


Policy Review of Workplace Harassment and Sexual Harassment Policies, Practices and Procedures

Report and Recommendations




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Index

| | |
|--|----|
| 1. Executive Summary | 4 |
| 2. Review of Current Policies, Procedures and Practices | 6 |
| 2.1 Policies..... | 6 |
| 2.2 Procedures..... | 8 |
| 2.2.1 <i>No Wrong Door Initiative</i> | 8 |
| 2.2.2 <i>Reporting Requirements for Complaints of Sexual Harassment</i> | 8 |
| 2.3 Practices | 9 |
| 2.3.1 <i>Training</i> | 9 |
| 2.3.2 <i>Surveys</i> | 9 |
| 3. Summary of Engagement Processes | 10 |
| 3.1 Focus Groups..... | 10 |
| 3.1.1 <i>Area Focus Groups</i> | 10 |
| 3.1.2 <i>Specific Interest Focus Groups</i> | 11 |
| 3.2 Meetings | 11 |
| 3.3 Written Sources..... | 12 |
| 3.4 Data Analysis Methodology..... | 12 |
| 3.4.1 <i>Limitations Regarding the Engagement Process</i> | 12 |
| 3.5 Feedback Themes..... | 13 |
| 3.5.1 <i>Policy Awareness and Comprehension among Manitoba Employees</i> | 13 |
| 3.5.2 <i>Prevalence of Workplace Harassment and Disrespectful Behaviour</i> | 15 |
| 3.5.3 <i>Creating a Respectful Workplace Culture</i> | 16 |
| 3.5.4 <i>Application of the Harassment Prevention Policy</i> | 17 |
| 3.5.5 <i>Scope of the Harassment Prevention Policy</i> | 20 |
| 3.5.6 <i>Inclusion of Sexual Harassment in the Harassment Prevention Policy</i> .. | 22 |
| 3.5.7 <i>Resolution Processes</i> | 23 |
| 3.5.8 <i>Resolution</i> | 25 |
| 3.5.9 <i>Formal Investigation Process</i> | 27 |
| 3.5.10 <i>Restoration</i> | 29 |
| 4. Summary of Research and Review of Best Practices | 30 |
| 4.1 Summary..... | 30 |
| 4.2 Policy Development | 30 |
| 4.3 Addressing Harassment Complaints and Concerns..... | 33 |



| | | |
|-----------|--|-----------|
| 4.4 | Investigating Harassment Complaints..... | 33 |
| 4.5 | Education and Awareness of the Policy | 35 |
| 5. | Recommendations and Best Practices for Manitoba | 36 |
| 5.1 | Improve the Workplace Culture..... | 36 |
| 5.2 | Clarify Application of the Harassment Prevention Policy..... | 38 |
| 5.3 | Clarify Scope of the Harassment Prevention Policy | 40 |
| 5.4 | Carify Roles and Responsibilities..... | 43 |
| 5.5 | Clarify Complaint, Investigation, and Resolution Processes and Procedures .. | 44 |
| 5.6 | Restoration..... | 49 |
| 5.7 | Accountability and Data Collection..... | 51 |
| 5.8 | Implementation and Communication of the Recommendations | 51 |
| 6. | Conclusion | 52 |

1. Executive Summary


As part of the five initiatives announced by the Government of Manitoba (“Manitoba”) on February 22, 2018 to ensure Manitoba employees work in an environment that is respectful and free of all forms of harassment, MLT Aikins LLP was retained by Manitoba to conduct a thorough review of Manitoba’s harassment and respectful workplace policies, practices and procedures (herein referred to collectively as the “Policies”) in order to assess their effectiveness, identify gaps and make recommendations for improvements. In order to assess the effectiveness of, and identify gaps in, the existing Policies and to make recommendations for improvements, a three-stage approach was implemented.

The first stage consisted of an extensive review of the existing Policies and in-depth research into best practices from provincial, national and international sources.

The second stage involved a wide-ranging engagement process with Manitoba employees at all levels, union representatives and other stakeholders. In order to ensure meaningful opportunities for employee engagement, we held over 50 in-person meetings, received and reviewed written feedback from both current and former employees and conducted two surveys of current and former Manitoba employees. Together, more than 500 current and former Manitoba employees participated in the engagement process. In addition, the Manitoba Status of Women Secretariat (“MSW”) and the Civil Service Commission (the “CSC”) recently conducted a survey and consultations regarding sexual harassment in the workplace, which engaged more than 3,000 Manitoba employees. The results of that survey and those consultations were also reviewed and considered in preparing this Report.

The final stage included a careful analysis of the information obtained in the engagement process to assist in considering the effectiveness of the current Policies and the identification of gaps therein, and of the results of the research regarding best practices. This analysis, together with Manitoba’s stated intent to become a national leader in addressing and mitigating workplace harassment, including sexual harassment and bullying, formed the basis for our recommendations for improvements. This Report includes 25 recommendations under eight different themes:

1. workplace culture;
2. application of policies, practices and procedures;
3. scope of policies, practices and procedures;
4. roles and responsibilities;
5. complaint, investigation and resolution policies, practices and procedures;
6. restoration;
7. accountability and data collection; and
8. the implementation and communication of the recommendations set out herein.



Following its review of this Report, Manitoba should consider the recommendations contained herein in order to determine whether such recommendations are appropriate in light of collective bargaining agreement requirements and restrictions, budgetary considerations and constraints and other factors inherent to Manitoba.

2. Review of Current Policies, Procedures and Practices


We were provided with policy documentation, training documentation, memorandums, news releases, communications and various other Manitoba documentation regarding harassment in the workplace. In reviewing this documentation, we identified the current Policies and the strengths and weaknesses of and gaps in the Policies. This section of the Report provides a summary of the current Policies.

2.1 Policies

Based on the documentation provided to us by Manitoba, the current primary policy regarding workplace harassment is the Respectful Workplace and Harassment Prevention Policy (the “Harassment Prevention Policy”). The Harassment Prevention Policy was introduced on May 4, 2015 following a comprehensive review of Manitoba’s policies, procedures and practices addressing workplace and sexual harassment generally. The Harassment Prevention Policy applies to all employees of and contractors and service providers to Manitoba, as well as interactions between employees and members of the public, and consists of applicable definitions, a resolution process for harassment concerns, including a formal complaint process, and practices for the resolution process.

Neither the Harassment Prevention Policy nor any corresponding procedure document outlines in detail the specific processes and procedures for initiating, investigating and resolving a complaint of harassment. Rather, the Harassment Prevention Policy outlines the general approach to be taken by a complainant. Of particular note, the Harassment Prevention Policy provides that a complaint may be made to the employee’s immediate supervisor, Human Resources or another level of management, up to and including the applicable deputy minister. The Harassment Prevention Policy requires that the person to whom the issue is reported must determine if the complaint constitutes a breach of the Harassment Prevention Policy and, if so, to endeavour to resolve the matter in an expeditious and confidential manner. The Harassment Prevention Policy outlines possible resolutions, including facilitated discussion, mediation, education or, for more serious matters, a formal investigation. We do note that there are two checklists, one for employees and one for managers, which include possible options for resolving a complaint or concern, which are generally referred to as a “toolkit”. However, these documents are not referred to in the Harassment Prevention Policy.

Given the absence of a detailed process for initiating, investigating and resolving a complaint and a designated position or department responsible for investigating formal complaints under the Harassment Prevention Policy, there is significant potential for inconsistent application of the Harassment Prevention Policy. More generally, the absence of a procedural guideline limits our ability to assess and review the procedures in place for addressing complaints of harassment. However, we did obtain employee feedback regarding current practice/procedures and that feedback helped to inform our understanding of current practices.




Many of the collective bargaining agreements to which Manitoba is a party, including the Manitoba Government Employees' Master Agreement between Manitoba and the Manitoba Government and General Employees Union ("MGEU"), the collective bargaining agreement between Manitoba Housing and the International Union of Operating Engineers, the collective bargaining agreement between the Manitoba Department of Families Support Workers and CUPE Local 2153, the collective bargaining agreement between the Department of Families and MGEU Respecting Direct Support Providers and Child Development Workers (Rural Locals 251, 252, 253, 254, 255, 256 and 258) and the collective bargaining agreement between Manitoba Housing (Winnipeg and Rural) and the MGEU, as well as the *Conditions of Employment Regulation* under *The Civil Service Act* (Manitoba), contain requirements and/or procedures for initiating, investigating and resolving a complaint of sexual and/or workplace harassment, with only one collective agreement referring to the Harassment Prevention Policy as the procedure for addressing a complaint. The Harassment Prevention Policy states that nothing in the Harassment Prevention Policy precludes an employee from filing a sexual harassment complaint in accordance with the applicable collective bargaining agreement or the *Conditions of Employment Regulation*. In addition, in accordance with the requirements of *The Workplace Safety and Health Act* (Manitoba) (the "Act"), the Harassment Prevention Policy states that an employee may file a complaint with the Manitoba Human Rights Commission.

Manitoba employs individuals in a wide variety of roles with various statuses, including term, part-time and full-time employees and employees appointed by Order in Council. Manitoba employees interact with a wide variety of individuals or groups, including:

- other Manitoba employees, including civil servants and political staff appointed under *The Civil Service Act* (Manitoba), including "technical officers" such as Special Assistants;
- individuals working in the Legislative Assembly of Manitoba (the "Legislative Assembly") under the jurisdiction of the Legislative Assembly Management Commission (the "LAMC") pursuant to *The Legislative Assembly Management Commission Act* (Manitoba), including:
 - elected Members of the Legislative Assembly ("MLAs");
 - employees of political offices, including caucuses and MLAs; and
 - non-political employees of the LAMC.
- independent/dependent contractors and their employees, if any; and
- the general public.

Currently, the Harassment Prevention Policy is limited in its application by virtue of the distinctions in status between the above groups of individuals. While the Harassment Prevention Policy states that it applies to all employees of Manitoba regardless of employment status, contractors and service providers to Manitoba and members of the public, the Harassment Prevention Policy does not currently clearly delineate how a



complaint involving a Manitoba employee against, for example, an individual falling under the jurisdiction of the LAMC or a contractor, both of whom are not explicitly subject to the Harassment Prevention Policy, should be addressed.

2.2 Procedures

2.2.1 No Wrong Door Initiative

On February 22, 2018, Manitoba implemented the No Wrong Door initiative. This procedure allows for political staff to report incidents of harassment directly to the CSC and/or the Clerk of the Executive Council. The No Wrong Door initiative was introduced specifically to address concerns that political staff felt reluctant to make a complaint of harassment for fear of reprisal. More particularly, the No Wrong Door initiative is described in a Backgrounder attached to a Manitoba press release from February, 2018 as follows:


Fear of reprisal has prevented employees from bringing forward complaints of inappropriate behaviour. Staff have been limited to bring forward complaints to either their direct supervisor or to the chief of staff.

Going forward, political staff will be able to report through other avenues, independent from politics including the clerk of the executive council or the Civil Service Commission. There will be no wrong door for employees to raise these issues.

Given the relatively recent introduction of the No Wrong Door initiative, it is difficult to fully assess its effectiveness. However, as discussed elsewhere in this Report, given the jurisdictional differences between individuals operating in the Legislative Assembly and Manitoba employees, the creation of a specific procedure for reporting claims of harassment involving non-Manitoba employees is a positive step. As discussed in greater length elsewhere in this Report, we note that employee feedback indicated confusion over whether the No Wrong Door initiative applied to all Manitoba employees or only Legislative Assembly and/or political employees not under Manitoba's jurisdiction. In addition, we note that scholarly research suggests that "hotline" procedures for reporting harassment concerns may be more prone to being dismissed by those receiving the concerns.

2.2.2 Reporting Requirements for Complaints of Sexual Harassment

On April 13, 2018, Manitoba implemented new reporting requirements for complaints of sexual harassment in the workplace. Effective April 1, 2018, all managers are required to report all reported instances of sexual harassment to the CSC, regardless of whether the report resulted in an investigation. A template for reporting complaints of sexual harassment has also been provided to managers. The CSC is to track and report on all incidents of sexual harassment, elevate reports for assessment and investigation by



Human Resources staff where appropriate and provide statistical data to Manitoba regarding the prevalence of sexual harassment and the results of complaints.

