

## PROMOTING A RESPECTFUL WORKPLACE: A GUIDE FOR DEVELOPING EFFECTIVE POLICIES

### ***INTRODUCTION***

The Law Society of B.C. has a long-standing commitment to promoting and assisting law firms to provide a healthy and respectful workplace free of discrimination, bullying and harassment. The Law Society has endorsed this guide for developing respectful workplace policies to support and assist B.C. law firms in developing best practices to prevent and address workplace harassment. The guide is intended to provide examples of the steps a responsible employer can take towards maintaining a working environment in which all firm members treat each other with mutual respect. The guide incorporates the anti-bullying requirements set out in *WorkSafeBC's Occupational Health and Safety Policies*, implemented on November 1, 2013.

### ***REASONS TO ADOPT A POLICY***

The advantages of written policies include:

- a) encouraging respect for the dignity of all individuals in the firm;
- b) demonstrating that the firm's management takes these issues seriously and promotes a respectful workplace;
- c) providing procedures for handling complaints and enhancing transparency;
- d) encouraging prompt resolution of instances of workplace bullying, harassment and discrimination;
- e) outlining preventative, remedial and disciplinary actions that may be taken; and
- f) minimizing the risk of harm to staff, paralegals and lawyers, as well as the risk that a firm will be held liable for discrimination, bullying and harassment.

### ***HOW LAW FIRMS SHOULD APPROACH THESE SAMPLE POLICIES***

The sample policies and templates are precedents and are intended to provide guidance, rather than to represent the ultimate or ideal documents. The precedents apply to a legal environment composed of partners, associates and other staff, not subject to a collective agreement. Firms should adapt and tailor the precedents to their own structure and culture.

## Model Policy — Respectful Workplace

Throughout the model policy:

- Square brackets “[ ]” are used to indicate that firms should include terminology or information relevant to their organization.
- Text boxes are used to provide supplemental commentary.

### ***COMMUNICATING THE POLICY***

Once adopted, it is important for firms to communicate the policy to all firm members and to develop an education strategy. The initial presentation of the policy and a clear statement of management support are important.

Education programs should be organized to inform firm members about the provisions of the policy and the objectives that it is intended to meet.

The firm might consider asking those covered by the policy to sign a commitment pledge acknowledging receipt and an understanding of the policy. This increases the acceptance and understanding of the policy and allows the firm to ensure that all firm members are fully aware of the policy.

### **CONSIDERATIONS FOR SMALL FIRMS**

Smaller law firms may face challenges in implementing this model policy. Smaller firms will frequently have limited financial resources or personnel to adopt the same kind of processes as larger firms.

To effectively implement a policy, small firms may:

- a) appoint one person, such as a senior member of the law firm, to implement the policy. This person should be: approachable, well positioned to notice situations of bullying, harassment, or discrimination, and able to take action when necessary. The person should also set an example of appropriate firm behavior.
- b) establish liaisons with other firms or sole practitioners for the purpose of:
  - arranging for educational and training programs for preventing and addressing workplace harassment;
  - conducting regular reviews of the procedures in its policy;
  - appointing a member of a different law firm or another sole practitioner to act as an advisor, investigator, or decision-maker, having due regard to the protection of the privacy rights of the parties.
- c) utilize the Law Society’s resources (such as the Equity Ombudsperson) to assist in workplace bullying, harassment, and discrimination issues; and
- d) retain outside consultants, where appropriate.

## ***MODEL POLICY FOR PROMOTING A RESPECTFUL WORKPLACE***

### **PART I: STATEMENT OF PRINCIPLES**

#### **1. Purposes**

The purposes of this policy are to:

- a) promote respect for the dignity of all members of the firm;
- b) maintain a working environment that is free from discrimination, bullying and harassment;
- c) set out the types of behaviour that may be considered offensive;
- d) establish a mechanism for receiving complaints of workplace discrimination, bullying and harassment;
- e) provide a procedure by which the firm will deal with such complaints; and
- f) educate members of the firm about how to proactively support a respectful workplace.

#### **2. Commitment**

[Name of firm] is committed to providing a collegial working environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that is equitable, respectful, and free from bullying, harassment, and discrimination.

