employees, visiting professionals, as well as student teachers and volunteers.

2.2 Under what circumstances does this policy apply?

- Whenever a pupil is the responsibility of the school system.
 - When an adult affiliated with the school system abuses any child, whether the child is a pupil or not.
 - When external agencies are involved and when they are not.
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3.0 DEFINITIONS

Complainant in this policy refers to a person reporting non-professional conduct.

Complaint in this policy refers to any information received by any means from any named or anonymous source, either in person or recorded, which suggests that a child is being, or has

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been, subjected to non-professional conduct by an adult in the school system. Concerns about inappropriate behaviour management are not treated as complaints under this policy.

Conduct categories This policy deals with behaviours that harm students and impede learning. These behaviours are grouped into two categories: abuse and misconduct, and are treated as non-professional conduct under the [Education Act](#). Other unacceptable, but less serious behaviours are addressed in the guidelines section of this policy and are referred to under the heading of inappropriate behaviour management.

Category I: Abuse refers to behaviour of adults in the school system which has one or more of the following components:

- is counter to the position of trust conferred upon adults in the school system;
- is a breach of section 31(1) of the [Family Services Act](#);
- is a [Criminal Code](#) offence involving children; or
- is a form of discrimination under the [New Brunswick Human Rights Act](#) or the [Canadian Charter of Rights and Freedoms](#) that is likely to have an injurious effect on students.

Examples of Abuse

- discriminatory behaviour based on race, colour, religion, national or ethnic origin, ancestry, place of origin, age, disability, marital status, sexual orientation, sex, culture, language group, or grade level;
- behaviour of a sexual nature with pupils such as: making or accepting sexual advances or invitations, asking for a date, touching inappropriately or having a sexual relationship; and
- behaviour which is considered physical, sexual or emotional abuse or neglect of a child whether or not the child is a pupil in the public school system.

Category II: Misconduct is negative conduct towards pupils that would be judged inappropriate by professionals in the New Brunswick public education system. It is less severe than abuse but has damaging effects on the physical, mental, social or emotional well-being of pupils. These effects may or may not be intended.

Examples of Misconduct

- attempting to pursue, isolate or see pupils individually without valid reason;
- behaviour which may not necessarily be directed at anyone in particular but creates a hostile or offensive atmosphere;

- behaviour which would objectively be considered offensive or insulting, exceeding reasonable limits of discipline and has remained unremedied after normal intervention by supervisors. This includes:
 - comments, conduct or displays which demean, belittle, or cause unfair disadvantage;
 - staring, perceivable to an observer, at genitals, breasts or buttocks; and
 - making sexual gestures or inappropriate comments or jokes.

Examples of Appropriate Behaviour

- normal work or achievement evaluations and disciplinary measures taken for valid reasons which are consistent with the [Education Act](#);
- physical force or restraint not exceeding that required for the protection of an orderly learning environment, personal safety, the protection of others, or the protection of school property;
- compliments which respect an individual's dignity;
- patting the back, holding the hand, or hugging to comfort a pupil as appropriate to the situation and the physical or developmental age of the child; and
- assisting with toileting or personal care to the extent that a pupil is not able to perform these tasks without assistance.

False accusation means a complaint under this policy which the complainant knew to be untrue. This differs from an *unsubstantiated complaint* in that unsubstantiated complaints are made in good faith but insufficient evidence exists to either prove or disprove the veracity of the complaint. Unfounded complaints are those where the evidence demonstrates that the respondent is not guilty of a Policy 701 infraction.

Non-professional conduct is defined in section 31.1 of the [Education Act](#) as: “conduct having or likely to have an injurious effect on the physical, mental, social or emotional well-being of a pupil, or any other person under the age of 19 years”.

Respondent refers to the person or persons against whom allegations are made under this policy.

School personnel refers to the superintendent, director of education and other administrative and supervisory personnel; school bus drivers; building maintenance personnel including custodians; secretaries and clerks; teachers; persons other than teachers engaged to assist in the delivery of programs and services to students; and other persons engaged in support areas such as social services, health services, psychology and guidance. For the purposes of this policy, school personnel includes any adult whose job or role within the public school system places him/her in contact with pupils.