Given that a specific harassment complaint or incident will be fact specific, general statistical information is likely of limited relevance to individual harassment complaints and their resolution. However, we are of the opinion that, as a public sector employer, Manitoba's recording and disclosure of the number of complaints/incidents and the manner in which they were addressed/resolved would be of assistance in tracking changes over time in the workplace and assist Manitoba in remaining accountable to its employees, stakeholders and the general public at large.

2.3 Practices

2.3.1 Training

Organization and Staff Development, an office of the CSC ("OSD"), provides training on the Harassment Prevention Policy to all employees of Manitoba. Training is conducted through a mandatory online training module that takes approximately one hour to complete (the "Online Training") and an optional in-person workshop (the "In-Person Training"). The training documentation provides an introduction to the requirements of the Harassment Prevention Policy and the underlying principles regarding workplace harassment. There is no indication that "refresher" training is required once an employee has completed the Online Training and/or In-Person Training. The effectiveness of both the Online Training and In-Person Training will be discussed in the engagement and recommendations sections of this Report.

We note that on February 22, 2018, the Honourable Cameron Frieson, Minister of Finance and Minister responsible for the Civil Service, requested that all cabinet ministers complete the Online Training module at the earliest possible date, and on March 6, 2018, Mr. Fred Meier, the Clerk of the Executive Council, and Mr. Philip Houde, Chief of Staff to the Premier, required all political staff to complete the Online Training module by March 20, 2018.

2.3.2 Surveys

Manitoba conducted two surveys, one in 2015 and one in 2017, regarding workplace harassment in order to gauge employees' experiences of workplace harassment, including sexual harassment, and the process and procedures utilized to address harassment. As well, as previously mentioned, a recent survey was conducted by MSW and the CSC, the results of which have been used by MSW to formulate a report related to sexual harassment.

3. Summary of Engagement Processes

In order to ensure that we received detailed and wide-ranging feedback from Manitoba employees concerning the Policies, we met with both current and former Manitoba employees and a variety of other stakeholders.

Between May 16, 2018 and June 19, 2018 we held a total of 54 in-person meetings involving more than 335 participants in ten Manitoba communities, reviewed 202 written submissions from current and former Manitoba employees, reviewed aggregated data and summaries of information obtained through concurrent and complementary processes undertaken by MSW and the CSC and reviewed publicly available information and reports, as summarized below.

We note that Manitoba employee participation in the engagement processes was voluntary.

3.1 Focus Groups

Focus groups are a useful method to:

- investigate complex behaviour;
- discover how different groups think and feel about a topic and why they hold certain opinions;
- investigate the use and effectiveness of resources currently available to employees;
- add a human dimension to impersonal data; and
- deepen understanding.¹


As a result, we determined that focus groups would be an effective method to obtain detailed feedback about the Policies from a wide range of Manitoba employees. To that end, we held focus groups in Beausejour, Brandon, Dauphin, Morden, Portage la Prairie, Selkirk, Steinbach, The Pas, Thompson and Winnipeg.

3.1.1 Area Focus Groups

Area-based focus groups were held in Winnipeg for the following departments and areas:

- Growth, Enterprise and Trade;
- Infrastructure;
- Agriculture;

¹ Birmingham City University, "How to Evaluate EIS: Focus Groups" (2006), online: <<http://www.evalued.bcu.ac.uk/tutorial/4b.htm>>.

- 
- Indigenous and Northern Relations;
 - Sport, Culture and Heritage;
 - Treasury Board Secretariat;
 - Justice;
 - Families;
 - Sustainable Development;
 - Education and Training;
 - CSC;
 - Municipal Relations;
 - Intergovernmental Affairs and International Relations;
 - Finance; and
 - Health, Seniors and Active Living.

Non-departmental based focus groups were held outside of the City of Winnipeg.

Of the 31 focus groups that we held in total, 12 focus groups were open to both managerial and non-managerial employees and 19 focus groups were open to middle management level employees only.

3.1.2 Specific Interest Focus Groups

In addition, we held seven focus groups for certain identified participant groups who had specific input and/or roles under the Harassment Prevention Policy, including unions representing Manitoba employees. In that regard, we held focus groups for Manitoba participant groups, including:


- Human Resources Consultants (“HR Consultants”);
- the labour relations team;
- the respectful workplace team of the Labour and Regulatory Services Division (“LRS”) within the Department of Growth, Enterprise and Trade; and
- political staff members.

We held focus groups with the following unions, which represent Manitoba employees:

- MGEU;
- Legal Aid Lawyers Association; and
- Manitoba Association of Government Engineers.

3.2 Meetings

We held 16 small group or individual meetings with senior staff members within Manitoba where focus groups were not appropriate due to the smaller number of people within the target group. These meetings were with the following stakeholders:

- 
- Deputy Ministers and/or the executive management committee from departments;
 - the team conducting the MSW engagement process;
 - the Executive Director of the Legislative Assembly;
 - a representative of the OSD; and
 - the former Respectful Workplace Advisor.

3.3 Written Sources

We invited current and former Manitoba employees at all levels to provide us with written feedback. We received and reviewed 197 submissions from current and former employees. Five employees who attended focus groups or meetings provided subsequent written feedback.

In addition, we reviewed:

- data obtained through the complementary MSW processes related to sexual harassment issues within Manitoba; and
- statistics prepared by Manitoba as a result of the recently implemented reporting plan released on June 12, 2018.

3.4 Data Analysis Methodology

The data we received from focus groups and meetings were gathered into a common data set. Focus group and meeting data were coded into seven primary themes and 40 sub-themes for analysis purposes.

3.4.1 Limitations Regarding the Engagement Process

The consultation process was voluntary. In order to encourage the most candid discussion possible, we advised participants that only aggregated results would be shared and that no comments made by any participant would be attributed to any one person. However, it has to be recognized that Manitoba was generally aware of individuals that requested permission to attend during working hours and some individuals expressed concern about the anonymity of email correspondence. It is reasonable to expect that this may have had an impact on some participants' perception regarding the anonymity of their comments and which, in turn, may have limited the candour of some.

In addition, comments from every participant were noted but may not be captured verbatim through focus group, meeting or submission data.

3.5 Feedback Themes

3.5.1 Policy Awareness and Comprehension among Manitoba Employees

We asked participants about their experience in receiving education and training from Manitoba on, generally, the meaning of harassment, its impacts, resolution processes and, more particularly, the Harassment Prevention Policy.


While it was not unanimous, most participants were generally aware that the Harassment Prevention Policy exists. We heard that most individuals take the Online Training, as described on page 9 above. We also heard that while some employees may not have taken the Online Training, there were various methods in place to ensure that most Manitoba employees were encouraged to take the Online Training. Firstly, new hires are required to take the Online Training as one of several mandatory training courses required during the first two weeks of employment. Secondly, completion of the Online Training is tracked and shared with managers such that, in the event that any employee has not taken the training, managers can follow up to ensure that the employee eventually completes the training. Participants generally saw this process, overall, as an effective way to ensure that employees took the Online Training.

With respect to the effectiveness of the Online Training in informing employees about the Harassment Prevention Policy, we heard very consistent responses from participants. Participants noted some advantages to the Online Training, in particular:

- the Online Training is a very good introduction to the topics addressed by the Harassment Prevention Policy;
- the Online Training is seen as an effective way to ensure that there was a general level of awareness among employees that Manitoba has a policy to address issues of respectfulness and harassment in the workplace;
- some individuals appreciated that the Online Training was not time consuming;
- introductory training ensures that employees know where to look for more detailed information in the event that they find themselves dealing with a situation covered by the Harassment Prevention Policy; and
- for those employees who do not work in Winnipeg, the Online Training was seen as the only realistically available training for staff members.

Particular challenges that participants noted around the delivery of the Online Training included:

- some employees work in field or summer student positions where they may not have access to computers, the Internet or the Learning Management System (“LMS”); and
- particularly as it relates to seasonal employees, training on the Harassment Prevention Policy is usually not delivered through the Online Training because of



the difficulty in accessing the Online Training. Rather, training is often provided through participation in an overview of the Harassment Prevention Policy during an orientation session. Some managers reported that the Harassment Prevention Policy training given during group orientation was typically very brief, while others had made use of alternative resources to deliver the Online Training. There was no consistent approach in how to provide for an alternative delivery format nor in the detail provided through the alternative form of delivery.


Employees also raised concerns regarding the content of the Online Training. The concerns we heard included:

- the content of the Online Training is overly simplistic;
- there are insufficient examples within the Online Training to provide insight into nuanced situations;
- the format invites people to quickly “click through” the slides rather than learning about the content;
- the format created a perception for some employees that the purpose of the Online Training was to demonstrate that training had occurred rather than showing a true commitment to creating a respectful working environment or teaching employees about the expectations in the workplace;
- there is no ability to debrief about the examples that are provided in the Online Training or encourage any discussion among employees to arrive at a shared understanding of the workplace expectations;
- the Online Training for each level of staff, whether managerial or non-managerial, is the same and does not provide information specific to the different roles that employees may have under the Harassment Prevention Policy; and
- employees find the content difficult to retain as a result of the format.

Participants identified that certain In-Person Training had previously been provided and that this resulted in increased awareness and comprehension. In-Person Training included:

- past workshops that had been offered including separate seminar format workshops for non-managerial staff, managerial staff and Human Resources staff members;
- in-person training for departments, divisions, or branches as a group; and
- the use by some divisions, branches or groups of discussion questions developed by OSD for use in conjunction with the Online Training.

We note that some of the forms of training that participants referred to may no longer be perceived by employees as available as a result of turnover in staff at OSD.



Overwhelmingly, we heard that the various forms of in-person training were more effective in developing a deeper level of comprehension and shared understanding of the Harassment Prevention Policy content when compared to the Online Training. Particularly, participants spoke of the advantages of having a facilitated discussion that included more nuanced scenarios as examples, particularly to help in coming to a clearer understanding of conduct that is not appropriate in the workplace and helpful or effective ways of addressing such conduct.

With regard to Manitoba employees located outside of Winnipeg, we heard that turnover may be higher, particularly in Northern Manitoba, resulting in employees unable to take In-Person Training. As well, because of the smaller pool of applicants in comparison to positions located in Winnipeg, less experienced applicants are more likely to be considered for more senior or responsible positions in locations outside of Winnipeg. Some participants indicated that this reality suggests that there is a greater need to make In-Person Training available on a more frequent basis in communities outside Winnipeg.


A recurring theme was that In-Person Training and other training delivered by the Respectful Workplace Advisor (a position that is currently not filled) were particularly effective, whether delivered by seminar or through attendance at a particular branch or division. We heard repeatedly that such a dedicated position helps to ensure that the training includes the information and examples most relevant to Manitoba employees.

We also heard that in locations outside Winnipeg where a facilitator was not readily available, some in-person training took place simply by taking the Online Training as a group and going through the discussion questions developed by OSD. By including that in-person component, participants expressed a much greater retention of the content and concepts contained in the Online Training and appreciated the opportunity for a shared understanding of workplace expectations.

We heard that there were some challenges associated with In-Person Training, such as the cost of attendance. Unlike the Online Training, attending In-Person Training has an associated tuition cost paid to OSD that must be borne by the department in question. For participants working outside Winnipeg, the availability of In-Person Training was significantly reduced and most participants had to travel to Winnipeg in order to access In-Person Training with the associated increase in cost and lost time away from work. These were seen as barriers to accessing In-Person Training.

3.5.2 Prevalence of Workplace Harassment and Disrespectful Behaviour

While we were not in a position to assess the prevalence of sexual harassment, harassment and disrespectful conduct in the workplace, we reviewed the information outlined by MSW that approximately 17% of participants in the MSW and CSC employee consultations reported having experienced sexual harassment. In addition,



Manitoba's tracking for the period of 2017-2018 indicated that there were over 100 allegations of harassment and bullying and of those allegations, 63 were substantiated.

Given the number of surveys we received from former employees, we were not in a position to draw an inference about the number of former employees that experienced harassment, sexual harassment or disrespectful conduct at work.

