



HUMAN RESOURCE POLICY

2.0 IPC EXPECTATIONS

2.03 HARASSMENT AND DISCRIMINATION IN THE WORKPLACE POLICY

Purpose

To clearly establish the expectations of the Office of the Saskatchewan Information and Privacy Commissioner (IPC) with respect to treatment of individuals in the workplace.

Policy

The IPC will take all reasonably practicable efforts to ensure no employee is subjected to harassment or discrimination in the workplace. The IPC is committed to providing a respectful workplace and the expectation is that all Executive Directors, supervisors and employees will create and maintain a work environment that is harassment and discrimination free and respectful of all persons in it.

Harassment and discrimination are prohibited under *The Saskatchewan Employment Act* and *The Saskatchewan Human Rights Code, 2018*.

Harassment or discrimination can occur both due to patterns of behaviour or single serious incidents; can occur unintentionally, can either take the form of discrimination against protected individual characteristics, or be caused by more general comments or actions which could reasonably cause humiliation or intimidation.

Response to Harassment or Discrimination

No reported incident of harassment or discrimination will go unaddressed. If allegations are substantiated, behaviour will be addressed appropriately, including corrective discipline.

The determination of appropriate corrective discipline will require the application of judgement on a case-by-case basis taking into consideration the facts of the case, findings of an investigation, mitigating or aggravating factors, and legal jurisprudence.

In the most serious cases such as, but not limited to, cases involving abuse of authority, hate literature, sexual assault, or other criminal behaviour associated with harassment or discrimination where harassment or discrimination has been substantiated, the employee will be dismissed unless there are significant factors that dictate otherwise.

Process Options

Employees who believe they have been subject to harassment or discrimination have the option of addressing their allegation of harassment or discrimination in any of the following manners:

- Individual problem solving (discussion between individual who alleges harassment or discrimination and other employee)
- Facilitated problem solving (discussion between individual who alleges harassment, other employee, supported/facilitated by a supervisor and the Executive Director of Corporate Services)
- Alternative Dispute Resolution (individual who alleges harassment, other employee and neutral third party (i.e., mediator)
- Formal Written report of Harassment or Discrimination (investigation involving individual who alleges harassment or discrimination, other employee, an impartial investigator, witnesses and the Commissioner or designate).

Written harassment or discrimination report(s) can be submitted to the supervisor, the supervisor's Executive Director or the Executive Director of Corporate Services.

Further details about each of the above are available in Appendix C.

Further, nothing in this policy precludes an employee from accessing their rights and provisions through *The Saskatchewan Employment Act* and *The Saskatchewan Human Rights Code, 2018* or any other legal avenues available.

Specifically, employees have the right to request the assistance of an Occupational Health Officer from the Ministry of Labour Relations and Workplace Safety to resolve an allegation of harassment.

Employees also have the right to file an allegation of harassment or discrimination with the Saskatchewan Human Rights Commission.

Employees may also wish to review the IPC Violence Free Workplace Policy #9.06 and the provisions of Workers' Compensation as they relate to the circumstances.

Objectionable Conduct Allegations which are not based on Prohibited Grounds

It is recognized that there may be allegations of objectionable conduct which are not based on one of the grounds prohibited by *The Saskatchewan Employment Act* and *The Saskatchewan Human Rights Code, 2018* and which therefore do not fall within the parameters of the IPC Harassment and Discrimination in the Workplace Policy. Should this occur, the Commissioner will determine how these types of complaints will be handled. All parties will be encouraged to work collaboratively to resolve issues of this nature as quickly as possible.

IPC Right to Manage

This policy in no way limits or constrains the right of the Commissioner, an Executive Director or a supervisor to manage the workplace. Supervisory and management actions, (for example, assignment of work, performance reviews, coaching, work evaluations, and disciplinary measures) must always be respectful of the individual. The policy will not, under any circumstances, be used to impede the supervisory relationship.

Employee and Family Assistance Program

Employees who require counselling are encouraged to contact the Employee and Family Assistance program. For more information see Policy #9.03.

Application

This policy applies to all individuals employed by the IPC.

The IPC recognizes that its employees may be subjected to harassment/discrimination by citizens, or by others who conduct business with the IPC. In these circumstances, the IPC acknowledges its responsibility to do all in its power to support and assist the person subjected to such harassment or discrimination.

Note: in the event that an allegation is made against the Information and Privacy Commissioner of Saskatchewan, all processes and procedures outlined in this policy document will be followed with the following exceptions:

- Allegations of harassment or discrimination (written or verbal) against the Commissioner should be raised with the Speaker of the Legislative Assembly.
- The Commissioner will not have any decision making authority in the application of the process, provisions and procedures outlined in Appendix A to L of this policy, and
- An external impartial subject matter expert will be engaged and that person will have the delegated authority to make all decisions ascribed to the Commissioner in Appendix A to L of this policy document (except where noted otherwise).
- The external impartial subject matter expert will provide their final report to the Speaker of the Legislative Assembly of Saskatchewan.

Authority

The Freedom of Information and Protection of Privacy Act, section 43.1

The Saskatchewan Employment Act

The Saskatchewan Human Rights Code, 2018

Influencing Sources

Legislative Assembly Service Human Resource Policy 2.3

Saskatchewan Public Service Human Resource Manual, Section 807

Supplementary Information

- Appendix A: Definitions
- Appendix B: Roles and Responsibilities
- Appendix C: Dispute Resolution Options
- Appendix D: Written Report of Harassment or Discrimination Procedures
- Appendix E: Investigative Process – General
- Appendix F: Investigative Process – Procedure
- Appendix G: Raising a concern on behalf of a co-worker
- Appendix H: Matters Involving Criminal Behaviour
- Appendix I: What to do if you are Accused of Harassment or Discrimination
- Appendix J: What to do if you Observe Harassment or Discrimination
- Appendix K: Harassment or Discrimination by External Persons to IPC
- Appendix L: Supervisors' checklist

DEFINITIONS

Discrimination

Discrimination in employment is prohibited in *The Saskatchewan Human Rights Code, 2018* on the basis of religion, creed, marital status, family status, sex, gender identity, sexual orientation, disability, age, colour, ancestry, nationality, place of origin, race or perceived race; and receipt of public assistance.