4.0 GOALS / PRINCIPLES

- 4.1** The Department of Education is committed to providing learning environments that are safe, orderly, inviting, and conducive to the pursuit of excellence. Adults in the public education system are essential to achieving this through the modeling of appropriate behaviour and through the care that they provide to pupils.
- 4.2** Because of the position of trust held by adults in the public education system, a student cannot give consent, in the full meaning of the word, to being the target of non-professional conduct. Failure by a student to report, or attempt to stop non-professional conduct directed at him/her, cannot be taken as justification for non-professional conduct. Moreover, ignorance of acceptable conduct will not be considered an excuse for non-professional conduct.
- 4.3** Education is the most basic prevention. Abusive behaviour must be treated as destructive, seriously affecting individuals and the school system as a whole.
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5.0 REQUIREMENTS / STANDARDS

5.1 PREVENTION

5.1.1 Screening Practices

- 5.1.1.1** Superintendents shall ensure screening procedures, appropriate to a person's role vis-à-vis students, are carried out for all persons who act on the superintendent's behalf in the school system, including volunteers.
- 5.1.1.2** Any previous incident that would be classified as non-professional conduct must be evaluated in relation to the requirements of the position.
- 5.1.1.3** No person shall be considered for duty in the New Brunswick public school system if:
- pending or past disciplinary actions by previous employers or supervisors call into question the individual's suitability for being in contact with pupils;
 - there are previous convictions for violent crimes or crimes against children; or
 - there are previous charges related to violent crimes or crimes against children which did not result in conviction solely as a result of technical reasons stated in the court decision.

5.1.2 References

- A person whose conduct has resulted in disciplinary action under this policy, to the extent of suspension or stronger measures, who requests a letter of reference, must be informed that the disciplinary action will be indicated in the letter of reference. The same applies to ongoing investigations that, on the balance of probabilities will result in suspension or stronger action.
- Knowingly issuing a reference that is incomplete or dishonest is a violation of this policy.

5.2 RESPONSIBILITIES

Disagreements over student evaluations, student awards, student placement decisions and normal disciplinary action, including exclusion from co-curricular and extra-curricular activities for cause, do not fall within the scope of this policy and must be addressed with school and district personnel.

5.2.1 The superintendent shall ensure that:

- adults whose job or role within the public school system place them in contact with pupils are familiar with and adhere to Policy 701 and the [Child Victims of Abuse and Neglect Protocols](#).

5.2.2 The school principal shall ensure that:

- staff, students and all persons acting within or for the school are informed about the ethical obligation to report non-professional conduct, as well as the legal obligation to report under section 31.1 of the [Education Act](#) and subsection 30(1) of the [Family Services Act](#) as described in the [Child Victims of Abuse and Neglect Protocols](#);
- staff, pupils, parents and all persons acting within or for the school are informed about the gravity of making false accusations and the ethical obligation to report cases of false accusation;
- all persons involved in a case are informed of the need to keep the information pertaining to the case confidential; and
- all complaints of abuse and misconduct received at the school level are recorded on a *Policy 701 Complaint Summary Form* (included in [Appendix A](#)) and forwarded to the superintendent.

**5.3 THE COMPLAINT INVESTIGATION PROCESS:
CATEGORIES I & II - COMPLAINTS CONCERNING ABUSE AND MISCONDUCT RECEIVED AT
THE SCHOOL LEVEL**

5.3.1 Step 1: Receiving a Complaint

A complaint may be made by any person.

The principal or designate, the superintendent or designate and Director of Human Resources of the Department of Education or designate shall ensure that each complaint received at their respective level in the public education system is pursued in accordance with this policy and a *Policy 701 Complaint Summary Form* ([Appendix A](#)) is duly completed. The *Policy 701 Complaint Summary Form* ([Appendix A](#)) should be signed by the complainant whenever possible.

When the principal is named as respondent, complaints shall be directed to the superintendent.