Workplace bullying, harassment, and discrimination will not be tolerated. The firm encourages reporting of all incidents of workplace harassment, regardless of who the offender may be. Any person who engages in conduct in violation of this policy will be dealt with as outlined in the policy. The firm recognizes that its members may be subjected to discrimination, bullying and harassment in the workplace, not only by coworkers, but also by clients, others who conduct business with the firm, opposing counsel, court personnel or judges. In such circumstances, the firm acknowledges its responsibility to support and assist the person subjected to such bullying, harassment, or discrimination.

#### **3. Application**

##### **3.1 Firm members**

This policy applies to all individuals working for [name of firm] including administrative support, associates, partners, dependent and independent contractors, articling and summer students, and volunteers.

The application of the policy to all those in the work context (including volunteers), to all types of employment relationships (including partners), and to any legal work-related environment and professional dealings is consistent with BC human rights law. The Supreme Court of Canada found that partners may potentially be in an employment relationship with the firm capable of founding a claim based on discrimination under the BC *Human Rights Code* (See: *McCormick v. Fasken Martineau DuMoulin LLP*, 2014 SCC 39.)

### 3.2 Location

This policy applies to any work-related environment, including:

- a) the office;
- b) any location where the business of [name of firm] is being carried out, including off-site work assignments, courtrooms, telephone and electronic communications, etc.;
- c) official and unofficial work-related social functions;
- d) work-related conferences or training sessions; and
- e) work-related travel.

## 4. Confidentiality

### 4.1 General

To protect the interests of the complainant, the respondent, and persons who report incidents of discrimination, bullying and harassment in the workplace, confidentiality will be maintained throughout the process to the extent permitted by the investigation.

### 4.2 Information and records

All information relating to the complaint (including contents of meetings, interviews, results of investigation, and other relevant material) will be disclosed only to the extent necessary to carry out the procedures under the policy, or where disclosure is required by law.

Information collected and retained is subject to the privacy protection provisions of the *Freedom of Information and Protection of Privacy Act* RSBC 1996, c. 165 and the *Personal Information Protection Act*, SBC 2003, c. 63.

Confidentiality at every stage of the process is important. The absence of assurances of confidentiality may discourage individuals from using the policy. A statement of confidentiality is meant to protect the complainant, respondent and the firm. However, the nature of an investigation may necessitate some exceptions to the rule of confidentiality and a firm should include a statement to that effect in the policy.

## PART II: LEGAL PRINCIPLES

### 5. Legal Background

#### 5.1 Legislation

Section 13 of the *BC Human Rights Code* prohibits discrimination in the workplace. Rule 6.3 of the Law Society of British Columbia's *Code of Professional Conduct* goes further, providing that a lawyer must not: sexually harass any person (Rule 6.3-3), engage in any other form of harassment of any person (Rule 6.3-4), or discriminate against any person (Rule 6.3-5). The *WorkSafeBC Occupational Health and Safety Policy Guideline D3-115-2* ("*Anti-Bullying Legislation*") requires employers to adopt written policies and procedures, and to provide training to ensure that supervisors and staff are aware of them.

#### 5.2 Other remedies

The policy is in addition to, and not in substitution for, such rights as an individual may have under the *BC Human Rights Code* or the procedures of the Law Society of B.C. Law firms cannot contractually exempt lawyers from the *BC Human Rights Code* or the Law Society *Code of Professional Conduct*.

An agreement that contains a confidentiality provision purporting to require a complainant to refrain from reporting the offender to the Human Rights Tribunal or the Law Society is not permitted and is in breach of the *Code of Professional Conduct*.

### 6. Prohibited conduct

Bullying, harassment, discrimination, retaliation, and malicious complaints are prohibited.

#### 6.1 Bullying and harassment

"Bullying and harassment" is defined in B.C.'s *Anti-Bullying* legislation and "(a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but (b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment."

Bullying and harassment may consist of a single incident or several incidents over a period of time. Examples of conduct which may constitute bullying and harassment can be found at Appendix 1.

Mutually acceptable social interaction is not workplace bullying or harassment.

## **6.2 Discrimination**

The *BC Human Rights Code* prohibits discrimination in employment based on: race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment of that person ( “enumerated grounds”). The *Code of Professional Conduct* is consistent with the *BC Human Rights Code* and prohibits sexual harassment, harassment, and discrimination. Discrimination that is not based on enumerated grounds is prohibited under the *Anti-Bullying* legislation.

