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THIS RESOURCE KIT IS FOR THE USE OF:

- LOCALS
- STEWARDS
- PROCEDURAL FAIRNESS STEWARDS
- REPRESENTING STEWARDS
- HARASSMENT COMPLAINT STEWARDS
- LOCAL INVESTIGATORS
- HARASSMENT COORDINATORS
- HARASSMENT COMPLAINT COMMITTEES UNDER POLICY 23B
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Kit prepared March 2000

CONTENTS OF PSAC **ANTI-HARASSMENT** **POLICY 23A:** **THE WORKPLACE**

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**POLICY 23A
PSAC ANTI-HARASSMENT POLICY:
THE WORKPLACE**

**POLICY AND
GUIDELINES FOR IMPLEMENTATION**



Policy adopted by the NBOD, January 1997
Guidelines amended 1998
Complaint form amended October 2, 1998

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The Workplace

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POLICY 23A PSAC ANTI-HARASSMENT POLICY: THE WORKPLACE

The Public Service Alliance of Canada believes that every individual has the right to dignity and respect both within the union and in the workplace. This policy outlines the position of the Alliance in our representation of members in cases involving workplace harassment. It does not apply to situations wherein members are exercising their rights and duties as union members or officials, such as in relation to union discipline or the PSAC Picket Line Policy. This policy should be seen as a companion policy to the "Policy 23B - PSAC Anti-Harassment Policy: The Union", which addresses harassment within the union context.

Harassment is an expression of perceived power and superiority by the harasser(s) over another person or group, often for reasons of sex, race, ethnicity, age, sexual orientation, disability, family or marital status, social or economic class, political or religious affiliation, or language. Harassment can also be personal in nature and unrelated to the grounds listed above. Harassment is unwelcome and unwanted, may be expressed verbally or physically, and can occur as a single incident or on a repeated basis. "Unwelcome" and "unwanted" in this context mean any actions or attitudes which are undesired by the person(s) experiencing the harassment and which the harasser(s) knows, or ought reasonably to know, are not desired by the victim(s).

Harassment in the workplace is any behaviour by any person that is directed at and is offensive to an individual or endangers an individual's job, undermines the performance of that job or threatens the economic livelihood of the individual. Harassment can include, but is not limited to, the following type of behaviour:

- unwelcome remarks, jokes, innuendoes, taunts, or other discriminatory communication in any media;
- insulting gestures or practical jokes which cause someone embarrassment or discomfort;

- display of offensive or pornographic pictures, graffiti, or other materials;
- placing unreasonable limitations on someone because of a perceived need (e.g., disability, pregnancy, etc.);
- leering (sexually suggestive staring);
- demands for sexual favours;
- unnecessary physical contact such as touching, patting or pinching;
- physical assault.

Harassment not only poisons the workplace for the individual(s) being harassed but for all of those who witness the harassment. It poisons our union and we will not tolerate it.

As an ongoing campaign to support this policy, the Alliance will ensure that education courses and/or seminars contain references to the Alliance policies on harassment and all negotiations will address the issue by attempting to obtain the strongest possible language to ensure that employers undertake their responsibility to provide a workplace free from harassment. An action plan will be implemented, including the development of educational and reference material on the issue.

Guidelines to assist those involved in the implementation of this policy and in the representation of Alliance members in cases on workplace harassment shall be developed and revised as necessary. Guidelines shall be based on the following principles:

1. All parties in a harassment complaint have the right to fair and due process and to confidentiality.
2. When feasible and advisable, parties shall be encouraged and assisted in settling the complaint at the earliest stage possible.
3. At all stages, the union will encourage a quick and effective resolution of the situation.
4. The employer is responsible for providing a workplace free from harassment. In the knowledge that harassment is a serious issue that requires everyone's attention, the Alliance will work with the employer to prevent, and ultimately to eliminate, harassment in the workplace.

5. Where harassment has been found and the Alliance deems subsequent discipline to be fair and appropriate, the Alliance will not represent the harasser in a resulting grievance.

Any member of the Public Service Alliance of Canada who is found guilty of harassment may be disciplined in accordance with PSAC Regulation 19 and Section 25 (Discipline) of the PSAC Constitution.

GUIDELINES FOR REPRESENTATIVES IN THE APPLICATION OF POLICY 23A

One of the most difficult situations a union representative has to repond to is the situation involving harassment. Most of us have become active in our unions because we are committed to ensuring that our workplaces are pleasant and equitable. We have seen situations where co-workers are treated unjustly and we have chosen to become involved. Our union has stated through Policy 23A that "The Public Service Alliance of Canada believes that every individual has the right to dignity and respect both within the union and in the workplace".

Situations involving harassment, however, are a little different than many of the other situations we encounter. These situations almost always begin with some action or behaviour on the part of our co-workers, rather than decisions, actions or inaction on the part of the employer. Often more than one union member is involved in the situation and it can be challenging to ensure that harassment is eradicated through a process that results in a more positive work environment. Because these situations evoke strong emotions and can be very damaging to those involved, we have to ensure that there is sufficient support for those adversely affected. Most importantly, we have to stay focussed on the workplace -- on the fact that our objective is to ensure that our workplaces are ones where dignity and respect for everyone are essential elements.

Under law, there is an obligation on the employer to provide a workplace free from harassment based on prohibited grounds (such as race, sex, age and so on). Many employers have adopted policies that assume responsibility to deal with personal harassment as well. It is our job, as the representative for our members, to ensure that the employer fulfills these obligations. Where the employer does not fulfill its legal or policy obligation, it is our policy and our intent to assist members who have been treated inappropriately in gaining redress.