Discrimination includes, but is not limited to, unequal treatment based on one or more of the prohibited grounds under *The Saskatchewan Human Rights Code, 2018*. Discrimination can be intentional or unintentional, direct or indirect.

Discrimination nullifies or impairs equality of opportunity in employment or in the terms and conditions of employment.

Harassment

Harassment is a form of discrimination.

This policy utilizes the definition of harassment as set out in *The Saskatchewan Employment Act*:

3-1(1)(l) "harassment" means any inappropriate conduct, comment, display, action or gesture by a person:

(i) that either:

(A) is based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; or

(B) subject to subsections (4) and (5), adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated; and

(ii) that constitutes a threat to the health or safety of the worker;

3-1(4) To constitute harassment for the purposes of paragraph (1)(l)(i)(B), either of the following must be established:

(a) repeated conduct, comments, displays, actions or gestures;

(b) a single occurrence of conduct, or a single, serious comment, display, action or gesture, that has a lasting, harmful effect on the worker.

Examples of what is and isn't harassment or discrimination

<p>Harassment or discrimination can occur both due to patterns of behaviour or single serious incidents; can occur unintentionally, can either take the form of discrimination against protected individual characteristics, or be caused by more general comments or actions which could reasonably cause humiliation or intimidation</p>	
<p>Examples of behaviour that constitute harassment or discrimination</p>	<p>Examples of behaviours that do not constitute harassment or discrimination</p>
<ul style="list-style-type: none"> • Unwelcome remarks, jokes, innuendos; • Insulting gestures or taunts causing embarrassment or offence; • Displaying objectionable materials, graffiti, or pictures; • Disparaging written materials; • Unwanted contact or attention; • Inappropriate touching; • Ostracizing; • Threats, bullying, coercion, isolation; • Actual or threatened physical assault; • Verbal assault; • Malicious gestures or actions; • Stalking; • Abuse of authority; • Hate literature; • Sexual assault; • Unwelcome sexual advances, propositions or inquiries • Comments or gossip about a person's sex life 	<ul style="list-style-type: none"> • Legitimate and constructive feedback regarding work performance; • Disciplinary measures taken by a supervisor in good faith and for valid reasons; • Practices permitted by policy such as designating a staffing action for accommodation purposes or to allow the return of an employee from an employer-sponsored disability plan; • Expressing opinions that are different from others, unless those opinions fall within the prohibited grounds.

What isn't harassment as set out in The Saskatchewan Employment Act.

3-1(5) For the purposes of paragraph (1)(l)(i)(B), harassment does not include any reasonable action that is taken by an employer, or a manager or supervisor employed or engaged by an employer, relating to the management and direction of the employer's workers or the place of employment.

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

- measures to correct performance deficiencies, such as placing someone on a performance improvement plan; or
- imposing discipline for workplace infractions; or requesting medical documents in support of absence from work.

Workplace

For the purposes of this policy, the workplace includes, but is not limited to, the physical work site; during telephone, email or other communication; washrooms, cafeterias or restaurants, training sessions, business travel, conferences, work-related social gatherings, or any other place the employee is required to be in service to the IPC.

Individual who alleges harassment or discrimination

The person who alleges an incident of harassment or discrimination has occurred and brings it to the attention of the employer.

Respondent

The employee(s) against whom an allegation of harassment or discrimination has been lodged.

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

Bad Faith Allegations

Allegations which are made frivolously, maliciously, or without factual basis. A bad faith allegation may constitute defamation, may be actionable by the respondent, and may result in disciplinary action, up to and including dismissal. Allegations should be undertaken with great care because they may result in pain and damage to the respondent's reputation and disruption in the workplace.

An allegation which is not substantiated upon investigation

No disciplinary action will be imposed upon an employee who makes an allegation of harassment or discrimination in good faith, even if the allegation is found to not be substantiated.

Retaliation

Retaliation against any individual for reporting harassment or discrimination may result in disciplinary action, up to and including dismissal. Retaliation is a very serious violation of this policy. Retaliation will not be tolerated and should be reported immediately to a supervisor or the Commissioner. Retaliation could occur after:

- Making an allegation or an allegation on behalf of a co-worker;
- Having participated or cooperated in any investigation;
- Being associated with a person who has made an allegation or participated in the harassment/discrimination reporting procedures.

ROLES AND RESPONSIBILITIES

The IPC has a responsibility to ensure that employees are not exposed to harassment or discrimination in the workplace and for implementation of this policy.

If the Commissioner or supervisor does not take action in accordance with the expectations of this policy when they knew, or reasonably ought to have known, that potential harassment or discrimination was occurring, they will be held accountable. The Commissioner retains final authority on sanctions which may include discipline.

The Speaker retains authority to determine what process will be followed in determining sanctions to be applied in situations involving the Commissioner.

Commissioner and Executive Directors

The Commissioner and Executive Directors have the ultimate responsibility for applying this policy within the IPC. They are specifically responsible for:

- Fostering a work environment free of harassment;
- Holding supervisors accountable for carrying out their responsibilities related to ensuring a harassment-free work environment and adherence to the policy;
- Ensuring the policy is communicated to all employees;
- Deciding, in the instance of a written allegation, whether individual(s) alleging harassment or discrimination and respondent(s) need to be separated pending the completion of the process;
- Determining if the allegation is founded, unfounded or made in bad faith; and
- Making decisions for follow-up action to complete the process, which may include discipline, up to and including dismissal.

The Commissioner and supervisors are expected to ensure their own, and the employees they supervise, adherence to this policy and when necessary take appropriate or corrective action (including disciplinary) to address any harassment or discrimination situation of which they are aware. *The Saskatchewan Employment Act*, Part 3, Division 3, s. 3-8 (d) and s. 3-9 (c) specifically outlines the legal obligations of the employer and supervisor to ensure, insofar as is reasonably practicable, the health, safety and welfare of workers and to ensure that worker's are not exposed to harassment or discrimination.