## **6.3 Retaliation**

“Retaliation” is any adverse action taken against an individual for:

- a) invoking this policy in good faith whether on behalf of oneself or another individual;
- b) participating or cooperating in any investigation under this policy; or
- c) associating with a person who has invoked this policy or participated in these procedures.

## **6.4 Malicious complaints**

A “malicious complaint” occurs when a person has made a complaint of bullying, harassment, or discrimination that he or she knows is untrue. Submitting a complaint in good faith (e.g. where the complaint is based on a mistake, a misunderstanding, or a misinterpretation, or where the complaint cannot be proven) does not constitute a malicious complaint.

# **PART III: RIGHTS AND RESPONSIBILITIES**

## **7. Rights**

Every firm member has the right to a respectful workplace, and the right to enforce his or her rights under this policy.

### **7.1 Firm member responsibilities**

Every firm member has a responsibility to uphold this policy and to ensure that the working environment is free from bullying, harassment, and discrimination by:

- a) promoting respect for the dignity of all members of the firm;
- b) not engaging in bullying, harassment, or discrimination;
- c) conducting themselves in a manner that demonstrates professional conduct, respect for others, and that honours diversity and inclusion in the workplace;
- d) participating fully and in good faith in any formal complaint, investigation, or resolution process where they have been identified as having potentially relevant information;
- e) reporting any incidents that may be in violation of this policy;

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- f) respecting the rights to personal dignity, privacy, and confidentiality pertaining to this policy; and
- g) participating in education and training opportunities aimed at maintaining and promoting a respectful workplace.

### 7.2 Supervisor responsibilities

Firm members with supervisory authority, including partners, have additional responsibilities under the policy to establish and maintain a workplace free of bullying, harassment, and discrimination. Their responsibilities include:

- a) ensuring that bullying, harassment, and discrimination are not allowed, condoned, or ignored;
- b) acting as a role model for professional and respectful conduct;
- c) providing training on this policy, and on bullying, harassment, and discrimination;
- d) ensuring that all firm members have full access to information regarding the firm's policies and standards;
- e) taking immediate action on observations or allegations of bullying, harassment, or discrimination;
- f) notifying police when there are reasonable grounds to believe that a violation of the *Criminal Code* or other applicable law has occurred;
- g) respecting the rights of all parties to a fair, equitable, and confidential process for dealing with complaints of bullying, harassment, or discrimination;
- h) supporting all individuals who participate in a resolution process;
- i) supporting any firm member who complains of workplace bullying, harassment, or discrimination by a person who is not a firm member (e.g. client, opposing counsel, judge, member of court staff, supplier, etc.);
- j) taking remedial or disciplinary measures, where appropriate;
- k) appointing and training appropriate advisors, investigators, and [decision-makers];
- l) regularly reviewing the procedures of this policy to ensure that they adequately meet the policy objectives.

Sections 7.3 to 7.5 set out roles and responsibilities for advisors, investigators, and decision-makers. Having three separate designated positions is ideal but not required.

### 7.3 Advisor responsibilities

Advisors will be appointed by [managing partners/the executive committee/other].

The role of advisors is important to the successful implementation of the policy. Each advisor should be:

- well respected, and influential within the firm;
- able to discuss a complaint with the complainant or respondent, regardless of that person's seniority;
- empathetic and sensitive to the nature and effects of bullying, harassment and discrimination;
- trusted as a person who will observe the principles of confidentiality; and
- properly trained to deal with complaints of bullying, harassment, and discrimination.

The number of appointed advisors usually depends on the number of firm members, in addition to the culture and structure of the firm. The appointment of more than one advisor is recommended because it allows firm members to have choices when requiring the assistance of an advisor. Where only one advisor is feasible, firms should provide an alternate to act in a situation where the appointed advisor is either the complainant or respondent in an allegation of bullying, harassment, or discrimination.

Advisors are responsible for:

- a) providing training, and conveying information about this policy and the process for making a complaint;
- b) assisting individuals who have concerns or complaints regarding workplace bullying, harassment, or discrimination;
- c) helping a complainant to move through the steps of this policy;
- d) keeping a written record of any complaint;
- e) maintaining confidentiality of communications relating to inquiries and complaints, unless under an obligation to disclose the information by law or under this policy; and
- f) referring individuals who require counseling to the appropriate resources.

