

## **The Township of Cavan Monaghan**

### **By-law No. 2014-21**

#### **Being a by-law to adopt Respect in the Workplace Policy (Violence and Harassment)**

**Whereas** Section 32.0.1 of Bill 168, an Act to Amend the Occupation Health and Safety Act with Respect to Violence and Harassment in the Workplace and other matters (herein referred to as "the Act") requires an employer to prepare policies with respect to workplace violence and workplace harassment, and to review the policies at least annually;

**And Whereas** Section 32.0.2 of the Act requires an employer to develop a program to implement the workplace violence policy;

**And Whereas** Section 32.0.3 of the Act requires an employer to assess the risks of workplace violence and to report the results of the assessment;

**And Whereas** Section 32.0.4 of the Act provides that if an employer is aware or ought to be aware that domestic violence that is likely to expose a worker to physical injury may occur in the workplace, the employer must take every reasonable precaution to protect the worker;

**And Whereas** Section 32.0.5 of the Act clarifies employer, supervisor and worker duties with respect to workplace violence;

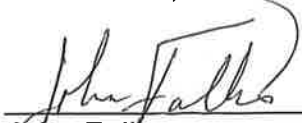
**And Whereas** Section 32.0.6 of the Act requires an employer to develop a program to implement the workplace harassment policy;

**And Whereas** Section 32.0.7 of the Act requires an employer to provide a worker with information and instruction on the contents of the workplace harassment policy and program.

**Now Therefore** the Council of the Township of Cavan Monaghan enacts as follows:

1. That the Respect in the Workplace Policy in the form attached hereto as Schedule "A" to this By-law.
2. That this By-law shall be commonly called the Violence and Harassment Policy By-law.
3. That By-law No. 2010-38 is hereby repealed in its entirety.

Read a first, second and third time and passed this 8<sup>th</sup> day of April, 2014.

  
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John Fallis  
Mayor

  
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Elana Arthurs  
Clerk



## **Respect in the Workplace Policy (Violence and Harassment)**

### **Purpose:**

The Township of Cavan Monaghan is committed to providing and maintaining a working environment that is based on respect for dignity and is free from harassment in the workplace on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed (religion), sex, sexual orientation, age, record of offences, marital status, family status, and mental or physical handicap.

### **Scope:**

This policy applies to all employees, contractors, consultants and elected officials. It applies in any location in which you are engaged in work-related activities. This includes, but is not limited to:

- The workplace.
- During work-related travel.
- At restaurants, hotels or meeting facilities that are being used for business purposes.
- In company owned or leased facilities.
- During telephone, e-mail or other communications.
- At any work-related social event, whether or not it is company sponsored.

This policy also applies to situations in which you are harassed or subjected to violence in the workplace from individuals who are not employees of the organization, such as customers and suppliers, although the available remedies may be constrained by the situation.

## **Definitions:**

### **1. Policy**

Harassment is a form of discrimination under the *Ontario Human Rights Code*. It is defined in subsection 10(1) of the Code as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. This definition includes any behavior, which is known or ought reasonably to be known to be offensive, embarrassing or humiliating and may include written, verbal and/or physical conduct. The source of such conduct may be a director, manager, supervisor, elected official, fellow employee, customer or other member of the public. Harassment and discrimination are violations of the Code and will not be tolerated.

Workplace harassment under the *Occupational Health and Safety Act* will be treated in the same manner as harassment based on Human Rights Code-protected grounds.

Any employee who legitimately feels that he/she has been harassed contrary to this policy has the right to utilize the Harassment Complaint Resolution Procedure outlined below in order to have the situation addressed.

Employees may also file a complaint with the Human Rights Tribunal of Ontario at any time within one (1) year from the date of the last act of alleged discrimination and/or file a grievance with their Union in accordance with procedures outlined in the Collective Agreement.

The Harassment Complaint Resolution Procedure has been developed to assure employees that harassment in the workplace will not be tolerated, that an employee who comes forward with a complaint of harassment will not be subjected to retaliation and that an employee who is alleged to have engaged in harassment will be dealt with fairly. Those also protected from reprisal include witnesses, representatives of complainants and witnesses, investigators and management.

