



# **Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process**

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Published by Treasury Board of Canada, Secretariat  
90 Elgin, Ottawa, Ontario, K1A 0R5, Canada

Catalogue Number: BT43-196/2015E-PDF

This document is available on the Government of Canada website, [Canada.ca](http://Canada.ca)

This document is available in alternative formats upon request.

Aussi offert en français sous le titre : Guide d'enquête pour l'application de la Politique sur la prévention et la résolution du harcèlement et la Directive sur le processus de traitement des plaintes de harcèlement

# Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process

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## Table of Contents

### Section I

1.1 Purpose

1.2 Responsibility and Authority

1.3 The Investigation Process

### Section II

Stage One: Selecting and Mandating the Investigator

Selecting an Investigator

Roles and Responsibilities of the Investigator

The Investigator's Mandate

Other Important Considerations

Stage Two: Planning the Investigation

Policies and Legislation

The Allegations

Witnesses

Documentation

The Investigation File

## The Investigation Plan

### Stage Three: Conducting the Investigation

#### The Concept of Procedural Fairness

#### The Burden and Standard of Proof

#### Prepare an Interview Plan

### Stage Four: Validating the Facts

#### Reviewing and Disclosing the Information Gathered

#### Assessing the Completeness of the Information Collected

#### The Preliminary Summary of Facts

### Stage Five: Analysis and Conclusion

#### Preparation

#### Extenuating Circumstances and Explanations

#### Reaching a Conclusion

#### Determining Whether the Allegation is Vexatious or Made in Bad Faith

#### Definitions

#### Where there are no Witnesses or Documents

#### The Report

### Stage Six: The Investigation Report

#### Content of the Investigation Report

### Stage Seven: Administrative Closure

#### Submission of the Investigation Report to person managing the harassment complaint process

##### Reviewing the Facts, Analysis and Conclusions

##### Release of the Investigation Report

##### Challenges to the Investigation Report

## Annex 1: Sample Investigation Mandate

## Annex 2: Investigator's Checklist

## Annex 3: Preparing an Investigation Plan

## Annex 4: Interviewing Tips

[Annex 5: Interview Protocol](#)

[Annex 6: Note Taking](#)

[Annex 7: Analyzing the Facts](#)

[Annex 8: Preliminary Summary of Facts](#)

[Annex 9: Report Writing](#)

[Annex 10: Investigation Report](#)

[Annex 11: Content and Disclosure of Harassment Investigation Reports](#)

[Annex 12: Checklist for person managing the harassment complaint process](#)

## Preamble

The information contained in this Guide is grouped into two sections. The first section presents an overview of the investigation process for the [Policy on Harassment Prevention and Resolution](#) and the [Directive on the Harassment Complaint Process](#). The second section provides more details for each stage of the process; and finally the annexes contain additional information, tools, templates and tips to conduct a high quality and professional investigation. The Guide can therefore be used according to the experience and knowledge of the user.

## Section I

### 1.1 Purpose

Harassment investigations require that investigators not only have the knowledge and the research, planning, interviewing and analytical skills, they must also be sensitive to the emotional issues and the impact that an alleged harassment situation has on individuals and on the workplace as a whole. This guide has been designed to ensure that the investigator will be able to undertake thorough and impartial investigations into harassment allegations.

It is also intended to provide a reference document that will assist the person responsible for managing the harassment complaint process to ensure the highest degree of quality.

The guide will also assist the parties in understanding the investigative process by:

1. Clarifying the role and responsibilities of investigators in conducting a thorough, timely, sensitive, and discreet investigation which includes:
  - Preparing an effective plan for identifying and collecting information;
  - Analyzing and summarizing the information and evidence obtained from interviews and pertinent documentation; and
  - Preparing a clear and concise preliminary summary of facts and an investigation report.
2. Providing suggestions and standards of practice for each step in the investigative process; and
3. Providing investigative and reporting tools.

## **The Policy on Harassment Prevention and Resolution**

The Treasury Board *Policy on Harassment Prevention and Resolution* defines harassment as follows:

*Improper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the Canadian Human Rights Act (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).*

Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

### **Criteria to be met to establish whether there was a breach of the Policy:**

To substantiate the allegations, the investigation must demonstrate that, according to the balance of probability:

- a. The respondent displayed an **improper and offensive conduct** including objectionable acts, comments or displays, or acts of intimidation or threats, or acts, comments or displays in relation to a prohibited ground of discrimination under the *Canadian Human Rights Act*;
- b. The behaviour was **directed at** the complainant;
- c. The complainant was **offended or harmed**, including the feeling of being demeaned, belittled, personally humiliated or embarrassed, intimidated or threatened;
- d. The respondent **knew or reasonably ought to have known** that such behaviour would cause offence or harm; and
- e. The behaviour occurred in the **workplace** or at any **location or any event related to work**, including while on travel status, at a conference where attendance is sponsored by the employer, at employer sponsored training activities/information sessions and at employer sponsored events, including social events.