A firm may include a provision such as:

“An advisor will not condone harassment or discrimination. In instances where an advisor is made aware of bullying, harassment, or discrimination that, if proven, would be a violation of this policy, he or she [will/may] report the incident to the investigator, and will inform the complainant of the action taken.”

However, the firm should contemplate whether such a provision would encourage or discourage the use of an advisor by potential complainants. The provision should enable an advisor to exercise discretion to make a formal complaint and initiate an investigation in cases where the complainant decides not to pursue a complaint.



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Advisors are not responsible for investigating or determining the merits of a complaint of workplace bullying, harassment, or discrimination.

Advisors are not investigators, decision-makers, or counsellors. They help to clarify options available, answer questions and explain the policy.

### 7.4 Investigator responsibilities

Investigators will be appointed by [managing partners/the executive committee/other].

Investigators are responsible for:

- a) investigating every complaint that is not resolved informally;
- b) applying principles of fairness and impartiality throughout the investigation;
- c) interviewing parties and witnesses;
- d) preparing written reports that include findings of fact and conclusions; and
- e) maintaining confidentiality of records of complaints, unless under an obligation to disclose the information by law or under this policy.

### 7.5 Decision-maker responsibilities

Decision-makers will be appointed by [managing partners/executive committee/other].

Decision-makers are responsible for deciding whether the policy has been violated.

A decision-maker, in conjunction with the appropriate level of management, is responsible for determining what action will be taken as a result of the investigator's findings.

It may be appropriate for a firm to appoint one or more firm members to process complaints under the policy. Another option could be to appoint an existing committee to handle complaints. Firms should consider privacy and confidentiality concerns in making such appointments. Decision-makers should be knowledgeable about human rights issues and represent different sectors of the organization. Every effort should be made to include members from diverse communities in the pool of decision-makers.

Firms should take into account their culture and context to determine what process would be the least intimidating, and to ensure that complaints are brought forward.

## 7.6 Education and training

All firm members will be provided with training on this policy, and on bullying, harassment, and discrimination.

All individuals charged with implementing and applying the policy (e.g. advisors, investigators, and decision-makers) will be properly trained, and fully versed in the specifics of the policy, the law, interviewing techniques, and information gathering, and on bullying, harassment, and discrimination.

## PART IV: PROCEDURES

### 8. External avenues

While the firm is committed to resolving incidents of bullying, harassment, and discrimination internally, nothing in this policy precludes firm members from pursuing other avenues of redress, including making a complaint under the:

- a) *Criminal Code*;
- b) *BC Human Rights Code*; or
- c) *Law Society's Code of Professional Conduct*.

The policy should make reference to the time limits for external avenues. The time limit for filing a complaint under the *BC Human Rights Code* is 6 months. The *Code* also allows a person to apply after the expiry of the time if it is in the public interest to do so, and no substantial prejudice will result to any person because of the delay.

Law Society Rule 6.3-1 states that “The principles of human rights laws and related case law apply to the interpretation of this section,” so the time limit for filing a complaint of bullying, harassment, or discrimination accords with those of the *BC Human Rights Code*.

During the initial meeting between the complainant and advisor, the advisor will notify the complainant of the external avenues of redress, and the applicable time limits.

### 9. Initial action

A person who considers that he or she, or someone else, has been subjected to bullying, harassment, or discrimination (the complainant) should keep a written record of the offensive behaviour, including the date(s), time(s), circumstances, witnesses (if any), and any other pertinent information.

The complainant is encouraged to bring the matter to the attention of the person responsible for the conduct (the respondent).

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Where the complainant is not comfortable bringing the matter directly to the attention of the respondent, or where such an approach is attempted and does not produce a satisfactory result for the complainant, the complainant may seek assistance from an advisor.

Directly approaching the person whose conduct has caused offence is usually the first step in a policy. Frequently, people are unaware that their conduct is offensive and all that is required to prevent its repetition is a simple statement that the conduct is unwelcome. However, power and status disparities between the respondent and the complainant may make it impossible or unreasonable for the complainant to approach the respondent. Therefore, such a first step should not be a mandatory step to the process.

