

PRIVATE and CONFIDENTIAL

REVIEW REPORT

GOVERNMENT OF NEWFOUNDLAND  
AND LABRADOR

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## **1. Executive Summary**

**Our Mandate:** Rubin Thomlinson LLP was asked to conduct a comprehensive review of the Government of Newfoundland and Labrador’s Harassment and Discrimination-Free Workplace Policy (the “Policy”), including the mechanisms that support it, such as complaint and investigation procedures, communications and messaging to employees, employees’ role in maintaining a harassment and discrimination-free and respectful workplace, training to support the policy and program, as well as any information, technology or operational changes that might be needed. In addition, we were asked to review the Respectful Workplace Program (the “Program”), and its role in supporting employees, managers and departments in addressing a range of workplace conflicts through processes that support and foster informal conflict resolution alternatives including conflict coaching, stress management, mediation, facilitations and workplace interventions. We were asked to provide specific recommendations aimed at improving the efficiency of the policy and program delivery.

**Execution of the Mandate:** As part of the review process, Rubin Thomlinson LLP considered: the Policy, Program and related documents; comparable policies and programs used in other jurisdictions; interviews with Government employees at all levels and with varied experiences relating to the Policy and the Program; written submissions from employees; our experience and expertise as it relates to understanding and responding to harassment and discrimination; and legal requirements relating to addressing harassment and discrimination in the workplace.

**Analysis of Policy and Program Documents:** In our review of the documents relating to the Policy and the Program, we identified gaps in a number of areas that had the potential to limit the clarity and effectiveness of the Policy and Program for individuals seeking to engage services under the Policy and Program, as well as for individuals tasked with delivering those services. Specifically, we believed there to be several areas for improvement, including: ownership of the Policy and its processes; timelines under the Policy; simplification of processes under the Policy; clarity of

resolution options for employees; process documentation; consistency of investigation processes; training requirements; and the relationship between the Policy and the Program.

**Analysis of Information from Interviews:** In speaking to employees who shared their subjective, personal experiences of having utilized processes under the Policy, we heard anecdotal but often consistent accounts of uncertainty about how to raise concerns under the Policy, skepticism about the effectiveness of processes under the Policy, a lack of follow-up after making a complaint under the Policy, and excessively long timelines for processes to be concluded. Employees tasked with delivering services under the Policy spoke of inconsistencies in the manner in which services were delivered and a lack of clear direction in how they were meant to conduct certain processes, such as harassment investigations. While employees spoke positively about their experiences accessing services under the Program, some Human Resources employees raised concerns about information being shared with Respectful Workplace Coordinators that was not conveyed to the employer to allow it to respond.

**Overview of Recommendations:** We believe that the Policy and the Program, as they exist now, contain positive elements. That said, we believe that there are areas for improvement. As a first step, we recommend the creation of a managerial position tasked specifically with oversight of the Policy. Additional recommendations contained in our report seek to improve the experience for employees seeking to utilize the Policy by requiring timelines for completion, simplified processes, improved documentation, and a more formalized and consistent response to requests for investigations of complaints. We further recommend that the relationship between the Policy and the Program be clarified for employees, and that there be a requirement of disclosure to the employer by Respectful Workplace Coordinators of information that suggests the potential for psychological harm to employees resulting from behaviour covered by the Policy. We further recommend that training relating to the Policy and the Program be expanded in scope and made mandatory for both employees and managers. Lastly, we note that any changes to

the Policy and the Program will be meaningful only if there is accountability for Managers and Human Resources employees tasked with implementing those changes. As such, we have made recommendations designed to increase the accountability of these individuals.

## **Recommendations**

Recommendation #1: Create a Harassment and Discrimination-Free Workplace Manager Position

Recommendation #2: Add Timelines to the Policy

Recommendation #3: Streamline the Process for Making Complaints and Authorizing Investigations Under the Policy

Recommendation #4: Provide Additional Information about the Resolution Options

Recommendation #5: Develop an Investigation Procedures Manual

Recommendation #6: Improve Documentation of Actions Under the Policy and the Program

Recommendation #7: Conduct Formal Investigations of Harassment Complaints

Recommendation #8: Provide Additional Information and Clarification Relating to Specific Concepts Within the Policy

Recommendation #9: Clarify the Relationship between the Policy and the Program

Recommendation #10: Recognize a Limited Duty to Report Harassment for Respectful Workplace Coordinators

Recommendation #11: Update the Publicly Available Information Relating to the Respectful Workplace Program

Recommendation #12: Add Bystander Intervention and Investigation-Related Content to Training Materials

Recommendation #13: Make Training Mandatory for all Employees

Recommendation #14: Make Conflict Resolution Training Mandatory for all Managers

Recommendation #15: Increase Accountability at All Levels for Upholding the Policy

## **2. Glossary of Terms**

Human Resource Secretariat (“HRS”) - The Human Resource Secretariat (HRS) provides leadership and support in the development and management of human resource policies, programs and services that support the overall effectiveness of government. The HRS has the responsibility for administration and oversight of the Harassment and Discrimination- Free Workplace Policy.

Public Service Commission (“PSC”) - The Public Service Commission establishes and enforces policy for protection of merit in recruitment and promotion and provides other services to departments, agencies and individuals including Employee Assistance and Respectful Workplace Programs.

Rubin Thomlinson LLP (“RT”) - The law firm retained to conduct a comprehensive review and provide best practices recommendations for the Government of Newfoundland and Labrador’s Harassment and Discrimination-Free Workplace Policy and Respectful Workplace Program and attendant training materials.

Harassment and Discrimination Free Workplace Policy (“Policy”) – The Policy supports a respectful workplace that recognizes and welcomes differences, promotes diversity, encourages communication and employee engagement, offers feedback and recognition, supports collaboration, and team work, and provides a safe and healthy workplace for all.

Guide for Managers and Employees (“Guide”) – The Guide is the companion booklet to the Harassment and Discrimination Free Workplace Policy which provides assistance to managers and employees to prevent and resolve harassment and discrimination in their workplaces.

Respectful Workplace Program (“Program”) – The Program provides individuals, work teams and Departments with healthy options to address the issue of workplace conflict.

### **3. Background to the Review**

On March 30, 2015, Premier Paul Davis announced that the Government of Newfoundland and Labrador (the “Government”) intended to hire an external consultant to conduct an independent review of the government’s policies. At the time, he stated in a press release:

“Harassment in the workplace cannot be tolerated. As an employer, the Provincial Government strives to create a work environment for its employees where they feel safe and free from harassment. Through the Human Resource Secretariat and the Public Service Commission, there are policies and learning resources to support our employees through education and training related to harassment and discrimination. We recognize that it is critical and necessary to ensure our policies are up-to-date and relevant for our public service employees. That’s why we will be engaging an external consultant to review the current policies related to respectful workplace and harassment.”

A Request For Proposals (“RFP”) was issued by the Government on April 21, 2015, stating:

The Government of Newfoundland and Labrador is seeking proposals for the provision of professional consulting services in the area of Harassment and Discrimination-Free Workplace Policy and Respectful Workplace Programming. The employer is committed to fostering a respectful workplace through the prevention and prompt resolution of harassment and discrimination. The employer will provide a forum for resolving harassment and discrimination early and make available a means through which employees can seek resolution options to address harassing and/or discriminatory behavior.