These guidelines are intended to assist you, the representative, in resolving situations involving harassment in a manner that will contribute to a work environment free from harassment. As stated in Policy 23A, the Guidelines are based on five principles, namely:

1. *All parties in a harassment complaint have the right to fair and due process and to confidentiality.*
2. *When feasible and advisable, parties shall be encouraged and assisted in settling the complaint at the earliest stage possible.*
3. *At all stages, the union will encourage a quick and effective resolution of the situation.*
4. *The employer is responsible for providing a workplace free from harassment. In the knowledge that harassment is a serious issue that requires everyone's attention, the Alliance will work with the employer to prevent, and ultimately to eliminate, harassment in the workplace.*
5. *Where harassment has been found and the Alliance deems subsequent discipline to be fair and appropriate, the Alliance will not represent the harasser in a resulting grievance.*

Based on these principles, these Guidelines begin by identifying harassment and its impact. They then set out the types of situations to which Policy 23A and these Guidelines apply and the roles and responsibilities associated with this Policy. They also outline some major principles concerning representation to be kept in mind when these situations arise. The Guidelines then outline the specific actions to be taken by our union at three stages: prior to an employer investigation, during an employer investigation and following the finding by an employer investigation or where there is no employer investigation. Finally, the Guidelines provide information on what to do if a member disagrees with the action taken by the Local.

Harassment

Policy 23A clearly outlines our union's definition of harassment.

Harassment is an expression of perceived power and superiority by the harasser(s) over another person or group, often for reasons of sex, race, ethnicity, age, sexual orientation, disability, family or marital status, social or economic class, political or religious affiliation, or language. Harassment can also be personal in nature and unrelated to the grounds listed above. Harassment is unwelcome and unwanted, may be expressed verbally or physically, and can occur as a single incident or on a repeated basis. "Unwelcome" and "unwanted" in this context mean any actions or attitudes which are undesired by the person(s) experiencing the harassment and which the harasser(s) knows, or ought reasonably to know, are not desired by the victim(s).

Harassment in the workplace is any behaviour by any person that is directed at and is offensive to an individual or endangers an individual's job, undermines the performance of that job or threatens the economic livelihood of the individual. Harassment can include, but is not limited to, the following type of behaviour:

- *unwelcome remarks, jokes, innuendoes, taunts, or other discriminatory communication in any media;*
- *insulting gestures or practical jokes which cause someone embarrassment or discomfort;*
- *display of offensive or pornographic pictures, graffiti, or other materials;*
- *placing unreasonable limitations on someone because of a perceived need (e.g., disability, pregnancy, etc.);*
- *leering (sexually suggestive staring);*
- *demands for sexual favours;*
- *unnecessary physical contact such as touching, patting or pinching;*
- *physical assault.*

Harassment not only poisons the workplace for the individual(s) being harassed but for all of those who witness the harassment. It poisons our union and we will not tolerate it.

Impact of Harassment

Members approaching a union representative need to be provided with more than a simple commitment to a fair process. Members need validation that stepping forward is the right thing to do and they need to know that our union will support them. Harassment and poisoned work environments can have a serious and lasting impact on all those who are involved. Harassment is not a joke nor is it a joking matter. Its impact can range from feelings of uneasiness or discomfort to actual physical harm. It can be emotionally, psychologically and physically damaging. Harassment hurts.

One of the tools a union representative must bring to this type of situation is sensitivity for those members affected. While “the grapevine” cannot be controlled, union representatives can act as a powerful model by ensuring that we are discrete in our handling of these situations. As explained below, we cannot guarantee complete confidentiality, but we can and we must use our discretion and our sensitivity to underline that our objective is to resolve the situation in a fair and thoughtful way.

Toward the end of the Question and Answer document included in this package, suggestions are made about possible resources to assist members involved in these situations.

Application of Policy 23A

Policy 23A and these guidelines outline the services provided by our union to those covered by PSAC collective agreements who have been involved in situations of workplace-related harassment, as

- complainants
- respondents
- witnesses

Please note that Policy 23B - “PSAC Anti-Harassment Policy: The Union” applies to situation that arise in our union. There may be situations where both policies apply, for example, where members of our union have acted in a union capacity in the workplace. Where the employer is involved, however, Policy 23A and these guidelines are the appropriate reference documents.

Note

Unions have successfully won a range of rights for workers, including rights as union members, and we encourage our members to exercise these rights. In some cases, a firm insistence that our rights be respected can result in allegations of harassment from those who are unsympathetic to the labour movement. The Alliance does not in any circumstance condone behaviour that is discriminatory or harassing and is based on age, race, creed, colour, national origin, religious affiliation, sex, sexual orientation, family status or mental or physical disability. We do recognize, however, that insistence on our rights can sometimes be confused with personal harassment.

Please note that Policy 23A and these Guidelines do not apply to situations wherein members are exercising their rights and duties as union members or officials, such as in relation to union discipline or the PSAC Picket Line Policy.

Roles and Responsibilities

Employer and Union

Employer

The employer is **responsible for providing a workplace free from harassment** as stipulated in our collective agreements, employer policies and legislation.

Union

Our union has a **three part role** to play in ensuring that the goal of a harassment-free workplace is met.