### **Time limits**

If a firm stipulates a time limit for reporting a complaint, the firm should include a clause to indicate that a complaint will not be dismissed simply because it has not been reported in a timely fashion. Frequently, fear of retaliation or embarrassment may cause a person to wait until the bullying, harassment, or discrimination becomes unbearable before reporting the behaviour. The very act of having to report bullying, harassment, or discrimination may also add to the individual's distress.

Complainants often feel uncomfortable, embarrassed, or ashamed when they talk about personal incidents of bullying, harassment, or discrimination. Some may feel that they will be ignored, discredited, or accused of misunderstanding intentions. Common reasons given for not reporting incidents are that the complainant believes nothing would be done, that the complaint would be ridiculed or treated lightly, that the complainant would be blamed, or would suffer repercussions.

## **10. Meeting with advisor**

Any firm member may meet with an advisor to:

- a) obtain information about this policy;
- b) discuss concerns about workplace bullying, harassment, or discrimination; and
- c) discuss alternative courses of action available under this policy, and externally.

Once a complainant has approached an advisor with a complaint of workplace bullying, harassment, or discrimination, the advisor will provide the complainant with a copy of this policy and will advise the complainant of the:

- a) importance of keeping a written record of incidents of bullying, harassment, or discrimination;
- b) right to make an informal or formal complaint under this policy;
- c) availability of counseling and other support services offered by the firm and others;
- d) right to be accompanied or represented by legal counsel or other person of choice at any stage of the process where the complainant is required or entitled to be present;
- e) right to withdraw from any further action in connection with the complaint at any stage; and

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- f) other avenues of recourse available to the complainant, such as a complaint to the Law Society, BC Human Rights Tribunal, or police, as well as any time limitations for filing an external complaint.

Other confidential support services available to lawyers in BC, free of charge, include the:

- Law Society of BC's Equity Ombudsperson  
<https://www.lawsociety.bc.ca/page.cfm?cid=270&t=Equity-Ombudsperson>;
- Lawyers Assistance Program <http://lapbc.com/>; and
- PPC Canada <http://www.ca.ppcworldwide.com/> .

The firm may wish to specify whether the firm will cover the costs of legal counsel, and whether lawyers from the firm are allowed to act for the complainant.

Where a person believes that a colleague has experienced or is experiencing workplace bullying, harassment, or discrimination, and reports this belief to an advisor, the advisor will meet with the person who is said to have been subjected to workplace bullying, harassment, or discrimination, and will then proceed in accordance with paragraph 10.0.

### 10.1 Outcomes of meeting with advisor

If the complainant and the advisor agree that the conduct in question is not workplace bullying, harassment, or discrimination as defined in this policy, the advisor will take no further action and will maintain a record of the meeting in his or her confidential file.

If the complainant and the advisor agree that the conduct in question is workplace bullying, harassment, or discrimination as defined in this policy, the complainant may choose to initiate a an informal or formal complaint.

The advisor will remind the complainant of the importance of documenting incidents of bullying, harassment, or discrimination, and may assist the complainant in creating a written record.

The advisor will create a written record of the meeting, which will be kept in the complainant's personnel file.

## 11. Complaints

### 11.1 Notice to the respondent

If the complainant initiates an informal or formal complaint, the advisor will provide the respondent with:

- a) a copy of this policy;
- b) written notice of the complaint;
- c) notice of the respondent's right to be represented by legal counsel or other person of choice at any stage of the process where the respondent is required or entitled to be present; and

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- d) information about the availability of counseling, educational, and other support services offered by the firm and others.

Other confidential support services available to lawyers in BC, free of charge, include the:

- Law Society of BC's Equity Ombudsperson  
<https://www.lawsociety.bc.ca/page.cfm?cid=270&t=Equity-Ombudsperson>;
- Lawyers Assistance Program <http://lapbc.com/>; and
- PPC Canada <http://www.ca.ppcworldwide.com/> .

The firm may wish to specify whether the firm will cover the costs of legal counsel, and whether lawyers from the firm are allowed to act for the respondent.

### 11.2 Informal complaint procedure

Where appropriate, the advisor will offer the parties an opportunity to resolve the issue informally. No person is required to attempt to resolve the issue informally.

As part of the informal process, the complainant may, with the assistance of the advisor, meet with the respondent with a view to arriving at a solution to the situation.

Where the complainant and the respondent are satisfied that they have achieved an appropriate resolution, the advisor will make a confidential written record of the resolution, which the advisor will keep in a locked filing cabinet. The written record will be signed by both parties, and both parties will be provided with a copy of the resolution.