Complaints received anonymously shall be acted upon to the extent possible given the amount of information provided. This is consistent with the application of subsection 30(1) of the [Family Services Act](#).

If a situation is reportable under section 30(1) of the [Family Services Act](#), the first member of the school personnel who is made aware of the complaint shall notify Child Protection Services personally or verify with Child Protection Services that a report was received. The police shall be notified whenever school personnel believe criminal activity may be involved.

In addition, under section 31.1 of the [Education Act](#), all school personnel who have reasonable grounds to believe that any member of the school personnel has engaged in non-professional conduct shall report to the superintendent.

5.3.2 Step 2: Initial Assessment of a Complaint

The principal shall refer all complaints made under this policy concerning non-professional conduct to the superintendent's office. The superintendent will make an initial assessment of the complaint and will re-direct those which fall outside of the scope of this policy to the principal for resolution.

5.3.3 Step 3: Superintendent's Decision to Pursue an Investigation

The superintendent shall:

- determine the type and seriousness of the complaint and determine whether an investigation is necessary;
- assign an investigator/investigation team as quickly as possible, when required;

- verify that complaints under section 30 of the [Family Services Act](#) have been reported to Child Protection Services;
- proceed with appropriate action as required by the situation and which may include invoking the normal disciplinary procedure; and
- immediately advise the Director of Human Resources of the Department of Education in writing when the superintendent has decided to launch an investigation.

5.3.4 Step 4: The Respondent's Rights

The respondent shall be informed of the complaint at a face-to-face meeting in the workplace as soon as possible. He/she shall also be provided with a written statement of allegations at that time or as soon as possible thereafter, unless school personnel are otherwise directed by the police or Child Protection Services. In the latter case, the respondent shall be advised that an investigation has been launched and that further information will be provided by the police or Child Protection Services, as the case may be. The respondent shall be informed **at the latest** when an investigation is launched under this policy.

The superintendent shall keep the respondent informed of the progress of the investigation.

Prior to the conclusion of the investigation, the respondent shall be afforded an opportunity to respond to the allegations. Every effort will be made to keep the complainant's/pupil's identity confidential. However, in order to adequately address a situation, it may be necessary to release the complainant's/pupil's name to investigators and possibly to the respondent. The complainant's/pupil's identity will not be disclosed when this would foreseeably place the complainant/pupil at risk of harm.

The respondent shall also be informed of his/her right to be accompanied, at any point in the investigation process, by a person of the respondent's choosing, or to have union representation where applicable.

Regardless of the involvement of external agencies, the superintendent shall ensure investigations are concluded in a timely manner. Internal investigations should normally be concluded within three months, taking particular circumstances into account. Where external agencies are involved, the investigation team shall conduct a joint investigation with the external agencies and/or make use of information obtained by external agencies, to the extent possible.

5.3.5 Step 5: The Investigation Report

At the conclusion of the investigation, the investigation team shall provide a written report to the superintendent. This report shall describe the investigative procedure used, describe the events in detail, and state whether the complaint was founded,

unfounded, unsubstantiated or false. This report will include the names of the complainant, if available, and the respondent.

5.3.6 Step 6: Meeting with the Respondent

When disciplinary measures are contemplated, the respondent will be given the opportunity to meet with the superintendent or designate. At the respondent's discretion, he/she may be accompanied by a union representative, if applicable. The respondent will have the opportunity to respond to the findings of the investigation.

5.3.7 Step 7: Communicating the Outcome of an Investigation

The superintendent shall forward the report and his/her recommendations regarding the disposition of the case to the Director of Human Resources of the Department of Education. In cases where there is to be a resignation or any disciplinary action related to non-professional conduct, this action is subject to approval by the Minister.

The pupil alleged to have been subject to non-professional conduct, his/her parents (if appropriate) and the complainant, where applicable, shall be informed in writing of the following:

- whether the complaint was determined to be founded, unfounded, unsubstantiated or false;
- any action to be taken that pertains to the student, for example, any accommodation that is to be introduced for the benefit of the student; and
- the ethical obligation to keep confidential the information shared.