⊗ As deterrence is key to our success in achieving the above goal, we will **pressure the employer to:**

- provide proactive and preventative training, and
- offer early mediation to the individual parties.

⊗ We will seek to ensure that those within our bargaining units are **provided with due process and fairness and that proceedings are conducted in a timely manner.**

⊗ We will provide **direct representation** to employees within our bargaining units, where appropriate.

Members

Complainant

This is the individual(s) who feels s/he has experienced harassment. Roles and responsibilities include:

- Making every effort to advise the member they feel has harassed them that the attention, attitude or behaviour is unwelcome and unwanted, if possible;
- Being specific and concrete when identifying the harassment; and
- Cooperating with the union in resolving the complaint.

Respondent

This is the individual(s) against whom the allegation of harassment is made. Roles and responsibilities include:

- Listening carefully to the allegations and attempting to understand and resolve the concern as quickly as possible;
- Cooperating with the union in resolving the complaint.

Stewards

These are the Local union representatives who are involved in attempting to resolve the complaint. The two roles may be played by the same individual, but the responsibilities for each role is different.

Harassment Complaint Steward

Each Local should have at least one steward assigned as the Harassment Complaint Steward. Roles and responsibilities include:

- Receiving complaints from members of the bargaining unit and ensuring that they fall under this policy;
- Facilitating early/informal resolution, if possible;
- Advising the respondent of the complaint;
- Ensuring that members understand the process and how they fit in, including their right to appeal any decisions;
- Ensuring that Policy 23A is available upon request;
- Being familiar with the policy and to carry out any required preparatory work/research as required. This includes being comfortable with the Alliance's liability in cases of harassment, as well as our desire to focus on corrective remedial actions in situations of harassment as opposed to a lengthy punitive process;
- Being familiar with the relevant language in the collective agreement, and the relevant employer policies and processes;
- Attending appropriate training courses;
- Being available and easily accessible to members for whom they have been named a Harassment Complaint Steward through methods appropriate for the Local (e.g., posting the name, publicizing it in the Local newsletter, e-mail and so on);
- Consulting with others (e.g., Local executive) to identify any issues that may affect the group with whom they are working;
- Making suggestions to prevent harassment situations from developing. For example, to raise the possibility of regular training for the membership, or lunchtime sessions at an event.

Procedural Fairness Steward

The Procedural Fairness Steward, who may be the same person as the Harassment Complaint Steward, is responsible for monitoring the employer's implementation of their Harassment Policy. Roles and responsibilities include:

- Explaining the employer's process as well as our union's involvement to any member who requests information.
- Being discrete at all times, setting an example for the membership and taking care not to disclose the substance of the complaint.
- Attending interviews and/or hearings conducted by the investigator at the request of involved members. Unless the collective agreement or employer policy specifically expands the steward's role, it will be to accompany the individual to the interview/hearing and will be limited to overseeing that the interview or hearing is fair.

Representing Steward

This is the steward who will provide representation to a member in the event there is a decision to proceed with a grievance. Roles and responsibilities are normal representational ones.

Witness

Witnesses are individuals who witnessed either the behaviour or action that is alleged to have been harassment or who have some other type of relevant information that will assist in resolving the complaint. Roles and responsibilities include:

- Cooperating with the union in resolving the complaint by providing accurate and fair testimony.

Important Principles in our Representation

Our union is governed by three important principles in matters involving representation in harassment situations, namely:

1. At some point in the process, a decision will be made as to whether we will represent in a particular situation and who we will represent. This decision will not be made until our union has had an opportunity to review the relevant information.
2. Up to the point where a decision is made, our union's role is to do our utmost to ensure that due process and fairness are afforded all parties in the handling and resolution of the harassment situation.
3. If the decision is to represent on a grievance, it does not necessarily mean the support of our union at all levels nor on all issues. Our union has the right to consider any valid information on the case and reconsider its decision on representation.

Please note that where we are representing workers in our bargaining units on matters that are related to rights embodied in the collective agreement, we cannot make a distinction between Rand deductees (those who have not signed a membership card), full members (those who have signed a membership card) and suspended members (a member who has been disciplined by our union through suspension of their membership). Rands and suspended members are entitled to our services. In this regard, please note that in this guideline, where the term "member" is used **in terms of representation on matters covered by the collective agreement**, Rands and suspended members are included.

In the case of representation for matters **that do not fall under the collective agreement**, we often provide equivalent representation for **Rands** that we do for full members, although this is our practice rather than a requirement.

In the case of **suspended members** for matters **that do not fall under the collective agreement**, the matter of representation should be referred through the Local and Component, if not a Directly Chartered Local, to the AEC/NBoD for a decision.

Time Limits

The process outlined below could result in a delay in lodging grievances and this delay might affect the timeliness of the grievances. It is **essential** that the Local obtain the employer's agreement that the timeliness of related grievances will be protected once this process has been initiated. Any extension of a time limit should be made **in writing** between the grievor, the employer and the union. The alternative is to file a grievance and ask that it be held in abeyance.

Prevention

The most important step in dealing with harassment in the workplace is prevention. With proactive initiatives, such as training and making the union's position clear before difficulties arise, the union may be able to prevent the initiation of the formal process outlined below.

Process

Where our union has become aware of a situation involving harassment, it will proceed as follows.

1. Prior to an Employer Investigation

Informal Resolution

If approached by a member or members involved in a harassment situation, the Harassment Complaint Steward will first assess whether s/he can play a role in settling the matter by speaking informally with the parties. This initiative should only be taken if the member raising the matter is comfortable with this approach and following an assessment of the potential for repercussions.

