



BY-LAW NO. 331 - 2012

A BY-LAW RESPECTING EQUAL OPPORTUNITY; DISCRIMINATION AND WORKPLACE HARASSMENT PREVENTION (AI-003)

1. PREAMBLE

- 1.1 WHEREAS Section 1, paragraphs 5 and 6 of the *Police Services Act*, states that police services shall be provided throughout Ontario in accordance with certain principles, including “the need for sensitivity to the pluralistic, multiracial and multicultural charter of Ontario society” and “the need to ensure that police forces are representative of the communities they serve”;
- 1.2 AND whereas subsection 31(1) of the *Police Services Act* provides that a Board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and shall:
- b. generally determine after consultation with the Chief of Police, objectives and priorities with respect to the police service in the municipality;
 - c. establish priorities for the effective management of the police service; and
 - e. direct the Chief of Police and monitor his or her performance;
- 1.3 AND whereas subsection 31(6) of the *Police Services Act* provides that the Board may, by by-law, make rules for the effective management of the police service;
- 1.4 AND whereas O. Reg. 3/99 prescribes standards for adequacy and effectiveness of police services;
- 1.5 AND whereas Part AI-003 of the Policing Standards Manual (2000), a copy of which is attached hereto as Appendix A, contains guidelines directing the Board, the Chief and members relative to Equal Opportunity; Discrimination and Workplace Harassment Prevention;
- 1.6 AND whereas section 47 of the *Police Services Act* sets out obligations of police services boards and police services relative to accommodation of needs of disabled members of police services in accordance with the *Ontario Human Rights Code*;
- 1.7 AND whereas under subsection 24(2) of the *Ontario Human Rights Code* employers are required to provide accommodation, unless to provide accommodation would cause undue hardship to the employer, considering the costs, outside sources of funding, if any, and health and safety requirements, if any;

- 1.8 AND whereas the *Accessibility for Ontarians with Disabilities Act (AODA)* sets out obligations to ensure the development, implementation, and enforcement of accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures, and premises on or before January 1, 2025.

NOW THEREFORE THE REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD ENACTS AS FOLLOWS:

2 DEFINITIONS

- 2.1 “*Act*” means *Police Services Act*, R.S.O. 1990, c.P.15, as amended;
- 2.2 “*Code*” means *Ontario Human Rights Code*;
- 2.3 “*Board*” means the Regional Municipality of Niagara Police Services Board;
- 2.4 “*Chief*” means the Chief of the Niagara Regional Police Service;
- 2.5 “*Member*” means a member of the Niagara Regional Police Service;
- 2.6 “*Ministry*” means the Ministry of Public Safety and Security;
- 2.7 “*Service*” means the Niagara Regional Police Service;
- 2.8 “*Workplace*” means any and all locations where business or social activities of the police service are conducted, including external training facilities such as the Ontario Police College and other locations where members may be assigned during periods of secondment; and
- 2.9 “*Workplace Harassment*” means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome. Workplace harassment may be, but is not limited to, an action or behaviour related to prohibited grounds or discrimination under the *Ontario Human Rights Code*.

3 BOARD POLICY

- 3.1 The objective of equal opportunity in the workplace, and discrimination and harassment prevention, is to ensure that the best qualified and motivated persons are selected for employment, promotion, preferred assignments and career enhancement through lateral transfer.
- 3.2 This objective is to be achieved by ensuring that no discriminatory barriers exist in the workplace, that no discriminatory or harassing practices or behaviours exist in the workplace, and that the human rights of employees and potential employees are upheld and respecting in both rule and in practice.
- 3.3 The Board is committed to providing a work environment, which encourages mutual respect and preserves personal dignity. It affirms that all members have the right to work in an environment that is free from discrimination, including harassment.
- 3.4 The Board observes and upholds the *Ontario Human Rights Code* which states:

“Every person has the right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability (Section 5(1)). Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability (Section 5(2)). Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee (Section 7(2)). Every person has a right to be free from a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcomed (Section 7(3)(a))”

and will ensure reasonable measures are instituted and maintained so no member is subject to discrimination, including harassment.

3.5 The Board states that all members, and any individuals representing the police service either on a paid or voluntary basis, are responsible for respecting the dignity and rights of their colleagues and co-workers, and for upholding the provisions guaranteeing those rights pursuant to the Code.

3.6 The Board states it will not tolerate or condone conduct which can be construed as unlawful discrimination, including harassment pursuant to the Code, and directs that an internal complaint procedure be established, as provided for by the Code, to ensure appropriate and expeditious resolution of a complaint where possible. Such police service general order shall supplement and form part of the Board’s By-law respecting Human Rights.

4 DIRECTIONS TO THE CHIEF

4.1 PROCEDURES

4.1.1 The Chief shall develop procedures and processes relating to equal opportunity; discrimination and workplace harassment prevention that:

- i. ensure that successful applicants be chosen from a diverse applicant pool, reflective of the community served, and that all applicants have equal opportunity for employment with this police service;
- ii. provide all officers with the opportunity to improve their skills, knowledge and abilities through career development and training initiatives such as continuing education, performance appraisals, promotional process and transfers;
- iii. encourage personal and professional growth of its members through the timely and constructive performance evaluation and the provision of directed continuous learning opportunities;
- iv. provide the fullest possible services in a prompt, fair and equitable manner to all segments of the public, without discrimination on the basis of race, ancestry, place of origin, colour or ethnic origin;
- v. extend fair and equal treatment under the law to every community and individual within its jurisdiction, without discrimination on the basis of race, ancestry, place of origin, colour or ethnic origin;

- vi. actively engage in the prevention of workplace discrimination and harassment through the development, delivery and maintenance of educational programs for all members of the police service;
- vii. recognize the emotional impact of such discrimination and harassment on individuals and react appropriately in investigating such complaints, including providing assistance through the Members' Assistance Program which offers confidential victim support and counselling to both members experiencing workplace discrimination and to members who may be the subject of a complaint;
- viii. undertake to educate its members on unlawful discrimination and harassment; and
- ix. maintain a discrimination-free workplace for all of its members to ensure that the police service is bias-free, and that it reflects the diversity of the community.

4.1.2 *SPECIFIC OBJECTIVES*

It is the policy of the Board that the Chief shall ensure that:

- i. all members clearly understand that conduct, which can be construed as unlawful discrimination, including harassment pursuant to the Code is not tolerated and is considered grounds for disciplinary measures consistent with the *Police Services Act*;
- ii. policies, police procedures and practices, in every area of operation and administration, such as recruitment, selection, hiring, career development and promotion, are free of discriminatory elements;
- iii. personnel at all levels, both uniformed and civilian:
 - (a) understand discrimination in all its forms (overt, covert, systemic) and have the skills to ensure that it is not manifest in their behaviour or any systems they manage;
 - (b) understand, are sensitive, and can work positively with colleagues and co-workers within the police service;
- iv. mechanisms for addressing discrimination and harassment complaints within the workplace are established, are known, and are accessible to police service personnel; and
- v. all police service personnel are informed about this policy and its implementation.

4.2 *TRAINING*

4.2.1 The Chief shall ensure that Members involved with employment practices of the police service have the requisite knowledge, skills, and abilities to perform this function.

4.2.2 The Chief shall ensure that all Members receive training on diversity and human rights.

4.2.3 The Chief shall ensure that as part of the training on diversity and human rights, the police service's policies and procedures in relation to reporting and addressing workplace discrimination and harassment are reviewed by all Members.

5 REPORT TO THE BOARD

5.1 REPORTING REQUIREMENTS – EXCEPTION BASED REPORTING

The Chief shall make a written report to the Board immediately following any employment practices in which:

- a. the procedures with respect to equal opportunity; discrimination and workplace harassment prevention were not followed; and
- b. in any other circumstance where, in the opinion of the Chief, there is a significant issue or potential liability to the Board or the Service.

5.2 ANNUAL REPORTING REQUIREMENTS

The Chief shall provide the Board with an annual statistical report on or before March 31st of each year. The report shall contain:

- a. a summary of the written procedures relating to equal opportunity; discrimination and workplace harassment prevention;
- b. the status of Service compliance with the said procedures;
- c. confirmation that Members have been trained in accordance with section 4.2;
- d. the number and nature of harassment complaints received during the preceding 12 months and the disposition of such complaints;
- e. an annual statistical report on the results of the Equal Opportunity Plan results;
- f. an analysis of the grievance activity during the preceding calendar year which includes the status of grievances, resolutions (outcomes), and identifies any observable trends.

6 IMPLEMENTATION

6.1 By-law No. 252-2003 is hereby repealed.

6.2 This By-law shall come into force upon the date of its passage.

6.3 The Chief shall implement this By-law, where applicable, through general order.

ENACTED AND PASSED this 20th day of December, 2012.

THE REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD

Signed Original on File
Chairperson

Signed Original on File
Executive Director

Legislative/Regulatory Requirements

Section 1, paragraphs 5 & 6 of the *Police Services Act (PSA)*, states that police services shall be provided throughout Ontario in accordance with certain principles, including “the need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society” and “the need to ensure that police forces are representative of the communities they serve.”

Subsection 47(1) of the *PSA* further states that “if an employee of a municipal police force becomes mentally or physically disabled and as a result is incapable of performing the essential duties of the position, the board shall accommodate his or her needs in accordance with the Ontario *Human Rights Code*.”

Under subsection 24(2) of the Ontario *Human Rights Code* employers are required to provide accommodation, unless to provide accommodation would cause undue hardship to the employer, considering the costs, outside sources of funding, if any, and health and safety requirements, if any.

Subsection 5(1) of the Ontario *Human Rights Code* states “Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.”

Subsection 5(2) of the Ontario *Human Rights Code* states “Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability.”

Subsection 7(2) of the Ontario *Human Rights Code* states “Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.” Clause 7(3)(a) of the Ontario *Human Rights Code* states “Every person has a right to be free from a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcomed.”

Occupational Health and Safety Act (OHSA): Definitions and Legislation

Under section 1 of the *OHSA*, a workplace is defined as “any land, premises, location or thing at, upon, in or near which a worker works.”

Section 1 of the *OHSA* defines workplace harassment as “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.”

Employers are expected to comply with the requirements of the *OHSA*. Some of the key employer obligations under the *OHSA* with respect to workplace harassment are to:

- Prepare and review a policy with respect to workplace harassment;
- Develop and maintain a program to implement the policy with respect to workplace harassment; and
- Provide appropriate information and instruction to workers on the contents of the workplace harassment policy and program.

Employers are required to meet obligations set out in the *OHSA* as related to workplace harassment. Employers are also required to meet other legislative obligations related to equal opportunity, including but not limited to, the *Accessibility for Ontarians with Disabilities Act, 2005* and the *Ontario Human Rights Code*.

Application

The employer obligations set out in the *OHSA* in relation to workplace harassment apply to police services. This includes harassment that police personnel could encounter during their work as a result of interactions with the public, between workers or from persons who have a personal relationship with workers.

Police personnel work in many diverse environments and under a variety of conditions. Employers are required under the *OHSA* to protect police personnel from workplace harassment in all police workplaces, including those beyond police facilities.

Sample Board Policy

Board Policy # _____

The objective of equal opportunity in the workplace, and discrimination and harassment prevention, is to ensure that the best qualified and motivated persons are selected for employment, promotion, preferred assignments and career enhancement through lateral transfer.

This objective is to be achieved by ensuring that no discriminatory barriers exist in the workplace, that no discriminatory or harassing practices or behaviours exist in the workplace, and that the human rights of employees and potential employees are upheld and respected both in rule and in practice.

Furthermore, where discriminatory or harassing acts or behaviours do manifest, they must be effectively investigated and appropriately addressed.

To this end, it is the policy of the _____ Police Services Board with respect to equal opportunity; discrimination and workplace harassment prevention, that the Chief of Police will:

- a) establish procedures on equal opportunity that are consistent with the principles of the *PSA* and the Ontario *Human Rights Code*, including recruitment, selection, career development and promotion;
- b) prepare procedures with respect to workplace harassment and develop and maintain a program to implement the policy, in accordance with the *OHSA*;
- c) establish procedures on responding to and preventing discrimination and harassment in the workplace, including stereotyping;
- d) ensure that no sexist, racist or other offensive or derogatory material is displayed in the workplace;
- e) establish procedures on employment accommodation in accordance with the Ontario *Human Rights Code* and section 47 of the *PSA*;
- f) implement an employee performance appraisal system that includes key commitments related to diversity and human rights; and
- g) ensure that all officers receive training on diversity and human rights.

Police Service Guidelines

- Procedures* 1. Every police service's procedures on equal opportunity should:
- a) ensure that merit is the basis of hiring, promotion and other employment practices of the police service, thereby allowing individuals to be judged on their knowledge, skills, and abilities;
 - b) require that the essential job qualifications of positions are identified prior to hiring or promoting, including:
 - i) identifying the essential duties of a position; and
 - ii) identifying the qualifications that candidates should have on the first day of the job; and
 - c) require that all job qualifications be bona fide, that is:
 - i) be for a purpose rationally connected to the performance of the job;
 - ii) be adopted in an honest and good faith belief that they are necessary to the fulfillment of that work-related purpose; and
 - iii) be reasonably necessary to the accomplishment of that legitimate work-related purpose.

2. Every police service's procedures and processes on recruitment should:
 - a) indicate the level of knowledge, skills and abilities required by those responsible for the recruitment process;
 - b) set out the training required by those responsible for the recruitment process;
 - c) define when to recruit internally and externally;
 - d) when recruiting externally, identify a strategy for advertising available positions to all segments of the community;
 - e) allow for adequate response time for job postings; and
 - f) ensure persons with a disability have access to the recruitment process (i.e., access to the job advertisement, adequate time for response, accessible process to submit application).

3. Every police service's procedures and processes on selection/promotion should:
 - a) indicate the level of knowledge, skills and abilities required by those responsible for the selection/promotion process;
 - b) set out the training required by those responsible for the selection/promotion process;
 - c) require the screening of all applicants based on essential qualifications required on the first day of the job;
 - d) ensure that the selection criteria are communicated to all applicable employees in advance of the promotional process, to enable the employees to develop or acquire required competencies;
 - e) identify processes for determining if applicants require any accommodation, in order to allow them to participate equally in the process to demonstrate their ability to perform the essential job qualifications;
 - f) ensure when assessing qualifications, that education and experience acquired outside of Canada is given appropriate consideration;
 - g) ensure standardized rating schemes are developed that are consistent with the Ontario *Human Rights Code* and the Supreme Court *Meiorin* decision, and consist of criteria that are reasonable, genuine and directly related to the requirements of the job; and
 - h) ensure that all participants, including the candidates, are aware of the selection/promotional process.

4. Every police service's procedures on responding to and preventing discrimination and harassment should:
 - a) communicate that discrimination and harassment are not to be tolerated in the workplace;
 - b) set out the responsibilities of employees to monitor their own behavior and actively confront discrimination and harassment they observe, and ensure that supervisory staff understand their legal obligations and responsibilities to create a work environment free of discrimination and harassment;
 - c) set out the steps for reporting, responding, investigating, and resolving incidents of discrimination and harassment in the workplace, including taking every precaution to respect the member's privacy, balanced against the need to ensure the safety of all members;

- d) require that all incidents/complaints are dealt with in a timely manner and respectfully and objectively;
 - e) address the mechanism for employees to seek guidance/advice on issues concerning discrimination and harassment;
 - f) require that all internal and external communications produced/delivered do not either overtly or subtly reinforce stereotypes; and
 - g) ensure that all employees, including supervisors, understand their responsibility to ensure that stereotyping does not occur in the workplace.
5. Every Chief of Police should ensure that no sexist, racist or other offensive or derogatory material is displayed in the workplace.
6. Every police service's procedures on employment accommodation should be in accordance with the Ontario *Human Rights Code* and section 47 of the *PSA*, and should:
- a) address accommodation for persons with disabilities, including ensuring that, short of undue hardship:
 - i) employees with a disability receive the accommodation they require in a way that is equitable, respects their dignity, maximizes their ability to contribute and enables them to participate in all aspects of employment with the police service; and
 - ii) applicants with a disability receive the accommodation they require in a way that is equitable, respects their dignity, maximizes their ability to compete for jobs within the police service;
 - b) address the mechanism for accommodating, short of undue hardship, employees with family responsibilities, employees with religious needs and pregnant women;
 - c) ensure the specific needs of an individual employee or applicant are assessed and reasonably met;
 - d) ensure accommodation is provided for all employment activities, for example: staffing; the duties and requirements of positions; and training and career development opportunities; and
 - e) ensure supervisors understand their responsibilities to make the climate of the workplace receptive to persons with a disability.
7. Every Chief of Police should implement an employee performance appraisal system that includes key commitments related to diversity and human rights.

Training

8. Every Chief of Police should ensure that all members receive training on diversity and human rights.
9. Every Chief of Police should ensure that, as part of the training on diversity and human rights, the police service's policies and procedures in relation to reporting and addressing workplace discrimination and harassment are reviewed by all members.