All supervisors are responsible for:

- Familiarize themselves with the policy and policy administration;
- Promote a work environment which encourages respect for all individuals. This is a continuing responsibility regardless of whether or not an allegation has been brought to the attention of the supervisor;
- Ensure compliance with this policy;
- Stopping any harassment of which they are aware;
- After consultation with the Commissioner, Executive Director of Corporate Services and Executive Director of Compliance, initiate appropriate preventative or corrective action;

- Protect the confidentiality of all parties and witnesses to the alleged action(s). The IPC will not disclose the name of an individual who alleges harassment or discrimination or an alleged harasser or the circumstances related to the complaint to any person except when disclosure is necessary for the purposes of investigating the complaint. All information relating to verbal and written complaints shall be kept strictly confidential;
- Cooperate with investigators or others brought in to assist with the resolution of the harassment or discrimination situation;
- Ensure remedies are applied without reasonable delay;
- Coordinating process for addressing third party harassment or discrimination complaints; and
- Take whatever action is necessary to assist and support an individual who has alleged harassment or discrimination where the respondent is someone outside the IPC.

Employees shall not participate in harassment.

The Saskatchewan Employment Act, Part 3, Division 3, s. 3-10(b) specifically outlines the legal obligations of the employee to refrain from causing or participating in the harassment or discrimination of another worker.

They are responsible for:

- Refraining from discriminatory or harassing behaviour; and
- Creating and supporting a work environment free of harassment or discrimination by complying with this policy and ensuring their behaviour meets acceptable standards; and

Employees are strongly encouraged to:

- Bring any incident(s) of harassment or discrimination or potential harassment or discrimination they observe to the attention of a supervisor or the Commissioner, and
- Immediately report any incident that involves a threat to cause bodily harm, assault or sexual assault to the police.

An individual alleging harassment or discrimination is responsible for:

- Reviewing the policy;
- Documenting the incident(s) of harassment;
- Making their concerns known to the respondent(s) or other appropriate person(s) (e.g. supervisor, Executive Director of Corporate Services or Commissioner) to review options for resolution; and
- Participating in the process to resolve the situation constructively.

Respondent(s) must be notified when an allegation is made against them. Respondents are responsible for:

- Reviewing the policy;
- Working with their supervisor and the Executive Director of Corporate Services to review options for resolution; and
- Participating in the process in order to resolve the conflict constructively.

The Executive Director of Corporate Services is responsible for:

- Maintaining expertise on the Harassment and Discrimination in the Workplace Policy and related processes;
- Providing interpretation of the policy;
- Assisting supervisors in determining the appropriate action to address workplace harassment;
- Assisting employees when approached about matters involving harassment;
- Providing advice and guidance to the Commissioner throughout the process;
- Screening, monitoring and tracking harassment or discrimination reports; and
- The Executive Director of Corporate Services will coordinate the investigation process with and for impartial investigators.
- If the allegation is made against the Commissioner, will forward the written report to the Speaker of the Legislative Assembly.
- The Director of Human Resources at the Legislative Assembly Service will coordinate the identification and selection of an external impartial subject matter expert and the investigation processes for investigations involving the Information and Privacy Commissioner of Saskatchewan.

DISPUTE RESOLUTION OPTIONS

There are several ways to resolve conflict and disputes when harassing behaviour is alleged. The ideal resolution takes place quickly and is handled solely by the individuals directly involved. Since this is not always possible, other mechanisms are described below. The following table is for quick reference:

Mechanisms	Who is Involved	What it is and Outcomes
Individual Problem Solving	The employee who believes they are experiencing harassing behaviour and the person who is engaging in the objectionable behaviour.	A discussion between the two parties with the objective of reaching mutual understanding and agreement to restorative action between those involved.
Facilitated Problem Solving	The employees who are directly involved, (individual who alleges harassment or discrimination, respondent, a supervisor and the Executive Director of Corporate Services)	A process led by a third party (e.g. supervisor, or neutral third party or Executive Director of corporate Services) with the goal to identify an acceptable resolution to the issue.
Alternative dispute Resolution (ADR)	The employees who are directly involved and a neutral third party.	A process led by a neutral third party (e.g., mediator) who assists parties in resolving disputes. A written, signed and recorded agreement is prepared.
Investigation	The employees directly involved (individual who alleges harassment or discrimination and a respondent), The Executive Director of Corporate Services, an impartial investigator, witnesses, and the Commissioner.	A fair and impartial fact finding process to assess whether the allegation(s) is founded, unfounded or made in bad faith. An investigation may be undertaken in response to a written report; results in a report of the findings of the investigation; a determination of whether or not harassment occurred; and a restorative plan which may or may not include disciplinary measures.

Individual Problem Solving

If an employee believes they have been subjected to harassment or discrimination, they are encouraged to clearly and firmly make known to the alleged perpetrator that the behaviour is objectionable and must stop.

If conflict resulting from the harassing behaviour can be resolved by those directly involved, it reduces the disruption in the workplace and contributes to better relationships in the future. Some people are not aware that their behaviour constitutes harassment or discrimination. Often, simply telling them about the offensive nature of their behaviour is enough to end it. Employees are encouraged to be proactive and tell the offender to stop.

Some of the language you could use to address the behaviour might include:

- I don't want you to do that anymore; it makes me uncomfortable . . .
- Please stop saying or doing . . . it makes me uncomfortable . . .
- It makes me uncomfortable when you
- I don't find it funny when you . . .

Refer to this policy if necessary. If employees want assistance in planning their approach to the other employee, contact their supervisor or the Executive Director of Corporate Services.

Facilitated Problem Solving

If employees believe that they have been subjected to harassment or discrimination and are unable to confront the other person or the confrontation does not improve the situation, the employee can discuss the problem with their supervisor or the Executive Director of Corporate Services. These individuals can help employees assess their options, develop an action plan for resolution and implement the plan. They can help employees identify and access a facilitator who may assist the employee and the respondent to work out an acceptable resolution and they can also be responsible for following up with the employee to ensure that the conflict has been resolved.

Alternative Dispute Resolution

If the conflict cannot be resolved by the individuals and their local resources, the intervention of a neutral third party, such as a mediator, can be requested (subject to the mutual agreement of those involved in the conflict).

Trained and experienced mediators can assist two or more parties to reach a resolution to their differences or can also help to resolve conflicts among groups.