Proposals are sought for professional consulting services to review the Government of Newfoundland and Labrador’s harassment and respectful workplace policies and programs to advise on whether they are appropriate and reflective of best practices in:

1. proactive measures and actions to reduce and prevent workplace conflict and harassment and build respectful work environments; and
2. reactive supports and resources to respond to identified concerns regarding harassment and workplace conflict.

The scope of work outlined in the RFP as follows:

This project requires a comprehensive review of the current Harassment and Discrimination-Free Workplace Policy as noted above including the mechanisms that support them, such as the processes and procedures to submit complaints and conduct investigations, communications and messaging to all employees about the policy and program, employees' role in maintaining a harassment and discrimination-free and respectful workplace, training to support the policy and program, as well as any information, technology or operational changes that might be needed and the Respectful Workplace Program's role in supporting employees, managers and departments in addressing a range of workplace conflicts through processes that support and foster informal conflict resolution alternatives including conflict coaching, stress management, mediation, facilitations and workplace interventions. The proposal should include specific recommendations aimed at improving the efficiency of the policy and program delivery.

The consultant shall:

- a) Conduct a comprehensive review of the Harassment and Discrimination-Free Workplace Policy and the Respectful Workplace Program;
- b) Conduct interviews and/or meetings with HRS and PSC members of the Executive and Senior Management group and other stakeholders as required;
- c) Identify any gaps and/or overlaps in the policy and program and make recommendations for implementation across Government departments;
- d) Make specific recommendations in consideration of best practices;
- e) In consideration of best practices, make recommendations on the program including how it can be organized, administered, delivered throughout the province, including strategies for overcoming geographic challenges;
- f) Recommend methods and approaches for continuous quality improvement and evaluation, including monitoring standards to

ensure investigators are properly trained and updated on best-practice methodologies and investigations are conducted within defined standards; and

- g) Examine existing communications and training strategies and recommend a best practices model for internal communication and delivery of training to support the policy and the program.

The schedule of events outlined in the RFP stated:

Request for Proposal, Issue Date	May 1, 2015
Deadline for Questions	May 15, 2015
Proposals Submission Deadline	June 1, 2015
Project Award	June 15, 2015
Project Start	June 29, 2015
Draft Report and Overview of Findings	August 1, 2015
Feedback on Draft	August 21, 2015
Project End	September 30, 2015

RT was advised that we had been selected to complete the review on July 24, 2015 and received the proposed agreement on July 30, 2015. The agreement contained a new start date of August 10, 2015 and the original completion date of September 30, 2015. Following a series of communications between Rubin Thomlinson and the Government, the agreement was executed on August 25, 2015 and work on the review commenced the following day, with a completion date set at October 30, 2015.

The scope of work in the executed agreement mirrored the scope of work in the RFP, excerpted above. For the ease of the reader, we have chosen to present the steps of the review process, the summary of information received and the rationales for our recommendations, in a format that reflects this scope of work.

#### **4. Comprehensive review of the Policy and Program**

Key documents reviewed as part of the review process include:

a) Policy-related documents

- Newfoundland and Labrador Harassment and Discrimination-Free Workplace Policy
- Guide to Harassment and Discrimination-Free Workplace Policy
- Harassment and Discrimination: A Manager's Role PowerPoint
- Harassment and Discrimination: A Manager's Role Lesson Plan
- Harassment and Discrimination: A Manager's Role How Serious Is It?
- Harassment and Discrimination: A Manager's Role Case Studies
- Maintaining a Harassment and Discrimination-Free Workplace e-Learning module
- E-Learning quiz
- Sample Correspondence Requesting and Authorizing an Investigation
- Draft Procedure Manual
- Performance Management Program Framework and Guidelines
- Workplace Investigation Specialist Position Description
- Community Of Practice Agenda

b) Program-related documents

- Newfoundland and Labrador Respectful Workplace Program
- RWP Brochure
- Conflict Poster "Not seeing eye to eye"
- Umbrella Poster "Feeling uncertain"
- RWP Frontline Information Session (1/2 day) September 30 and October 15, 2015
- Conflict Resolution for Managers (full day) January 22 and February 12, 2015
- Conflict Resolution for Managers (full day) March 5 and April 9, 2015
- Conflict Resolution for Managers (full day) May 21, 2015
- Conflict Resolution for Managers (full day) June 9, 2015
- Conflict Resolution for Managers (full day) September 16 and October 8, 2015
- RWP Frontline Information Session (1/2 day) February 10, 2015
- RWP Frontline Information Session (1/2 day) March 12, 2015
- RWP Frontline Information Session (1/2 day) June 1, 2015
- Call for Interest HVGB Conflict Resolution for Managers (full day) Request to determine interest in hosting a program
- HVGB Conflict Resolution for Managers (full day) June 17, 2015
- RWP Final Paper September 2015
- Conflict Resolution Skills Presentation February 2015

- RWP Frontline Facilitators Guide February 2015
- RWP Procedures Manual 2009
- Findings Report Respectful Workplace Project September 2002
- RWP Package for new clients
- RWP PSC website final
- Respectful Workplace Committee Terms of Reference

c) Other documents

- Nova Scotia Respectful Workplace Policy
- Government of Prince Edward Island Policy for the Prevention and Resolution of Harassment in the Workplace
- BC Discrimination and Harassment in the Workplace Policy
- Government of Alberta Maintaining a Harassment Free Workplace Policy
- Government of Ontario Workplace Discrimination and Harassment Prevention Policy
- Office of the Citizen's Representative Investigation Report
- NAPE Collective Agreement

**5. Interviews with HRS and PSC members of the Executive and Senior Management group and other stakeholders as required**

RT proposed that in addition to interviewing members of the Executive and Senior Management group, we also conduct interviews with a cross section of HRS and PSC employees responsible for the administration and delivery of all aspects of the procedures related to the Policy and Program. We felt it important to hear how individuals tasked with delivering the services felt about the materials, tools and resources that were available to them, as well as how they utilized the tools and resources. RT provided the Government with specific employee groups with whom we wished to speak – for example, harassment investigators, trainers and union leaders. The Government provided RT with a list of members of the Executive and Senior Management group, as well as a list of employees in the various roles requested by RT, and we selected the names of those individuals with whom we wished to speak. Throughout the review process, RT communicated with a contact person at the Government identified within the agreement. Our contact assisted RT with the scheduling of one-on-one interviews and focus groups with these

individuals. These interviews were conducted in-person by Mr. Boyd between October 13 and October 16, 2015 in St. John's. A few interviews were conducted by telephone, where the individual was unable to travel to St. John's or where the interview needed to be rescheduled for the week of October 19 -23 or October 26 – 29, 2015.

RT further proposed that we conduct interviews with employees who had engaged with the Policy and/or the Program. The purpose of this was to allow employees to share their personal experiences, positive or negative, of engaging the Policy and/or utilizing any of the related services, such as training, conflict resolution, or investigations. We also wanted to allow any employees not brought into the process based on their roles to come forward and participate should they wish to do so. To that end, an email account was created at RT to allow employees to send us confidential emails relating to their personal experiences with the Policy and/or the Program. The email sent to all Government employees from the Executive Council on September 16, 2015 stated:

**Consultant Seeks Input on Harassment and Discrimination-Free Workplace Policy and the Respectful Workplace Program**

The Provincial Government strives to create a work environment for its employees where they feel safe and free from harassment. To ensure our policies are up to date and relevant, the Government of Newfoundland and Labrador has engaged Cory Boyd, LL.B. and Kenda Murphy, LL.B. of RT to complete a comprehensive review of the Harassment and Discrimination-Free Workplace Policy and the Respectful Workplace Program. Both individuals are employment lawyers with extensive experience in conducting workplace reviews and assessments as well as harassment and other workplace investigations.

As part of the review process, all government employees are invited to provide any relevant comments directly to RT at [NLReview@RubinThomlinson.com](mailto:NLReview@RubinThomlinson.com). The information provided by employees will be used to assist them in preparing a report that includes recommendations relating to the Harassment and Discrimination-Free Workplace Policy and the Respectful Workplace Program, including how they can best be organized, administered, and delivered throughout government offices.

Your participation in this process is voluntary. Your comments will be kept secure and strictly confidential at all times. You will never be identified to anyone – including co-workers, supervisors, senior managers and executives – or in any discussions or documents that result from this process. If you choose to identify yourself to RT, they may reach out to you directly with additional questions or to arrange an in-person interview. If you would prefer to not be contacted, please state that in your response.

Employees are strongly encouraged to make thoughtful and candid comments to the email address above by September 30, 2015. If you have any questions about this survey, please feel free to contact the consultants directly: Cory Boyd, (416) 847-1814 or [CBoyd@rubinthomlinson.com](mailto:CBoyd@rubinthomlinson.com) and Kenda Murphy at (416) 847-1814 or [KMurphy@rubinthomlinson.com](mailto:KMurphy@rubinthomlinson.com).

General observations including personal experiences with the process, procedures and policy are welcome. Employees might also wish to consider some or all of the following questions:

- Is there anything you would change about the policy in general or processes and procedures currently in place to submit complaints and conduct investigations?
- Do you feel that communications related to the policy and program is appropriate and timely?
- What do you see as your role in maintaining a harassment and discrimination-free and respectful workplace? What should be the role of management within the organization?
- Have you ever received any training related to the Harassment and Discrimination-Free Workplace Policy and/or the Respectful Workplace Program? If yes, please provide any comments you may have on the effectiveness of that training. Do you think that training is necessary in your workplace?
- Do you have any comments regarding the technology used to capture information?
- Do you think operational changes are needed to ensure the effectiveness of the Policy and Program?
- Based on your experience, do you think the Harassment and Discrimination-Free Workplace Policy and/or the Respectful Workplace Program is effective in resolving workplace conflict?

Ultimately, we received 50 email submissions to the NLReview address that were reviewed and considered as part of this process. These included two submissions from former Government employees. Upon receipt of these two submissions, and without identifying the identities of the individuals, we advised our contact that we

wished to reach out to, and include, these individuals in the review process, to which she advised us that the Government agreed.

As part of the review process, interviews were conducted with 52 individuals in total, including eight individuals who reached out to us directly through the NLReview email address or our individual work email addresses, and 44 who were selected for participation based on their role.

During all interviews with employees, we reiterated our mandate and the purpose of the interview. We advised interviewees both verbally and in writing that the process was confidential, and explained that the confidentiality was subject to any legal obligation to share information. Individuals who submitted information using the NLReview email address and who were contacted for an interview were specifically advised that our mandate did not include investigating or otherwise following up on their individual complaints.

In summarizing the information obtained below, and in preparing and presenting our recommendations and their respective rationales, we have relied on our review of the Policy, Program and related documents; our review of comparable policies and programs used in other jurisdictions; the accounts provided by employees in writing or through interviews; the interviews with members of the Executive and Senior Management group; the interviews with employees tasked with administering the Policy and Program; our own experiences and expertise as it relates to understanding and responding to harassment and discrimination; and legal requirements relating to addressing harassment and discrimination in the workplace. Having considered these various sources, we have presented the information below in a manner that synthesizes and summarizes their perspectives on the mandate that we were given by the Government related to this review process.

## **6. Review of the Harassment and Discrimination-Free Workplace Policy, Respectful Workplace Program and Training Materials**

### a) Harassment and Discrimination-Free Workplace Policy

In reviewing the Policy and discussing it with employees at all levels within the Government, we identified seven primary areas for improvement:

#### i) Ownership

#### **Information Gathered**

The Policy does not identify a specific individual or office that is tasked with oversight of the administration of the Policy, instead noting that it is broadly the responsibility of the Human Resource Secretariat. The oversight and monitoring of all harassment and discrimination complaints falls to the Designated Human Resources Managers, while other Human Resources employees and managers in the field are tasked with meeting with employees to assist them in identifying their concerns and providing them with information about their options under the Policy. During interviews, we were advised that the oversight over formal investigations into complaints under the Policy largely falls to the Assistant Deputy Minister (“ADM”) of Labour Relations, Classification, Organization and Management. In all instances, the individuals noted above were taking on these responsibilities in addition to a broad range of other duties.

We were further advised during interviews that there had been a temporary Investigator position in the Collective Bargaining Division in 2011. The primary role of this position was to coordinate the investigation of harassment complaints. We were told that an individual was in that role for a short time before retiring in 2012 and was not replaced. His duties were added to the portfolio of the ADM, Labour Relations, Classification, Organization and Management. We were also provided a draft Position Description for a Workplace Investigation Specialist position, dated September 1, 2011, which proposed the position be tasked with the direction,

oversight and coordination of harassment complaints. It was noted to us by the ADM that because there was a limited number of formal investigations being conducted under the Policy, there may not be enough work to sustain such a role on a full-time basis. However, a similar-type role could take on broader responsibilities of administering the Policy in order to justify its creation.

While training under the Policy has occurred since its creation, we note that individuals who were placed on the roster to conduct workplace investigations following the revision of the Policy in 2011 have all received harassment investigation training from a specific external provider. However, many of those individuals took this training as far back as 2011. We were advised that only 16 harassment investigations have been completed since the Policy was revised in 2011 with another 6 ongoing. With over 20 individuals on the roster, the frequency with which investigators get to exercise their skills is quite rare: some individuals on the roster reported not having done a single investigation. We believe that updated training, special skills workshops and Community of Practice meetings to discuss investigations from a variety of perspectives – the latter of which commenced under the direction of the Centre for Learning and Development (“CLD”) in October 2015 - can assist in keeping investigators skills up-to-date, and could be best achieved through a centralized coordination of investigator training that could fall within the duties of a new position.

### **Recommendation #1**

Based on the need for centralized oversight of various services provided under the Policy, a managerial position should be created and housed within the Human Resource Secretariat. While we decline to make a recommendation on the classification of such a position, it should be a sufficiently senior position to reflect the seriousness of its duties and the authority that it would be delegated under the Policy. The position should be dedicated to the performance of an array of duties related to the administration of the Policy, including receiving and reviewing complaints, identifying whether allegations are within scope of the Policy, assigning and monitoring investigations, providing expert advice to Human Resources and

managers relating to the Policy, monitoring training completion, identifying additional training opportunities, assisting in the facilitation of Harassment Investigators Community of Practice meetings, documenting actions taken in response to complaints, and preparing statistics and reports relating to the Policy.

**Recommendation Summary:**

Create a Harassment and Discrimination-Free Workplace Manager Position

ii) Timelines

**Information Gathered**

There is a lack of timelines within the Policy, both for employees to raise their concerns and for the Government to respond. In the absence of timelines and the expectations that they set, we think that delays can occur more frequently. In the submissions from, and interviews with, employees, we consistently heard about how long processes under the Policy could take. Many complained of waiting to hear from management or Human Resources about any action being taken in response to their complaints. Some harassment investigators acknowledged that investigations were “side of desk” work, and did not always take priority; others said that for them it was a priority but acknowledged that they had other work to complete at the same time that they were expected to be conducting investigations. It was even suggested that harassment investigations can lose priority because other work that needed to be completed had timelines for completion. Several individuals tasked with conducting formal harassment investigations confirmed that they could often take between 6 and 18 months to complete. In the vast majority of cases, this is simply too long, especially in instances where employees could still be having interactions in the workplace, or where one might be sent home with pay pending the outcome of the investigation. Such delays are a disservice to employees who bring complaints under the Policy, and a disincentive to others who are considering whether or not to do so.

It was suggested by some individuals to whom we spoke that given the unpredictable nature of harassment investigations, it would be unreasonable to impose timelines within the Policy. We disagree. Timelines can be provided while still acknowledging that there may be occasions where there are extenuating circumstances that require extensions of those timelines. This will create expectations for employees who bring a complaint and accountability for those who respond to complaints. We note that other provinces, including Prince Edward Island, Alberta, British Columbia and Ontario, have timelines with their policies.

We note that in speaking to investigators in particular, there were several process steps currently being used that were causing investigations to take longer. For example, all complaints were co-investigated, requiring the coordination of two investigators' schedules. Written statements were also prepared and sent to the parties for their review and signature; we were told anecdotally that it could sometimes take weeks to get the statements back. Similarly, as will be discussed further below, the process by which a complaint travels from the employee to the investigator was cumbersome and involved multiple steps. While we recognize that these process steps are intended to ensure fairness within the process, and that fairness is legally required, we believe that there are alternatives that address fairness but also allow for a more streamlined process. Therefore, we believe that in some instances consideration could be given to whether process steps could be modified in the interest of expediency without sacrificing fairness to the parties. In cases that are investigated outside of St. John's requiring travel that can be time consuming to schedule, consideration could also be given to the use of video conferencing to assist investigators in meeting timelines.

### **Recommendation #2**

A requirement should be added to the Policy requiring employees to raise their concerns within a specified period of time following the last incident. Based on a review of timelines used in other provinces, as well as in the Newfoundland and Labrador *Human Rights Act*, twelve months would seem a reasonable period of time to allow. The Policy should explicitly note that the timeline for submission of a

complaint may be extended where there are extenuating circumstances that would justify so doing.

Additionally, timelines should be added to the Policy relating to the speed by which the organization will respond to concerns. Complaints should be acknowledged in writing within 5 days. Informal resolution options, where appropriate, should be initiated within 15 days. Investigations should commence within 5 days of receipt of the complaint by the investigator and should be completed within 90 days, subject to certain exceptions that could be articulated within the Policy. The findings of the investigation should be communicated to the parties within 15 days of the receipt of the report by the Deputy Minister of the respondent's Department. These timelines could be monitored by the Harassment and Discrimination-Free Workplace Manager. As noted above, we recognize that there may be occasions when extenuating circumstances outside the control of the investigator might prevent them from meeting these timelines, such as a complaint/respondent being on leave. In these cases, the circumstances should be reported to the Harassment and Discrimination-Free Workplace Manager and communication should be made to the complainant and/or respondent about the delay and the impact on the timelines.

### **Recommendation Summary:**

Add Timelines to the Policy

iii) Simplification of Processes

### **Information Gathered**

Despite an extensive listing of responsibilities within the Policy, it is not always clear to the reader of the Policy to whom an employee should go when they have a complaint, nor is it clear who will ultimately be responsible for ensuring that the Government adequately responds to the complaint. This was echoed in submissions that we received from employees. When the Policy is reviewed in conjunction with the Guide, it can become more confusing as it would appear that the employee's

direct supervisor, manager, Designated Human Resource Manager (who can be the Director of Strategic Human Resource Management or a Human Resource Manager) and the EA/RWP Program are all avenues to raise concerns. While all these individuals, save the EA/RWP Program (as discussed below), would certainly have an obligation to act if they were made aware of an issue related to the Policy, a simplification of the reporting process could make the Policy more accessible to employees.

On this point, we further note that there is a great deal of information in the Guide that appears better suited to being first found in the Policy with, perhaps, further explanation in the Guide. It is often cumbersome to work between the Policy and the Guide to accumulate pieces of information that together form the sum. For example, the Policy contains little information about formal investigations while the Guide provides more details.

Additionally, where an individual files a complaint under the Policy that requires an investigation, the current practice is that the manager or Human Resources employee elevates the complaint to the Deputy Minister of the Department, who requests a formal investigation be authorized by the Deputy Minister of the Human Resource Secretariat, who, should he authorize the investigation, then requests that the Assistant Deputy Minister of Labour Relations, Classification, Organization and Management assign investigators to the investigation, whose names are then sent to the Deputy Minister of the Department, who forwards the complaint to the investigator. We were advised anecdotally by one investigator that she had seen this process alone take 3 months. One sample that we were provided showed the authorization and assignment of investigators alone took five weeks. We were also provided a report of the Office of the Citizen's Representative that detailed a situation in which it took just shy of two months from the date of the formal complaint to the assignment of investigators. A simplification of the process could help reduce these timelines.

We asked about the rationale for the process for initiating a formal investigation, outlined above, and were told that it was to ensure that the Deputy Minister was aware of, and had accountability for, issues within his or her Department. We agree that this is important, but believe it could be achieved in a more simplified manner. We were also told that involving the Deputy Minister gave the investigators authority when they entered a work area to conduct their investigation. We further agree that this is important but believe it could be achieved by delegating authority to the Harassment and Discrimination-Free Workplace Manager.

### **Recommendation #3**

Revise the Policy to make clear to employees that should they have a complaint under the Policy, they should report it to their direct supervisor or the Harassment and Discrimination-Free Workplace Manager. It would then be the responsibility of the individual receiving the complaint to bring in the appropriate individuals, such as Human Resources or the EA/RWP Program. The Policy should continue to note those individuals who have a duty to intervene should they be informed of a situation of alleged harassment or discrimination.

Where a formal investigation is requested by the employee or deemed necessary by Human Resources or management, that request should be communicated directly to the Harassment and Discrimination-Free Workplace Manager who would be tasked with reviewing the complaint to ensure it is within the scope of the Policy and, if so, assigning investigators. The Harassment and Discrimination-Free Workplace Manager should communicate the fact of the investigation to both the Deputy Minister of the Department and the Deputy Minister of the Human Resource Secretariat. The Deputy Minister of the respondent's Department would still receive the report at the end of the process and be tasked with determining and implementing any outcomes.

### **Recommendation Summary:**

Streamline the Process for Making Complaints and Authorizing Investigations Under the Policy

#### iv) Resolution Options

##### **Information Gathered**

The Procedures and Resolutions Options section of the Policy currently contains four options with no delineation between informal and formal resolution options. It can appear to the reader that all of the subheadings indicate one process with several levels of intervention. This section should be broken down to clearly reflect the informal and formal options to resolving harassment and discrimination in the workplace that are available to employees. Additional information about the potential informal resolution options available to the employee may be helpful for those who may be unfamiliar with Alternate Dispute Resolution (“ADR”) and conflict resolution practices. While defined in the Definitions section of the Policy, more practical information about what ADR or Mediations look like could be helpful. Informal resolutions are often an effective manner of dealing with internal complaints, providing faster and less disruptive options for employees who may be wary of a formal investigation process. As such, they should be highlighted and better articulated for employees reviewing the Policy.

The Policy is the first place where employees should be able to see information respecting the investigation process and, at present, only the Guide contains information on investigations. Even some of the harassment investigators to whom we spoke seemed unfamiliar with the Guide and unsure where they could find a copy of it. As such, the actual investigation procedures including the complaint procedure, confidentiality, conducting and recording interviews, how findings are made, report writing, and investigation outcome communication ought to be contained in the Policy. Given the potential impact of requesting an investigation, employees must understand what steps are involved in an investigation, how the results of the investigation will be communicated to Management and the parties, and what types of outcomes can be expected.

We received a number of submissions that addressed employee concerns with the Policy and its operation. While there were statements respecting lack of knowledge

of and training in the Policy, the majority of concerns expressed spoke to the investigation process. Those concerns ranged from lack of understanding of how investigations were undertaken, the process of the investigation, the length of time involved in an investigation, the lack of communication throughout, and little or no outcome reporting to the complainant.

In speaking to the individuals tasked with conducting the investigations, it was apparent that although they all received training from the same organization on how to conduct investigations, there were inconsistencies between their approaches as well. These included differences relating to communicating with the parties, documenting interviews, and sharing investigation findings – all significant aspects of the process. One investigator suggested that if we were to review 10 harassment investigation reports we would see 10 different versions, with others noting that they relied on templates obtained from colleagues and were unsure whether these templates were consistent across departments.

We note that during interviews, we were advised of a draft Investigation Procedures Manual that had been prepared and circulated but which was ultimately not completed. Having reviewed the draft, it appeared to be incomplete but could serve as a starting point for a more comprehensive manual. Several investigators noted that they would find such a manual helpful.

#### **Recommendation #4**

Revise the Policy to provide additional detail about the various informal resolution options that are available to employees under the Policy, including more practical and step-by-step information about what those processes might look like for employees.

#### **Recommendation Summary:**

Provide Additional Information about the Resolution Options

### **Recommendation #5**

A detailed and comprehensive Investigation Procedures Manual should be prepared that articulates each step of the investigation process, and provides guidance on how each step is meant to be completed by the investigator. The manual should address overarching considerations, such as fairness and confidentiality. It should also provide specific guidance on all tasks within the process, including communication templates, documentation and note-taking, preparing for interviews, reviewing evidence, making determinations and preparing reports. It is important that the manual that is created reflects the training that investigators are provided and is utilized consistently and uniformly by investigators.

### **Recommendation Summary:**

Develop an Investigation Procedures Manual

v) Documentation

### **Information Gathered**

It is expected under the Policy that following the receipt of a complaint, either the manager or a Human Resources employee will meet or communicate with the complainant and review with them their options under the Policy. This is a good practice that can assist in the early resolution of complaints and ensure that employees are aware of their options. Complaints that are resolved through informal resolution processes tend to be resolved more quickly and with less disruption to the workplace. However, what we heard from some employees is that they were unaware of their options under the Policy or misunderstood what was going to happen after they shared their complaint with their manager and/or Human Resources. More pointedly, some employees said that when they met with their manager or Human Resources to discuss their concerns, options were not shared with them at all.

In speaking to Human Resources employees, we were told that a record was kept of meetings with employees to review their options under the Policy but nothing was formally communicated back to the employee.

### **Recommendation #6**

Where an employee has raised an issue that *may* fall within the scope of the Policy, a meeting should be held with the employee and their manager and/or Human Resources to review their options with them under the Policy, as is currently required under the Policy. Going forward, this meeting should be documented and a communication should be sent by email (or letter, where the employee lacks e-mail) to the employee reiterating to them what their options are under the Policy and confirming the option that they had selected.

### **Recommendation Summary:**

Improve Documentation of Actions Under the Policy and the Program

vi) Formal vs Informal Investigations

### **Information Gathered**

During interviews, we were advised by Human Resources employees that informal investigations were used to look into issues of inappropriate behaviour or misconduct, such as lateness or minor issues relating to performance or safety. We were advised that these processes resembled the formal investigation process in some ways, but did not involve formal authorization by the Deputy Minister, might not involve written statements, and did not always result in reports. It was suggested that such a process makes sense for minor issues, and we agree.

However, we were further advised by some Human Resources employees to whom we spoke that informal investigations were also being conducted, on occasion and only by some investigators, into issues of harassment under the Policy. Some harassment investigators indicated that they let employees choose between formal or

informal investigations into harassment, after they had described for employees the key differences between the processes such as Deputy Minister involvement and the length of time to complete the investigation. From the interviews with investigators, it was apparent that there were inconsistencies between how and when these informal investigations were being conducted. Record-keeping of these processes was occurring but appeared to be kept within the Department, rather than being kept and reviewed across all Departments. It was also noted by investigators that informal investigations were conducted by Human Resources employees who also provide other services to the Department, which we believe could create the appearance of bias.

While it was suggested by one Human Resources Director that informal investigations might be a form of Designated Human Resource Manager Intervention, as defined in the Policy, we do not agree. It does not appear to us that the use of informal investigations to address issues of harassment was intended by the Government or contemplated by the Policy. In speaking to senior leadership within the Government, a few were surprised to hear that such processes might be used to deal with issues of harassment.

In the email submissions that we received, we heard from some employees who expressed confusion about the investigation process being conducted into their complaints, stating that they expected a formal investigation but did not receive one. From their accounts, it appeared that informal investigations were conducted instead. One employee to whom we spoke said that she was dissuaded from requesting a formal investigation, following which an informal investigation was conducted after which she received no information about the investigation outcome. These personal accounts, while subjective and anecdotal, were largely consistent, and in some ways reflective of the informal investigation practices discussed above.

The use of informal investigation processes has the potential to limit transparency of decision-making and procedural fairness for the parties. Based on the information provided by Human Resources employees, harassment investigators, and in the

employee submissions, it appears that in the interest of expediency, issues of harassment and discrimination were, on occasion, investigated through a substandard process. If the goal is expediency, steps should be taken to complete formal investigations more quickly rather than using a process not explicitly contemplated by or defined within the Policy.

### **Recommendation #7**

We recognize that informal investigations may be entirely appropriate in some circumstances. We also note the value of resolving complaints in an expedient manner using informal processes. That said, when an employee raises a concern that may be covered by the Policy and an investigation is required, the presumption should be that the investigation conducted will be a formal investigation and will be conducted in accordance with the expectations of the Policy. Fairness, transparency, neutrality, and consistency should be hallmarks of the investigation approached used under the Policy. If an informal investigation is to be conducted into issues of harassment, it should be at the direction of the Harassment and Discrimination-Free Workplace Manager and “informal investigation” should be added to the resolutions section of the Policy and defined.

### **Recommendation Summary:**

Conduct Formal Investigations of Harassment Complaints

vii) Additional Gaps Within the Policy

### **Information Gathered**

In addition to the gaps outlined above that deal with broad sections or processes under the Policy, we identified additional gaps more specific in nature. For example, the definition section does not include a definition of reprisal or retaliation, nor does it include an explicit prohibition of reprisal. Although retaliation is referenced in the Manager Responsibilities section, a definition of reprisal or retaliation and a

prohibition against reprisal within the Policy Statement are necessary elements of an effective Harassment and Discrimination Policy.

The wording of the Confidentiality section is confusing. The section reads, in part, that “only those people involved in the process [w]ill have access to the information collected”. It is unclear to whom this section refers. Similarly, although the section references complainants, respondents and witnesses also having access, it does not clarify specifically what information these individuals will receive. Also, reference is made to certain instances which would require that information be released, such as “judicial or quasi-judicial proceedings”, which does not provide examples of such proceedings for employees who may be unfamiliar with these terms.

Lastly, while the Representation section ensures that the complainant and respondent are aware that they are entitled to have a support person with them when they are attending meetings respecting a complaint, the section lacks any formal mention of the role of the union and the operation of the collective agreement with respect to unionized employees who are involved in the complaint process.

### **Recommendation #8**

Revise the Policy to include a definition of and prohibition against reprisal. Clarify the expectations and limitations of confidentiality relating to processes under the Policy. Expressly state the right to union representation during processes under the Policy for complainants, respondents and witnesses, should that right be provided in collective agreements.

### **Recommendation Summary:**

Provide Additional Information and Clarification Relating to Specific Concepts Within the Policy

b) Respectful Workplace Program

i) Relationship Between the Policy and the Program

**Information Gathered**

While the Policy is housed within the HRS, the Program is housed within the PSC, which is, as noted above, an arms-length and independent body tasked with oversight of specific Government decisions. The Policy under the HRS and the Program within the PSC provide very different approaches to employees in relation to addressing harassment and resolving conflict in the workplace.

As noted above, the Policy identifies the EA/RWP as one place that employees can go should they be experiencing harassment or discrimination. Similarly, among the services that are offered under the Program is “Harassment-related services”. To the reader, it can be unclear if it is management within the Department that suggests that Program services be used or if the parties themselves get to make this decision. Additionally, it can be unclear whether these are alternatives to the interventions offered under the Policy or an example of them.

Through interviews with employees of the HRS and the PSC, including EAP and RWP Coordinators, we better understood the actual role of the Coordinators and the options within the Program that relate to the Policy. The Program offers a great variety of services to employees, including options that can assist in circumstances where harassment is occurring. Coordinators can be used to facilitate, or coordinate, ADR-type processes relating to a workplace conflict rooted in harassment should they be invited to do so by management within the Department. Coordinators may also work with employees experiencing harassment on a confidential basis to provide them with coaching or support to engage in the complaint processes under the Policy, formally or informally.

We heard consistently from employees and managers who utilized the services of the Program that they found them responsive and helpful. Even employees who made

submissions outlining their dissatisfaction with the complaint process under the Policy noted that they had positive experiences with the Coordinators in the Program. We do not believe that the availability of these services and the potential support that is available from the Program to address issues under the Policy is apparent from a review of the publicly available materials. Although the Policy and the Program represent different approaches to resolving conflict and are intended to provide different services to employees, the fact remains that for employees experiencing harassment there needs to be clarity about the options available to them and an ability to engage the services of both programs in a manner that is complementary.

**Recommendation #9**

The updated materials relating to the Program should clarify the nature of the relationship between the Policy and the Program and make clear what services are available to employees under each, and how those services work together to address harassment-related conflict in the workplace. In order to ensure that the information shared is consistent, we believe that there needs to be increased cooperation between the HRS and the PSC as relates to the Policy and the Program. Joint publications and training that is co-developed and delivered would assist employees in understanding the relationship between the two. Regularly scheduled meetings, involving senior managers and individuals administering the Policy and Program on the ground, could increase cooperation and ensure consistent messaging. One option could be to re-implement the Respectful Workplace Steering Committee, with representation on the Committee from outside of St. John's and an updated Terms of Reference that reflects the current Policy and Program, as well as the recommendations of this report.

**Recommendation Summary:**

Clarify the Relationship between the Policy and the Program

ii) Duty to Report for RWP Coordinators

**Information Gathered**

We were advised by PSC employees tasked with delivering the Program that the Program was initially created to provide a resolution alternative to more formalized investigative processes in dealing with employee complaints, but over time the program evolved to focus on prevention as well as restoration of workplace health. We were further advised that the Program is delivered within the psychological health and safety framework as set out by the Mental Health Commission's National Standards on Psychological Health and Safety in the Workplace. RWP Coordinators are trained health professionals and mediators and, as such, operate within overlapping Codes of Ethics that create confidentiality expectations of them.

We understand that should an employee come to a RWP Coordinator with concerns about harassment, they may be provided any or all of the following: referrals for counselling, referrals for coaching, and support intended to assist the employee to raise their concern either directly with the harasser or with their manager and/or Human Resources. Group interventions, mediations and other conflict resolution processes are also offered, but only at the invitation of the manager within whose department the conflict is said to be occurring. With group interventions, individual participation will always be voluntary.

We were provided a document entitled *Information for New Clients Accessing RWP Services* which, we understand, is provided to all employees who seek assistance under the Program. According to this document, employees are advised:

Confidentiality is a key principle of the Employee Assistance & Respectful Workplace Division. Confidentiality means that your EA/RWP Coordinator must keep all information that relates to your involvement in the program private. In accordance with the Personal Health Information Act (PHIA), we will not disclose information provided in the course of a counseling, consultation, coaching, mediation, or group intervention unless required to

do so by law. At the earliest possible opportunity, we will outline the confidential nature of the services provided and the limits of confidentiality.

Your Coordinator has an ethical and/or legal duty to release information when:

A behavior may cause harm to self or others person;

A child under the age of 16 years may be in need of protection from physical, sexual, emotional abuse, neglect, family violence and/or lack of supervision.

Subpoenaed by a court of law.

In the document titled “Respectful Workplace Program Support”, prepared by PSC staff, their confidentiality obligations were described as follows:

All private and personal information will remain confidential within the limits of the law unless client permission is given to share. This confidentiality guarantee is the cornerstone of the EA/RWP division. Clients coming to the EA/RWP division are assured of safe place to seek support through EAP and/or bring forward concerns, consider their options and plan to bring their concerns to management for redress through RWP.

Accordingly, it is the current position within the PSC that if an employee raises a concern of harassment or discrimination with a RWP Coordinator but does not consent to having that information shared with the Government, that wish is respected and the employer, either through management within the Department or through Human Resources, is not made aware of the alleged behaviour. Several senior managers within the HRS raised concerns about this practice, suggesting that it prevented the Government from meeting its obligations to its employees to provide them with a workplace free of harassment and discrimination. It was suggested by

some that RWP Coordinators should have a similar duty to report the allegations as exists for managers and others within the Government under the Policy.

During our interviews with employees and managers, some of whom were identified by the PSC while other self-selected to participate, we heard of positive experiences had while engaging the services of the Program. Anecdotal accounts suggest that employees who are reluctant to utilize the options under the Policy might be comfortable engaging the services of the Program. We expect that is due in part to the confidentiality that is offered to them. We were advised that the Program has approximately 200 new cases per year across the range of services that it provides, including coaching, mediation, facilitation, workplace intervention and consultation.

We believe that the Program has credibility with managers and employees and offers valuable services to them that can assist them in addressing workplace conflict resulting from harassment. That said, we believe that the Program's own model allows for disclosure to the employer of allegations of harassment and discrimination in very limited circumstances when those allegations are shared with a RWP Coordinator and the employee does not consent to those allegations being disclosed.

Currently, disclosure may occur where the alleged behaviour may cause "harm" to the individual or others. We asked PSC staff whether this included the possibility of psychological harm and were told either that such harm had not previously been considered under this requirement, or that it was interpreted as physical harm. However, given the Program's own mandate to ensure employee health and reduce psychosocial harms in the workplace, we believe a broader interpretation of this requirement should be considered. During interviews, we were advised anecdotally that there were rare occasions already where, when employees did not consent but there were accounts of harassment and other bad behaviour within a department, RWP Coordinators might ask their Director to follow-up with management in the Department in which the behaviour was taking place. We believe it appropriate to create a more formalized avenue to seek such redress.

### **Recommendation #10**

We recognize the value for employees in their having an arms-length body to which they can go to discuss concerns relating to the workplace and explore options to address those concerns in a confidential manner. We are cognizant of the potential impact of any recommendation that undermines that confidentiality, in that it could lead to fewer employees seeking assistance when they were having problems in the workplace. Nonetheless, we believe that by utilizing an “in-house” EAP and RWP provider, the role of the Coordinators is slightly blurred when compared to organizations where EA/RWP services are outsourced. Furthermore, we recognize that the protection of employees from harassment and discrimination in the workplace is of paramount importance to the Government, and any employer, and we believe it is a purpose that the PSC has a role in supporting.

Therefore, where RWP Coordinators are made aware of alleged behaviour that is said to be ongoing and that has the potential to create harm, psychological or otherwise, for the individual reporting the behaviour or others, the Coordinator should share this information with their Director who should advise the appropriate management within the Department of the alleged behaviour for the manager to address using the avenues available to them under the Policy. This limited exception could be noted to employees seeking services from the RWP Coordinators in the same manner that the current exceptions are noted. We note that this recommendation applies to RWP Coordinators, and not EAP Coordinators, both because of the scope of our mandate and because of the difference in their roles and the services that we understand them to be intended to provide.

### **Recommendation Summary:**

Recognize a Limited Duty to Report Harassment for Respectful Workplace Coordinators

### iii) Website Improvements

#### **Information Gathered**

A comprehensive read through the information available to employees on the website relating to the Respectful Workplace Program discloses a number of typographical errors and inconsistent spelling of words throughout paragraphs. While it was not our mandate to proofread these materials, it was our belief that the writing and presentation of the information on the website in its current form detracted from the substance of the information respecting the Program and the importance of the services that are offered in relation to the Program. In particular, we found that the section dealing with mediation included half sentences that purport to be sentences, confusing statements, and inconsistent use of terminology. We were advised during the interviews that the website was in the process of being revised as expeditiously as possible, and so we would simply note that greater attention needs to be paid to any reworking of sections to ensure that spelling and grammatical mistakes are caught before the final edit.

In addition to the errors in the documents provided to us relating to the Program's website content, there were also sections that were incomplete or not adequately explained to the reader. For example, the documentation provided contained a section titled "Program Guidelines" which disclosed no meaningful content and does not appear on the current website. Program Guidelines are a critical element to a government program such as this and would inform employees which department governs the program, how the Program functions, and the nature of its mandate. Additionally, the Respectful Workplace Program offers the opportunity to establish a Respectful Workplace Committee without articulating what that Committee can or will "do" in practical terms and offers services to employees without clearly establishing the types of situations that may lend themselves to improvement by participation in a particular type of service or when these services might be most beneficial. Lastly, we note that the online materials state that the Program supports the Harassment and Discrimination Free Workplace Policy without providing any

detail on how it does so. For example, which resolution services offered under the Policy can be delivered by Program employees, and in what context.

**Recommendation #11**

A complete overhaul of the publicly available information relating to the Respectful Workplace Program should be conducted to ensure that the information is accurate, up-to-date and complete. Care should be given to ensure that the information is properly edited before being posted.

**Recommendation Summary:**

Update the Publicly Available Information Relating to the Respectful Workplace Program

c) Training Materials

i) Harassment and Discrimination-Free Workplace Training

**Information Gathered**

Currently, training on the Policy is offered to all Government employees through an optional e-learning module. We were advised by staff of the Centre for Learning and Development (“CLD”), which administers the training, that 498 employees had completed the training online, out of the approximately 8200 current Government employees. It was noted by others that one challenge with the delivery of the e-learning module is that all employees do not have access to a computer with internet.

Training on the Policy is a component of the Resource Management Package (“RMP”), which is mandatory training for all managers. The sessions are classroom-based although recently the training is being offered virtually, such that there is still classroom instruction but it is delivered online. All managers are encouraged to ensure that their employees complete the Harassment and Discrimination e-Learning module, and so as a result training is mandatory for managers but only

strongly suggested or encouraged for employees. We were advised that 599 managers had completed the training, which was estimated to be roughly 75% of managers by CLD staff. While it would be difficult to maintain 100% completion due to turnover and geographical challenges, the introduction of online delivery should assist in improving the completion rate. We were advised that capacity to offer additional sessions exists, and that should additional managers seek out the training, additional sessions would be offered to meet the demand.

We heard from several employees in their submissions or during interviews that they were never advised of or offered any training on the Policy. We recognize that these comments from employees may be more of a reflection of their awareness of the type of training that is available rather than a statement of what is or is not actually being offered to them.

Having reviewed the training materials for the managers' training, we found them to be well thought out and thorough in the information provided. The lesson plan lays out the information that must be canvassed, offers insight on what questions can be asked of the group to foster discussion, and uses good case studies for the groups to put the recent learning into practice. The quiz contains a mix of questions that require analysis and others that are easily answered. The PowerPoint presentation is well done.

The drawback to the Policy training materials is the information that is not there. As with the Policy, the training PowerPoint presentation has very little information on formal investigations. Slide 20 "Formal Investigation" has 4 bullets:

- approval by the department Deputy Minister;
- the investigation request has to go to the DM of the Human Resource Secretariat;
- investigators are chosen from an internal pool of investigators; and
- most cases are resolved before this point.

The above-noted bullet points are lacking any substantive information on the investigation process. There is no discussion of complaints and how to file complaints. There is no indication of what the manager's role is in receiving formal complaints and how to bring those forward to review or vetting. There is no information respecting any aspect of the investigation process. While it may be true that the managers involved in this training will not themselves be the individual actually conducting the investigation, they must be aware of what the process is to be able to discuss it with any of their employees coming forward with a complaint. As noted above, we heard from employees involved in investigation processes who were generally unfamiliar with the process, and so information from their manager could greatly reduce their anxieties. Basic questions about what happens once a complaint has been made, who is going to contact the employee to talk further about the complaint, when does the employee get to tell his/her story, when does the respondent get notified about a complaint, how does the respondent get notified about the complaint, what happens to the employee after the respondent is told, who else knows about the complaint, who can the employee talk to about the complaint, how long does it take, what might happen to the respondent, and how will the employee know about the outcome of the investigation, are all questions that employees normally have about investigations.

We were advised that such information might be presented by the instructor in discussing slide 20, but we think that the materials should reflect these concepts to ensure that consistent and complete messaging occurs both in the classroom and should the manager need to go back to the materials for a refresher on Policy concepts.

Additionally, we note that in our practice we have observed a trend in the approach to harassment utilized by organizations that includes a focus on "bystander intervention". The purpose of such training is to teach people how they can best assist individuals that they observe being subjected to harassment or discrimination. Where individuals are reluctant to bring complaints about the treatment they are

experiencing, bystander intervention training can empower their colleagues to assist them or to speak up on their behalf.

Also in relation to the Policy training for government employees, the e-Learning method of providing training is appropriate for targeting many employees over a wide geographic area. This e-Learning platform is easily navigable and clearly outlines what the person taking the training has to do to complete it. It is also significant to note that the quiz that is included in the materials greatly assists in ensuring that the employee is actually processing and understanding the concepts in the materials. As well, if the employee does not take the quiz or attain a mark of 70%, they are not deemed to not have taken and passed the course.

All of the positive aspects of the e-Learning above described are tempered by a number of employee submissions that indicated that a computer method of learning is not overly helpful as there is no opportunity to ask questions or engage in dialogue about the concepts. While the information in the training is clear, we believe it to be valuable for course takers to be able to pose questions about situations that they have found themselves in so that they have personalized learning that reinforces the concepts to a greater degree.

For example, within the Prevention and Early Intervention sections, there is very good information respecting conflict and personal and work-related consequences of conflict. However, it is difficult to make bold assertions of “challenging inappropriate statements” without giving the course taker the opportunity to practice how to challenge particular inappropriate statements. Allowing course takers to identify to a trainer past examples of challenging statements in order to get advice would improve the training experience.

Additionally, regarding the e-Learning module, similar comments must be made about the lack of significant information about the investigation process. Employees have a right to be informed about all of the options that are available to them if they find themselves in a situation where they are being harassed or discriminated

against. Again, we heard from several employees that they were unsure of the options that were available to them or what those options entailed.

There is one slide in the Resolution Options section that is dedicated to Formal Investigations and it has 3 bullets:

- investigation requires approval of the department DM in consultation with the Human Resource Secretariat;
- investigators will interview the people involved including witnesses; and
- NOTE – Most issues are resolved before this stage

### **Recommendation #12**

Bystander Intervention training should be explored as an option for teaching employees how to respond when they observe discrimination and harassment. Both the e-Learning module for employees and the Policy training for Managers within the RMP should be expanded to provide additional information about the investigation process. This will allow employees to make informed choices about whether to proceed with a complaint under the Policy, and how to proceed. It will also allow managers to answer questions from employees who come to them with concerns and ask how any potential complaint might be addressed.

### **Recommendation Summary:**

Add Bystander Intervention and Investigation-Related Content to Training Materials

### **Recommendation #13**

Given the importance of the Policy and the expectation that all employees and managers are aware of the Policy and abide by it, we recommend that training related to the Policy be made mandatory for all Government employees.

Additionally, all managers and employees should be required to refresh their training at periodic intervals. The training should be part of the orientation for new employees, and existing employees should be required to complete the training within a reasonable time period. E-learning is a practical means by which the

training could be delivered to the majority of employees. Where an employee lacks access to a computer with internet, alternate avenues should be explored. For example, employees could call in to hear a delivery of the materials by a trainer using a conference call, or a copy of the materials could be mailed to individuals who were asked to review the documents and respond that they had completed the review. In all instances, employees should be provided with a specific contact individual, either the Harassment and Discrimination-Free Workplace Manager or someone within the CLD, to whom they can reach out to share their thoughts or questions relating to the training.

While training is already mandatory for Managers, there should be greater monitoring and follow-up related to completion of the training. This could be done by the Harassment and Discrimination-Free Workplace Manager, using statistical information already being compiled by the CLD.

### **Recommendation Summary:**

Make Training Mandatory for all Employees and Managers

ii) Respectful Workplace Program Training

### **Information Gathered**

The Conflict Resolution Skills for Managers and the RWP Frontline training materials are thorough, informative, and provide great opportunities for encouraging dialogue and learning among course takers. In fact, the content of the Conflict Resolution Skills presentation appears to be such that all managers would benefit from attending this session yet, unlike the Policy training for managers, it is not mandatory. All managers have to deal with conflict within their departments and among their staff and this program would benefit all managers from the standpoint of understanding and recognizing conflict and the sources of conflict, the very important role of communication, how to listen and respond in the moment and checking in with staff after the fact.

One gap with this training, however, is that similar to the Policy training there is a focus on informal/alternate dispute resolution skills. While recognizing that formal investigation options rest with the HRS, there should be some consideration given to canvassing situations within the Conflict Resolution training that managers may encounter within their department during an investigation. It may be helpful for managers to learn techniques to address conflicts that may arise within those specific situations. For example, managers may have to address the situation during an investigation where employees take sides in a dispute, and the Conflict Resolution Skills session is where they are best positioned to acquire those skills.

**Recommendation #14**

Given the important role of management to resolve conflicts, either to prevent issues of harassment or in response to such issues, the conflict resolution training offered by the Program should be made mandatory for all managers, allowing for a reasonable period of time for such training to be rolled out given the limited number of individuals available to deliver the in-person training session.

**Recommendation Summary:**

Make Conflict Resolution Training Mandatory for all Managers

d) Accountability

**Information Gathered**

The Policy and Program provided to us contained many positive elements, as well as some areas that we believe could be improved. Even if the Policy and Program were to reflect all of our recommendations, however, they would still only be effective if there was accountability for those individuals tasked with administering the Policy and Program. Many of our recommendations are intended, in part, to increase accountability under the Policy. Recommendations such as the creation of a Harassment and Discrimination-Free Workplace Manager position, timelines, and

documentation requirements should have that effect. We believe, however, that there is a need for more overarching attempts at accountability as well. As outlined throughout this report, we heard from many employees who felt that they were not treated well when they attempted to utilize services under the Policy, and particularly from employees who felt that they raised concerns and nothing happened. In some cases we heard people did not bother to raise concerns because of an assumption that it would not lead to any action. Accordingly, we think that it is important that there is accountability for inaction or mistreatment under the Policy.

**Recommendation #15**

The Policy should indicate that failing to respond adequately to issues of harassment and/or discrimination is, in itself, a violation of the Policy. Managers should be held accountable and regularly evaluated to ensure that their actions uphold the principles and specific requirements of the Policy and the Program. Where formal performance appraisals of managers are utilized, a section should be included that lists any specific actions undertaken related to the Policy and the Program. The Performance Management Program Framework and Guidelines for Deputy Ministers, which for 2015-2016 requires a plan, including specific actions, to enhance Occupational Health and Safety (OHS) within the entity for which they are responsible, should require a similar plan relating to Harassment, Discrimination and Respectful Workplace for the following year. While we note that the 2015-2016 document includes reporting relating to “Harassment and Workplace Investigations”, we believe a positive obligation for Deputy Ministers to develop a proactive plan will further enhance accountability.

**Recommendation Summary:**

Increase Accountability at All Levels for Upholding the Policy