

**Pabineau First Nation**  
**DISCRIMINATION AND HARASSMENT POLICY**

**Effective Date:** This Discrimination and Harassment Policy comes into effect on October 9 , 2009 as authorized by Band Council Resolution.

**1 Purpose**

The purpose of this Policy is to formally set out the standard of treatment that Pabineau (the “First Nation”) expects of all of those bound by the Policy. The First Nation requires that all those people bound by this Policy conduct themselves in accordance with traditional Mi’gmaq values and the highest standards of respect for others.

**2 Application and Scope**

The provisions of this Policy apply to the First Nation itself and to the First Nation’s:

- Chief and Councillors,
- employees,
- independent contractors,
- contract employees,
- students, and
- volunteers.

This Policy covers situations of discrimination and harassment which occur at or away from the workplace, during or outside working hours, provided that such situations have a negative effect on the working relationships, work effectiveness or job security of the First Nation’s employees.

Please refer to the following Pabineau documents which complement this Policy:

1. The Employee Code of Conduct;

2. The Privacy and Protection of Personal Information Policy; and
3. Employee Confidentiality and Non-disclosure Agreements.

### **3 Objectives**

Every employee of the First Nation shall be treated fairly in the workplace.

Every employee shall be provided an environment that is free of discrimination, harassment and offensive behaviour.

Any behaviour that is found to be discrimination, harassment or offensive shall not be tolerated. Such conduct shall be dealt with in keeping with the seriousness of the violation, including disciplinary action up to and including discharge from employment or contract termination.

### **4 Discrimination**

In this Policy "discrimination" means:

1. Differential treatment of a person on the basis of that individual's actual or presumed membership in, or association with, some class or group of persons, rather than on the basis of personal merit; or
2. Differential treatment of a person or group on the basis of any characteristic referred to in this Policy; or
3. Differential treatment of a person or group on the basis of the individual's or group's actual or presumed association with another individual or group whose identity or membership is determined by any characteristic referred to in this Policy; or
4. Failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any characteristic referred to in this Policy.

The applicable characteristics for the purposes of discrimination in this Policy are:

1. ancestry, including colour and perceived race;
2. nationality or national origin;
3. ethnic background or ethnic origin;
4. religion or creed, or religious belief, religious association or religious activity;
5. age;
6. sex and gender-determined characteristics or circumstances;
7. sexual orientation;
8. marital status;
9. family status;
10. source of income;
11. political belief, political association or political activity;
12. physical or mental disability or related characteristics or circumstances;  
and
13. conviction for which a pardon has been granted.

It is also discrimination under this Policy to retaliate or threaten retaliation against any person who filed a complaint under this Policy, the alleged victim of any discrimination that is the basis for the complaint, or family members of the alleged victim or the complainant.

Discrimination is unlawful.

## **Harassment**

In this Policy “harassment” includes:

1. Abusive and unwelcome conduct;
2. Improper conduct on the basis of any characteristic referred to in section 4 above.

A person's motives are not relevant in deciding whether behaviour amounts to harassment.

Acts of harassment may be unlawful.

Harassment means any improper behaviour by an employee that is directed at and is offensive to another employee, and which that person knew or should reasonably have known would be unwelcome. It comprises objectionable conduct, comment or display made on either a one time or repeated basis that demeans, belittles, or causes personal humiliation or embarrassment to an employee of the First Nation.

A person subjects another individual to harassment when he or she engages in unwanted and unwarranted conduct which has the purpose or effect of violating that other person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that other person.

Abuse of authority is a form of harassment that occurs when an individual improperly uses the power and authority of his or her position to endanger an employee's job, undermine the performance of that job, threaten the economic livelihood of the employee, or in any way interfere with or influence the career of the employee. It includes intimidation, threats, blackmail and coercion.

Bullying is a form of harassment. It may be characterised by offensive, intimidating, malicious or insulting behaviour, or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient. It does not

need to be based, or appear to be based, on gender, race or any other specific factor.

Examples of behaviour that may amount to harassment include:

1. suggestive comments or body language;
2. verbal or physical threats;
3. insulting, abusive, embarrassing or patronising behaviour or comments;
4. offensive gestures, language, rumours, gossip or jokes;
5. humiliating, intimidating, demeaning and/or persistent criticism;
6. open hostility;
7. isolation or exclusion from normal work or study place, conversations, or social events;
8. publishing, circulating or displaying pornographic, racist, sexually suggestive or otherwise offensive pictures or other materials; and
9. unwanted physical contact, ranging from an invasion of space to a serious assault.