3.5.3 Creating a Respectful Workplace Culture

Participants indicated that there was a lack of reinforcement regarding the Harassment Prevention Policy and that this lack of reinforcement had the result of undermining the ability of employees to retain an understanding of the Harassment Prevention Policy, as well as undermining the perceived importance of respectfulness in the workplace. Some participants held the view that refresher sessions of the respectful workplace training, whether online or in-person, would help to maintain a respectful culture within Manitoba.

We heard about initiatives currently taking place within Manitoba to create/maintain a respectful workplace culture. For example, LRS has established a respectful workplace team. The team was originally struck as the new Operational Excellence Committee, with their first project being to improve respect across LRS. This team has developed a 5 Year Plan that involves surveys and gathering feedback at the division level, as well as extensive planning to operationalize steps to increase respect in the workplace. Putting these operational plans into practice has now begun with a 12 month schedule of planned activities, including tips of the week sent to LRS employees and a planned respectfulness week. This committee is particularly interesting in its makeup in that we heard that "transformation champions"² are members along with managerial, non-managerial and union representatives. We heard that a key element of the committee's success is that these union representatives take an active participatory role rather than an observatory role.

Another example is the Safe Spaces Advisor initiative, which involves advisors with greater training on workplace respect issues and procedures being embedded within departments to provide advice and guidance to LGBTQ2 employees dealing with workplace harassment or disrespect. We heard that these advisors also receive additional training from the Rainbow Resource Centre.

3.5.4 Application of the Harassment Prevention Policy

We received feedback about how participants perceived the appropriateness of the breadth of the Harassment Prevention Policy both as it relates to whom the Harassment Prevention Policy applies and the scope it covers.

² Manitoba, *Transforming the Manitoba Public Service, A Strategy For Action*, online: <https://www.gov.mb.ca/asset_library/en/proactive/transformation_2018.pdf>



Manitoba Employees

The Harassment Prevention Policy states that it applies to “all Manitoba government employees”. We requested feedback from participants to understand whether there are any challenges around understanding what is meant by “all Manitoba government employees”. We received feedback from participants concerning such challenges. In particular, we heard that:

- there is not always a clear understanding about the extent to which this may apply to students or volunteers; and
- there is a perception that longer service employees and/or higher ranking employees are not always held to the same expectations around respectful workplace behaviour as are communicated to employees in the Harassment Prevention Policy and Online Training.

Contractors

The Harassment Prevention Policy indicates that it applies to “all contractors and service providers” to Manitoba. We received feedback about efforts to require compliance with the Harassment Prevention Policy by contractors and service providers. More particularly, we heard from Deputy Ministers and managerial employees that there is currently no consistent practice to ensure that contractors are aware of the Harassment Prevention Policy, nor is there a standard practice of including a contractual obligation which mandates that contractors and their employees meet the behavioural standards set out in the Harassment Prevention Policy.

Within the Infrastructure Department, there is a greater push to ensure that contractors are aware of and comply with the Harassment Prevention Policy. More particularly, current practices within that department include a requirement for contractors to comply with the Harassment Prevention Policy as a standard term of any contract entered into with a contractor or service provider and the holding of pre-start meetings before the commencement of construction projects where the Harassment Prevention Policy is typically discussed.

With respect to the process to be followed where a concern is raised under the Harassment Prevention Policy with regard to an interaction between a Manitoba employee and a contractor (or employee of a contractor), generally the feedback we received was that no consistent approach was taken to respond to such concerns. Some of the managers indicated that they did consider themselves empowered to require contractors to remove contractor employees who behaved disrespectfully from Manitoba projects, while other managers were unsure of their authority to do so.



Clients and Members of the Public


The Harassment Prevention Policy states that it applies to interactions between Manitoba employees and “clients/general public”. The term “client” is not clearly defined in the Harassment Prevention Policy. When we asked participants who would be considered clients for the purposes of the Harassment Prevention Policy, we heard that these groups might include entities that receive funding from Manitoba or those that are regulated closely by Manitoba, as well as individuals receiving services from Manitoba. Interactions with members of the general public are also stated to be covered by the Harassment Prevention Policy.

One of the strongest themes that we heard from our engagement with Manitoba employees at every level was that some of the most difficult and frequent sources of disrespectful conduct and harassment came as a result of interactions with clients and the public. Participants outlined a variety of instances where there is a high potential they would be subjected to disrespectful behaviour or harassment from the general public. Manitoba employees are frequently called upon to interact with clients and the general public in conflict situations and/or with individuals in emotional, financial or medical crises. As we were told, when clients and/or individuals are facing these types of conflict or crisis situations, they do not always present at their best or at their most reasonable and respectful and that, as a result, the incidence of disrespectfulness or harassment may be heightened. Moreover, certain types of services provided by Manitoba cannot be discontinued or removed and alternate methods of serving clients or individual members of the public acting disrespectfully or in a harassing manner sometimes have to be considered.

While we heard that Manitoba employees are given training and guidance on how to behave in a respectful manner towards those whom they serve and members of the public with whom they interact through customer service training and, in some instances, de-escalation training, overwhelmingly we heard that Manitoba employees do not have a clear understanding of how to confront disrespectful or harassing behaviours from clients or the public.

A recurring theme in our engagement process was that Manitoba employees considered it important to “have a thick skin” and be prepared for a certain amount of disrespectfulness or even harassment from the public in carrying out their functions as civil servants. However, overall, participants did not have a clear idea on:

- where to draw the line in accepting disrespectful or harassing language or conduct from the public;
- how to request that clients or members of the public stop behaving disrespectfully or in a harassing manner; or
- when to involve managerial employees in dealing with these kinds of situations.



In many cases, participants advised that simply knowing they have permission to respectfully and politely address in a direct manner problematic behaviour with clients or the public would be helpful in and of itself. Others indicated that more robust guidance was a necessity.

Political Arm of Government

Many civil servants work side by side with political employees at the Legislative Building. Away from the Legislature, Manitoba employees may still routinely interact with political employees who may or may not be covered by the Harassment Prevention Policy.


As discussed at page 7 above, the employment structures around the political arm of government are complex. Certain roles are clearly covered by the Harassment Prevention Policy such as those “technical officers” like Special Assistants or Executive Assistants. However, they are not working under traditional employment relationships, but rather are appointed by Order in Council with the result that their employment can be terminated at any time and for any reason.

We heard a mix of feedback about the interactions between Manitoba employees (political and non-political) and political employees and/or MLAs subject to the LAMC. Many participants in the open meetings and the managerial meetings indicated that they had never interacted with political staff members subject to the LAMC. For those that did have such interactions, there were challenges identified as far as the application of the Harassment Prevention Policy.

Firstly, it was clear that non-political Manitoba employees held a very strong perception of a power imbalance between non-political and political staff, whether the political staff in question is considered subject to the Harassment Prevention Policy or not. We heard several times about the deep reluctance of non-political Manitoba employees to bring forward any concerns that they may have about the conduct that may be considered harassing or disrespectful of any political employee or MLA. The bases for such reluctance included the following:

- the fear of overt reprisals such as job loss;
- the fear of more hidden reprisals, including de-prioritization of one’s projects or similar career-limiting barriers; and
- lack of clarity on how such complaints or concerns ought to be handled.

Political staff members may also have a difficult time raising concerns because of the highly precarious nature of the positions they hold. There is an inherent vulnerability to reprisals for reporting on either conduct experienced or observed because the political staff members are appointed by Order in Council and have no job security.



We note that our engagement with political employees not falling under Manitoba's jurisdiction was limited to only members of the Progressive Conservative Party, and did not include consultations with independent MLA, Manitoba Liberal Party and/or New Democratic Party employees.

3.5.5 *Scope of the Harassment Prevention Policy*

Definitions

We sought specific feedback from participants about the types of conduct covered by the Harassment Prevention Policy. Currently, the Harassment Prevention Policy defines the forms of conduct covered by the Harassment Prevention Policy. Harassment is defined as follows:

...any objectionable or offensive behaviour that is known, or ought to be reasonably known, to be unwelcome. It includes objectionable actions (e.g. touching, pushing), comments (e.g. jokes, name-calling) or displays (e.g. posters, cartoons) made on either a one-time or continuous basis that demean, belittle, or cause humiliation or embarrassment. Harassment can also take place electronically (e.g. text messages, social media, email or screen savers).

Inappropriate conduct is also referred to in the Harassment Prevention Policy as follows:


Inappropriate conduct will be deemed “disrespectful behaviour” or “harassment” depending on the circumstances of the particular incident. Disrespectful behaviour which continues or increases in severity and frequency may become harassment.

Sexual harassment is defined as follows:

- *a course of abusive remarks or behaviours based on gender or sex; or*
- *a series of objectionable and unwelcome sexual solicitations or advances; or*
- *one single sexual advance by a person in an authority position who should have known it was not welcome by the recipient; or*
- *a reprisal, retaliation or threat of retaliation for rejecting a sexual solicitation or advance; or*
- *a reprisal for filing a sexual harassment complaint.*

The unwanted behaviours may be physical or verbal. Examples of behaviours that may constitute sexual harassment include, but are not limited to:

- *unnecessary physical contact such as touching, patting or pinching*
- *demands for sexual favours in return for a promise of reward or a threat of reprisal*
- *unwelcome sexual remarks or jokes that put down one's gender.*



Participants indicated that an advantage to having broadly worded definitions is that the wide continuum of conduct covered by the Harassment Prevention Policy allows for the flexibility needed to address all forms of disrespectful conduct.

Harassment

A recurring disadvantage regarding the definition of harassment raised by participants was that the broadly worded language resulted in a strong subjective component. Many participants pointed out that while most employees would have a shared understanding of obviously harassing conduct or comments, it is less likely that a shared understanding in relation to more nuanced situations exists. Participants stated that without more concrete examples, it was difficult to know in some cases whether or not the conduct or comment they were subjected to, or that was brought to their attention as managers, would constitute disrespectful or harassing conduct.

Another weakness identified by managers specifically is a concern that efforts at performance management may result in accusations that the performance management is harassment. Some managers expressed the concern that even though the Harassment Prevention Policy states that performance management does not amount to harassment, the broad language of the definitions leaves a lot of room for confusion on this point. Further, many managers had anecdotal examples of situations where they had been accused of harassment or heard of other managers being accused of harassment under the Harassment Prevention Policy for attempting to engage in performance management.

Inappropriate Conduct and Disrespectful Behaviour


The definition section refers to “inappropriate conduct” and “disrespectful behaviour” without providing a definition for these terms. We heard from participants that the differences between inappropriate conduct, disrespectful behaviour and harassment under the Harassment Prevention Policy were not well understood.

A recurring comment was that further examples of the conduct intended to be covered by the Harassment Prevention Policy should be provided to employees.

We heard that participants were not certain how “bullying” was encompassed by the Harassment Prevention Policy and whether “inappropriate conduct” referred to bullying. Many participants indicated that it would be helpful to both define bullying and ensure that bullying behaviours were covered by the Harassment Prevention Policy.

Definition of Sexual Harassment

Concern was expressed at all levels of participants regarding the definition of sexual harassment. Some expressed concern about the subjectivity inherent in the broad



definition of sexual harassment, while others noted advantages of a broadly worded definition.

We frequently heard criticism as it relates to the definition's reference to sexual advances. There were two main criticisms that were raised repeatedly. Firstly, participants stated that they did not understand why the description was limited to those in authority. In these comments, participants often pointed out that unwelcome advances can be made by co-workers, including subordinates. Secondly, participants noted that the use of the phrase "should have known" is not sufficiently clear to describe the type of conduct prohibited by the Harassment Prevention Policy.

3.5.6 Inclusion of Sexual Harassment in the Harassment Prevention Policy

We sought feedback from participants regarding the structure of the Harassment Prevention Policy, specifically in that it covers all of harassment, sexual harassment and disrespectful conduct, rather than addressing sexual harassment in a stand-alone policy document. We heard a wide range of feedback on this issue and there was no particular consensus on the appropriate structure.

Some participants considered sexual harassment to be too different in nature than harassment or disrespectful conduct, such that there should be a separate policy for issues relating to sexual harassment. Some participants found that including disrespectful conduct at the lower end of the continuum of misconduct in the same conversation as sexual harassment was inappropriate. Those participants often expressed the view that equating those types of conduct by including them in one policy tends to diminish the seriousness of sexual harassment or workplace harassment. Some participants took the view that the resolution processes for sexual harassment should be different than for other forms of harassment or disrespectful conduct in that there should be "hard and fast" rules for sexual harassment, whereas greater flexibility is needed for other inappropriate conduct.

