

PROVINCE OF NEW BRUNSWICK ADMINISTRATION MANUAL SYSTEM		AD - 2913
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1. INTRODUCTION

This policy establishes the written code of practice for harassment in GNB workplaces in compliance with [New Brunswick Regulation 91-191](#) under the [Occupational Health and Safety Act](#), Part XXII.I Violence and Harassment Codes of Practice, Section 374.4(1).

The Government of New Brunswick (GNB) is committed to fostering and sustaining a workplace that respects and protects the human rights of all employees. Every employee has the right to work in a respectful workplace that is free from harassment. A respectful workplace values diversity and inclusion, courteous conduct, equality, positive communication and professional working relationships.

All employees share a responsibility for creating and maintaining a respectful workplace. Employees at every level of the organization are accountable to be civil and respectful in their interactions with one another, as well as with customers, clients, and the public. Respectful behaviour is essential to creating a productive and healthy workplace.

GNB will neither condone nor tolerate any form of harassment in the workplace.

2. APPLICATION

This policy applies to all employees in Parts I, II and III of the New Brunswick Public Service. Where applicable, this policy also applies to volunteers, contractors, fee for service individuals, those governed under medical staff bylaws, and clients.

3. AUTHORITY

Board of Management Minute 93.0625, 96.0777, 19.0032.
[New Brunswick Regulation 91-191](#), under the [Occupational Health and Safety Act](#) (O.C. 91-1035)

4. WORKPLACE

For the purposes of this policy, the workplace includes and is not limited to: the physical work site or building, washrooms, lunch rooms and eating areas, designated smoking areas on site, meeting rooms, training sessions and conferences, business travel, work related gatherings, the client's home, employee's home office or virtual worksites, any physical or virtual workplace where an employee conducts business on behalf of the government of New Brunswick. The workplace may extend to events outside of work hours depending on the nature of the event.

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4.1 Social Media Communication, connected to the Workplace: The responsibility for creating and maintaining a respectful workplace and for being civil and respectful extends to social media platforms. If the social media communication is connected to the workplace, whether or not the communication originated from a government issued or private device, it may be subject to a complaint under this policy if it is deemed to be offensive, unwelcome, demeaning or belittling and as defined in section 6. The term social media includes and is not limited to Facebook, Instagram, Twitter and LinkedIn.

5. POLICY STATEMENT

5.1 Conflict can be encountered in the course of any employment environment. When possible, it is incumbent on all employees to resolve day to day conflicts directly, using respectful communication techniques, focusing on the common goal of meeting the employer's objectives. All employees are to be aware of their behaviour in the workplace and demonstrate standards of respectful and professional behaviour consistent with this policy and the New Brunswick Public Service Values.

5.2 It is the employer's responsibility to promote a respectful workplace by preventing and eliminating harassment. Harassment in the workplace is a form of discrimination. It is unwelcome, unwanted and it affects an individual's ability to learn and work. It can also be an expression of abuse of power, authority, control or intimidation and is coercive in nature.

5.3 All managers and supervisors are responsible for their employees' work environment and must take appropriate action to ensure the health and safety of their employees and others in the workplace. Managers and supervisors are responsible to take appropriate preventive or corrective action and to put a stop to any harassment they are aware of, regardless if a complaint is filed. Failure to take appropriate action may result in disciplinary measures, up to and including dismissal, being imposed on the manager or supervisor as well as the offending person.

5.4 Harassment in the workplace constitutes a disciplinary infraction. Disciplinary measures up to and including dismissal shall be dealt with appropriately.

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5.5 This policy is not intended to limit or constrain the employer's right to manage. Managers have an inherent right to manage attendance, conduct and performance. Disciplinary measures taken by the employer for any valid reason do not constitute harassment in the workplace.

6. DEFINITIONS

For the purpose of this policy, harassment in the workplace includes personal and sexual harassment, poisoned work environment and abuse of authority and also includes the elements contained in the definition of harassment referenced within the [New Brunswick Regulation 91-191](#): *“Harassment, in a place of employment, means any objectional or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including bullying or any other conduct, comment or display made on either a one-time or repeated basis that threatens the well-being, health or safety of an employee, but does not include reasonable conduct of an employer in respect of the management and direction of employees at the place of employment.”*

6.1 Personal Harassment

Personal harassment means any objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome. It includes objectionable conduct, comment or display made on either a one-time or continuous basis that demeans, belittles, or causes personal humiliation or embarrassment.