The mediator may initiate separate meetings with each of the involved parties to arrive at an understanding of the individuals' issues and interests. This may be followed by joint sessions. Some variations of this problem-solving process, which can help restore the workplace to a respectful level, include the use of a facilitator to help the supervisor and employees work through the dispute and prevent recurrence. The parties will work together to apply the process which is most appropriate to each situation.

Investigation

When it is not possible to resolve a conflict through individual or facilitated problem solving or mediation, or depending on the nature of the allegation, an investigation may be initiated through a written report (see Written Report Procedures). The investigative process is an explicit procedure that will involve an impartial investigator(s). A written report should never be undertaken frivolously and requires careful consideration. This process may take longer and may involve more people (witnesses).

When deciding how to respond to an allegation of harassment, the Commissioner will consider the following factors:

- Whether the alleged harassment or discrimination is more than 24 months old;
- Whether events of alleged harassment or discrimination are relevant to issues that are currently present or likely to be present in the workplace;
- Where the alleged perpetrator is currently in the employ of the employer and the allegation is of such serious nature that if true, would warrant discipline or training.

If a written allegation is submitted and an investigation takes place, the Commissioner¹ will make the final decision, based on the investigator's report, as to whether or not harassment or discrimination has occurred and will determine the appropriate action to be taken. This may include the application of the Corrective Discipline/Performance Improvement Policy #11.02.

Note: It should be noted that the employer is obligated to address any harassment or discrimination allegation and this may, at the employer's discretion, result in an investigation whether or not a written allegation has been filed.

¹ Please see "Application" section of the Harassment and Discrimination in the Workplace Policy for information about how allegations against the Commissioner would be handled.

WRITTEN REPORT PROCEDURES

Written harassment or discrimination reports can be submitted to the Executive Director of Compliance, the Executive Director of Corporate Services or to the Commissioner.

Note: where stated, time frames are intended to be guidelines only. Individual circumstances may cause the time frames to be exceeded.

Content of a Report

Reports may be submitted on the “Saskatchewan Information and Privacy Commissioner Harassment of Discrimination Report form”. Regardless of form of document used to submit the written report alleging harassment or discrimination, the following information is required:

- Name of individual who alleges harassment or discrimination;
- Date;
- Grounds for allegation (i.e., on what grounds did the harassment or discrimination occur);
- Respondent; alleged perpetrator’s name;
- Details of the allegation: describe the behaviour that you are objecting to. What was said or done? When? How often? Where? Circumstances surrounding the incident(s). Describe what you have done in response to the behaviour. Have you advised the alleged perpetrator(s) or another appropriate person that the behaviour is objectionable and must stop;
- Identification of witnesses; and
- Signature: by signing a written report, the individual who alleged harassment or discrimination is agreeing to have a copy of the report given to the respondent(s).

Note: The respondent will be given a copy of the actual report, not a summary or edited version. However, in the case of multiple respondents, only details of the report pertaining to an individual respondent will be provided to that respondent.

Within five working days of the receipt of a written report, the recipient will ensure that the Commissioner receives a copy of the report.

All those who receive copies of the report must observe strict confidentiality requirements. A copy of the report and this policy will be given to the respondent by management within five working days. In the event of multiple respondents, only details of the report pertaining to an individual respondent will be given to that respondent. The respondent(s) will be informed of their right to representation of their choice.

Upon receipt of the written report, the Commissioner², in consultation with whomever is deemed necessary, shall assign an impartial external subject matter expert to review the allegation and determine if it falls within the purview of the Harassment and Discrimination in the Workplace Policy. The allegation would be screened using the criteria; *if the circumstances detailed in the allegation were substantiated, it would constitute harassment or discrimination as defined in this policy, The Saskatchewan Employment Act, and the Saskatchewan Human Rights Code, 2018.*

If the allegation does not meet the screening criterion, the Commissioner will refer the issue (not the written report) to the appropriate person within the IPC for other problem solving mechanisms outside the Harassment and Discrimination in the Workplace policy.

² If the allegation is against the Commissioner, the Legislative Assembly Service, Director of Human Resources will initiate the process to engage an external subject matter expert who, once engaged, will be provided with a copy of the report.

The subject matter expert, in consultation with whoever is deemed necessary, will make the determination if the allegation falls within the purview of the Harassment and Discrimination in the Workplace Policy.

If the allegation does not meet the screening criterion, the subject matter expert will refer the issue to the, Director of Human Resources, Legislative Assembly Service for other problem solving mechanisms outside the *Harassment and Discrimination in the Workplace Policy*.

INVESTIGATIVE PROCESS - GENERAL

Separation of individual who alleges harassment or discrimination and respondent

The Commissioner (or external impartial subject matter expert for cases involving the Commissioner) will, with advice from the Executive Director of Corporate Services, decide if the individual who alleges harassment or discrimination and respondent(s) need to be separated pending the completion of the investigation. Where the employees involved in the issue work together, the nature of the reporting or working relationship, and the seriousness of the allegations, will inform decisions on whether or not they need to be separated.

Confidentiality

All complaints made about an individual will be communicated to that individual.

The employer will not disclose the name of the individual who alleges harassment or discrimination or respondent or the circumstances related to the allegation to any person except where disclosure is necessary for the purposes of restorative or investigative processes, or as required by law.

No one involved will discuss or share the information outside the restorative or investigative processes. Information is shared on a “need to know” basis and must not be shared further. Failure to preserve the confidentiality of information acquired during the process may result in disciplinary action, up to and including dismissal.

The Commissioner shall have access to the investigation files.

If the Commissioner is being investigated, access to the investigation files will be limited to the external impartial investigator and the Speaker of the Legislative Assembly. The Commissioner, will not have access to investigation files.

Notwithstanding the above clause, information relating to the investigation may be subject to subpoena for court. Also, disciplinary action taken in relation to an employee found to have violated the Harassment and Discrimination in the Workplace Policy will be disclosed as identified under the restorative action/discipline section of this document.

Appointment of Investigators

If it is determined that an investigation will take place, the Commissioner³ will appoint an impartial investigator, or team of impartial investigators without unreasonable delay. If necessary, outside investigators/mediators shall be brought in. The cost of the investigation is the responsibility of the IPC.