The above list is not intended to be exhaustive.

Many of the above examples of behaviour may occur through the use of internet, email, or telephone.

All these examples may amount to harassment, particularly when the conduct is coupled with the inappropriate exercise of power or authority over another person.

Being under the influence of alcohol or otherwise intoxicated shall not be admitted as an excuse for harassment, and may be regarded as an aggravating feature.

## **6 Sexual Harassment**

### Definition of “sexual harassment”

Sexual harassment means any conduct, comment, gesture or contact of a sexual nature, whether on a one time basis or in a continuous series of incidents, that might reasonably be expected to cause offence or humiliation to an employee; or that the employee might reasonably perceive as placing a condition of a sexual nature on employment or on an opportunity for training or promotion. Generally, sexual harassment is deliberate, unsolicited, coercive and one sided and both male and female employees can be the victim or the perpetrator.

Every employee is entitled to a work environment that is free of sexual harassment.

The First Nation shall make every reasonable effort to ensure that no employee is subjected to sexual harassment.

The First Nation shall take such disciplinary measures as the First Nation deems appropriate, and in accordance with this Policy, against any person under the First Nations’ direction who subjects any employee to sexual harassment.

Complaints of sexual harassment may be brought to the attention of the First Nation in accordance with the provisions of this Discrimination and Harassment Policy.

The identity of the complainant will be kept confidential in accordance with section 7.1 of this Discrimination and Harassment Policy.

## **7 Complaint Procedures and Guidelines**

Harassment and discrimination are considered very serious matters by the First Nation, and employees who commit such infractions shall be subject to disciplinary action. As well, any managers who knowingly permit harassing or discriminatory behaviour to continue once they have become aware of it shall be subject to disciplinary action.

Employees must have reasonable grounds before making a complaint about alleged discrimination or harassment. Otherwise they may cause severe and possibly irreparable damage in the workplace. The First Nation considers that employees who bring forward fabricated or false complaints of harassment or discrimination have engaged in serious misconduct.

### **7.1 Confidentiality**

All managers, employees and other persons who are aware of a harassment complaint, or involved in its resolution, must recognize the seriousness of the situation and respect the sensitivity and confidentiality that must be accorded to the matter. They must refrain from discussing the complaint amongst themselves or with anyone who does not have a formal 'need to know' in accordance with this Discrimination and Harassment Policy. Every effort must be made to preserve the dignity and self respect of the parties to the complaint. All information and documentation concerning a complaint shall therefore be kept and transmitted as confidential and protected material. Those who do not fully respect such confidentiality may be subject to discipline.

The First Nation and its employees shall not disclose the name of a complainant, the alleged perpetrator (the “respondent”) or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or necessary for implementing disciplinary measures in relation to the complaint or as required by law.

### **7.2 Informal Complaint Process**

The informal complaint process is intended to provide a mechanism through which an employee is able to discuss a claim of harassment or discrimination in an open, honest and non threatening manner with the person who is offending him/her. The goal is that through early mediation both parties will understand the point of view of the other, and that the behaviour causing the problem will

stop. This approach provides an opportunity for the problem to be eliminated in a timely and safe manner.

An employee who feels that he or she has been subjected to harassment or discrimination may immediately make his or her disapproval clearly known to the individual(s) concerned and ask that the behaviour stop. The employee should make notes of both the incident and the discussion. These notes should be specific, and include the dates, times, locations and the names of any other people or witnesses involved.

However, an employee who feels that he or she has been subjected to harassment or discrimination may go straight to the Human Resources Manager with the complaint if he or she is unable or unwilling to approach the individual(s) concerned directly.

Should the Human Resources Manager be the complainant or the alleged perpetrator the complaint shall be forwarded to the Chief and Council who shall designate a person to fulfill those responsibilities of the Human Resources Manager described throughout this Policy.

### **7.3 Informal Mediation/Resolution**

Depending on the severity of the allegation and subject to the agreement of the parties involved, when a complaint is received by the Human Resources Manager an attempt will be made to resolve the matter informally, prior to beginning a formal investigation. Such resolution would require the agreement of the complainant and the respondent. The Human Resources Manager shall contact the parties and interview them separately concerning the reported incident(s) of harassment.