The respondent shall be notified in writing of the disposition of the complaint and any disciplinary action that is to be noted in the employee file, where applicable.

The information provided to all parties must respect the confidential nature of such cases and the protection provided by sub-section 31.1(9) of the [Education Act](#) which prohibits revealing the names of school personnel and professional persons who have reported reasonable belief of non-professional conduct.

5.3.8 Step 8: Support for Victims

The superintendent shall address counselling support during the period of the investigation and after resolution of the situation for the complainant, other pupils who may have been traumatized and/or the respondent in the case of false allegation.

5.4 SPECIAL CIRCUMSTANCES

5.4.1 Complaint received at the School District Office

The school district office shall be the point of contact in dealing with complaints against school personnel who are supervised by district office staff and complaints against school principals. Section 5.3 will be followed as appropriate.

5.4.2 Complaint received at the Department of Education

Complaints received at the Department of Education, shall be referred to the Human Resources Branch which shall ensure the superintendent is notified. Section 5.3 will be followed by the superintendent, as appropriate.

5.4.3 Respondent no longer active in the school system or dated complaints

This section refers to situations where the ability to investigate is limited due to a significant lapse of time or the inability to obtain information from the respondent. In such cases, the superintendent shall consult with Child Protection Services when applicable. If it is likely that the incident involved a breach of the [Criminal Code](#) in effect at the time, the incident should be referred to the police. As with any other case involving non-professional conduct, the superintendent shall report dated complaints to the Director of Human Resources of the Department of Education.

5.4.4 Non-professional conduct external to the school system

Any member of the school personnel who has reasonable grounds to believe that any adult who is in contact with pupils in the public school system has been charged with any violent crime or crime against a child, or who has otherwise engaged in non-professional conduct, shall immediately inform the superintendent of the school district in which the person is active. The superintendent shall inform the Director of Human Resources of the Department of Education.

5.4.5 Non-professional conduct reported by a professional who is not a member of the school personnel

As per sub-section 31.1(5) of the [Education Act](#), any professional who is not a member of the school personnel shall immediately report to the Minister of Education, the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct. Such reports are to be made to the Director of Human Resources of the Department of Education.

5.5 RECORD-KEEPING

5.5.1 At the School:

Documentation pertaining to any complaint under Policy 701 will be accessible to the principal and his/her designate only. Any other release of information will be done

through the superintendent's office. The original *Policy 701 Complaint Summary Form* ([Appendix A](#)) completed at the school, shall be maintained in a confidential file at the school until notification of the final outcome of the complaint is received from the superintendent's office. At that time, all documentation pertaining to the complaint shall be forwarded to the superintendent's office and none maintained at the school.

5.5.2 At the School District Office:

A copy of every *Policy 701 Complaint Summary* ([Appendix A](#)), investigation report and all other supporting documentation shall be maintained in a confidential file by the Human Resource section at the school district office. Access to these files shall be limited to the superintendent and his/her designate(s).

Disciplinary actions shall be maintained in the employee file as per subsection 31.1(13) of the [Education Act](#).

5.5.3 At the Human Resources Office of the Department of Education:

A copy of every *Policy 701 Complaint Summary* ([Appendix A](#)), investigation report and all other supporting documentation pertaining to non-professional conduct forwarded to the Director of Human Resources shall be maintained in a confidential file regardless of the outcome of the investigation. This includes records of complaints against persons who are not members of the school personnel and complaints determined to be false allegations. Access to this file is restricted to the Director of Human Resources and his/her designate(s).

5.6 DISCIPLINARY ACTION

Judgments concerning the acceptability or classification of a behaviour shall not rest with any one individual but shall be weighed in the light of accepted professional standards.

Disciplinary action will reflect the seriousness of the non-professional conduct and shall take any relevant previous discipline into account. In all instances where an employee has a sexual relationship with a pupil, or sexually abuses a pupil, this shall be cause for dismissal of the employee.

5.6.1 False Accusations

The superintendent shall take action in every case of proven false accusation.