The advisor will follow up with both parties to ensure that the solution is working.

### 11.3 Formal complaint procedure

If the complainant is not satisfied with the results of the informal procedure, or chooses not to utilize the informal procedure, the complainant may make a formal written complaint to the investigator.

At any time after a formal complaint has been initiated, the complainant may make a request to [the decision-maker] for temporary accommodation until the complaint resolution process comes to an end. Every effort will be made to reasonably accommodate the complainant.

Temporary accommodation may include limiting contacts between the complainant and respondent by relocating the respondent to another area of the workplace or allowing the complainant to report to work with someone other than the respondent. The complainant should not bear the inconvenience of job relocation. Care must be taken to support the complainant and ensure that his or her career development is not negatively affected as the process unfolds.

## 12. Investigation

The investigator will interview the complainant, respondent, and witnesses. The investigation will be completed in a timely manner. Upon completion of the investigation, the investigator will prepare a written report that includes findings of fact. The [decision-maker] will be advised of the outcome of the investigation.

### 12.1 Action taken following investigation

Based on the outcome of the investigation, the [decision-maker] in conjunction with the appropriate level of management, will make a decision about whether the policy has been violated, and what action will be taken as a result of the findings. The complainant and respondent will be informed of the outcome of the investigation and any decisions as to whether the policy has been violated.

### 12.2 Complaint not substantiated

If an investigation results in a finding that the complaint of workplace bullying, harassment, or discrimination is not substantiated, no record will be placed in the respondent's file. All other documentation will be kept in a locked filing cabinet by the investigator.

If an investigation results in a finding that the complainant made a malicious complaint, the [decision-maker] will implement an appropriate remedial action, based on the nature and severity of the violation, in accordance with the "remedial action" section of this policy (see section 13). The outcome of the proceedings will be recorded in the complainant's personnel file and may be used in any investigation of a subsequent complaint.

### 12.3 Complaint is substantiated

Where the investigation results in a finding that the complaint of workplace bullying, harassment, or discrimination is substantiated, the [decision-maker] in conjunction with the appropriate level of management will implement an appropriate remedial action, based on the nature and severity of the violation.

Where the complaint is substantiated, the confidential outcome of the proceedings will be recorded in the respondent's personnel file and may be used in any investigation of a subsequent complaint.

Since members of the firm usually have the right to inspect the contents of their own personnel files, to protect the confidentiality of witnesses and others, it is important that details of the investigation and the evidence not be kept in the personnel file. Only the outcome of the investigation should be recorded in the personnel file.

Generally, the only person who will have access to witness statements is the investigator. When the investigator provides his or her final report, he or she should not refer to witnesses by name.

### 13. Remedial action

Remedial action may include:

- a) an apology;
- b) educational training;
- c) counseling;
- d) reprimand;
- e) reassignment;
- f) withholding a promotion;
- g) a financial penalty;
- h) probation;
- i) a suspension, with or without pay;
- j) suspension or removal from the partnership; or
- k) dismissal, with or without notice.

Remedial actions that involve a financial penalty or suspension or removal from the partnership will be approved by the [appropriate level of management]. Suspension or removal of a partner must proceed in accordance with the provisions of the partnership agreement.

A remedy should be based on the nature and severity of the violation; the more serious the violation, the harsher the remedy. Bullying, harassment, and discrimination policies are usually remedial in nature and aim at establishing a workplace that is respectful.

The resolution may include a reinstatement of the complainant if he or she was forced to terminate his or her employment due to bullying, harassment, or discrimination, back pay for wages lost, restoration of benefits that may have been denied or an apology to the complainant.

#### **Appeal Process**

The sample policy does not provide an appeal process. An appeal process will depend upon how disciplinary measures are normally appealed in the firm. If there are no internal appeal procedures, a respondent who has been disciplined may take the matter to court.

A complainant should be informed of the right to file an application with WorkSafe BC or the BC Human Rights Tribunal if he or she is dissatisfied with the disposition of the complaint. The complaint may be dismissed if the substance of the complaint has been appropriately dealt with in another proceeding.

## **14. Review**

The firm will review this policy regularly to ensure that the procedures meet the policy objectives.