Provision of Information

The Harassment Complaint Steward should provide all involved members with Policy 23A, Guidelines for Representatives in the Application of Policy 23A, Policy 23A: Questions and Answers, and Component Harassment Policy, if applicable.

The steward should be available to answer any questions members might have about these documents. As well, the steward should ensure that each person receiving these documents signs to the receipt of them and is able to get a copy of the signed document upon request. (Hint: Keep the receipts in a general file up to the point where a specific file (e.g., a grievance file) is opened concerning the situation. At this point, the relevant receipts should be moved into the new file.)

Parties to Stage 1

Because this stage is informal, the only parties involved are the complainant (the person(s) alleging harassment) and the respondent (the person(s) against whom harassment is alleged). Witnesses are not parties to a complaint, neither is the employer nor our union, unless they are the source or the target of a complaint. This may

assist in resolving the matter before formal processes and a larger number of people are involved.

Informal Resolution Not Possible

If the Harassment Complaint Steward cannot play a role in quickly settling the matter, the Harassment Complaint Steward should encourage the complainant to advise the employer about the situation and request the implementation of the employer's policy on harassment.

Investigation/No Investigation

If the employer commences an investigation, the process moves to step 2 below. If there is no investigation, the process moves to step 3 below.

2. During an Employer Investigation

Role of Union

At this point, our union's role is to do our utmost to ensure that the process is fair. As a result, no individual member is represented during the investigation. Rather, our union will oversee the process and monitor the proceedings for due process and fairness. It is important to remain aware of our member's need for validation of their concerns and support. Our role is to assist in resolving the problem in a fair way.

Procedural Fairness Steward

The Local will assign a steward to monitor procedural fairness throughout the employer's investigation. This may be the same person as the Harassment Complaint Steward.

Disputes about the Employer's Investigation

It is important to note that the employer's investigation process is based on its policy and not the collective agreement. Disputes arising from whether the process is fair usually cannot be sent to a third party for resolution. If the matter concerns personal harassment

involving employees of Treasury Board, the Public Service Commission will consider complaints about process.

As a minimum, if the process falls short of the above standards, the steward should advise the member in question to raise their concern in writing with the investigator and the employer (copy to our union), detailing the concerns.

3. **Following Finding By Employer Investigation or Where There is No Employer Investigation**

In the event the employer does not investigate the complaint, this step will begin after step 1 above.

Member Request for Further Action

If a member (complainant or respondent) feels that the situation was not appropriately handled by the employer, s/he may request the Local to investigate the matter.

Local Investigation

The Local will:

- review the employer's investigation report for accuracy and completeness (for employees of the federal government, this report can be accessed via a request by our member (if complainant/respondent) under the *Privacy Act*); and
- where possible, interview the complainant, respondent, witnesses and the steward(s) involved in steps 1 and 2 above.

Note:

⇒ The employer's investigation report, where available, may be used as a source document in conducting the review, but must **not** be used as the sole basis for the decision.

⇒ If there is any consideration of internal discipline of a member involved in this situation under the PSAC Constitution and PSAC

Regulation 19, the Local should appoint a three person committee to conduct this investigation and to make recommendations under this Policy and Policy 23B. This will prevent the need for multiple investigations.

Decision of Local

When the investigation is completed, the Local will make a determination on the following issues:

- Is there a grievable matter?
- Will our union represent?
- Who will our union represent?
- On what basis will our union represent?

The final point above is an essential consideration. Our union is free to question the finding itself (i.e., was there harassment?) or, in the event our union agrees there was harassment, to question any penalty (i.e., was the discipline imposed appropriate to the facts?).

Inform all parties

The Local will inform, in writing, all the parties who are members about this decision and the rationale for the decision.

Limited Confidentiality

The Local, and members charged with investigation, should note that whatever appears in the union investigation report or in correspondence with the parties may well end up in the hands of the employer and be used in forums such as adjudication. Witnesses being interviewed in the union investigation should be clearly warned that the statements given to the union investigators could be used by the employer during formal hearings. Consistency in testimony is very important.

Grievance

In the event the decision is to lodge a **grievance**, our union will proceed with this action. Representation may be provided by any Local steward, including the stewards involved above.

Extent of Representation

The Local will advise the member for whom we will provide representation through a grievance that **this is not a guarantee** that the grievor will be represented at all levels throughout the process, nor on all issues being grieved. This advice was given in writing through the Provision of Information step in Stage 1 above, but should be restated at this stage.

Complaint to Human Rights Commission

Members alleging harassment based on a **prohibited ground** (e.g., sex, age, race and so on) should approach the appropriate human rights commission or body to discuss lodging a **complaint**. The Local can play a role in facilitating this contact. Note that when a complaint is signed, the matter is represented by the human rights commission and the union does not have a formal role. Once again, however, there is a need for support and validation by members pursuing this path. Note that Commissions normally do not proceed with a complaint until all internal process, such as grievances and employer complaint procedures, have been exhausted.

Complaint to Public Service Commission

If the situation involves **personal harassment**, federal public service complainants can approach the Public Service Commission Mediation, Investigation and Conciliation Directorate and lodge a **complaint**, concerning the process or the decision. Again, the Local can play a role in facilitating this contact, but the basic role is one of calling attention to a situation requiring employer attention.