We also heard a completely different point of view where participants found that the simplest and least confusing way of addressing respectfulness and harassment in the workplace was to include all forms of inappropriate conduct in one policy. From those holding this view, we heard that combining all forms of disrespectful or harassing conduct in one policy removes a barrier in that it does not require the employee to try to pre-determine what policy the conduct experienced falls within. Similarly, for those addressing inappropriate conduct in the workplace, outlining the approach in a single policy document is less confusing. Lastly, we heard many participants state that that the resolution processes should be similar regardless of the type of harassment or disrespectful conduct that is being addressed.

3.5.7 Resolution Processes

We sought feedback on the resolution process for addressing respectful workplace concerns and its real or perceived effectiveness.

Speak to the Other Person

The first step of the resolution process is to speak to the other person. The Harassment Prevention Policy in this regard reads as follows:

An impacted employee should approach the person who made them feel uncomfortable, calmly explain how their behaviour affected them and ask that the behaviour stop.

Employees are told that the person experiencing inappropriate conduct should approach the other person and calmly ask that the conduct stop. Again, we heard consistent feedback that in the case of sexual harassment particularly, it may be very difficult and unrealistic to expect the person experiencing sexual harassment to approach the other person.


However, there was a general consensus that encouraging people in appropriate circumstances to calmly discuss issues of sexual harassment, harassment or disrespectful conduct is most conducive to resolving situations. Similarly, there was a general agreement that resolving interpersonal problems as early as possible and before they escalate is also the best way to come to a mutually acceptable resolution. However, many participants pointed out that, on a practical level, it is very difficult and uncomfortable to utilize that optimal approach. Participants indicated that people who had taken training on difficult conversations had increased capacity to address situations. In addition, we heard that those who had taken In-Person Training had a greater capacity to take the first step and talk to the other person about the impugned conduct.

Report It

The resolution process calls for an individual being harassed or disrespected to report the conduct to a manager or Human Resources if they feel unable to speak to the other person or if doing so has not resolved the situation. In that regard, the Harassment Prevention Policy reads as follows:

If an employee is unable to approach the other person, or if the employee has approached the other person but the issue remains unresolved, the employee must report their concern.

The concern can be reported verbally or in writing to the employee's immediate supervisor or Human Resources. If the issue involves the employee's immediate



supervisor, the employee may report it to another level of management, up to and including the deputy minister.


We heard from participants that there are real or perceived barriers that prevent Manitoba employees from reporting. These real or perceived barriers include:

- fear of the stigma around making a report;
- fear of reprisal;
- lack of confidentiality;
- uncertainty regarding the process;
- concern that the person to whom the report may be made is not neutral;
- concern that Human Resources employees are “on the side of management” and are not neutral; and
- a perception that the concern will not be addressed in any event.

A further recurring theme identified by almost every group of participants was that managers did not typically feel that they had the skills or knowledge to appropriately address an issue of disrespect or harassment. Particular challenges raised include:

- managers do not always know whether they have the authority to address an issue where no formal complaint has been made;
- managers are unsure about whether they have the authority to address an issue where one of the people involved is not under their supervision;
- managers are very concerned about making a mistake in addressing respectful workplace concerns because of the sensitive nature of the issues;
- some managers feel ill equipped to understand what next steps should be taken once a formal complaint is made;
- some managers feel very concerned that they themselves would be named a harasser if they addressed an issue with an employee under their supervision;
- managers do not generally know of the “toolkit” or checklist setting out processes to assist them in addressing the concerns; and
- most managers do not have to address respectful workplace issues frequently because generally, most Manitoba employees conduct themselves appropriately. As a result, managers feel that they have little experience or expertise in addressing respectful workplace concerns.

Many participants referred to the No Wrong Door initiative when discussing the step of reporting a concern. Participants generally agreed that it should be open to Manitoba employees to report issues arising under the Harassment Prevention Policy to whomever they felt the most comfortable raising the issue with. Many participants suggested that the No Wrong Door initiative should be expanded so that all Manitoba employees could raise any issue under the Harassment Prevention Policy outside their direct chain of authority. There were some concerns raised in connection with that suggestion, including:

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- Manitoba employees may not know what other “doors” or avenues for reporting exist outside of their direct supervisor or branch manager;
 - reporting concerns outside of the usual chain of authority or Human Resources staff might result in reports being made to individuals who do not have the authority or expertise to address issues;
 - in the event that the No Wrong Door initiative is expanded, more information or training should be given so that there is a general understanding that the person receiving the concern or complaint has a corresponding obligation to take action;
 - given the wide range of behaviour covered by the Harassment Prevention Policy, some participants raised a concern that it would not be appropriate or realistic to expect senior government staff members to be in a position to address more minor forms of disrespect; and
 - any expanded No Wrong Door initiative should be structured to ensure that anyone who receives a complaint is not expected to address the complaint but is expected to have the resources and understanding to immediately direct the complaint to the appropriate person.

Respectful Workplace Advisor


One of the recurring themes that came up in virtually every meeting or focus group was the advantage of having a dedicated role within Manitoba to assist in resolving respectful workplace issues through expert training, interventions and coaching. The Respectful Workplace Advisor’s job duties included both the training role outlined above and restoration work such as workplace interventions and group mediations. We also heard that the Respectful Workplace Advisor was regularly called upon to provide advice and coaching that was very effective in placing managers, employees and Human Resources staff in the best position to address concern as they arose.

The only disadvantage that we heard about the Respectful Workplace Advisor role was that it was not adequately resourced, such that there may often be a long delay before the Respectful Workplace Advisor was in a position to provide the requested advice, training or intervention.

3.5.8 Resolution

Once a concern has been reported, the Harassment Prevention Policy states that the person to whom the concern is raised will determine whether the conduct complained of breaches the Harassment Prevention Policy and then take steps to resolve the concern. In this regard, the Harassment Prevention Policy reads as follows:

The person to whom the issue is reported will determine if the allegations constitute a breach of the policy and if so, will endeavour to resolve the matter in an expeditious and confidential manner. Every issue reported and all actions taken to resolve the issue must be documented.



When asked whether participants had a clear understanding of how the person to whom the issue is reported will determine if the allegations constitute a breach of the Harassment Prevention Policy, participants indicated that the typical first step in addressing a respectful workplace concern would be to contact their assigned HR Consultant. There were challenges identified with that approach. Those challenges included:

- HR Consultants raised a concern that managers did not always understand the HR Consultant role in providing initial advice and were concerned that often managers had an expectation that the HR Consultant would take over. HR Consultants saw their role as providing advice and coaching to the manager;
- participants were concerned that given the generalist Human Resources role of the HR Consultants and a perceived high level of turnover among HR Consultants, not all HR Consultants had experience or expertise in addressing respectful workplace concerns;
- several participants noted that the approach taken by HR Consultants was not consistent from one HR Consultant to the next so that it resulted in similar concerns being addressed very differently; and
- several participants perceived that HR Consultants tended to take a more formal approach and that issues that should have been resolved informally took on a much more adversarial tone due to HR Consultant involvement.


We also heard that where managers did take steps to address a respectful workplace concern on an informal basis, there were some concerns about whether the requirement to document the issues reported or the actions taken was properly occurring. Specifically, some participants perceived that documentation was not properly created or maintained to allow for appropriate disciplinary consequences to be imposed in the event that the respondent/alleged harasser did not change their behaviours following the informal resolution process.

The Harassment Prevention Policy states that not all concerns require a formal investigation and that some may be resolved informally. In that regard, the Harassment Prevention Policy reads as follows:

Not every reported issue warrants a formal investigation. In situations that pose a serious threat to the health and safety of the employee or others, or where allegations are denied or discipline is likely, a formal investigation may be required.

Participants provided the following feedback:

- many participants do not have a clear understanding of when a formal investigation would be triggered or what factors might lead to that decision;

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- some managers feel unsure as to how the decision to proceed with a formal investigation will be made and who has the responsibility to make that decision;
 - participants do not know what other processes would be followed if the concern was addressed in an informal manner; and
 - some participants are concerned that the Harassment Prevention Policy language around when a formal investigation would be triggered is too open to interpretation. For example, we heard that most employees agreed that some situations call for a “hard and fast” rule such as situations that poses a “serious threat to the health or safety” of employees.

3.5.9 Formal Investigation Process

We sought feedback on the effectiveness and challenges of the formal investigation process currently followed. The Harassment Prevention Policy states as follows:

Not every reported issue warrants a formal investigation. In situations that pose a serious threat to the health and safety of the employee or others, or where allegations are denied or discipline is likely, a formal investigation may be required.

In these cases, the employer may appoint an investigative team which would normally be led by the Civil Service Commission or the Labour Relations Division of Treasury Board Secretariat.


An investigation generally includes:

- *interviewing the employee who reported the concern (the complainant)*
- *interviewing witnesses*
- *meeting with the person alleged to have acted inappropriately (the respondent) to present the allegations and receive their response*
- *determining the facts*
- *providing findings to senior management*
- *advising all individuals involved in the investigation, including witnesses, of the requirement to maintain confidentiality, except with respect to union/legal representation.*

The complainant and respondent may be accompanied during the investigation process.

We heard a variety of concerns regarding the conduct of formal investigations, including:

- the conduct of investigations is often done without meeting standards of fairness for the respondent to an investigation, in that respondents are not provided with the details of the complaint in order to be in a position to adequately respond;
- investigations are perceived to be unfair to the complainant in some instances because the HR Consultant conducting the investigation is not perceived to be neutral due to the relationships between the HR Consultant and management;

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- participants were concerned that given the generalist Human Resources role of the HR Consultants and a perceived high level of turnover among HR Consultants, not all HR Consultants have experience or expertise in conducting investigations;
 - several participants noted that the approach taken by HR Consultants was not consistent from one HR Consultant to the next so that it resulted in investigations being conducted very differently;
 - the real or perceived emotional consequences for the complainant to participate in the investigation process are high and this is exacerbated by the long time it tends to take to complete investigations; and
 - any consequences and/or corrective or disciplinary action resulting from a complaint are confidential and, as a result, there is a perception that no consequences are imposed when concerns are raised.

With respect to the conduct of formal investigations, we asked for feedback about the timeliness of investigations. In that regard, the Harassment Prevention Policy states:


Reported issues will be resolved as soon as reasonably possible. Investigations, where required, will be completed and results communicated as soon as reasonably possible.

Should significant delays in the investigation be unavoidable, the respondent and complainant will normally be advised.

We heard a recurring theme that investigations are not conducted in a timely manner and routinely take many months to complete. While we heard that there are reasonable explanations for some delays and that some delays cannot be avoided, it was perceived that generally, the length of time required to conduct investigations is not reasonable. Further, investigations that take months are seen to have a negative impact on the specific office or area of the workplace involved. In that regard, we heard that the disadvantages of lengthy, months' long investigations include:

- escalation of tensions between the parties;
- continuation of inappropriate or disrespectful conduct while the investigation is ongoing;
- contribution to a toxic work environment for those not directly involved in the investigations; and
- perception by the complainant and others aware of the complaint that the matter is not viewed as serious.

A recurring concern raised was that during the course of an investigation, there is very little communication with the parties to the investigation. It was recognized that a lack of communication may occur when there is no new information due to reasonable delays or when the investigation has not advanced to a new stage. As was stated by one



participant, when there is silence, we fill the silence with our own conclusions. The lack of communication was generally seen as a major contributing factor in the dissatisfaction with investigations. Various participants suggested:

- the Harassment Prevention Policy should include a set timeline during which an investigation should be complete; and
- the team investigating an allegation should be mandated to communicate at set intervals, even if the communication is simply to confirm that the investigation is still ongoing, so that parties do not come to the conclusion that no action has been taken.

3.5.10 Restoration

We requested feedback from participants regarding the effectiveness of the steps that could or should be taken to restore the workplace after an allegation has been resolved. The Harassment Prevention Policy reads:

Following the resolution of a reported issue, the immediate supervisor is responsible for ongoing monitoring to ensure this policy is followed.