³ If an investigation of the Commissioner is required, the Commissioner will not be involved in the appointment of the investigator or team of investigators. The Director of Human Resources, Legislative Assembly Service will coordinate the process for identifying and selecting an external impartial subject matter expert investigator. The decision on who to appoint as the external investigator will be made by the Speaker of the Legislative Assembly Service.

Authority of Investigators

The investigator(s) is authorized to suggest mediation at any time during the investigation if they believe it will lead to a satisfactory resolution. For mediation to proceed, the parties (Individual who alleges harassment or discrimination and respondent) must agree that mediation is the best option at this time.

Evidence and documents resulting from the Investigation

All evidence and documents of allegations, including contents of meetings, interviews, results of investigations and other relevant material, will be kept **confidential** by the IPC, except where disclosure is required by a disciplinary or other remedial process.

Upon conclusion of the investigation, the investigator shall return all materials related to the investigation. Retention of the investigator's materials related to the investigation by the IPC will be outlined in each investigator's contract for services.

Due to the possibility of subsequent actions, e.g. legal proceedings, Judicial review, review by the Saskatchewan Human Rights Commission, Occupational Health and Safety, or labour Relations and Workplace Safety, materials related to the investigation will be retained in accordance with the IPC Records Management Schedule.

Withdrawal of Allegation

An individual who alleged harassment or discrimination may withdraw an allegation at any time. The employer still may be required to address the concerns raised in cases where:

- There exists a real or perceived threat to the health or safety of other employees;
- There is evidence that the individual who alleged harassment or discrimination may have been threatened or may fear retaliation;
- Failure to address the situation might endanger an employee;
- The allegation alleges abuse of power;
- Failure to follow through on an allegation would seriously damage the reputation of the IPC.

Support

Employees are entitled to have a support person with them during the interviews associated with the investigation. The support person must sign a declaration agreeing to maintain the confidentiality of the process. The support person will serve as an emotional support to the employee, not acting as an advocate or participant in the process.

Legal Representation

Where a written report is filed and the respondent(s) seeks private legal counsel and ultimately there is no finding of harassment or discrimination, the Commissioner may authorize reimbursement of reasonable legal costs.

INVESTIGATIVE PROCESS - PROCEDURE

The following procedures were developed to provide guidance for the impartial investigator and to ensure employees have an understanding of what to expect during an investigative procedure. However, the investigator has the discretion to modify the process as needed to appropriately manage the investigation into a particular allegation. The investigator will advise involved parties of any changes to the procedures outlined below.

The investigator(s) will ensure that the respondent has been given a complete copy of the Harassment or Discrimination Report and a copy of this policy. In the event of multiple respondents, only the details of the report pertaining to an individual respondent will be provided to that respondent.

Option 1 - Mediation

Each investigator will start the investigation by exploring the option of mediation with the individual who has alleged harassment or discrimination and respondent as a method to resolve the issue. The parties may choose, by mutual agreement, to undertake mediation in lieu of an investigation.

If the mediation process is chosen, the Executive Director of Corporate Services, in consultation with the Commissioner, shall identify potential mediators for consideration of the individual who has alleged harassment or discrimination and respondent.

If the mediation process is chosen, the parties will attempt to resolve their difficulties through mediation within 30 days. Timelines may be extended subject to the agreement of the individual who has alleged harassment or discrimination, respondent, and mediators.

If mediation is unsuccessful, an investigation of the allegation will be undertaken.

Note: mediation may be requested at any point, even after an investigation has started and even if originally refused when offered as an option by the investigator. However, if the mediation does not result in resolution, the investigation will resume and the process will not be interrupted by further requests for mediation.

Mediation

In the event a mediated agreement is reached:

- The terms and conditions of the agreement will be written out and signed by the respondent, individual who has alleged harassment or discrimination, and mediator(s).
- No additional disciplinary action beyond that agreed to in the mediation process will be taken by management.
- The Commissioner will be provided with a copy of the mediation agreement.
- The mediation agreement will be kept on the respondent's file for a 12-month period, unless otherwise agreed to during the mediation process.
- The individual who has alleged harassment or discrimination and respondent will also be provided with a copy of the mediation agreement for their records.

Option 2 – Investigation Option

In the event an investigation is undertaken, the following activities will normally be completed as soon as practicably possible following the appointment of the investigator(s):

- Interview the individual who has alleged harassment or discrimination;
- Interview the respondent(s);
- Interview relevant witnesses
- Collect relevant documents or other physical evidence.

Access to personnel files by an investigator is subject to the consent of the person to whom the file applies.

Prior to concluding the investigation and preparing a final report, the investigator shall provide the respondent and the individual who has alleged harassment or discrimination a summary of their tentative findings. In the event of multiple respondents, only the tentative findings pertaining to an individual respondent will be provided to that respondent.

In the case of multiple individuals who have alleged harassment or discrimination, each individual will receive only the summary of tentative findings applicable to them. The individual(s) who has/have alleged harassment or discrimination and respondent(s) then have five working days to respond or to raise concerns to the investigator. If the response provided to the investigator(s) suggest a need for further investigation, that investigation should be completed without unreasonable delay.

Written Report

As soon as practicable after completing the investigation, the investigator will submit a written report to the Executive Director of Corporate Services, who will review for clarity, accuracy of factual information (names, times, locations) and readability. Any issues with the report will be identified to the investigator for revision (factual items) or consideration (clarity and readability).

Once the investigative report is concluded, the investigator will submit a written report to the Commissioner.

If the report involves the Commissioner, the report will be forwarded, by the investigator, to the Speaker of the Legislative Assembly of Saskatchewan.

As soon as practicable after receiving the investigator's written report, the Commissioner⁴ will distribute the summary of findings to the individual who has alleged harassment or discrimination and respondent. In the event of multiple respondents, only the summary of findings pertaining to the individual respondent will be provided to that respondent. In the event of multiple individuals who have alleged harassment or discrimination, only the summary of findings pertaining to an individual's allegation will be provided to that individual.

⁴ For allegations involving the Commissioner, the Director of Human Resources with the Legislative Assembly Service will coordinate the distribution of the summary of findings to individual(s) who has/have alleged harassment or discrimination and respondent(s) on behalf of the Speaker of the Legislative Assembly of Saskatchewan.