4. **Appeals To A Decision That Our Union Will Not Represent**

If the Local makes a decision with which a member complainant or member respondent disagrees, s/he may appeal this decision to the appropriate Component Officer or to the Component National President for review. In these situations, the appropriate officers concerned will review the appeal and make a decision as quickly as

is practical and advise the member parties of the decision and of the action, if any, to be taken.

In the event the Component official makes a decision with which either of the member parties are dissatisfied, they may appeal this decision to the PSAC National President.

Those in Directly Chartered Locals will make their appeal directly to the PSAC National President.

The PSAC National President will:

- consult the Component concerned, if applicable, in accordance with Section 10, Sub-Section (2) of the PSAC Constitution; and
- where appropriate, establish a committee to review the complaint and make a recommendation to the PSAC National President.

The establishment of a review committee as outlined above and/or the decision-making process by the PSAC National President will take place as quickly as is practical. All member parties will be informed of this decision.

Principles of Investigation

We would expect the following elements in a good investigation by the employer:

- ⇒ The investigation is impartial and, as importantly, is seen as impartial by all parties.
- ⇒ All witnesses are interviewed and all documents identified by the parties are reviewed.
- ⇒ The investigation is timely, i.e., it takes place while everyone can still remember the situation.
- ⇒ The expectation of how long the investigation will take should be clearly stated by the investigator at the beginning of the process. The length will vary depending on the complexity of the allegations and surrounding circumstances.
- ⇒ All statements relied upon in the investigation should be reviewed and signed by the person making the statement.
- ⇒ There should be full disclosure to the complainant and respondent of all allegations, responses and statements, except where non-relevant personal information is involved.
- ⇒ There should be a clear focus on resolving a problem.
- ⇒ If there are several inter-related complaints, a team of investigators should be assigned to ensure a timely resolution and procedural fairness where there is no concern about bias.
- ⇒ All parties in a complaint should be duly advised by the investigator that their statements and the investigator's notes are accessible under the *Access to Information Act*, the *Privacy Act* or similar provincial legislation.
- ⇒ The final report from the investigation should be provided to all parties.

Assistance to Those Involved in the Implementation of This Policy

The PSAC has several resources available to assist members responsible for dealing with situations involving harassment, including:

- The Harassment Complaint Report Form for use with Policy 23A and Policy 23B.
- The PSAC video, [Harassment at Work](#)
- The PSAC 2 day course, [Harassment Awareness Training](#)
- The various equity-related modules available as part of the Equity Education Kit.

Contact your PSAC Regional Office to access these resources.

As well, those implementing this Policy at the Component or Local level should ensure that they are aware of any related Component or Local policies.

Changing Case Law

Case law in the area of human rights changes at a rapid pace. This is a new area and it is important that Locals check with the Component regularly to ensure that they are aware of any new developments. Those in Directly Chartered Locals should contact their PSAC Regional Office.