Participants communicated that the current availability of supports to assist in workplace restoration is very limited. Participants referred to the following as possible supports, some of which are already available within Manitoba:

- more consistent use of the Employee and Families Assistance Program (“EFAP”) for the parties to the complaint;
- involving EFAP in mediations for the affected office/workplace;
- toxic workplace interventions conducted by the Respectful Workplace Advisor;
- codes of conduct to define standards of conduct going forward; and
- ensuring appropriate consequences for those who breach the Harassment Prevention Policy.

4. Summary of Research and Review of Best Practices

4.1 Summary

In order to properly identify and assess current best practices, we conducted a review of a variety of legal, academic, private and public sector sources, including, but not limited to:

- review of human rights legislation from across Canada and internationally, including policies and guidelines produced by human rights commissions regarding harassment policies, procedures and practices;
- review of workplace safety and health legislation from across Canada and internationally, including policies and guidelines produced by government departments regarding harassment policies, procedures and practices;
- review of scholarly articles and research informing issues of harassment, respectful workplaces, workplace investigations and trauma-informed approaches;
- research and review of Canadian jurisprudence regarding harassment policies and investigations;
- review of workplace policies, procedures and best practices from public and private sector employers both in Canada and internationally;
- review of workplace policies, procedures and best practices from legislative bodies across common law jurisdictions, with particular focus on addressing concurrent or exclusive jurisdiction over public sector employees, political staff and legislative staff, including elected representatives; and
- research and review of best practices that mitigate and address workplace harassment and sexual harassment and provide support for victims of harassment.

The scope of our review highlights the fact that harassment in the workplace is an expansive issue which affects a variety of stakeholders and which results in a variety of legal requirements, research, opinion and literature. Accordingly, this summary is, by necessity, not exhaustive of all identified sources, but rather highlights significant areas for consideration and leading best practices. Additional reference to best practices will also be made throughout the “Recommendations” section of this Report.

4.2 Policy Development

The structure and implementation of an employer’s policies and procedures is essential to ensuring that the employer complies with its statutory requirements and adopts best practices.³ More particularly, we note the specific statutory requirements of the

³ *Laskowska v Marineland of Canada Inc.*, 2005 HRTO 30, [2005] O.H.R.T.D. No. 30; *Green v Canada (Aboriginal Affairs and Northern Development)*, 2017 FC 1121, 287 A.C.W.S. (3d) 150 [Green].

Workplace Safety and Health Regulation (the “*Regulations*”) under the *Act*, which requires an employer’s harassment policy to include information on how to make a complaint, how a complaint will be investigated and how the complainant and alleged harasser will be informed of the results of the investigation,⁴ and *The Human Rights Code* (Manitoba) (the “*Code*”) which requires an employer to not permit, and to take reasonable steps to terminate, harassment of a current or prospective employee, co-worker, client or customer.⁵ More generally, a well-designed harassment policy will typically incorporate sections addressing:⁶

- the responsibilities of employees, management and the employer;
- clear definitions and guidelines regarding harassment, sexual harassment and bullying, including examples of prohibited conduct;
- procedures for reporting, investigating and addressing harassment, ideally with multiple avenues available for raising harassment concerns;⁷
- remedies available to address complaints of harassment, including discipline which may be imposed where complaints are founded;⁸
- confidentiality of complaints and investigations;⁹

⁴ Man Reg 217/2006, s 10.1 [*The Regulations*].

⁵ *The Human Rights Code*, C.C.S.M. c. H175, ss 19 (1) & (2); Manitoba, Manitoba Human Rights Commission, “Policy #I-1: HARASSMENT – s. 19” (Winnipeg: MHRC, 11 December 2013) [*Policy I-1*]; *Robichaud v Canada (Treasury Board)*, [1987] 2 S.C.R. 84, [1987] S.C.J. No. 47.

⁶ Quebec, Commission des droits de la personne et des droits de la jeunesse, “A Policy Against Discriminatory Harassment in the Workplace” (Montreal: CDPDJ, 2004) [*CDPDJ*]; Manitoba, Manitoba Human Rights Commission, “Sample Anti-Harassment Policy” (Winnipeg: MHRC); Alberta, Alberta Human Rights Commission, “Developing and implementing effective harassment and sexual harassment policies” (Calgary: AHRC, February 2012); Alberta, Alberta Human Rights Commission, “Sample Harassment Prevention Policy” (Calgary: AHRC, October 2017) [*AHRC, Sample Policy*]; Manitoba, SafeWork Manitoba, “Preventing Harassment in the Workplace” (Winnipeg: SafeWork Manitoba August 2011, Revised 2015) [*Preventing Harassment*]; Ontario, Ministry of Labour, “Code of Practice to Address: Workplace Harassment Under Ontario’s OHS Act” (Ministry of Labour, 8 September 2016) [*Ontario Code of Practice*]; Ontario, Ontario Human Rights Commission, “Policy on Preventing Sexual and Gender-Based Harassment” (Toronto: OHRC, 27 January 2011, Revised May 2013); Saskatchewan, Saskatchewan Human Rights Commission, “Information Sheet: Sexual Harassment” (Regina: SHRC, 22 August 2016); Alberta, Alberta Human Rights Commission, “Information Sheet: Sexual Harassment” (Calgary: AHRC, October 2017); Nova Scotia, Nova Scotia Human Rights Commission, “Sample Sexual Harassment Policy” (Halifax: NSHRC); Prince Edward Island, Prince Edward Island Human Rights Commission, “Workplace Rights: A Guide to the PEI *Human Rights Act* for Employers and Employees” (Charlottetown: PEIHRC, 2010).

⁷ *The Regulations*, *supra* note 4; *Preventing Harassment*, *supra* note 6; Amy Bess, Aaron Gelb, & Heather Sager, “Oops, He (or She) Did It Again! Implementing a Best-in-Class Harassment-Free Workplace Program to Help Your Company Stay Out of the Headlines” 43:3 *Employee Relations LJ* 29.

⁸ Manitoba, Manitoba Human Rights Commission “Sample Anti-Harassment Policy for Employers” (Winnipeg, MHRC) [*MHRC, Sample Policy*]; Saskatchewan, Saskatchewan Human Rights Commission, “Developing an Anti-Discrimination Policy: A Guide for Employers” (Regina: SHRC, 2011) [*Developing a Policy*].

⁹ Ontario, Ministry of Labour, “Health and Safety Guidelines –Workplace Violence and Harassment: Understanding the Law”, (Ministry of Labour, 2016) [*Understanding the Law*].

- education and promotion of the policy;
- monitoring procedures to ensure compliance with the policy; and
- prohibition of retaliation for making reports of harassment which are not frivolous or vindictive and/or participating in investigations.¹⁰

The definitions of harassment, sexual harassment and bullying are a foundational component of the written harassment policy. However, there remains tension in the sources between a broad-based policy covering all forms of conduct with a definition for harassment or bullying that is based on the perspective of the complainant, or a policy that excludes minor misconduct and contains definitions which impose a stricter definition for harassment based on the intent of the alleged harasser.¹¹ In either case, an effective policy provides examples of both prohibited conduct (including interactions outside of work hours or the workplace) and conduct which is not considered disrespectful or harassment (such as performance management and consensual banter or relationships).¹²

We note that establishing clear procedures for reporting, handling and resolving harassment complaints can reduce the risk that a complainant's concerns are not properly addressed. In that regard, the Government of Saskatchewan's *Anti-Harassment Policy*¹³ utilizes a detailed multi-page flowchart to assist complainants, management and Human Resources staff with addressing harassment concerns. Procedural guidelines for supervisors and Human Resources staff may also assist in ensuring consistent application of the policy.

In addition, we note that the scope of a policy generally must cover conduct between employees that occurs outside of the traditional workplace, including social events outside of work hours.¹⁴

¹⁰ *MHRC, Sample Policy*, *supra* note 8; Deborah Brake, "Retaliation in an EEO World" (2014) 1 Indiana LJ 116.

¹¹ *Janzen v Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252, [1989] 4 W.W.R. 39; *Green*, *supra* note 3; *Policy I-1*, *supra* note 5; *Brandon University and BUFA, Re* (2009), 100 CLAS 129, 2009 CarswellMan 662 [*Brandon University*]; Angus Chan & Brian Kleiner, "How to Investigate Discrimination and Harassment Complaints" (2000) 19:1 Equal Opportunities Intl 19; Arthur Gross-Schaefer, Renee Florsheim, & Judi Pannetier, "The Swinging Pendulum: moving From Sexual harassment to Respectful Workplace Relationships" (2003) 29:2 Employee Relations LJ 50; Marvin Claybourne, Barry Spinner, & Kathryn Malcom, "Workplace Harassment: A Test of Definitional Criteria Derived From an Analysis of Research Definitions and Canadian Social Definitions" (2014) 37:6 Intl J of L & Psychology 589.

¹² *Supra* note 6; Elaine Newman, "Preventing violence and harassment in the workplace" (Toronto: Lancaster House, 2012) [*Lancaster House*].

¹³ Saskatchewan, Human Resource Service Centre, "Section-807-Anti-Harassment Policy", (11 November 2000; Revised 27 February 2009) online: <<https://taskroom.sp.saskatchewan.ca/Pages/Public%20Service%20Commission/Service%20Pages/Section-807-Anti-Harassment-Policy.aspx>>.

¹⁴ *Simpson v Consumers' Association of Canada*, [2001] O.J. No. 5058, [2001] O.T.C. 350.

4.3 Addressing Harassment Complaints and Concerns

An individual who raises concerns of harassment and/or bullying should have their concerns taken seriously and in a confidential manner, and should be provided with other supports as appropriate.¹⁵ The individual's working relationships and workplace environment should be reviewed to determine if either the individual or the alleged harasser needs to be moved or reassigned within the workplace to terminate the harassment or pending review of the complaint or concern. Possible resolutions short of a formal investigation should be explored with the complainant and assessed based on the particular circumstances of the allegations and parties involved. While the complainant's wishes for the form of resolution should generally be considered,¹⁶ the employer must comply with their legal requirement to terminate harassment,¹⁷ which may require a formal investigation in circumstances where the complainant has not made, and does not wish to make, a formal complaint. In addition, where multiple allegations are made against one individual, even minor concerns may require a formal investigation. In addition, a manager may be required to intervene where it is within their knowledge that harassment has occurred or may have occurred; in such circumstances, a complaint is not required for action to be taken.¹⁸

More generally, clear timelines should be established once a complaint is made to ensure that the matter is dealt with as expeditiously as possible. However, given that some complaints will be particularly complex, policies should provide a range of time limits and contemplate that such time limits may not be followed in exceptional circumstances.

4.4 Investigating Harassment Complaints

In the event that informal resolution is not possible, the concerns should be objectively considered in relation to the definitions as set forth in the Harassment Prevention Policy. Generally, the claims should be considered from the perspective of a "reasonable person", giving consideration to the context and circumstances of the complaint.¹⁹ Concerns involving physical and/or psychological injury or trauma should be considered as more serious.


¹⁵ Manitoba, Manitoba Human Rights Commission, "Harassment and Sexual Harassment: Your Rights, Your Obligations" (Winnipeg: MHRC); *AHRC, Sample Policy*, *supra* note 6.

¹⁶ Saskatchewan, Occupational Health and Safety Division, "Harassment Prevention: An employer's guide for developing a harassment policy" (Regina, 2016); *CDPDJ*, *supra* note 6.

¹⁷ *Supra* note 5.

¹⁸ *AHRC, Sample Policy*, *supra* note 6; *Policy I-1*, *supra* note 5; *Jones v. Amway Canada Ltd.*, [2001] O.H.R.B.I.D., 2001 C.L.L.C. 230-031; *Wall v. Embro*, 27 C.H.R.R. D/44 at paras 162-67, 95 C.L.L.C. 230-029; Ontario, Ontario Human Rights Commission, "Policy on preventing sexual and gender-based harassment - Summary (fact sheet)" (Toronto: OHRC).

¹⁹ *Brandon University*, *supra* note 11.