### **2. Sexual Harassment**

Sexual harassment includes conduct or comments of a sexual nature that the recipient does not welcome or that offend him or her. It also includes negative or inappropriate conduct or comments that are not necessarily sexual in nature, but which are directed at an individual because of his or her gender.

Both men and women can be victims of harassment, and someone of the same or opposite sex can harass someone else.

Some examples of sexual harassment are:

- (a) Any deliberate and unsolicited suggestion or physical conduct with a sexual connotation that creates an uncomfortable working environment for the recipient and is made by a person who knows or ought reasonably to know that such action is unwelcome.
- (b) A sexual advance or solicitation made by a person where the person making the advance or solicitation knows or ought reasonably to know that it is unwelcome.
- (c) A reprisal or threat for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.
- (d) Unwelcome remarks, jokes, innuendoes or taunting about a person's body, attire, sex, personal or social life.
- (e) Practical jokes of a sexual nature which give rise to awkwardness or embarrassment.
- (f) Displays of pornographic or other offensive material of a sexual nature.
- (g) Unnecessary physical contact such as touching, patting or pinching which are known or ought reasonably to be known to be unwelcome.
- (h) Expressions of gender bias, which may include remarks which are discriminatory, degrading or derogatory.
- (i) Sexual assault.

### **3. Discriminatory/Racial Harassment**

Discriminatory harassment includes comments or conduct based on the protected grounds in the *Ontario Human Rights Code*, which the recipient does not welcome or that offends him or her.

Some examples of discriminatory harassment include:

- (a) Demeaning comments, unwelcome remarks, jokes, innuendoes or taunting about a person or group of persons based on race, ancestry, place of origin, colour, ethnic origin, citizenship or creed.
- (b) A display of racist pictures or materials or a display which is derogatory or offensive to a person's race.
- (c) Denial of normal co-operation with an employee because of the employee's race or ethnic background.

- (d) Insulting gestures or practical jokes based on race or ethnic grounds which cause awkwardness or embarrassment.
- (e) Demeaning remarks about a racial group that creates an uncomfortable and/or “poisoned work environment”.

#### **4. Poisoned Work Environment**

Harassing comments or conduct can poison someone’s working environment, making it a hostile or uncomfortable place to work, even if the person is not being directly targeted. This is commonly referred to as a poisoned working environment and it is also a form of harassment.

Some examples of actions that can create a poisoned work environment include:

- (a) Displaying offensive or sexual materials such as posters, pictures, calendars websites or screen savers.
- (b) Distributing offensive e-mail messages or attachments such as pictures or video files.
- (c) Practical jokes that embarrass or insult someone.
- (d) Jokes or insults which are offensive, racist or discriminatory in nature.
- (e) Demeaning racial remarks, jokes or innuendoes about an employee, client or customer, told to other employees, clients or customers may deny the right of those persons who are the subject of the comments, to be viewed as equals.
- (f) Racial remarks, jokes or innuendoes made about other racial groups in the presence of an employee or client may create an apprehension on the part of the members of other racial minority groups that they are targeted when they are not present.
- (g) The display of racist, derogatory or offensive pictures, graffiti or materials is humiliating and also impairs the right of those persons who are members of the targeted racial group from being viewed as equals.
- (h) Racial remarks, jokes or innuendoes do not only poison the environment for racial minority groups. They affect everyone’s environment and are disruptive.

#### **5. Workplace Harassment and Bullying**

Workplace harassment is a health and safety issue that is covered under the *Occupational Health and Safety Act*.

The *Occupational Health and Safety Act* defines workplace harassment as:

Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

Workplace harassment may have some or all of the following components:

- It is generally repetitive, although a single serious incident may constitute workplace harassment if it undermines the recipient's psychological or physical integrity and has a lasting harmful effect.
- It is hostile, abusive or inappropriate.
- It affects the person's dignity or psychological integrity.
- It results in a poisoned work environment.