The report will include the following components:

- Introduction;
- Names of parties involved (individual who has alleged harassment or discrimination, respondent, witnesses)
- Overview of process followed;
- Overview of applicable policies or laws;
- Allegation(s) – each allegation separately listed;
- Evidence – evidence related to each separate allegation;
- Summary of Findings: The investigator’s conclusion respecting each allegation as to whether or not harassment/discrimination occurred.
- The investigator’s report will include a recommended course of restorative action where appropriate, but will not provide recommendations regarding disciplinary action.

Within seven working days of receiving the investigator’s written report, either the individual who has alleged harassment or discrimination or the respondent(s) may request a review of the investigation for thoroughness. The challenge must be submitted in writing to the Commissioner (or Speaker of the Legislative Assembly of Saskatchewan if the allegation involved the Commissioner). The challenger must specify what aspect of the investigation is seen as inadequate. After consultation, the Commissioner (or Speaker of the Legislative Assembly of Saskatchewan) may direct that the investigation be re-opened to address the concerns raised in the challenge or deny the request that the investigation be re-opened.

Determination

In cases involving IPC employees, the Commissioner⁵ shall make the final decision as to whether or not harassment or discrimination has occurred, within the meaning of this policy.

The decision as to whether or not harassment or discrimination has occurred shall be communicated to the individual who has alleged harassment or discrimination and the respondent(s) by the Commissioner once the summary of findings is received and the challenge process has been exhausted.

The decision as to whether or not harassment or discrimination has occurred shall be communicated to the individual who has/have alleges harassment or discrimination and the respondent(s) by the Director of Human Resources, Legislative Assembly Service, on behalf of the Speaker of the Legislative Assembly of Saskatchewan for an allegation involving the Commissioner, once the written report is received and the challenge process has been exhausted.

⁵ The Speaker of the Legislative Assembly of Saskatchewan will make the determination as to whether or not the Commissioner has engaged in harassment or discrimination within the meaning of this policy. If the Speaker believes the Commissioner has engaged in professional misconduct, the finds of the investigation may be tabled with the BOIE. The BOIE will confirm or not whether professional misconduct has occurred and determine how to proceed.

Restorative Action/Discipline

If it is determined that harassment or discrimination has occurred, the Commissioner⁶ shall determine what appropriate restorative action is to be taken. The Commissioner may consult with the Human Resource Services branch of the Legislative Assembly or the Public Service Commission for comparable situations. The offending party may be subject to disciplinary action, up to and including dismissal, as part of the restorative process that is applied. In the most serious cases of harassment or discrimination, the Commissioner will consult as needed in determining the appropriate disciplinary action.

Implementation of Restorative Action/Discipline

The Commissioner will communicate to the individual(s) who has/have alleged harassment or discrimination and respondent(s) the details of the restorative action plan and its implementation. Where disciplinary action is applied as part of the restorative action plan, the Commissioner will, on a confidential basis, inform the individual(s) who has/have alleged harassment or discrimination of the discipline imposed on the respondent(s), the rationale for imposing discipline and the relevant considerations taken into account. If it is determined that disciplinary action will not be imposed as part of the restorative plan, that decision will also be communicated and explained to the individual(s) who has/have alleged harassment or discrimination.

For allegations involving the Commissioner, the details of a restorative plan and its implementation will be communicated to individuals(s) who has/have alleged harassment or discrimination and respondent(s) by the Director of Human Resources, Legislative Assembly Service on behalf of the Speaker of the Legislative Assembly of Saskatchewan.

Note: where stated, time frames are intended to be guidelines only. Individual circumstances may cause the time frames to be exceeded.

⁶ If an allegation involves the Commissioner, the Speaker of the Legislative Assembly of Saskatchewan will determine the appropriate restorative or disciplinary action.

RAISING A CONCERN ON BEHALF OF A CO-WORKER

There are situations where a person may believe that a co-worker has been subjected to harassment or discrimination. Although a third party cannot make an allegation of harassment or discrimination, the third party can raise their concern to a supervisor or the Commissioner. The supervisor or Commissioner will meet with the person who is said to have been subjected to harassment or discrimination and will then proceed as outlined in the Supervisory Check List.

MATTERS INVOLVING CRIMINAL BEHAVIOUR

Normally, harassment or discrimination cases will not involve conduct that may be of a criminal nature. However, in exceptional cases, the actions of the alleged perpetrator may cross over the line into criminal behaviour.

Role of the Investigator

Where, in the opinion of the investigator, behaviour of a criminal nature has occurred, the investigator shall alert the Commissioner and provide advice to the individual who alleged harassment or discrimination with respect to advancing the complaint to the police.

Legal Advice

If a supervisor is made aware of a harassment or discrimination circumstance which they believe may have involved criminal behaviour, the Supervisor shall discuss the situation with the Commissioner, and seek advice as to whether the matter has crossed the line into criminal action. If the circumstances are such that the actions could be deemed as criminal, the individual who alleged harassment or discrimination shall be advised of their right to refer the complaint to the police.

Employee May Advance A Criminal Complaint

At any time during the process of handling an allegation of harassment or discrimination where the behaviour of the alleged perpetrator may be considered to be criminal in nature, and particularly if the matter is investigated and substantiated, the individual who alleged harassment or discrimination must be advised that they have an opportunity to advance a criminal complaint to the police for investigation. In such circumstances where an employee chooses to advance a criminal complaint, the employer will offer support to do so.

Employer May Advance Complaint

In cases where the employee had been afforded the opportunity to advance a criminal complaint but chose not to do so, those wishes should be respected except where there is an overriding concern. A supervisor who believes a particular matter should be raised with the police, despite the individual who alleged harassment or discrimination wishes must first raise the matter with the Commissioner who will seek advice as needed prior to determining if the police should be contacted. The Commissioner retains the final authority for contacting the police on behalf of the IPC.

WHAT TO DO IF YOU ARE ACCUSED OF HARASSMENT OR DISCRIMINATION

This policy is based upon the principles of fairness and due process. You must be notified in the event that an allegation is made against you. At this point, you should review the policy and develop an action plan for restorative resolution of the situation. You may wish to work with your supervisor and/or the Executive Director of Corporate Services. They will help you determine how to begin the resolution process.