The determination as to who should conduct a formal investigation is critical. While the determination must be based on the particular circumstances of a complaint, the overarching principle must be that the investigator is objective, unbiased and neutral.²⁰ For large employers, it is generally acceptable to have internal Human Resources professionals and/or other trained investigators to conduct investigations, provided that the individual is not associated with any of the parties.²¹ However, some circumstances will warrant the retention of an independent, external workplace harassment investigator to ensure impartiality and confidence in the process, particularly where the alleged harasser is a member of senior management.²²

Investigations should be expeditious but thorough.²³ Where the investigation is conducted by an internal Human Resources professional, the investigation should be monitored by a senior member of Human Resources. The investigation must comply with the principles of procedural fairness.²⁴ More particularly, after the complainant has been given the opportunity to fully detail their allegations and concerns, the respondent should be notified, provided with sufficient details of the allegations and allowed an opportunity to respond to the allegations.²⁵ Witnesses identified by either party or the investigator should also be interviewed. The parties involved should also have an opportunity to respond to counter-allegations as they arise.²⁶

A final written report should be produced which addresses the allegations, evidence obtained and conclusions.²⁷ The complainant should be notified of the outcome of the investigation, and if the allegations were substantiated, be advised of the corrective action taken.²⁸ As well, confidentiality of the process should be maintained.

²⁰ *Preventing Harassment*, *supra* note 6; *SSAB Swedish Steel Ltd. and Marine Workers' and Boilermakers' Industrial Union, Local 1*, *Re*, [2015] B.C.W.L.D. 2628, 122 C.L.A.S. 243; *Gagnon v Canada (Attorney General)*, 2017 FC 373.

²¹ *Humber River Regional Hospital and ONA (Cherubino)*, *Re*, 132 C.L.A.S. 230, 2017 CarswellOnt 13090.

²² *University of Saskatchewan v Peng*, 2014 SKCA 98; Jonathon Day, "The Problem of Perceptions: Reasons for Outsourcing the Sexual Harassment Investigation" (2000) 27:1 *Employment Relations Today* 101.

²³ *Developing a Policy*, *supra* note 8; *Ontario Code of Practice*, *supra* note 6; Workplace Harassment under Ontario's Occupational Health and Safety Act.; Amy Oppenheimer, "Investigating Workplace Harassment and Discrimination" (2004) 29:4 *Employee Relations LJ* 56.


²⁴ Peter Dorfman, Anthony Cobb, & Roxanne Cox, "Investigations of Sexual Harassment Allegations: Legal Means Fair – or Does it?" (2000) 39:1 *Human Resource Management* 33.

²⁵ *Memorial University of Newfoundland and MUNFA (I-12-20)*, *Re*, 123 C.L.A.S. 82, 258 L.A.C. (4th) 57; *Marjorie Harriott and National Money Mart Company and Desmond Wade*, 2010 HRTO 353, [2010] OHRTD No 315; *Calgary (City) and CUPE, Local 27 (Workplace Harassment and Discrimination)*, *Re*, 135 C.L.A.S. 133, [2018] A.W.L.D. 2018.

²⁶ *Brandon University*, *supra* note 11.

²⁷ *Developing a Policy*, *supra* note 8.

²⁸ *Ibid.*



4.5 Education and Awareness of the Harassment Prevention Policy

Given the employer's legal responsibility for the conduct of employees and the statutory requirements to terminate workplace harassment, employers are required to regularly educate their employees about the applicable harassment policies, their obligations under the policies and the consequences of any violations of the policies.²⁹ Training should be provided on a continual basis to ensure compliance, with additional training for managers and Human Resources staff who receive and investigate complaints and concerns.

²⁹ *Understanding the Law*, *supra* note 9; Alexia Georgakopoulos, LaVena Wilkin, & Brianna Kent, "Workplace Bullying: A Complex Problem in Contemporary Organizations" 2:3 *Intl J of Business & Social Science* 1; Heather Antecol & Deborah Cobb-Clark, "Does Sexual Harassment Training Change Attitudes? A View From the Federal Level" (2003) 84:4 *Social Science Q* 826.

5. Recommendations and Best Practices for Manitoba

In order to inform our recommendations, we have reviewed the current Manitoba Policies, the feedback from both current and former Manitoba employees including that obtained by MSW, recognized best practices and the state of the legal landscape in relation to human rights, workplace safety and health, respectful workplace matters, conflict resolution, investigation processes. Our recommendations are also informed by our experience as lawyers who practice in the areas of labour, employment and human rights law and who regularly provide comprehensive advice and assistance to public sector and private sector employers engaged in a variety of industries. Such comprehensive advice and assistance include the provision of practical and legal guidance on workplace harassment policy development and training, the handling of workplace harassment related issues and complaints and the resolution thereof. We are also engaged by and on behalf of employers to conduct workplace investigations into complaints under respectful workplace and harassment related policies.

5.1 Improve the Workplace Culture


Preventative strategies and early intervention is recognized as the most effective way to prevent and defuse harassment, sexual harassment and bullying. Our research suggests that such preventative strategies are increasingly being incorporated into organizational strategic planning. Ultimately, reactive responses to harassment, sexual harassment and bullying concentrate on the effects of those forms of conduct, rather than on its causes. This tends to lead to waste in terms of the cost-effectiveness of the reactive actions undertaken because responses may not reduce recurrence.³⁰ Accordingly, we recommend that mitigation strategies geared towards improving workplace culture, such that employees are encouraged and empowered to address issues at the earliest possible point and before escalation of behaviours has occurred, be implemented.

Recommendation 1: Make Use of In-Person Training as Frequently as Possible

Manitoba's current practice of requiring mandatory training for all new employees on the Harassment Prevention Policy is a best practice and should be continued. Further, Manitoba's tracking to ensure that all employees receive training is also a best practice and we recommend that this too be continued.

We recommend that consideration be given to in-person rather than online training on the Harassment Prevention Policy where practicable, including to employees who work outside of Winnipeg. Alternative methods, such as video conferencing, can be considered as a cost saving measure while still offering the training live. All levels of Manitoba employees should attend training.

³⁰ Duncan Chappell and Vittorio Di Martino, *Violence at Work*, 3d ed (International Labour Office, 2006).



Providing training in a seminar or workshop format, rather than through web-based modules, allows employees to arrive at a shared understanding of what behaviour is or is not appropriate in the workplace. It also emphasizes to employees the significance that Manitoba places on maintaining a respectful workplace. The training should provide to all employees concrete comprehension of their roles in maintaining a respectful workplace.

In addition to the topics currently included in the In-Person Training, we recommend that consideration be given to the inclusion of clear instruction on what constitutes performance management to facilitate a shared understanding among employees at all levels of what does not amount to bullying or harassment in relation to performance management issues.

As well, we note that an emerging best practice is to provide bystander training for employees, with a particular emphasis on encouraging and empowering employees who witness harassment and bullying to intervene and/or report the matter.³¹ Both the Online Training and In-Person Training address an employee's obligation to report inappropriate behaviour that they witness, with the In-Person Training providing intervention strategies. However, we recommend that consideration be given to providing more extensive training on this topic.

Recommendation 2: Provide Separate Training to Employees Designated to Receive Complaints

Given the different roles played by employees and management staff, separate training sessions should be made available. When the most senior members of the workforce participate in this type of training, it helps to affirm the importance of the topic and send a positive message about the type of workplace culture to which Manitoba is committed. As well, the training provided to managers should assist them in identifying issues or potential issues that need to be addressed which have not yet been the subject of a complaint.

Recommendation 3: Provide Employees with Regular, Recurrent Training

Participants clearly identified an issue with retaining the information they received during the Online Training, which was due, in part, to the infrequency of addressing harassment-related issues. Further, regular and ongoing training is a recognized best practice. We would recommend that Manitoba consider implementing regular, mandatory refresher training on respectful workplace issues, including the Harassment Prevention Policy, and a system for tracking such recurrent training.

³¹ Claudia Benavides-Espinoza & George Cunningham, "Bystanders' Reactions to Sexual Harassment" (2010) 63:3-4 Sex Roles 201; Luis Millan, "Managing #MeToo", *Canadian Lawyer*, (18 June 2018), online: <<http://www.canadianlawyer.com/article/managing-metoo-15860/>>.

Recommendation 4: Expand Respectful Workplace Teams

Consideration should be given to ways in which the values behind the Harassment Prevention Policy and related practices and procedures can be reinforced. Some best practices that are already occurring within Manitoba that could be expanded upon include:

- the LRS Respectful Workplace team; and
- the Safe Spaces Advisors aimed at assisting LGBTQ2 employees.


5.2 Clarify Application of the Harassment Prevention Policy

Recommendation 5: Address Application of the Harassment Prevention Policy to Employees Interacting with MLAs & LAMC Employees

The Harassment Prevention Policy is not applicable to elected politicians and LAMC employees. However, certain Manitoba employees interact regularly with LAMC employees and elected politicians. The existence of separate and distinct policies poses the potential where a harassment complaint is made for separate procedures with different outcomes.

Accordingly, Manitoba should consult with LAMC in an effort to agree upon an appropriate bridging clause, for inclusion in the Harassment Prevention Policy and the applicable LAMC policy. This bridging clause would provide that, where a Manitoba employee has concerns regarding an elected politician and/or employee of the LAMC or vice versa, Manitoba and the LAMC will co-operate and determine which policy should be followed based on the particular circumstances. This would ensure that Manitoba employees who experience harassment from an MLA and/or LAMC employee are provided with a meaningful resolution process in accordance with Manitoba's requirements under the *Code* and the *Act* and that parallel proceedings, which could result in different findings, are not undertaken under both the Harassment Prevention Policy and LAMC's applicable policy. As part of the consultation with LAMC and the implementation of a bridging clause and joint process, consideration should be given to the following:

- what senior position within Manitoba will be given the responsibility to be a "point person" to liaise with the LAMC when issues arise;
- the steps that should be taken to facilitate shared understandings and expectations regarding lines of communications and standards of behaviour;
- what situations should call for a jointly appointed external investigator;
- how the external investigator will report on findings; and
- how consequences for harassment/respectful workplace violations will be determined.



More generally, greater collaboration between Manitoba and the LAMC, while remaining respectful of the jurisdictional separations, would likely reduce some of the issues identified by political and non-political staff.


We recommend that consideration be given to specific orientation sessions for Manitoba political employees who work at the Legislative Building, ideally before commencing employment. The purpose of this orientation would be to ensure that Manitoba political employees are familiar with expectations set out in the Harassment Prevention Policy, the availability of complaint process(es) and, in particular, the application of the bridging clause.

Recommendation 6: Provide Clearer Guidelines for Responding to Harassment from Third Parties

As noted previously, we heard from a number of participants that much of the harassment and disrespectful behaviour they receive comes from the general public, service contractors and client groups. In these situations, employees are often unsure of the application of the Harassment Prevention Policy and do not know how to address the harassment and disrespectful behaviour.

In keeping with best practices, both the Harassment Prevention Policy and training that employees receive should specifically outline the process for addressing harassment from third parties. With regard to members of the public, employees should be empowered and trained to raise concerns under the Harassment Prevention Policy in the same manner as they would raise concerns regarding the conduct of another Manitoba employee. Manitoba should inform the public that harassment and disrespectful behaviour will not be tolerated and may, in some circumstances, result in services being denied. Such information could be made available in the form of posters and bulletins posted in work areas in which members of the public interact with Manitoba employees. Moreover, where employees are engaging with members of the public, the employees should be empowered to inform the individuals that harassment and disrespectful behaviour will not be tolerated. More particularly, Manitoba should consider highlighting or strengthening:

- the right of employees to refuse unsafe work, including the right of employees to terminate interactions which constitute harassment or bullying under the Harassment Prevention Policy;
- zero-tolerance for disrespectful conduct from third parties and the imposition of consequences/controls as necessary, such as bans from worksites;
- where controls have been imposed for a third party, management oversight and monitoring; and
- where an employee reports concerns involving a third party, the procedures and processes contained in the Harassment Prevention Policy should be followed to the extent practicable.



With regard to service contractors, Manitoba should consider including in its standard contractual terms provisions requiring compliance with the Harassment Prevention Policy and providing for the potential termination of the contract should the service contractor or their employees violate the Harassment Prevention Policy.

5.3 Clarify Scope of the Harassment Prevention Policy


Recommendation 7: Amend Definitions in the Harassment Prevention Policy

Employees should be provided a clear framework for understanding behavioural expectations at work. The *Code* and the *Act* set out conduct that is prohibited in the workplace, and the definitions of harassment and sexual harassment in the Harassment Prevention Policy are adequate to meet Manitoba's obligations under the *Act* and the *Code* as they relate to harassment and sexual harassment.