In addition, behaviour that intimidates, isolates or discriminates against the recipient may also be included.

Examples of workplace harassment/bullying are:

- (a) Verbally abusive behaviour such as yelling, insults, ridicule and name calling including remarks, jokes or innuendoes that demean, ridicule, intimidate or offend.
- (b) Workplace pranks, vandalism, bullying and hazing.
- (c) Gossiping or spreading malicious rumours.
- (d) Excluding or ignoring someone, including persistent exclusion of a particular person from workplace-related social gatherings.
- (e) Undermining someone else's efforts by setting impossible goals, with short deadlines and deliberately withholding information that would enable a person to do their job.
- (f) Providing only demeaning or trivial tasks in place of normal job duties.
- (g) Humiliating someone.
- (h) Sabotaging someone else's work.
- (i) Displaying or circulating offensive pictures or materials.
- (j) Offensive or intimidating phone calls or e-mails.

- (k) Impeding an individual's efforts at promotions or transfers for reasons that are not legitimate; and
- (l) Making false allegations about someone in memos or other work related documents.

### **What Isn't Harassment**

Workplace harassment should not be confused with legitimate, reasonable management actions that are part of the normal work function, including:

- (a) Measures to correct performance deficiencies, such as placing someone on a performance improvement plan.
- (b) Imposing discipline for workplace infractions; or
- (c) Requesting medical documents in support of an absence from work.

It also does not include normal workplace conflict that may occur between individuals or differences of opinion between co-workers.

### **The Test of Harassment**

It does not matter whether you intended to offend someone. The test of harassment is whether you knew or should have known that the comments or conduct were unwelcome to the other person. For example, someone may make it clear through their conduct or body language that the behaviour is unwelcome, in which case you must immediately stop that behaviour.

Although it is commonly the case, the harasser does not necessarily have to have power or authority over the victim. Harassment can occur from co-worker to co-worker, supervisor to employee and employee to supervisor.

## **6. Workplace and Domestic Violence**

Workplace and domestic violence that may occur in the workplace are health and safety issues, which are covered under the *Occupational Health and Safety Act*.

### **Workplace Violence**

Workplace violence is defined under the *Occupational Health and Safety Act* as:

- The exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker.
- An attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker.



- A statement or behaviour that is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

It is defined broadly enough to include acts that may be considered criminal. Workplace violence includes, but is not limited to:

- (a) Physically threatening behaviour such as shaking a fist at someone, finger pointing, destroying property, throwing objects.
- (b) Verbal or written threats to physically attack a worker.
- (c) Leaving threatening notes or sending threatening e-mails.
- (d) Wielding a weapon at work.
- (e) Stalking someone; and
- (f) Physically aggressive behaviours including hitting, shoving, standing excessively close to someone in an aggressive manner, pushing, kicking, throwing an object at someone, physically restraining someone or any other form of physical or sexual assault.

Violence that occurs outside the normal workplace but which has an impact on the working environment, including working relationships, may also be considered violence in the workplace.

### **Domestic Violence**

Domestic violence is defined as violence that would likely expose you, or other workers, to physical injury that may occur in the workplace. The Township of Cavan Monaghan will take every precaution reasonable to protect you and your co-workers in this circumstance. This may include some or all of the following:

- (a) Creating a safety plan.
- (b) Contacting the police.
- (c) Establishing enhanced security measures such as a panic button, code words, and door and access security measures.
- (d) Screening calls and blocking certain e-mail addresses.
- (e) Setting up priority parking or providing escorts to your vehicles or to public transportation.

- (f) Adjusting your working hours and location so that they are not predictable; and
- (g) Facilitating your access to counseling through the Employee Assistance Program or other community programs.

We appreciate sensitivity of these issues and will do our best to assist you as discreetly as possible while maintaining your privacy.

### **Preventing Harassment and Violence**

It is the responsibility of directors, managers, supervisors, elected officials, fellow employees, customers or other members of the public to ensure that we create and maintain a harassment and violence-free workplace and address violence and/or the threat(s) of violence from all possible sources.