Once you become aware that an allegation has been made against you, you are encouraged to become involved in order to resolve the conflict constructively. This will require the willingness to listen and be open to the other person's perspective.

The restorative process focuses on conflict resolution rather than blame or punishment. If this approach is unacceptable to either party or inappropriate due to the seriousness of the allegations, an investigation may take place.

WHAT TO DO IF YOU OBSERVE HARASSMENT OR DISCRIMINATION IN THE WORKPLACE

If you observe a colleague experiencing humiliating, degrading or disrespectful behaviour, and you feel it is safe for you to do so, you may wish to intervene and offer them your support. If the situation is such that you do not feel safe to intervene, contact your supervisor for assistance.

If your colleague accepts your offer of support, use this policy to help the person assess their options and remind your colleague of the availability of support through the EFAP program. If you are unsure about how to approach your colleague, you may wish to contact your supervisor and/or the Executive Director of Corporate Services for advice regarding appropriate action.

If you observe any incidents that involve a threat to cause bodily harm, assault, sexual assault, or any other risk to the individual, you are strongly encouraged to immediately report the situation to the police (911).

By reporting what you have witnessed, you may prevent or preclude actual incidents of violence against a colleague(s) in the workplace.

It is misconduct for supervisors and the Commissioner who know of workplace harassment or discrimination not to take immediate corrective action. The Executive Director of Corporate Services will assist in determining the appropriate action and the Supervisors' checklist can also be used as a reference.

HARASSMENT OR DISCRIMINATION BY OTHERS

The employer's obligation to provide a harassment and discrimination free workplace extends to include circumstances where employees may be subject to harassment or discrimination by persons not employed by the IPC: i.e., members of the public or by employees of government agencies, corporations, and offices outside of IPC to whom this policy does not apply.

The process and procedures set out in the foregoing policy are intended to address situations of harassment or discrimination between and among IPC employees.

The following process and procedures apply to circumstances of harassment or discrimination of IPC employees by others (not employees of the IPC):

- Employees who are subject to harassment or discrimination by others (not employees of the IPC) are encouraged to report the incident(s) to the employer.
- Upon receipt of such a harassment or discrimination report, the Commissioner shall, in consultation with the employee and Executive Director of Corporate Services, take such action as is appropriate and reasonably practical in the circumstance to ensure that the harassment or discrimination does not continue.
- The Commissioner, in consultation with the Executive Director of Corporate Services and the Executive Director of Compliance, shall consider what, if any, policies and procedures are appropriate at the workplace to minimize or control harassment or discrimination of employees by others (not employees of the IPC).

The following process and procedures apply to circumstances of harassment or discrimination of IPC employees by citizens, employees of government agencies, corporations or offices to whom this policy does not apply:

- Upon receipt of a report of harassment or discrimination, the employer will take immediate steps to ensure that the individual who alleged harassment or discrimination is protected from continued or recurring harassment or discrimination.
- In the case of a written report alleging harassment or discrimination, an investigation will be carried out in accordance with the process and procedures set out in this policy.
- The respondent and the respondent's employer will be informed of the allegation and the investigation.
- Any findings determined by the investigation will be provided to the respondent's employer.

SUPERVISORS' CHECKLIST

The supervisors' checklist sets out key considerations when dealing with harassment or discrimination issues at various steps in the process:

- Prior to discussing the allegation.
- When receiving a written harassment or discrimination report.
- If behaviour that is objectionable in nature or may constitute harassment or discrimination is witnessed.

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Receiving an allegation where a respondent is named

Receiving a written Harassment or Discrimination Report

If behaviour by any employee that you believe is objectionable in nature or may constitute harassment or discrimination is witnessed

Ensure you have information about the IPC Employee and Family Assistance program (EFAP) available to share with the employee. Re-enforce that the EFAP is a confidential service available for employees without cost.

Supervisors' Checklist for Handling Harassment or Discrimination Allegations

Supervisors are responsible for ensuring a harassment and discrimination free workplace and adherence to the IPC's Harassment and Discrimination in the Workplace Policy. This includes taking appropriate preventive and/or corrective action and stopping harassment or discrimination of which you are aware. It is important that you review and understand the Policy, including your obligations and the process outlined in the Policy prior to receiving an allegation. Upon reviewing the Policy, you should discuss any questions or concerns you may have with the Commissioner and or the Executive Director of Corporate Services.

The following steps are to be used as a guide and are not intended to replace the process as outlined in the IPC's Harassment and Discrimination in the Workplace Policy.

Prior to discussing the allegation:

- Make the individual who alleges harassment or discrimination as comfortable as possible in relating the allegations to you.
- Make the individual who alleges harassment or discrimination aware that you cannot guarantee confidentiality. Depending on the nature of the allegation, you may be required to take action.
- Inform the individual who alleges harassment or discrimination that the respondent has the right to know the allegations made against them and will be given the opportunity to respond.
- Where the alleged behaviour appears criminal in nature, inform the individual who alleges harassment or discrimination that they have the opportunity to refer a criminal complaint to police and will be supported in doing so.

- Discuss the options for filing an allegation:
 - Individual Problem Solving
 - Facilitated Problem Solving
 - Alternative Dispute Resolution; e.g. mediation
 - Written Harassment or Discrimination Report
- Provide the employee with a copy of the Harassment and Discrimination in the Workplace Policy or direct the employee to the policy on the IPC network (oipc drive/IPC Policy Manual NEW/Final Policies/1.0 Human Resources/2.03).
- Supervisors should ensure that concerns or complaints are discussed with the Executive Director of Corporate Services and the Commissioner.

Receiving an allegation where a Respondent is not named:

If the individual who alleges harassment or discrimination does not want to name the respondent and wishes to handle the issue themselves:

- Ensure you understand the nature of the allegation. Where the alleged behaviour appears to be criminal in nature, inform the individual who alleges harassment or discrimination that they may advance a criminal complaint to police and will be supported in doing so.
- Discuss with the individual who alleges harassment or discrimination the dispute resolution options available to them. Inform them that they may also discuss other resolution options available to them with the Executive Director of Corporate Services or Commissioner. It is advised that you, as the supervisor, follow up on any resolution process to ensure any agreements made to resolve the dispute are acceptable to management.
- Monitor/follow up with the employee to ensure their workplace issue has been resolved.
- Record all aspects of the discussion you had with the employee and forward records to the Executive Director of Corporate Services who will keep the records in a confidential and secure location.