Without limiting the above, personal harassment includes harassment within the meaning of the [New Brunswick Human Rights Act](#), i.e., harassment on the basis of the following prohibited grounds of discrimination: race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, family status, sexual orientation, sex, gender identity or expression, social condition or political belief or activity.

6.2 Sexual Harassment

Sexual harassment means any conduct, comment, gesture or contact of a sexual nature, whether on a one-time basis or a series of incidents,

- that might reasonably be expected to cause offence or humiliation; or

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- that might reasonably be perceived as placing a condition of a sexual nature on employment, an opportunity for training or promotion, or receipt of services or a contract.

Examples of behaviour that can constitute sexual harassment include, and are not limited to:

- conversation, physical touching, or leering that could be construed as a sexual advance;
- conversation about an individual's sexual behavior including sexualized banter;
- inappropriate or unwelcome focus/comments on a person's physical attributes or appearance;
- comments with sexual overtones;
- inappropriate, lewd, or sexually offensive written, graphic, or behavioral displays, including gender-based insults or jokes;
- a reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance; and
- sexual assault.

6.3 Poisoned Work Environment

A poisoned work environment is characterized by an activity or behaviour, not necessarily directed at anyone, that creates a hostile or offensive workplace. A poisoned work environment can be created by managers or supervisors or amongst employees who may or may not have a reporting relationship with each other. Examples of a poisoned work environment include and are not limited to: bullying, graffiti, sexual, racial or religious insults or jokes, abusive treatment of an employee(s) and the display of pornographic or other offensive material.

6.4 Abuse of Authority

Abuse of authority is where an individual improperly uses the power and authority inherent in a position to endanger a person's job, undermine the performance of that job, threaten the person's economic livelihood, or in any way interfere with or influence a person's career. It is the exercise of authority in a manner which serves no legitimate work purpose and ought reasonably to be known to be inappropriate. Examples of abuse of authority include, and are not limited to: misuse of power, intimidation, threats, blackmail or coercion, inappropriate use of power (with a subordinate) for sexual purposes.

6.5 Complainant

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A Complainant is a person who brings forward a complaint as defined in this policy.

6.6 Respondent

A Respondent is a person against whom a complaint is made.

6.7 Employee

Includes any full-time, part-time, casual, temporary, seasonal, or contract employee in Parts I, II and III of the New Brunswick Public Service. Also, any volunteer, student or intern worker providing services to the Government of New Brunswick.

6.8 CEO

CEO means a Chief Executive Officer or designate and includes Deputy Ministers (Part I), Superintendents of Schools (Part II); Chief Executive Officers of Regional Health Authorities (Part III); and for the purpose of 7.2.b or 7.2.e, the Deputy Minister of Finance and Treasury Board.

6.9 Manager

A manager is any person who is responsible for employees, has responsibility for delegating work and includes, supervisors, directors, principals of schools, nurse managers, facility managers and all appropriate persons in the chain of command within the organization.

6.10 Parties to the Complaint

Parties to the complaint mean the complainant and respondent.

6.11 Prima Facie

Prima facie means a first look or review at the allegations of the complaint either verbal or written. If on the face of it, the allegations appear to be true, then it is deemed to be true (benefit of the doubt) and the prima facie test has been met.

7. PROCEDURE

Upon becoming aware of any incident which may fall under the definition of harassment, the following procedure should be followed to attempt a resolution. Nothing prevents a CEO from taking any appropriate action (notwithstanding the procedure in this policy), including normal disciplinary action.

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7.1 Informal Resolution

Complainants and managers will use the informal procedure to attempt to resolve workplace harassment unless it is inappropriate to do so.

The objective of informal resolution is to address complaints raised through this policy as soon as possible and in a fair and respectful manner. Every effort should be made to resolve the problem as quickly as possible with open communication and cooperation. If a person believes they have a complaint under this policy and that person chooses to address the matter informally, the following actions should be taken:

- a. Complainant requests the assistance of a manager in the informal resolution of a workplace harassment complaint.
- b. Complainant directly speaks to the individual who has disrespected them or who has potentially violated the definitions in this policy in an attempt to resolve the problem before it can escalate. If the communication is done in person the complainant should have the manager present. If done in writing, it is advisable to forward a copy to the manager, and to keep a copy of the letter. All communications are to be two-way, meaning both parties have the opportunity to respectfully discuss the complaint.
- c. If the problem is not resolved, or if the complainant does not wish to communicate directly with the respondent, the complainant should meet with their manager, unless it is inappropriate to do so, then the complainant may reach out to a Human Resources representative.
- d. Problem resolution mechanisms such as coaching, guided conversations, counselling, facilitation and mediation can in many instances resolve the issue and prevent the situation from escalating to the point where a formal complaint is filed.
- e. If the facts are not in dispute and it is determined by the CEO that there is evidence for a founded complaint then the CEO shall take appropriate action up to and including dismissal.
- f. Nothing in the informal procedure prevents a manager from recommending the matter be investigated, or if the informal complaint procedure is not successful from recommending further action.

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7.2 Formal Procedure

If the informal procedure is inappropriate or fails, the CEO may choose to proceed with the formal procedure. The complainant may also choose to file a written complaint (Harassment Complaint Form, [Appendix A](#)).

- a. When proceeding under the formal procedure a written and signed complaint is required. It should give an accurate account of the incident or incidents of harassment including times, places and parties involved. When completed, the complaint is submitted to the manager (unless the manager is a named respondent), or Chief Executive Officer (CEO). Anonymous complaints will not be accepted.
- b. If the complainant deems it inappropriate to file a complaint with one of the persons mentioned above, a complaint may be filed with the Deputy Minister of Finance and Treasury Board.
- c. The employer is committed to reviewing all complaints, however, it is the CEO's discretion whether or not to investigate a complaint. The CEO or the investigator may, upon reviewing the written complaint and interviewing the complainant, determine whether or not the complainant has a prima facie complaint under this policy which merits further investigation. The CEO or investigator shall inform the complainant whether or not the investigation will be pursued and may take other action to resolve any workplace issues identified through the complaint.
- d. It is also the CEO's discretion whether or not to investigate a complaint if it is not filed within a year of the alleged circumstance leading to the complaint, unless exceptional circumstances warrant an extension.
- e. The CEO shall investigate or shall appoint an investigator or request the Deputy Minister of Finance and Treasury Board to appoint one to ensure the complaint is investigated in a confidential and expeditious manner.
- f. If at any time a grievance, court action or other legal process has been filed and the subject matter is the same as, similar in nature, or related to the complaint the CEO may suspend the investigation.

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- g. The respondent shall be informed of the complaint, presented with a written statement of allegations and afforded an opportunity to respond.
- h. When there is a direct reporting relationship between the complainant and the respondent, it may be in the best interest of all parties for them to be physically and hierarchically removed from one another for the period of the investigation. If there is no reporting relationship, the CEO shall determine if the parties should be physically removed from one another for the period of the investigation. The CEO shall consider operational requirements, health and safety of individuals and other employment factors in the decision to reassign or relocate either party.
- i. Unless directed otherwise, the investigator shall gather and analyze the information, summarize the findings and may propose corrective action or make recommendations when specifically requested to do so by the CEO.
- j. The investigator shall report the written findings and recommendations, when applicable, to the CEO who shall determine whether the respondent has committed an act or acts constituting harassment (i.e. a founded complaint).
- k. If a complaint is founded, in whole or in part, the CEO shall take appropriate action up to and including dismissal.
- l. The parties to the complaint must be informed in writing whether the allegations were founded or unfounded.
- m. The CEO may take any other action deemed advisable.
- n. A complainant who submits 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.

8. OTHER OPTIONS

8.1 Complaints to the New Brunswick Human Rights Commission

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[New Brunswick Human Rights Act](#) complaints should normally be filed within one year from the time the harassment occurred. Complaints are investigated by the New Brunswick Human Rights Commission. For more information, contact the [New Brunswick Human Rights Commission](#).

8.2 Complaints under the Criminal Code

Sexual and other forms of assault are covered under the [Criminal Code](#). Sexual and other forms of assault are serious criminal offences that should be reported to the police.

9. RIGHTS AND RESPONSIBILITIES

9.1 A shared responsibility

While all employees share responsibility for creating a respectful workplace and understanding and preventing harassment in the workplace, it is important to recognize that, under law, managers carry more responsibility than other employees.

9.2 Chief Executive Officers or Designate

Chief Executive Officers are responsible for the implementation and administration of this policy/ code of practice. They shall:

- promote behaviours, actions and values that contribute to a respectful workplace;
- ensure that the rights of both the respondent and the complainant involved in a harassment incident are protected. Fair and equitable procedures must be ensured for all parties;
- appoint an investigator or investigators where appropriate as per the policy;
- consult with the investigator or investigators to set a reasonable time frame for the completion of the investigation;
- review the investigation report;
- determine the outcome, the appropriate action to be taken, and implement the action;
- maintain confidentiality; and
- ensure the parties are informed in writing whether the allegations were founded or unfounded, in a timely manner. (Reports arising from the investigation remain the property of the employer. Disclosure is pursuant to [the Right to Information and Protection of Privacy Act](#), section 20(1) and 20(2)).

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9.3 Managers

- Managers promote and model behaviours, actions and values that contribute to a respectful workplace.
- Those who have authority to prevent or discourage harassment may be held accountable for failing to do so. This accountability extends to anyone in a management or supervisory position.
- Departments, Regional Health Authorities and School Districts may be responsible for the action or inaction of managers and supervisors.
- The employer may share liability with managers and others in founded complaints.
- Managers shall participate in Respectful Workplace Training, ensure employees receive Respectful Workplace Training and ensure training records are maintained.
- Maintain confidentiality.

9.4 Employees

- All employees share a common responsibility to promote and model behaviours, actions and values that contribute to a respectful workplace.
- Report an incident of harassment to the employer as soon as possible.
- In the event that harassment occurs, employees at every level of the organization may find themselves to be a complainant, respondent, or witness, and are responsible to cooperate fully with formal or informal resolution procedures.
- Employees are required to participate in Respectful Workplace training.
- Maintain confidentiality.

9.5 Complainants

Complainants have the right:

- to make a complaint and have the complaint reviewed;
- to be accompanied by a person of their choice (unrelated to the complaint) during the interview; and
- not to be subject to retaliation for having made a complaint under this policy.

It is the responsibility of the complainants:

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- to immediately make known, if possible, their disapproval or unease to the respondent;
- to follow all procedures under this policy;
- to cooperate with all those responsible for dealing with the investigation of the complaint; and
- to maintain confidentiality with respect to the investigation.

9.6 Respondents

Respondents have the right:

- to be informed that a complaint has been filed and will be investigated;
- to be presented with a written statement of allegations and to be afforded an opportunity to respond to them; and
- to be accompanied by a person of their choice (unrelated to the complaint) during their interview.

It is the responsibility of the respondents:

- to follow all procedures under the policy;
- to cooperate with all those responsible for dealing with the investigation of the complaint; and
- to maintain confidentiality with respect to the investigation.

9.7 Witnesses

Witnesses have the right:

- not to be subject to retaliation for participating as a witness; and
- to be accompanied by a person of their choice (unrelated to the complaint) during the interview.

It is the responsibility of the witness:

- to meet with the investigator and to cooperate with all those responsible for the investigation of the complaint; and
- to maintain confidentiality with respect to the investigation.

9.8 Investigator(s)

The investigator shall:

- ensure the respondent has received a written statement of the allegations;
- ensure all parties involved have been informed of their rights and responsibilities;
- interview the parties and relevant witnesses;

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- review and examine all evidence;
- where the investigator believes that mediation is appropriate, they shall advise the CEO or designate;
- prepare a full written report;
- ensure the investigation is completed in a timely manner (usually up to 3 months);
- where requested, provide a summary of recommendations following the investigation; and
- maintain confidentiality with respect to the investigation.

10. TRAINING

- All employees must complete Respectful Workplace Training. New employees must complete training as part of orientation.
- All managers must complete Respectful Workplace Training for managers.
- All records of employee training shall be maintained by the Employer.
- The employee performance evaluation shall include a requirement for annual review of the Respectful Workplace Policy.

11. REVIEW and UPDATE

This policy/code of practice will be reviewed and updated in compliance with [New Brunswick Regulation 91-191](#), Part XXII.I Violence and Harassment Codes of Practice.

12. REFERENCES

[New Brunswick Regulation 91-191](#) under the [Occupational Health and Safety Act](#), Part XXII.I Violence and Harassment Codes of Practice
New Brunswick. Human Rights Commission. (1992). *The [Human Rights Act of New Brunswick](#)*. Fredericton, N.B.: New Brunswick Human Rights Commission.

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Appendix A

[Harassment Complaint Form](#)