However, the Harassment Prevention Policy seeks to exceed those legislated minimums and to prohibit disrespect. The existing definitions are not adequate to assist employees in understanding the behavioural standards relative to prohibited "disrespectful behaviour". Indeed, no clear definition of "disrespectful behaviour" (as distinct from harassment) is contained within the Harassment Prevention Policy. Employees are only told that if they behave in a disrespectful manner too frequently, it may become harassment.

As a consequence of the lack of definition around "disrespectful behaviour", the feedback we received suggests that participant understanding of the kinds of conduct that "disrespectful behaviour" covers is overly subjective and open to being applied in a manner that is either overbroad or too limited. With respect to the potential for an overbroad application, we heard of instances where managers had applied the Harassment Prevention Policy in issuing discipline or direction to a respondent where such discipline or direction was likely not warranted. For example, we heard that bad body odour was treated as an instance of "disrespectful behaviour" or that the natural volume or sound of someone's voice in the cubicle next door was treated as "disrespectful behaviour", and that the processes in the Harassment Prevention Policy were accordingly sometimes applied to deal with those kinds of instances. While those kinds of issues present a management issue, they should not properly be subject to the Harassment Prevention Policy. Applying the Harassment Prevention Policy to each and every situation that is in any way disagreeable to any person is an overbroad application that does not assist employees to understand how to behave.³² Further, as participants in the engagement process pointed out, including very minor forms of disagreeable behaviour or rudeness within the definition tends to trivialize the behaviour that is

³² *Motor Coils Manufacturing Ltd. and Unifor, Local 520 (Stacey), Re* [2015] O.L.A.A. No. 263, 123 C.L.A.S. 316; *Supra* note 11.



serious and needs to be minimized or prevented to the extent possible. As British Columbia Arbitrator Heather Laing has stated:

*Harassment ... is a serious word, to be ... applied vigorously when the occasion warrants its use. It should not be trivialized ... by using it as a loose label to cover petty acts or foolish words, where the harm, by any objective standard, is fleeting. Nor should it be used where there is no intent to be harmful in any way, unless there has been a heedless disregard for the rights of another person and it can be fairly said, "you should have known better."*³³

However, we also heard of instances where, due to the subjective nature of the definitions, the Harassment Prevention Policy may have been applied too narrowly.

Recommendation 8: Introduce a Definition for "Bullying"

In order to provide employees with more well defined parameters on prohibited "disrespectful conduct", consideration should be given to limiting the prohibited conduct to what is more commonly known as "bullying" and providing a clear definition of that term.

In Manitoba, there are no legislated requirements around the term "bullying". For example, neither the *Act* nor the *Code* contain the requirements around defining or preventing bullying. However, Alberta and British Columbia legislation³⁴ now specifically include bullying in protections established for workers by legislation and policy. In addition, there is a growing trend among employers outside of Alberta and British Columbia to include specific reference to "bullying" in harassment and/or respectful workplace policies.

Possible sources for the definition of "bullying" include the following:


- SafeWork Manitoba's definition of bullying:

...severe, repeated conduct that adversely affects a worker's psychological or physical well-being if it could reasonably cause a worker to be humiliated or intimidated or a single occurrence, if it is shown to have a lasting, harmful effect on a worker.

- WorkSafe Victoria (Australia) has well developed policies and practices around bullying. In that jurisdiction, workplace bullying is defined as "repeated, unreasonable behaviour directed toward an employee or group of employees that creates a risk to health and safety." This definition may have the advantage of capturing more undesirable behaviours by deleting the subjectivity in the word

³³ *British Columbia v B.C.G.E.U.*, [1995] B.C.C.A.A.A. No. 131 at 56, 40 C.L.A.S. 195.

³⁴ *Occupational Health and Safety Act*, SA 2017, cO-2.1; *Workers Compensation Act*, RSBC 1996, c 492, s 5.1; and British Columbia, Work Safe BC, "Policy Item D3-115-2 RE: Employer Duties – Workplace Bullying and Harassment" (Vancouver: Work Safe BC, 2 November 2013).



“severe” while still requiring a serious effect from the conduct in question. However, conduct should not need to be repeated before it may constitute a violation of the Harassment Prevention Policy.

Recommendation 9: Introduce a Definition for “Reasonableness”

As noted, a best practice is to assess conduct from the perspective of a reasonable person. In order for employees to have a shared understanding of what is meant by “reasonableness”, we would recommend that consideration be given to introducing a definition for reasonableness that clarifies the objective element within the meaning of that term.³⁵

Recommendation 10: Endeavour to Achieve Consistency between Policies and Collective Bargaining Agreements


Most Manitoba employees are subject to a collective bargaining agreement. As outlined above, collective bargaining agreements also provide for an investigation mechanism specific to sexual harassment. This multiplicity for filing and handling harassment complaints holds the potential for parallel investigations and/or inconsistent application of the Harassment Prevention Policy in the workplace. We recommend that procedures be harmonized such that inconsistent results are avoided.

Harmonizing the investigation processes will, in some cases, involve changing the language of the relevant collective bargaining language particularly as it relates to the Manitoba Government Employees’ Master Agreement and other MGEU collective bargaining agreements. The collective bargaining agreement with CUPE currently provides that the investigation process is as outlined in the Harassment Prevention Policy. Other collective bargaining agreements that govern the employment relationships of Manitoba employees prohibit sexual harassment or harassment but do not call for a specific investigation process. The effective implementation of this recommendation will require both discussion and agreement with at least the MGEU in order to amend the governing collective bargaining agreements.

Recommendation 11: Sexual Harassment and Harassment should Continue to be Addressed in the Same Policy

Upon reviewing the MSW feedback and on review of the feedback we heard during our engagement process, there was a clear segment of participants who suggested that sexual harassment should be dealt with in its own separate policy. However, other employees, in particular those responsible for receiving and investigating harassment concerns, argued that dividing the different forms of conduct into more than one policy would be more likely to cause confusion and may create a barrier to employees raising a complaint because they may not know which policy applies to a given situation.

³⁵ Green, *supra* note 3.



Within our review of emerging trends, we noted a recent trend towards implementing a stand-alone policy concerning sexual harassment and/or assault. For example, Manitoba has passed legislation requiring post-secondary institutions to have a stand-alone sexual violence policy³⁶ and the Human Resources Professionals Association has recently recommended that all employers should have a stand-alone policy or revise their current policy in order to ensure that sexual harassment and sexual violence in the workplace can be addressed promptly and appropriately by individuals with the proper expertise.³⁷

However, existing Canadian legislation generally does not require separate policies for different forms of harassment. In addition, our review of case law indicates that there is no appreciable difference in factors that courts and tribunals apply when considering the adequacy of investigations into the various forms of harassment. As well, we note that separate sexual and workplace harassment policies are not mandated by the *Act*, however the *Act* and the *Regulations* require that all workplace violence, including sexual violence, be addressed, in a violence prevention policy.³⁸ Moreover, all forms of harassment must be addressed promptly and appropriately by individuals with the proper expertise. In this regard, there should be no distinction between sexual harassment and any other forms of harassment. All forms of harassment can cause significant harm, including psychological injury, to the subject of the harassment.

Moreover, in our opinion, and based on the feedback from managers and other employees responsible for addressing harassment concerns, having two policies relating to harassment may complicate the choice of procedures and may result in conflicting approaches, investigations and results. We recommend that Manitoba's current policy structure which addresses all forms of workplace harassment, as well as bullying, in one master policy be maintained. However, consideration should be given to including the term sexual harassment within the title of the Harassment Prevention Policy.

5.4 Clarify Roles and Responsibilities

Recommendation 12: Clarify Roles and Responsibilities


As noted earlier, a best practice we have identified in the structure and operation of respectful workplace policies is the identification of roles and responsibilities.³⁹ In addition to providing clarity and a practical sense of each employee's role, it may also help to foster the concept that every person has a role in minimizing the incidence of

³⁶ *The Sexual Violence Awareness and Prevention Act (Advanced Education Administration Act and Private Vocational Institutions Act Amended)*, S.M. 2016, c. 20.

³⁷ Human Resources Professional Association, "Doing our Duty: Preventing sexual harassment in the workplace", online: < <https://www.hrp.ca/Documents/Public/Thought-Leadership/Doing-Our-Duty.PDF>>.

³⁸ *Supra* note 4; We understand that Manitoba currently has in place a Preventing Workplace Violence policy which requires each department to develop a workplace violence policy.

³⁹ *Lancaster House*, *supra* note 12.



workplace harassment, sexual harassment and bullying. We recommend that consideration be given to setting out the roles and responsibilities of:

- employees;
- senior management;
- supervisors;
- union representatives; and
- Respectful Workplace committee members (if applicable).

Consideration should be given to including clear standards of behaviour within the roles and responsibilities by setting out positive examples of acceptable conduct as well as unacceptable conduct.

5.5 Clarify Complaint, Investigation and Resolution Processes and Procedures

Recommendation 13: Remove Perceived Barriers to Raising Complaints

The academic literature generally provides that an employee will be less likely to file a formal sexual harassment complaint where the employee does not trust the procedures in place to address their complaint.⁴⁰ Uncertainty regarding the procedure can create or increase distrust. More particularly, where the employee is fearful of reprisal, concerned for future job prospects, does not have confidence in the process and/or is uncertain about being believed, the employee will be less likely to utilize the complaint process. When an employee feels that they cannot report harassment, the employee is more likely to be traumatized by their experience.

In that regard, the Harassment Prevention Policy currently states:


Reprisal

There shall be no reprisal against an employee who in good faith exercises rights under this policy. Reprisal is an actual or threatened harmful act. Reprisal not only involves penalizing someone, it can also be the withholding of a benefit.

False Allegations

If it is determined that a complaint was deliberately made for frivolous or vindictive reasons, the employee making the allegation may be subject to discipline. This does not apply to complaints made in good faith but which are not proven.

⁴⁰ Ganga Vijayasiri, "Reporting Sexual Harassment: The Importance of Organizational Culture and Trust" (2008) 25:1 Gender Issues 43; Laura Reese & Karen Lindenberg, "Victimhood and the Implementation of Sexual Harassment Policy" (1997) 17:1 Rev of Public Personnel Administration 37.



We recommend that consideration be given to improving the existing reprisal language to provide greater reassurance to Manitoba employees. For example, it may provide greater reassurance to employees to explicitly state that any complaint found to be made in good faith will not be subject to discipline. Further, consideration should be given to providing a more detailed definition of the forms of prohibited conduct that constitutes a reprisal. As noted previously, examples assist in creating a shared understanding about conduct.

Recommendation 14: Maintain and Further Assess No Wrong Door Initiative

Manitoba's recent implementation of the No Wrong Door initiative represents a significant effort to address the gap in the Harassment Prevention Policy for Manitoba political employees. Consideration could be given to expanding the application of the No Wrong Door initiative to all Manitoba employees and all forms of harassment and bullying. Multiple avenues for reporting harassment, including anonymous options, have been identified as a best practice.


However, we caution that some academic literature indicates that informal systems for reporting harassment, such as open-door policies or anonymous hotlines, may result in organizational failures to properly address the harassment.⁴¹ In other words, less formal complaint structures are more likely to result in employee's concerns not being properly heard and/or addressed. In order to avoid such an outcome, a role or department within Manitoba could be designated to act as a resource to those who receive reports of harassment and to investigate such reports where appropriate, as outlined further in this Report.

Given the recent implementation of the No Wrong Door initiative, we are unable to fully assess its effect on reporting and addressing harassment complaints. In the event that the No Wrong Door initiative is maintained, we recommend that consideration be given to providing to all managers and supervisory staff at every level training on how to react in a timely manner to a report of harassment by referring the complaint to the appropriate avenue for resolution, as outlined further in this Report.