### **Township of Cavan Monaghan Commitment**

The Township of Cavan Monaghan will do its part by not tolerating or condoning discrimination, harassment or violence in the workplace. This includes making everyone in our organization aware of what behaviour is and is not appropriate, assessing the risk of workplace violence, investigating complaints and imposing suitable corrective measures.

### **Harassment Complaint Resolution Procedure**

Prior to accessing the Complaint Resolution Procedure an employee who feels that he/she is experiencing unwelcome and unwanted behaviour which falls within the definition of harassment should attempt to address the issue directly with the individual involved by politely advising the individual that his/her conduct is unwelcome and unwanted.

In the event that after advising the individual that his/her conduct is unwelcome and deemed to be that of harassment, or if the circumstances are such that the employee feels unable to address the issue directly with the individual, then the employee may proceed directly to the Harassment Complaint Resolution Procedure.

1. The employee (the complainant) shall bring his/her concern immediately to the attention of his/her immediate manager/Director in an attempt to resolve the complaint without the necessity for a written complaint.
2. If the situation persists, or if the complainant feels unable to approach his/her immediate manager/Director, the complainant may bring his/her concern immediately to the attention of the Chief Administrative Officer who shall act as the Advisor.

In doing so, the complainant will be required to set down in writing, the nature of the harassment and the details of the harassment including, where possible, places, dates and times. The complainant may be asked for the identities of any witnesses.

3. Should the alleged complaint involve an employee(s) under the direct supervision of the Advisor, or the Advisor is not perceived as being objective, the concerns can be turned over directly to the Township solicitor.
4. Those involved in the Complaint Resolution Procedure shall be given the opportunity to exercise their right for representation. Representation may include union stewards or a colleague.
5. The Advisor will meet with the person who is alleged to have been the source of the harassment (the respondent) at the earliest opportunity following receipt of the complaint.
6. The respondent shall be advised of the nature of the complaint and shall be given an opportunity to provide his/her details of the alleged complaint. This process may involve one or more meetings in order to allow the respondent a fair opportunity to reply to the complainant's allegations. The respondent may be requested to put his/her response in writing and may be asked for the identities of any witnesses.
7. Following the initial meeting with the respondent, the Advisor will determine whether an informal resolution of the complaint is possible, such as a meeting with the complainant and respondent, an apology or some other informal resolution.
8. If the complaint is resolved informally, the Advisor will retain in a separate file, a copy of the written complaint, together with a memo outlining the manner in which the complaint was resolved. No reference to the complaint will be made in the personnel file of either the complainant or the respondent, unless the terms of the informal resolution provide otherwise.
9. If an informal resolution is not possible, the Advisor will investigate the complaint. Both the complainant and respondent will be counselled on the internal processes of the Complaint Resolution Procedure, and will be requested to provide the names of witnesses who may assist in the investigation. The Advisor may interview these witnesses and may interview any other individual who may have information that might assist with the investigation.
10. The investigation will be completed within ninety days from the date it begins.
11. Upon conclusion of the investigation, the Advisor will meet individually with both the complainant and the respondent to share the results of the investigation and to provide each of them with a further opportunity for input before a final decision is reached.

12. If the Advisor determines that harassment has occurred he/she will decide what action is appropriate in the circumstances. This action may include discipline, up to and including dismissal. The complainant will be kept informed as to the outcome of the resolution, however specific details of any such discipline may not be disclosed for reasons of confidentiality of personal information.
13. If the Advisor determines that no harassment has occurred, he/she will advise the complainant and the respondent. A record of the complaint and the results of the investigation will be kept in a separate file, and no reference to complaint will be made in the respondent's personnel file.
14. If the Advisor determines that the complaint has been made frivolously, vexatiously and/or in bad faith, disciplinary action may be taken against the complainant.

Confidentiality will be maintained throughout the Complaint Procedure. In the event that legal proceedings arise, as a result of the application of this policy, disclosure will be made as required by law.