A complaint under this policy that involves falsehood or malicious intent or is otherwise made in bad faith, as determined by the investigation, shall be subject to appropriate disciplinary action up to and including suspension in the case of pupils, dismissal of employees or banning from school premises and possible legal action in the case of parents and volunteers. Disciplinary action taken by the school system does not preclude the respondent from pursuing civil action.

6.0 GUIDELINES / RECOMMENDATIONS

NOTE: This section provides guidance for addressing conduct which is undesirable but is not reportable as an infraction under Policy 701.

6.1 GUIDELINES FOR ADDRESSING INAPPROPRIATE BEHAVIOUR MANAGEMENT

Inappropriate Behaviour Management refers to an approach to dealing with pupils that is counterproductive to learning and/or maintaining a positive learning environment in the school, as defined in Policy 703 – [Positive Learning Environment](#). It reflects poor judgment or limited behaviour management skills. It is not abuse or misconduct as defined by this policy. It must be treated by supervisors as any personnel issue which requires supervision.

Examples of Inappropriate Behaviour Management

- personal attacks on pupils' characters rather than dealing with their behaviour;
- continuous use of sarcasm;
- undue, non-constructive criticism in dealing with pupils; and
- habitual uncontrolled temper.

6.1.1 Responsibilities of the Superintendent

The supervisor of the person against whom such a complaint is lodged is accountable for ensuring it is appropriately identified, monitored, resolved and documented. Reporting criteria will be determined by superintendents. In addition, it is the supervisor's role to be aware of potential areas of weakness and act proactively, ensuring inappropriate behaviour management is addressed. Additional training and monitoring may be required to assist the employee in improving interpersonal or management skills.

6.1.2 Responsibilities of the Principal

Once the principal has determined that an action falls into the realm of inappropriate behaviour management, the principal will:

- inquire as to whether the complaint was directed to the person(s) involved and encourage this to be done;
- attempt to establish communication among parents, staff and pupils involved to resolve the issue at the school level if possible; and
- to guide, monitor (and inform the superintendent if necessary) when inappropriate behaviour management is identified.

6.1.3 Reporting Procedures

Step 1: Complaints involving inappropriate behaviour management must be dealt with initially at the school level. Persons having a complaint which does not involve abuse or misconduct are encouraged to communicate their concerns directly to those involved. If the outcome is unsatisfactory, the complaint should be directed to the principal or vice-principal.

Step 2: Situations that are not satisfactorily resolved at the school level may be forwarded to the superintendent by the complainant or school administrators. However, prior to intervening in such situations, district staff shall request that complaints are brought to the attention of the school administration. Likewise, Department of Education staff receiving such complaints shall verify that school and district staff have been involved in the complaint process.

Documentation of complaints of inappropriate behaviour management should follow normal human resources practices.

7.0 DISTRICT EDUCATION COUNCIL POLICY-MAKING

District Education Councils may establish policy, within the parameters of this policy and the [Education Act](#).

8.0 LEGAL AUTHORITY

[Education Act](#)

6(a) The Minister shall establish educational goals and standards and service goals and standards

Mandatory reporting of non-professional conduct

31.1(1) In this section

"administrative proceedings" includes hearings before an adjudicator under the [Public Service Labour Relations Act](#) and hearings before the Appeal Board;

"professional person" means a professional person as defined in subsection 30(10) of the [Family Services Act](#).

31.1(3) A superintendent shall report to the Minister the name of any teacher or other member of the school personnel who

- (a) has been convicted of an indictable offence under the [Criminal Code](#) (Canada),
- (b) in the case of a teacher, the superintendent has reasonable grounds to believe has committed an act which may be grounds for the suspension or revocation of the teacher's certificate, or

(c) is investigated, is disciplined or resigns because of non-professional conduct or alleged non-professional conduct.

31.1(4) A member of the school personnel shall immediately report to the superintendent concerned the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct.

31.1(5) A professional person who is not a member of the school personnel shall immediately report to the Minister the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct.

31.1(6) This section applies notwithstanding that the person has acquired the information through the discharge of his or her duties or within a confidential relationship.