Recommendation 15: Implement Clear and Consistent Procedures for Addressing Concerns

We consistently heard from participants that they were uncertain to whom they should report harassment concerns, how their concerns would be handled and what, if any, procedure existed to address them. We heard from managerial employees that, as a result of their limited experience dealing with harassment concerns, they were often unsure or unaware of how to properly address complainants and determine the procedures required. Finally, we heard from Human Resources staff that they are

⁴¹ Karen Harlos, "If you build a remedial voice mechanism, will they come? Determinants of voicing interpersonal mistreatment at work." (2010) 63:3 Human Relations 311.



overworked and unable to properly investigate and report on harassment concerns. This feedback suggests that the current system for addressing respectful workplace issues is difficult to access, inconsistently applied and unnecessarily protracted.

In order to address these concerns, and to adopt best practices, Manitoba should consider implementing:

- amendments to the Harassment Prevention Policy to provide clear identification of multiple options for reporting concerns;
- guidelines for the employees tasked with receiving concerns; and
- clear steps for addressing, investigating and resolving harassment concerns.


More specifically with respect to the steps for addressing, investigating and resolving harassment concerns, leading best practices highlight that a formal investigation is neither optimal nor required for all harassment concerns. Rather, informal resolutions between parties or mediation can be quicker and more effective at resolving interpersonal conflict. However, we heard from managers that they were often unsure of when to utilize approaches other than a formal investigation.

We recommend that Manitoba consider establishing guidelines for determining which form of resolution procedure is appropriate in the circumstances. We recommend that such guidelines should provide that a formal investigation be utilized where the circumstances are contentious (i.e. where allegations are denied by a party), where there is a possible risk of physical and psychological injury or where the complainant requests a formal investigation after being advised of the different procedural options. We also recommend that consideration be given to offering alternatives such as facilitated discussion and mediation in all other cases, but that these alternatives should not be considered a pre-requisite for a formal complaint.

As noted previously, the Government of Saskatchewan's *Anti-Harassment Policy* contains a detailed multi-page flowchart outlining the procedures for handling and investigating harassment complaints. We recommend that Manitoba consider adopting a similar strategy to ensure more robust procedural guidelines.

Recommendation 16: Fill and Increase the Number of Respectful Workplace Advisors and Expand the Position's Duties and Responsibilities

The role of the Respectful Workplace Advisor in relation to training, coaching and post incident interventions was clearly well received by Manitoba employees. Further, the current practices for conducting a formal investigation, which include investigations carried out by the HR Consultant who works with the department, are inconsistent with best practices and legal precedent. Individuals carrying out investigations into workplace harassment, sexual harassment and bullying require specialized knowledge



and expertise to competently investigate complaints and must be neutral in that the parties are not well known to the investigator.⁴²

We recommend that Manitoba consider reestablishing the role of the Respectful Workplace Advisor and expanding the duties associated with the position. We suggest that the expanded role could be one which specializes in harassment training, the receipt of concerns and complaints and the conducting of investigations and to which employees and/or members of management can refer harassment concerns and formal complaints. Individuals in this position, unlike HR Consultants, should not be assigned to work with or within stipulated departments. This could assist in alleviating stated concerns around the neutrality of the investigator or conflicts of interest, the expertise of the investigator and the timeliness of the investigation.

Our research suggests that having a designated position or office to address harassment, sexual harassment and bullying is an emerging trend both among public sector and private sector entities and particularly in larger organizations such as Manitoba. The position(s) should be staffed with individual(s) who have experience in and knowledge of mediation, conflict resolution and neutral investigation techniques.

When filled, the role could include the following duties:


- providing the respectful workplace training to staff;
- acting as an independent resource to assist staff in determining how to approach a respectful workplace issue;
- offering informal resolution procedures for resolving complaints,
- conducting formal investigations into complaints;
- preparing written reports in support of the formal investigations conducted and setting out findings of fact; and
- providing workplace interventions to assist with restoring the workplace in the event that issues do arise.

We recommend that consideration be given to ensuring that the position be resourced such that there are sufficient Respectful Workplace Advisors to be capable of responding to respectful workplace concerns in a timely manner.

Recommendation 17: Introduce Timelines for Investigations

We heard repeated concerns about the consistently months' long investigation process into complaints of harassment. Investigations that are not commenced quickly and carried out promptly and thoroughly may not meet an employer's legal obligations established by the *Code* to put an end to harassment when it occurs. While we do not

⁴² *Lancaster House*, *supra* note 12; *Supra* note 22.



recommend any hard deadlines on the number of days before the investigation is either commenced or completed, we recommend that consideration be given to establishing guidelines for non-complex complaints, such as those involving less than five witnesses, and guidelines for complex complaints that are realistic.

Establishing and adhering to typical timelines, as far as is practicable, provides parties with clear and reasonable expectations about the process. Providing clear explanations to parties about the cause of reasonable delays also helps to maintain reasonable expectations.

Recommendation 18: Introduce Communication Requirements Regarding Investigations

We heard that the communication between those investigating respectful workplace concerns and the parties to the concerns was inadequate as it relates to:


- communicating concerns with respondents;
- providing adequate status updates during the course of an investigation; and
- communicating the results of an investigation to the parties.

While the details of allegations should generally be kept as confidential as possible, in order to meet procedural fairness requirements established by courts in Canada, respondents need to be provided with sufficient detail to understand the allegations made against them and be able to respond. Such detail will generally include the identity of the complainant or the individual subject to the alleged conduct and a description of the alleged impugned conduct.

Investigators should not be required to provide any details about the lines of inquiry or preliminary findings. However, when investigations are not concluded within the general timelines set out in a policy, we recommend that parties be provided with updates confirming that the investigation is ongoing and advising as to when the parties can expect the investigation to be concluded and/or next steps to be taken.⁴³ Such updates should not be more than one month apart.

A best practice under human rights legislation is that the complainant be advised of both the outcome of the investigation and the corrective actions taken. While we noted that the Harassment Prevention Policy includes a requirement to so notify a complainant, participants indicated that the information included in such notifications in practice was not sufficient for a complaining employee to know whether corrective actions were taken. We recommend introducing clear guidelines for the information that should be included in such communications. It is not necessary that the level of discipline meted out, if any, be disclosed, but rather disclosure should be limited to the fact that disciplinary action was taken. We note that participants raised concerns about any

⁴³ *Understanding the Law, supra* note 9.



disclosure whatsoever in light of the requirements of *The Freedom of Information and Protection of Privacy Act* (Manitoba) (“FIPPA”). However, pursuant to section 44(g) of FIPPA, Manitoba is not prohibited from disclosing the results of the investigation and/or disciplinary action imposed to the complainant.

Recommendation 19: Clarify Potential Remedies

It was apparent that there is currently a perception that consequences are not being appropriately applied. The concept of “zero tolerance” creates a perception that any person breaching the Harassment Prevention Policy will be dismissed. Such a perception can cause reluctance on the part of employees to bring forward concerns, particularly concerns regarding isolated or less severe forms of harassment. We recommend that consideration be given to the inclusion in the Harassment Prevention Policy of clear language setting out the potential disciplinary consequences that may be imposed and that progressive discipline will be applied in accordance with applicable collective bargaining agreements and jurisprudence.

Recommendation 20: An Appeal Procedure within the Harassment Prevention Policy is Unnecessary

We were asked to comment specifically regarding appeal mechanisms which may be considered or implemented. We have not identified any best practices or legal requirements that would suggest that an appeal mechanism should be implemented. In fact, for most employees there is an existing quasi-appeal mechanism in that the collective bargaining agreements provide for a grievance procedure that will allow an employee unsatisfied with the outcome the ability to file a grievance. Further, implementing an appeal mechanism is likely to render the process more protracted rather than simpler and faster. We also note that the *Act* requires that a harassment policy include a general statement which provides that an employee is not precluded from filing a complaint under the *Code*.

5.6 Restoration


Recommendation 21: Improve Post-Incident Monitoring

The Harassment Prevention Policy addresses workplace restoration in the following manner:

Workplace Restoration

Following the resolution of a reported issue, the immediate supervisor is responsible for ongoing monitoring to ensure this policy is followed.

We recommend that consideration be given to requiring managers to document the monitoring efforts made as well as the results of such monitoring to ensure that managers are monitoring in a timely and effective manner and are better positioned to



prevent or mitigate a recurrence of the original issue. In addition to monitoring behaviour after a complaint has been made, we recommend that employees be encouraged to immediately notify the appropriate individual(s) of a recurrence of the original issue or if they believe that they are being retaliated against by any party. In addition, we recommend that consideration be given to including training on effective post-incident monitoring in the training provided to managers.

Furthermore, consideration should be given to developing detailed guidelines for managers that would provide a reference tool to assist in workplace restoration. We note that the Federal Government has created a detailed multi-page guideline for managers that includes decision making charts and options for tackling specific scenarios that may be considered as a useful reference point.⁴⁴

Recommendation 22: Inform Employees of Available Supports

Some restoration options are already available to assist both individual employees and groups in restoring the workplace to a positive working environment after incidents or allegations of harassment, sexual harassment or bullying have occurred or been investigated. The resources currently available, such as EFAP for both individuals and groups, should be specifically referred to in the Harassment Prevention Policy and employees should be encouraged to access those supports. Consideration should be given to making a practice of asking the parties what supports are needed at the time of the complaint and as the resolution process proceeds.

Recommendation 23: Inform Managers of the Availability of Workplace Interventions

We heard repeated accounts of the effectiveness of workplace interventions conducted by the Respectful Workplace Advisor, particularly when such interventions occurred shortly after an incident. As noted previously, we have suggested that consideration be given to staffing the position of Respectful Workplace Advisor and that the responsibilities of this position include conducting interventions. Should that recommendation be implemented, the availability of that resource should be specifically referred to in the Harassment Prevention Policy so that managers are aware of and encouraged to make use of that resource where appropriate.

⁴⁴ Canada, Public Service and Military, *Restoring The Workplace Following A Harassment Complaint: A Manager's Guide*, (Ottawa: Government of Canada, 19 February 2013), online: <<https://www.canada.ca/en/treasury-board-secretariat/services/healthy-workplace/prevention-resolution-harassment/restoring-workplace-following-harassment-complaint-managers-guide.html>>

5.7 Accountability and Data Collection

Recommendation 24: Maintain Reporting Processes

As a large public employer, Manitoba is unique in that it is accountable to both its employees and the general public. We have reviewed the introduction of the CSC reporting requirements for complaints of sexual harassment and commend Manitoba on establishing an independent and public accountability system. While the effectiveness of the reporting system cannot be fully assessed given its recent introduction, we recommend that the system be continued and that consideration be given to expanding the reporting requirements to include reporting of harassment generally.

In addition, sharing of information through the CSC reporting process will assist Manitoba in identifying those employees who raise multiple concerns and those employees who are the subject of multiple concerns. Identifying and addressing repeat breaches of harassment related policies is in accordance with emerging best practices.

5.8 Implementation and Communication of the Recommendations

Recommendation 25: Communicate the Report and Revisions to Policy

Following its review of this Report, Manitoba should consider the recommendations contained herein in order to determine whether such recommendations are appropriate in light of collective bargaining agreement requirements and restrictions, budgetary considerations and constraints and other factors inherent to Manitoba.

Where changes are implemented to the Policies, Manitoba should communicate such changes and the rationale for such changes to Manitoba employees and the general public.

As previously noted, best practices and the engagement process highlight that in-person training is generally more effective for ensuring that employees understand the underlying concepts and obligations regarding harassment and respectful workplaces. Accordingly, we recommend that consideration be given to the provision of In-Person Training for any changes implemented to the Policies.

In addition, Manitoba should ensure that all Manitoba employees are able to easily access the applicable amended Policies, including employees who do not have access to computers, internet or the LMS as part of their positions. As well, in those work areas in which Manitoba employees interact with the general public, consideration should be given to displaying the amended Harassment Prevention Policy or portions thereof in prominent locations within such work areas.



6. Conclusion

Freedom from harassment and sexual harassment in the workplace is a right to be enjoyed by all Manitobans. Manitoba's goal is to be a leader in the provision of a workplace that fosters respectfulness and militates against harassment. It has been our pleasure to engage with hundreds of Manitoba employees who share the goal of a respectful, harassment-free workplace, to work with Manitoba in the identification of gaps in the current Policies and to provide the recommendations contained herein. Such recommendations have been designed to assist Manitoba in achieving its commendable goal by filling gaps, providing simplification and clarification in the complaint, investigation and resolution processes and addressing real or perceived challenges in the current Policies.