Receiving an allegation where a Respondent is named:

If the employee comes forward with an allegation and names the respondent:

- Ensure you understand the nature of the allegation. Where the alleged behaviour appears to be criminal in nature, inform the individual who alleges harassment or discrimination that they may advance a criminal complaint to police and will be supported in doing so.
- Inform the individual who alleges harassment or discrimination that the respondent will be told the nature of the allegation and given the opportunity to respond.
- Discuss with the individual who alleges harassment or discrimination dispute resolution options available to them. Inform them that they may also discuss other resolution options available to them with the Executive Director of Corporate Services or Commissioner.
- Ensure that the Executive Director of Corporate Services and Commissioner are contacted about the allegation.
- Meet with the respondent to provide them with the nature of the allegation, including the name(s) of the individual(s) who has/have alleged harassment or discrimination. Inform the respondent that they may discuss other dispute resolution options that may be available to them with the Executive Director of Corporate Services or Commissioner.

- Work with the parties involved ensuring the dispute has been resolved to the satisfaction of all involved. It is advised that you, as the supervisor, participate in any resolution process to ensure any agreements made to resolve the dispute are acceptable to management.
- If the employees involved are unable to come to a satisfactory resolution then discuss the option of filing a written Harassment or Discrimination Report with the individual(s) who has/have alleged harassment.
- Record all aspects of the discussion you had with the employees in steps 2, 3, 4, and 5 above and forward all records to the Executive Director of Corporate Services who will keep the records in a confidential and secure location.

Receiving a written Harassment or Discrimination Report:

If the employee wants to file a written report:

- Provide the employee with a copy of the Harassment and Discrimination in the Workplace Policy.
- Ensure the employee fills out all of the sections in the IPC Harassment or Discrimination Report form.
- Ensure the employee signs and dates the written report.
- Inform the individual who alleges harassment or discrimination that by signing the report, they are agreeing to give a copy to the respondent, their supervisor, the Executive Director of Corporate Services and the Commissioner and if an investigation occurs, an impartial investigator.
- If the allegation is against the Commissioner, inform the individual who alleges harassment or discrimination that their written Harassment or Discrimination Report should be submitted to the Speaker of the Legislative Assembly of Saskatchewan. Advise them that by signing the report, they are agreeing to give a copy to the respondent (Commissioner), the Speaker of the Legislative Assembly and an external impartial investigator.
- Where the alleged behaviour is criminal in nature, inform the individual who alleges harassment or discrimination that they have the opportunity to advance a criminal complaint to police and will be supported in doing so.
- Ensure that the Executive Director of Corporate Services and Commissioner are contacted about the written report. Once a written report has been received and discussed with the Executive Director of Corporate Services it must be forwarded to the Commissioner⁷. The Commissioner will review the allegation(s) to determine if it meets the intent of the Policy and if an investigation is warranted.
- Meet with the respondent to provide them with a copy of the report, the nature of the allegations, including the name(s) of the individual(s) who alleges harassment or discrimination. Inform the respondent that they may discuss other dispute resolution options that may be available to them with the Executive Director of Corporate Services or Commissioner.
- Determine, in consultation with the Executive Director of Corporate Services or Commissioner, if the individual(s) who alleges harassment or discrimination (s) and respondent(s) need to be separated pending the completion of the investigation.

⁷ If the allegation involves the Commissioner, an external impartial subject matter expert will be engaged and that person will make the determination if the allegation meets the policy and an investigation is warranted.

If behaviour by any employee that you believe is objectionable in nature or may constitute harassment or discrimination is witnessed:

- Inform the employee of the offending behaviour and instruct them to stop.
- If the offending employee, and/or the employee experiencing the objectionable behaviour, is not somebody you supervise, immediately contact the supervisor responsible for the employee and the Executive Director of Corporate Services.
- If the offending behaviour was directed towards another employee, the supervisor must ensure that the employee is protected from harassment or discrimination. The Executive Director of Corporate Services shall be consulted about options to address the situation. In the absence of the supervisor, the Executive Director of Corporate Services and the Commissioner will assume authority to address the situation to ensure the employee is protected from harassment/discrimination (i.e. separate by reassignment).
- The Commissioner and the Executive Director of Corporate Services must be consulted prior to removing an employee from the workplace. The Executive Director of Corporate Services will assist in the development and delivery of a message to the employee's work unit of the IPC respecting their absence.
- Prepare a written report for the involved supervisor, which describes the events, circumstances, dates, times, participants, employee actions and witnesses.
- The supervisor and the Executive Director of Corporate Services shall work collaboratively together, and may be in consultation with Human Resource Services, Legislative Assembly Service to assess the situation in relation to the Harassment and Discrimination in the Workplace policy and to determine the course of action.

Name:	Date:
Grounds for Report (on what grounds do you believe harassment or discrimination occurred? See Definition of Harassment and Discrimination under policy 2.03 Harassment and Discrimination in the Workplace Policy).	
Respondent(s). Person(s) who you allege committed the harassment or discrimination.	
Details of the Allegation. Please be as detailed as possible when describing the behavior(s) you object to. Include such things as: what occurred, location, date, time, circumstances surrounding the incident, what you have done in response to the behavior, etc.	
(use additional pages if needed)	

Witness(s) of Alleged Harassment or Discrimination. Please list name(s) and phone numbers.

Relevant documents. Please attach copies of any documents you consider relevant.

Signature. By signing this report, you are agreeing to have a copy given to the Executive Director of Corporate Services, the Commissioner, respective supervisor, impartial investigator and the respondent(s). Your report will be maintained in confidence; however, relevant information will be shared to the extent necessary to determine the appropriate resolution of this matter. (If this report involves the Commissioner, a copy will be provided to the Speaker and an external impartial subject matter expert engaged to assist the process).

Signature:

Date: