



*House of Assembly
Newfoundland & Labrador*

Standing Committee on Privileges and Elections

**Interim Report to the House of Assembly
on the Development of a Legislature-Specific
Harassment-Free Workplace Policy**

November 2018



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INTRODUCTION

On May 2, 2018, the House of Assembly unanimously passed a Private Members' Resolution which ordered the Standing Committee on Privileges and Elections to undertake the development of a Legislature-specific harassment-free workplace policy. The complete resolution is outlined in the following section (Terms of Reference).

Following the passing of the resolution, the Privileges and Elections Committee (PEC) began to prepare for the work it would undertake, including extensive jurisdictional research and an analysis of applicable legislative and policy provisions. The Committee held its first meeting on May 31, 2018, and has held a total of fifteen (15) meetings up to the time of publication of this report.

A significant portion of the work conducted throughout the Summer and Fall 2018 was focused on consultations as required by the resolution with Members, employees, and independent/external groups. Further details on the Committee's consultation process are outlined in a further section.

This report includes a summary of some common themes the Committee has heard throughout its consultations and jurisdictional analysis, along with a preview of directions it will be taking in its final recommendations to the House. The Privileges and Elections Committee will continue to develop and refine its recommendations for a Legislature-specific harassment-free workplace policy over the coming months, for presentation to the House of Assembly in the Spring 2019 sitting.

The PEC feels it is important to take the necessary time to get its work done properly, and to ensure that the unique nuances and specificities of the parliamentary setting and the work of elected officials are duly taken into consideration. The interim process for application of the Executive Branch Harassment-Free Workplace Policy to MHAs (as adopted by the House of Assembly Management Commission) will remain in effect for any issues of harassment that may arise while the PEC is completing its work. The provisions of the current Code of Conduct for Members will also remain in effect.



PRIVILEGES & ELECTIONS COMMITTEE

Scott Reid (Chair) – St. George's-Humber

Lorraine Michael (Vice Chair) – St. John's East-Quidi Vidi

Keith Hutchings – Ferryland

Pam Parsons – Harbour Grace-Port de Grave

John Finn – Stephenville-Port au Port

TERMS OF REFERENCE

In completing this work, the Privileges and Elections Committee is guided by the Private Members' Resolution of May 2, 2018, which states the following:

"BE IT RESOLVED that this Honourable House support the introduction of a legislature-specific harassment policy, similar in principle to the policy in effect in the Nova Scotia provincial legislature, where elected representatives and their staff are held responsible for inappropriate conduct;

BE IT FURTHER RESOLVED that this Honourable House, through the introduction of a legislature-specific harassment policy, recognize all forms of harassment including bullying, cyber-bullying and intimidation of all forms;

AND BE IT FURTHER RESOLVED that this Honourable House develop this legislature-specific harassment policy through the Privileges and Elections Committee of this House in consultation with all Members and employees of the House and with independent groups who have experience and expertise in handling harassment complaints."



CONSULTATION PROCESS

The Privileges and Elections Committee undertook significant consultations to inform its work in developing a Legislature-specific harassment-free workplace policy. Guided by the Private Members' Resolution of May 2, 2018, the Committee focused its consultations specifically to Members of the House of Assembly; employees of the Legislature (public service and political support); and independent/external groups with applicable experience and expertise.

With respect to seeking input from Members and employees of the Legislature, the PEC was supported by the expertise and consultative resources of the Public Engagement Division (PED), Communications and Public Engagement Branch. The Committee wishes to express its gratitude to employees of the PED for their dedication and professionalism in completing this work.

MEMBERS OF THE HOUSE OF ASSEMBLY

Sharing Information

As a first step in its consultations with MHAs, the Committee felt it was important to share the information and research it was considering as part its work. To facilitate this, the PEC worked with PED to set up an information portal through its online engagement tool (engageNL), which was accessible only to Members. The portal contained such information as:

- the Code of Conduct for Members and related provisions;
- the interim process currently in effect for the application of the Executive Branch Harassment-Free Workplace Policy to complaints against MHAs;
- jurisdictional research on harassment-free workplace policies applicable to complaints against elected officials;
- presentations/submissions of independent/external groups the Committee has heard from; and
- any press releases issued by the Committee.

Seeking Input

The Committee also worked with officials from PED to develop a questionnaire for MHAs. While participation was voluntary, Members were strongly encouraged by the PEC to complete the questionnaire and provide input. The views and information collected were reported back to the Committee without identifying information that would attribute views/comments to an individual Member.



The questionnaire ran from August 10 to September 14, 2018, and there were 33 questionnaires completed. It covered such topics as:

- Experience with harassment in the workplace
- Perceptions of a safe and respectful workplace
- Defining harassment
- Creating and maintaining a respectful/harassment-free workplace
- Informal and formal resolution options
- Confidentiality
- Education and training
- Responsibility for formal investigations
- Supports for complainants and respondents
- Intake of complaints

The Privileges and Elections Committee also provided an opportunity for MHAs to appear in person before the Committee to share their perspectives and input. As with the questionnaire, participation was voluntary. There was one presentation to the PEC.

During the consultation process, all MHAs were provided with an opportunity to access the information portal; provide input through the questionnaire; and be heard in person by the Committee.

EMPLOYEES OF THE LEGISLATURE

The Committee also felt it was important to share information with employees as part of its consultations. Similar to the process used with MHAs, the PEC worked with PED to develop an information portal through its online engagement tool (engageNL), which was accessible only to employees of the Legislature.

The Committee worked with officials from PED to develop a questionnaire for employees. While employees were strongly encouraged by the PEC to complete the questionnaire and provide input, participation was voluntary. The views and information collected were reported back to the Committee without any identifying information that would attribute views/comments to an individual employee.

The questionnaire ran from September 24 to October 7, 2018, and there were 34 questionnaires completed. It covered topics similar to the MHA questionnaire.



EXTERNAL/INDEPENDENT GROUPS

Over the last several months, the Privileges and Elections Committee also heard presentations from numerous independent/external organizations as follows:

- Citizens' Representative
- Commissioner for Legislative Standards
- Respectful Workplace Program, Public Service Commission
- Women's Policy Office
- Department of Justice and Public Safety
- Human Rights Commission – Newfoundland and Labrador
- Equal Voice
- Nova Scotia Legislature
- Provincial Action Network on the Status of Women (PANSOW)
- Goss Gilroy Inc., Management Consultants
- Gardiner Centre
- Native Friendship Centre
- Egale Canada

These organizations were invited to appear before the Committee, each providing input relative to their work that will help inform the development of a policy that is sensitive to gender-based issues and inclusive of everyone.

The Privileges and Elections Committee expresses its gratitude to Members, employees and the external/independent organizations who took the time to participate in this process. The input and perspectives shared have informed the themes highlighted in this report, and will be invaluable as the Committee refines its final recommendations to the House of Assembly.



EMERGING THEMES

A number of themes are emerging from the research and consultations the Privileges and Elections Committee has undertaken over the last several months. While development of the policy continues to evolve, the PEC confirms the following with respect to its final recommendations.

GENDER-BASED ISSUE:

While there were a number of common themes that emerged throughout the Committee's consultations over the last several months, harassment as a gender-based issue was consistently heard, and one the PEC felt important to highlight in this report. The Committee confirms that it will be apply this lens as it works to further develop and refine its final recommendations to ensure that a Legislature-specific policy is sensitive to gender-based issues relating to harassment in the workplace. A number of directions highlighted further in this report, particularly with respect to support for complainants and intake of complaints, demonstrate the Committee's commitment to applying the gender lens in its recommendations.

POWER DYNAMICS:

Another common theme evident to the Privileges and Elections Committee following the consultation process is the issue of power imbalance, particularly the complexities it presents in terms of dealing with workplace harassment in the legislative context and the work of elected officials. While there is a power imbalance between elected officials and employees, it is recognized there is also a power dynamic between MHAs (e.g. Cabinet ministers to backbenchers; longer-serving Members to newly-elected Members; etc.). The Committee recognizes the importance of applying this lens in its final recommendations for a Legislature-specific policy.

SEPARATION OF HARRASSMENT/BULLYING FROM CODE OF CONDUCT:

Another dominant topic of discussion throughout the Committee's deliberations has been whether the current Code of Conduct for Members and its related processes adequately addresses harassment. The Committee has consistently heard that the sensitive nature of harassment issues requires specific considerations that are different from other issues related to misconduct of Members (e.g. financial, ethical or otherwise).



The PEC confirms it will recommend that harassment be separated from the Code of Conduct; and that all harassment-related complaints would be dealt with in accordance with the provisions of the new policy proposed by this Committee (i.e. the Code of Conduct will no longer be used to deal with complaints of harassment). The PEC also confirms that it will recommend that the Commissioner for Legislative Standards retain responsibility for the Code of Conduct and its related provisions.

The PEC recognizes there are still two possible options available to deal with issues of harassment until the Committee makes its final recommendations to the House of Assembly. While this is the case, the PEC recommends that any harassment complaints arising in the interim be dealt with under the current process for application of the Executive Branch Harassment-Free Workplace Policy to MHAs (as adopted by the House of Assembly Management Commission), as opposed to the Code of Conduct for Members.

RESPONSIBILITY FOR ADMINISTRATION OF POLICY:

Throughout the consultation process there was significant discussion as to whether the Commissioner for Legislative Standards is the most appropriate position/office to receive and investigate harassment complaints. Taking into consideration again the sensitive nature of harassment issues, and that there are specific considerations that are different from other issues related to misconduct of Members (e.g. financial, ethical or otherwise), the PEC confirms it will recommend that oversight of the harassment-free workplace policy proposed by this Committee be assigned to Office of the Citizens' Representative. This includes intake of complaints and oversight of resolution processes (including formal investigations).

The PEC is of the view that the Office of the Citizens' Representative has a mandate more consistent with oversight of a harassment-free workplace policy. Additionally, a capacity for this type of work already exists within that office as it currently has oversight of whistleblower provisions for the Legislature. While the Commissioner for Legislative Standards has other dealings with Members (e.g. conflict of interest, Code of Conduct, etc.), the Citizens' Representative would only have dealings with Members relating to the harassment-free workplace policy and whistleblower provisions.

In its final report to the House of Assembly, the Committee will make necessary recommendations to ensure that the Office of the Citizens' Representative is vested with the powers and resources necessary to carry out work related to the administration of this policy.



INDEPENDENT SUPPORT ADVISOR:

A consistent theme arising throughout its jurisdictional research and consultation process is the importance of having necessary mechanisms in place to support, advise and guide complainants and other participants involved in dealing with and resolving issues of harassment.

In this regard, the Committee confirms it will recommend that an independent support advisor be established, which is external to and independent of the Legislature (including its Statutory Offices). This position will not receive formal complaints, but will provide advice, support and guidance to individuals on navigating the process and the options available; and also in understanding and dealing with their feelings and fears as they deliberate on the course of action best suited to them. While the specific roles and responsibilities of the position are not yet confirmed (they will be included in the Committee's final recommendations), the primary intent is to increase the comfort level of complainants as they navigate, deal and cope with harassment issues.

INTAKE OF COMPLAINTS:

The Committee has heard that the first step in reporting alleged harassment or bullying is among the most important for complainants. It is vital for a complainant to be able to contact a person who has the necessary expertise and training to handle sensitive situations, and provide clear direction on the process and options available. The PEC will recommend that the Office of the Citizens' Representative assign a dedicated intake position with the necessary skills, knowledge and training (including gender-based sensitivity and inclusion) to receive complaints of harassment.

TIMELINES FOR MAKING A COMPLAINT:

Throughout its jurisdictional analysis and consultation process, the Committee learned that time limits for making a complaint (from last incident) vary anywhere from 90 days to one year (also referred to as a limitation period). The PEC also heard that specific factors need to be considered when choosing a limitation period within the legislative context including life experience of MHAs; four-year election cycle; and the difficulty in investigating with the passage of time (e.g. harassment investigations are based largely on memory).

With respect to the limitation period, the Committee confirms it will recommend that the time limit to file a complaint be 6 months from last incident.

**CONFIDENTIALITY:**

Throughout its research and consultations, the Committee consistently heard that confidentiality of all individuals is paramount in any process that deals with complaints of harassment. Persons who have experienced harassment may be less comfortable bringing their allegations forward, and witnesses and respondents may be less forthcoming with information, if they fear that what they share could become known to others. In both the MHA and employee questionnaires, there was consensus that confidentiality provisions are necessary, and that there should be recourse mechanisms if there is a breach. Additionally, several independent groups highlighted the fact that confidentiality provisions are a fundamental component of any policy that deals with harassment.

To support what it has heard, the Committee confirms that its final recommendations to the House will include mechanisms for recourse if there is a breach in confidentiality.

ENHANCED ACCOUNTABILITY:

In terms of creating and maintaining a respectful workplace culture, the Committee recognizes the importance of enhancing the accountability of Members respecting their commitment to uphold applicable policies and legislation, and to ensure their behaviour meets the high standards expected of elected officials. Currently, while Members agree to uphold the Code of Conduct as part of their oath of office when being sworn-in, there are no measures in place to ensure MHAs are continuously reminded of their commitment and obligations. In contrast, employees of the House of Assembly Service are required to sign their Code of Conduct annually as a declaration of their ongoing commitment to its principles.

The PEC confirms that in its final report to the House of Assembly, it will recommend that following the initial swearing of adherence to the Code of Conduct as part of the oath of office, each MHA be required to sign the Code of Conduct every two years. Additionally, the Committee will recommend that Members annually sign a declaration form confirming they have read and understand the provisions of the harassment-free workplace policy that will be proposed by this Committee.

EDUCATION & TRAINING:

Throughout its jurisdictional analysis and consultations, the Committee consistently heard that education and training are critical components in not only fostering and promoting a respectful workplace, but also in preventing harassment. Additionally, the Committee recognizes the



importance of having the appropriate knowledge, skills and expertise to effectively develop and facilitate this training.

During its consultations, the PEC heard from the Gardiner Centre, an outreach arm of Memorial University's Faculty of Business Administration. The Centre develops and delivers a wide range of professional development programs and custom training solutions tailored to fit specific requirements. After its initial presentation, the Committee requested that the Gardiner Centre develop a proposal for customized training for all MHAs that takes into account the unique role of elected officials, and the skills needed to prevent and recover from incidents of harassment and bullying. Their proposed training strategy includes topics such as:

- Awareness (e.g. difference between effective conflict vs. harassment/bullying; discrimination based on performance vs. harassment; etc.)
- Creative problem solving
- Supportive communication
- Conflict management
- Stress management

The Committee recommends that the House of Assembly immediately adopt the training program proposed by the Gardiner Center for Members of the House of Assembly. This training should be developed and delivered to all current Members as soon as possible, and to newly elected MHAs on an on-going basis. It is recommended that all Members participate in the training together, with no separation by caucus; and that attendance be mandatory.



CONCLUSION

The themes highlighted in this report represent only a selection of the perspectives and ideas the Privileges and Elections Committee has heard over the last several months. Its final report to the House of Assembly, which will be tabled in the Spring 2019 sitting, will include further analysis of perspectives and ideas shared throughout its consultations, along with detailed recommendations for a Legislature-specific harassment-free workplace policy. It will also include any recommendations for amendments to the Code of Conduct for Members and its related processes, and other consequential statutory amendments.

The Privileges and Elections Committee has given this work the utmost attention and deliberation, and it recognizes the importance of leading by example in this area. Over the coming months it will work diligently to develop a policy applicable to the Legislature and elected officials that is sensitive to gender-based issues; inclusive of everyone; and creates a process for investigation of complaints that protects confidentiality of those involved. It will take into account lessons learned through the Legislature's recent experience with issues of harassment to develop a policy that raises the bar; creates a cultural shift; fosters a better work environment; and holds elected officials to the highest standards of behaviour.



SUMMARY

The Standing Committee on Privileges and Elections confirms the following directions with respect to its final report to the House of Assembly:

- It will recommend that harassment be separated from the Code of Conduct; and all harassment-related complaints will have to be dealt with in accordance with the provisions of the policy proposed by this Committee (i.e. the Code of Conduct will no longer be used to deal with complaints of harassment).
- It will recommend that the Commissioner for Legislative Standards retain responsibility for the remaining aspects of the Code of Conduct.
- It will recommend that oversight of the proposed harassment-free workplace policy be assigned to Office of the Citizens' Representative, which includes oversight of resolution processes (including formal investigations).
- It will recommend that an independent support advisor be established, which is external to and independent of the Legislature (including its Statutory Offices). This position will not receive formal complaints, but will provide advice, support and guidance to individuals on navigating the process and options available.
- It will recommend that the Office of the Citizens' Representative assign a dedicated intake position with the necessary skills, knowledge and training (including gender-based sensitivity and inclusion) to receive complaints of harassment.
- It will recommend that the timeline to file a complaint be 6 months from last incident.
- It will recommend mechanisms for recourse if there is a breach in confidentiality.
- It will recommend that following the initial swearing of adherence to the Code of Conduct as part of the oath of office, each MHA be required to sign the Code of Conduct every two (2) years.



- It will recommend that all MHAs annually sign a declaration form confirming they have read and understand the provisions of the harassment-free workplace policy that will be proposed by this Committee.

The Standing Committee on Privileges and Elections makes the following recommendation to the House of Assembly for immediate action:

- Adopt the training program proposed by the Gardiner Center for Members of the House of Assembly. This training should be developed and delivered to all current Members as soon as possible, and to newly elected MHAs on an on-going basis. It is recommended that all Members participate in the training together, with no separation by caucus; and that attendance be mandatory.