31.1(7) A person who fails to comply with subsection (3), (4) or (5) commits an offence punishable under Part II of the [Provincial Offences Procedure Act](#) as a category F offence.

31.1(8) No action lies for damages or otherwise against a person in relation to anything done or purported to be done in good faith, or in relation to anything omitted to be done in good faith, in the execution or intended execution of the duty to report under this section.

31.1(9) Except in the course of judicial or administrative proceedings, no person shall reveal the identity of a person who has given information under this section without that person's written consent.

31.1(10) A person who violates subsection (9) commits an offence punishable under Part II of the [Provincial Offences Procedure Act](#) as a category H offence.

31.1(11) Any agreement respecting a resignation of a member of the school personnel in relation to non-professional conduct or any disciplinary action to be taken against a member of the school personnel in relation to non-professional conduct is subject to the prior approval of the Minister.

31.1(12) The Minister may take such action as the Minister considers appropriate if, in the opinion of the Minister, a matter reported to the Minister under this section

(a) has been inadequately investigated, or

(b) may result in an inappropriate agreement respecting a resignation of a member of the school personnel or in inappropriate disciplinary action against a member of the school personnel.

31.1(13) Notwithstanding any provision in any collective agreement under the [Public Service Labour Relations Act](#), any information maintained in the file of a member of the school personnel with respect to a resignation or a disciplinary action taken in relation to non-professional conduct shall not be removed.

[Family Services Act](#)

30(1) Any person who has information causing him/her to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill-treated or otherwise abused shall inform the Minister (of Family and Community Services; read Child Protection Services) of the situation without delay.

30(3) A professional person who acquires information in the discharge of the professional person's responsibilities that reasonably ought to cause the professional person to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill-treated or otherwise abused but who does not inform the Minister of the situation without delay commits an offence.

30(10) For the purposes of this section "professional person" means a physician, nurse, dentist or other health or mental health professional, an administrator of a hospital facility, a school principal, school teacher or other teaching professional, a social work administrator, social worker or other social service professional, a child care worker in any day care center or child caring institution, a police or law enforcement officer, a psychologist, a guidance counsellor, or a recreational services administrator or worker, and includes any other person who by virtue of his employment or occupation has a responsibility to discharge a duty of care towards a child.

31(1) The security or development of a child may be in danger when

- (a) the child is without adequate care, supervision or control;
- (b) the child is living in unfit or improper circumstances;
- (c) the child is in the care of a person who is unable or unwilling to provide adequate care, supervision or control of the child;
- (d) the child is in the care of a person whose conduct endangers the life, health or emotional well-being of the child;
- (e) the child is physically or sexually abused, physically or emotionally neglected, sexually exploited or in danger of such treatment;
- (f) the child is living in a situation where there is domestic violence;
- (g) the child is in the care of a person who neglects or refuses to provide or obtain proper medical, surgical or other remedial care or treatment necessary for the health or well-being of the child or refuses to permit such care or treatment to be supplied to the child;
- (h) the child is beyond the control of the person caring for him;
- (i) the child by his behaviour, condition, environment or association, is likely to injure himself or others;

- (j) the child is in the care of a person who does not have a right to custody of the child, without the consent of a person having such right;
- (k) the child is in the care of a person who neglects or refuses to ensure that the child attends school; or
- (l) the child has committed an offence or, if the child is under the age of twelve years, has committed an act or omission that would constitute an offence for which the child could be convicted if the child were twelve years of age or older.

9.0 REFERENCES

Appendix A – [Policy 701 Complaint Summary Form](#)
[Canadian Charter of Rights and Freedoms](#)
[Child Victims of Abuse and Neglect Protocols](#)
[Criminal Code](#)
[Education Act](#)
[Family Services Act](#)
[New Brunswick Age of Majority Act](#)
[New Brunswick Human Rights Act](#)
Policy 703 – [Positive Learning Environment](#)
[Provincial Offences Procedure Act](#)
[Public Service Labour Relations Act](#)

10.0 CONTACTS FOR MORE INFORMATION

Human Resources – (506) 444-4914

Policy and Planning – (506) 453-3090

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