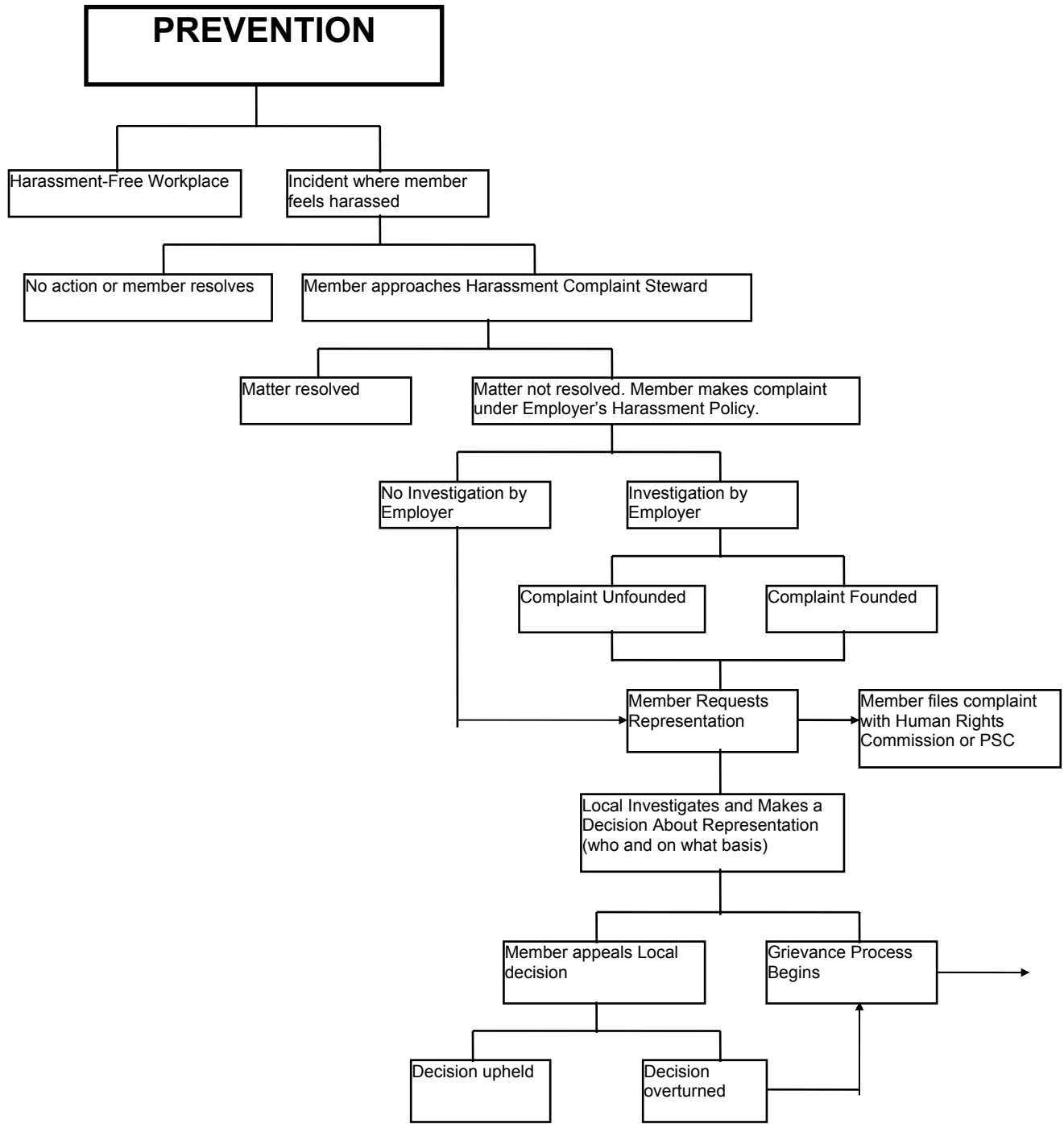
Changes to Policy 23A

Implementation of the “PSAC Anti-Harassment Policy: The Workplace” will evolve as we continue to incorporate lessons learned. Those charged with implementing this policy are invited to provide input about areas of concern and suggestions on where improvements are needed. We must ensure that new thinking and new ways of looking at these issues are reflected in our policy and procedures. Please provide your comments to:

PSAC Human Rights Office
Health, Safety and Equity Section
Public Service Alliance of Canada
233 Gilmour Street
Ottawa, Ontario
K2P 0P1

or through e-mail to: humanrights@psac.com

Process for Implementation of Policy 23A



POLICY 23A

PSAC ANTI-HARASSMENT POLICY: THE WORKPLACE

QUESTIONS AND ANSWERS

The Public Service Alliance of Canada believes that every individual has the right to dignity and respect both within the union and in the workplace. Harassment not only poisons the workplace for the individual(s) being harassed, but for all of those who witness the harassment. Harassment is not a joke nor is it a joking matter. Its impact can range from feelings of uneasiness or discomfort to actual physical harm. It can be emotionally, psychologically and physically damaging. Harassment hurts.

Our union has a clear anti-harassment position and to act on our beliefs, we have adopted a number of policies that outline our response to various situations of harassment. Policy 23A identifies the role we will play in representing those covered by our collective agreements when harassment situations arise in the workplace. Policy 23B - PSAC Anti-Harassment Policy: The Union is a companion policy that addresses how we will respond to harassment if it appears in our union.

This document pertains to Policy 23A and the Guidelines for Representatives in the Application of Policy 23A. It asks and answers the most frequently raised questions and concerns when allegations of harassment arise in the workplace. It provides you with information about your rights and responsibilities under Policy 23A.

Q-1 I am uncomfortable with the behaviour of someone I work with and feel that I am being harassed. What should I do?

A-1 Our union is committed to the belief that everyone has the right to feel safe and respected in their workplace. If you do not feel this is the case, our union is committed to assisting in the resolution of this situation.

If you feel comfortable speaking directly to the other individual, this is always the best first step. Often there is a simple misunderstanding that can be straightened out quite easily.

In the event this is not possible, contact your Local to determine who is going to be able to help you and contact this individual. Note that in some locals an Harassment Complaint Steward may be available.

Remain calm, cooperate, and be honest. Be discrete about the situation. It is not helpful to anyone for co-workers to begin to choose sides in these matters. This simply makes the environment more stressful for everyone. Your cooperation may help shed light on the facts surrounding the allegation and assist in a quick resolution of the situation.

Q-2 I am being investigated for alleged harassment. What should I do?

A-2 Remain calm, cooperate, and be honest. Be discrete about the situation. It is not helpful to anyone for co-workers to begin to choose sides in these matters. This simply makes the environment more stressful for everyone. Your cooperation may help shed light on the facts surrounding the allegation and assist in a quick resolution of the situation.

Q-3 I am being questioned as a potential witness regarding an alleged harassment situation. What should I do?

A-3 Remain calm, cooperate, and be honest. Be discrete about the situation. It is not helpful to anyone for co-workers to begin to choose sides in these matters. This simply makes the environment more stressful for everyone. Your cooperation may help shed light on the facts surrounding any allegation and assist in the quick resolution of the situation.

Q-4 What kind of assistance or representation will I receive from my Union?

A-4 Our union has a role to play in assisting in the prevention of harassment, but it is important to underline that it is the employer's legal responsibility to prevent or otherwise achieve a harassment-free workplace. In this context, there are three things our union can do in situations involving harassment, namely to work with the employer to prevent harassment in the workplace, to do our utmost to ensure due process and fairness where harassment has occurred and to provide direct representation where necessary.

Once made aware of allegations of harassment, the Union will assess the matter to determine if it can be settled informally, while ensuring that the goal of a harassment-free workplace is met. This will be done in consultation with the person raising the matter.

During the employer's investigation, a Local steward will monitor the proceedings to ensure that members within our bargaining units are provided due process and fairness. To this end, the steward will attend interviews and/or hearings conducted by the investigator at the request of involved members. The steward's role in these circumstances will be limited to overseeing the process, rather than acting as a representative.