It is important to review the policy on a periodic basis. The first review should take place approximately one year after the adoption of the policy so that the effectiveness of the policy can be assessed early on.

Firms should not rely solely on complaints to detect workplace bullying, harassment, or discrimination. Firms may ask about workplace bullying, harassment, or discrimination in employee surveys and/or during exit interviews.



It is not necessary to include examples of harassment or discrimination. However, including examples may provide some guidance regarding the types of behaviour that is inappropriate.

## **APPENDIX 1: EXAMPLES OF BULLYING, HARASSMENT, AND DISCRIMINATION**

The following are examples of workplace bullying, harassment, and discrimination:

a) verbal conduct, such as:

- unwelcome attention of a sexual nature, including:
  - questions or remarks about sex life
  - propositions of physical intimacy
  - remarks about physical appearance
  - requests for dates or sexual favours
  - offers of job related benefits in return for sexual favours
  - requests or demands to submit to sexual requests in order to keep one's job or avoid some other loss, etc.
- unwarranted criticism
- ridicule
- epithets
- derogatory comments
- slurs
- name-calling
- offensive remarks
- jokes
- rumours
- gossip
- innuendo
- abusive language
- threats
- shouting
- yelling
- swearing

b) visual conduct, such as:

- displaying or disseminating pornographic, sexist, racist or other offensive or derogatory material (e.g. posters, cartoons, drawings, photographs, etc.) including via e-mail, internet, or text message.
- leering
- gestures
- ostracism (e.g. deliberately excluding a firm member from work-related social interaction, “silent treatment,” etc.)

c) physical conduct, such as:

- interfering with a person’s normal movement;
- unwelcome physical contact including touching and assault.

## APPENDIX 2: COMPLAINT FORM

### Complaint Form under the Respectful Workplace Policy

I, [name of complainant], working as a [title] in the [department/practice group] have reasonable grounds to believe that [name of respondent] working as a [title] in the [department/practice group] has [bullied/harassed/discriminated against] me in employment on [date].

The grounds of [bullying/harassment/discrimination] are:

The particulars are as follows:

Signed at: [place] on: [date]

Complainant's signature: \_\_\_\_\_

## APPENDIX 3: RESPONSE FORM

### Response Form under the Respectful Workplace Policy

I, [name of respondent], working as a [title] in the [department/practice group] have received a complaint signed by [complainant's name] working as a [title] in the [department/practice group] alleging that I have [bullied/harassed/discriminated against] [him/her] in employment on [date].

The grounds of [bullying/harassment/discrimination] are:

I deny the allegations and provide particulars as follows:

Signed at: [place] on: [date:]

Respondent's signature: \_\_\_\_\_

## APPENDIX 4: ADVISOR CHECKLIST

Once a complainant reports offensive behaviour to an advisor, it is necessary for the advisor to gather as much information as possible in order to ascertain whether there is *prima facie* evidence of workplace harassment sufficient to justify an investigation.

The following checklist, based on material prepared by the law firm, Levin and Funkhouser, Ltd., (Chicago), and used with permission, might be followed by an advisor in the initial meeting with a complainant.

- Confirm the name and position of person complaining.
- Ascertain who allegedly bullied, harassed, or discriminated against the employee.
- What occurred? Try to get as many details as possible, even though this may be uncomfortable for the complainant. Ask open-ended, non-judgmental questions.
- How often did the harassment occur?
- On what dates and at what times did the harassment take place?
- Where did the incidents of harassment take place?
- Who, if anybody, witnessed the incidents of harassment?
- How did the complainant feel about the harassment at the time it occurred?
- Does the complainant feel the same way now? If not, what is different about how the complainant now feels, and what brought about the difference?
- How did the complainant respond to the harassment? Did the complainant make any effort to stop it?
- Did the complainant tell anyone else about the incidents of harassment? If so, get the details concerning who, what, when, where, and the response, if any.
- Does the alleged harasser have control over the compensation, working conditions, or future employment of the complainant?
- Has the alleged harasser made or carried out any threats or promises in connection with the alleged harassment?
- Does the complainant know of or suspect that there are other victims of harassment by the same person?
- To what extent has [the managing body of the firm] been made aware of the situation?
- What action would the complainant like the firm to take?

Once this information has been ascertained, the advisor will prepare or assist the complainant in preparing a written complaint.