If the Band Manger then determines that the issue can be resolved informally at the complaint stage, an attempt will be made to reconcile the parties through mediation. The Human Resources Manager may act as the mediator or may

request the Chief and Council to appoint a mediator. When early mediation resolves the complaint, the basis for the final confidential report shall be limited to a description of the agreement between the parties.

Should the complainant decide not to proceed with the matter, his/her wishes shall be respected. However, if the situation which caused the complaint is considered serious, action may be taken to address the situation, in a confidential manner.

#### **7.4 Formal Complaint Process**

When the complainant wishes, he/she should forward the complaint in writing to the Human Resources Manager.

When the Human Resources Manager receives a verbal or written complaint the Human Resources Manager shall review the complaint and will meet with the complainant to establish and confirm all of the basic facts.

Where appropriate, the respondent and the complainant will be notified in writing, as soon as possible, that the complaint has been received. This notice shall include a statement of the nature of the complaint and the assertions made the names of any witnesses, and any relevant documents. It shall also include a statement of the steps that the Human Resources Manager will follow to have the complaint mediated and/or investigated, and the proposed time frames. The complainant and the respondent will also be advised of their right to be accompanied by a person of their choice during any interviews related to the complaint.

At the same time, the Chief and Council will be made aware of the complaint and a proposed action plan for its resolution. If necessary, Chief and Council will take immediate action and advise the Human Resources Manager to separate the complainant and the respondent. Such action may include the identification of alternate work for one of the employees; consideration of

telework for one or both of the employees; consideration of an application for leave for one or both of the employees; or in urgent cases discipline, including termination of employment.

### **7.5 Formal Investigation**

In those cases where a formal investigation is required the Chief and Council shall appoint an investigator of their own choice. That person may or may not be a member of the First Nation. The investigation shall proceed in accordance with terms of reference established by the Chief and Council. Individuals providing information to the investigator will be asked to read and sign a statement prepared by the investigator and based on the interview. The individuals who provide information during the investigation will be advised that the information they provide will form part of a confidential report, a copy of which will be provided to the complainant, the respondent, the Human Resources Manager and the Chief and Council.

### **7.6 Report**

Upon completion of the formal investigation, the written confidential report shall be provided to the Human Resources Manager. That report shall include all relevant factual information, signed testimony of the parties, and appropriate analysis of the information.

Upon receipt of the investigator's report, the Human Resources Manager shall:

1. Contact both the complainant and the person against whom the complaint was made and:
  - a. provide each of them with a copy of the investigation report, and
  - b. give them an opportunity to respond to the statements in the report and provide any additional information relevant to the complaint;

2. Consider any changes that either party believes are necessary, after verifying them with the investigator;
3. Bring the report to the attention of the Chief and Council, provide them with a copy, and provide written advice concerning any corrective action considered appropriate.

### **7.7 Follow up on Complaints**

The Chief and Council are responsible for ensuring that corrective action is taken when warranted. Such action may include discipline in cases when:

1. A complaint has been upheld; or
2. An employee has unreasonably pursued a claim that is unfounded and determined to have been frivolous and/or vexatious.

Once a complaint has been investigated, whether informally or formally, the Human Resources Manager shall monitor the situation closely to ensure that all parties to the complaint make the transition back to their assigned work as smoothly and as quickly as possible. When warranted, that may include the acquisition of professional counseling to assist all parties to deal with the outcome of the process. The Human Resources Manager shall also monitor their work environment closely to ensure that there is no potential for repeating the unwelcome behavior.

## **7.8 Other Redress Mechanisms**

Employees are encouraged to use the First Nation's process to resolve discrimination and harassment complaints, including complaints of sexual harassment. However, an employee who prefers may refer the complaint to the Canadian Human Rights Commission. Procedures for redressing complaints to that Commission are set out in the Canadian Human Rights Act, PART III, Discriminatory Practices and General Provisions. For the purposes of the Canadian Human Rights Act the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

Any complainant who wishes to acquire the services of a lawyer is responsible for all expenses related to that decision. Respondents and other employees who are involved in the complaint shall also be personally responsible for their own lawyer's costs should they wish to retain one.