The Union may also offer representation on the filing of a grievance after the matter has been investigated. It is **essential**

that any extension of a time limit on filing a grievance be made **in writing** between the grievor, the employer and the union.

In order to determine whether to represent, the union will investigate the matter.

At all times, the Union will provide information and advice to assist in an early and satisfactory resolution to the matter.

Therefore, the Union's steward can be either:

- (a) an advisor;
- (b) an accompanying person;
- (c) a monitor to ensure due process and fairness;
- (d) a representative; or
- (e) an investigator to determine if union representation is required and to what extent.

Q-5 What documentation should I have received from my Union to help me understand the process and the Union's role?

- A-5
- (a) Policy 23A - PSAC Anti-Harassment Policy: The Workplace
 - (b) Guidelines for Representatives in the Application of Policy 23A
 - (c) Policy 23A: Questions and Answers
 - (d) Component Harassment Policy, if applicable

As well, you should have access to the employer's policy on harassment. If you have difficulty obtaining it, ask your Local for assistance.

Q-6 I am being harassed and have decided to take formal action. What are my options?

- A-6
- The decision about which option(s) to select involve legal and technical questions. If you still have questions after reading the following section, your Local will be able to provide advice.

Harassment is defined in Policy 23A, which notes the general distinction between personal harassment (based on personal characteristics of the individual being harassed, such as long hair) and harassment based on a “prohibited ground” (group characteristics, such as race, disability, sexual orientation, sex). It is important to identify the type of harassment you are experiencing as this will determine the options open to you.

- (a) File a complaint under the Employer’s harassment policy (either type of harassment)
- (b) File a grievance under the relevant article of the collective agreement (either type of harassment)

Most collective agreements do not contain a personal harassment article and, thus, any grievance filed concerning this type of harassment could not be reviewed by a third party. It would basically have the same weight as a complaint under the employer’s policy. Your Local can assist in verifying if your collective agreement contains such a clause.

- (c) File a personal harassment complaint with the Public Service Commission (only available to workers covered by the *Public Service Employment Act*)

The Public Service Commission will encourage you to use the internal departmental harassment complaint procedure. You can agree or you can advise the PSC that you do not wish to use the department’s internal procedure.

- (d) File a complaint with the provincial or Canadian Human Rights Commission if the harassment you are experiencing is related to a prohibited ground, such as sex, race, age, disability.

Federal public service employees and those under the jurisdiction of the *Canada Labour Code* are covered by the *Canadian Human Rights Act* and other employees are covered by the provincial human rights Acts or Codes. Each of these pieces of human rights legislation identify specific prohibited grounds. Please verify if one of those grounds covers your situation.

All human rights commissions will encourage you to first use the other options. Insist that your complaint be registered to protect the time limits.

Exercising any of these options should trigger an investigation by the employer, if no investigation has already been carried out, as the employer has an obligation to provide a workplace free from harassment.

Q-7 Can I exercise more than one of these options at one time?

A-7 There is nothing that restricts you from exercising more than one of these options simultaneously. You will have to decide upon the most appropriate action or actions based on the facts of your particular situation. You may also have to take appropriate actions, such as lodging a complaint you intend to pursue at a later time, to protect your right to use the various options if the outcome of your initial option(s) has not resolved the matter to your satisfaction.

Q-8 What are the time limits to take these actions?

A-8 The time limits to take these actions are as follows:

- (a) a complaint under the employer's policy Each employer policy may have a different set of timeframes and you will need to check the policy that applies to you. Usually the timeframes are fairly flexible as there is no third party redress.

- | | |
|--|---|
| (b) a grievance | Check the time limits set out in your collective agreement.
(<i>Note: presently, for collective agreements signed between the PSAC and Treasury Board, the time limits are twenty-five days, excluding, Saturdays, Sundays and designated holidays, from the incident or last incident. Harassment situations, however, can be of a continuous nature, and the grievance can cover a long period.</i>) |
| (c) a personal harassment complaint with the Public Service Commission | This option is only valid for workers covered by the <i>Public Service Employment Act</i> . It is best to check with the Public Service Commission to verify the time limit as it may be amended, but it is normally one year from the incident or last incident. |
| (d) a complaint to the relevant human rights commission | Check the time limits for filing a complaint under the relevant human rights Act or Code that is applicable to you. For instance, under the current <i>Canadian Human Rights Acts</i> , the time limit to file a complaint is one year. |

Q-9 Are there other things I should consider in selecting an option?

A-9 It is important that you take the appropriate action to address your situation. In order to assess which route to take, there are three other considerations.

- In general, the grievance procedure is faster than the human rights complaint process, especially in light of the enormous back-log of complaints at the various human rights commissions. It is not rare to have to wait five years for the outcome of a human rights complaint, compared to two years for a grievance, including an adjudication (or third-party) decision.

- Not all grievances are able to go to adjudication/arbitration. A number of factors must be considered in determining whether a grievance can go forward, including the constantly changing case law in this area. Consult your steward for more information.
- Human rights commissions may dismiss or refuse to deal with complaints. If they do so, they must set out their reasons, which under certain circumstances might be challenged.

Q-10 What kind of corrective action could I get in a harassment matter?

A-10 Usually a key element in these matters is to end harassment where it has occurred and for the complainant to “be made whole” (put back in the position or circumstance they would have been in had there been no harassment). If the complainant has lost any leave or other benefits due to the harassment, these should be reinstated. As well, there may be a clear need for harassment training in the workplace to ensure the situation does not arise again.

Those who are requesting punitive damages (i.e., money) for pain, suffering or humiliation in the grievance process should note that adjudicators appointed under the *Public Service Staff Relations Act* have seldom granted such remedies. These can, in certain circumstances, be granted in mediation processes or by Human Rights tribunals.

Q-11 With respect to remedies, would the Union support a grievance requesting specific discipline of a named respondent?

A-11 No. It is the responsibility of the employer to impose discipline. As well, the Union cannot compromise any future representation it may provide to the respondent.

PSAC Policy 23A emphasizes due process and early resolution of the complaint. Given our strong commitment to an harassment-free workplace and our awareness that harassment generally takes place in an environment of unequal power, the Alliance will continue to maintain a focus on the needs of complainants. However, the Alliance is equally concerned that alleged harassers receive due process in any investigation. A just and equitable resolution of the complaint is our primary focus.

Q-12 You keep telling me to talk with my Union representative, but what happens to the information I give to the Union?

A-12 Any information divulged to a Union representative will normally be kept confidential. It should be underlined, however, that this information will be kept on the grievance file and may be used at a later date to determine who the Union will represent or not represent. As well, this information could be used in any formal proceedings related to this matter. Finally, this information could be used if a related complaint were to be lodged under the PSAC Anti-Harassment Policy: The Union (Policy 23B).

Q-13 Once the Union has signed a harassment grievance or a grievance concerning the disciplinary measure imposed by management due to a harassment situation, will it support me throughout the case?

A-13 Up to the point where a decision is made by the Union to support the filing of a grievance, the Union's role is to do its utmost to ensure that due process and fairness is afforded to all parties in the handling and resolution of the harassment situation. Following an employer investigation, however, the Union may be called upon to make a decision about who it will represent and on what basis.

Note: The Union's representation of a grievance does not necessarily mean that the support of the Union will be provided at all levels nor on all issues. The Union has the right to consider any valid information on the case and reconsider its decision on representation at any time. It could decide to withdraw its support

or offer representation on limited grounds (i.e., severity of the disciplinary measure).

Q-14 Can I still pursue my grievance if the Union withdraws its support?

A-14 You cannot pursue a grievance without the support of the Union if the grievance concerns the interpretation and application of the collective agreement.

If you are a federal public service worker and the grievance concerns a disciplinary measure, the *Public Service Staff Relations Act* allows you to pursue it without Union support to adjudication. Should you decide to pursue a grievance to adjudication without the support of the Alliance, you must do so at your own expense.

Q-15 Is there a Union appeal process available to challenge a decision made with regard to Union representation that was denied to me?

A-15 You can appeal to the appropriate Component official. If you are not satisfied with this response, you can further appeal to the PSAC National President. Members of Directly Chartered Locals appeal directly to the National President. In doing so, you should ensure that the time limits for any following steps in the grievance are protected (e.g., transmittal of your grievance, referral to adjudication). For specific details on the appeal procedure, see Policy 23A - Guidelines.

Q-16 I am finding this situation very stressful. What other resources are available to assist me?

A-16 Speak with your steward to determine if there is an Employee Assistance Program (EAP) or Peer or Union Counseling Program available and how you can access it. As well, many communities

have resource centres, such as Women's Centres or various community support groups.

In some regions, PSAC members have joined together to form committees and group, including the Lesbian and Gay Support Group (LGSG), Regional Women's Committees (RWC), the Members with Disabilities Ad Hoc Committee (MDAC) and the Visible Minority/Racially Visible Action Committee (VMAC or RVAC). Contact your Regional Office to find out if one of these groups exists in your region.

Q-17 Why was I asked to sign a document stating that I have received information from the union and that I have been advised of certain things?

A-17 In order to ensure that all those involved in a harassment situation receive the same information and that the information has actually been provided, you have been asked to sign the document entitled "Provision of Information Related to Representation in Matters of Harassment". A copy of the signed document can be provided to you on request.

POLICY 23A PSAC Anti-Harassment Policy: The Workplace

PROVISION OF INFORMATION RELATED TO REPRESENTATION IN MATTERS OF HARASSMENT

I, _____ (print name), acknowledge having received a copy of the following documentation:

- Policy 23A - PSAC Anti-Harassment Policy: The Workplace
- Guidelines for Representatives in the Application of Policy 23A
- Policy 23A: Questions and Answers

I understand that, until a decision is made by the Union to support the filing of a grievance, the Union's role is to do its utmost to ensure that due process and fairness is afforded to all parties in the handling and resolution of the harassment situation.

I further understand that, once the Union decides to represent a grievance, it does not necessarily mean that the Union will continue to support this grievance. The Union has the duty and the right to consider any valid information on the case and reconsider its decision on representation at any time. The Union may decide not to represent me further, even if it has done so up to a certain point in the grievance procedure, or it may decide to represent me only with regard to the severity of a disciplinary sanction.

I also take note that any information I divulge to a Union representative will become part of a Union record that may be used at a later date in determining who to represent and on what basis or in the review of a related complaint of harassment under the Harassment at Union Functions and Events policy. As well, this information could be used in any formal proceedings related to this matter.

Signature of Member

Date

Address

City, Province

Postal Code

Phone - home

Phone - office

Signature of Union Representative

Title of Union Representative