## **1.2 Responsibility and Authority**

The Policy provides that the ultimate responsibility and authority for preventing and addressing harassment in the workplace rest with the Deputy Head and that person's designated official(s).

Harassment investigators are expected to meet the *Competencies Profile for Harassment Investigators* which can be obtained from the Treasury Board Secretariat (TBS) website.

## **Application**

The *Policy on Harassment Prevention and Resolution* applies to the core public administration which includes the organizations named in Schedule I and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act* unless excluded by specific acts, regulations or Orders in Council.

It covers employee behaviours in the workplace or at any location or any event related to work, including while on travel status, at a conference where the attendance is sponsored by the employer, at employer sponsored training activities/information sessions and at employer sponsored events, including social events.

The *Directive on the Harassment Complaint Process* flows from the TB *Policy on Harassment Prevention and Resolution* and requires the establishment and the maintenance of an effective harassment complaint process. It sets out specific roles and responsibilities of the designated official(s) pertaining to the application of the Directive.

Though other persons who work for the core public administration such as contractors, volunteers, temporary workers hired through agencies and Governor in Council appointees are excluded from the complaint process, managers should address any alleged harassment involving these individuals in accordance with the spirit of the Policy and the Directive. Members of the public cannot file a complaint under the Policy; however management should ensure the alleged harassment concerns are addressed.

In addition the *Guide on Applying the Harassment Resolution Process* should be read in conjunction with the Directive as it is fundamental in interpreting and applying efficiently the harassment complaint process.

## **Time Limit**



The written complaint of harassment should be submitted within 12 months of the last incident or event of alleged harassment (unless there are extenuating circumstances) as prescribed by the *Directive on the Harassment Complaint Process*. Allegations concerning events which occurred outside of this time limit can be included if the complainant can demonstrate that the incidents are directly related to the allegations that fall within the prescribed time limits. This is especially important in cases where the complainant intends to demonstrate a pattern of events.

## **Privacy and Disclosure of Information**

The *Privacy Act* requires that Federal Government institutions that collect personal information from individuals for an administrative purpose inform them of the purpose for which it is being collected. The information provided in the course of an investigation is collected under the authority of the *Financial Administration Act* and is considered to be required for the purpose of dealing with harassment allegations, to make decisions as to whether or not harassment has occurred, and in such cases to determine appropriate action, including disciplinary and/or corrective measures.

Furthermore, the *Privacy Act* prohibits a Federal Government institution from using or disclosing personal information for any other purpose than that for which it was collected unless in accordance with specific exceptions cited at section 8 of that Act (example: for complying with a subpoena, for archival purposes or for research or statistical purposes).

The *Privacy Act* establishes the rights of individuals to:

- Examine or obtain copies of the personal information kept about them by federal government agencies (subject to specific exceptions such as where the release of information might be injurious to national security or to the conduct of a criminal investigation);

- Ask to correct any errors or, if this request is refused, to note on the record itself that the accuracy of a record is contested; and
- Know why the information is being collected.

The *Privacy Act* also governs the collection, use, disclosure, retention and disposal of personal information in regard to harassment complaints and the resolution thereof. This type of personal information is protected under the Act and will be stored in a personal information bank designated by the organization.

The *Access to Information Act* gives Canadian citizens the right to have access to information in federal government records. However, this is subject to exemptions, where the disclosure of the information could be injurious to certain interests (example: the safety of individuals or the defence of Canada) or where the information falls within a specific class such as, personal information or information which is subject to solicitor-client privilege.

The individuals referred to in a harassment investigation report have the right to know, both under the *Privacy Act* and in accordance with the principles of natural justice, what has been said about them and by whom (although at times exceptions may apply). They have the right to request both their own personal information and any other information that is relevant to the harassment allegation and investigation thereof.

To obtain further information about *Access to Information and Privacy*, please consult Annex 11 of the Guide, *Content and Disclosure of Harassment Investigation Reports*.

### **1.3 The Investigation Process**

Every effort should be made to resolve workplace issues through an informal resolution process. Informal resolution processes are also commonly called interest based conflict resolution, *Informal Conflict Management System* and alternative conflict resolution. However, when this process has been

unsuccessful, declined by the parties or if it is deemed inappropriate, the person responsible for managing the harassment complaint process may initiate an administrative investigation to determine whether the allegations are founded or not. An effective investigation of harassment allegations is fundamental to the successful resolution of workplace harassment.

There can be several participants in the investigation process. This includes complainants, respondents and witnesses. During the investigation all parties are expected to co-operate in the complaint process if and when called upon to do so.

Discussion of all aspects pertaining to the complaint should be limited to those who need to know in order to minimize damage to the work environment.

An overview of the administrative investigation process is provided below. Each element of the process is described in greater detail throughout this Guide.

### **Stage One: Selecting and Mandating the Investigator**

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### **Stage Two: Planning the Investigation - Preparing the file**

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### **Stage Three: Conducting the Investigation – Establishing the facts**

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### **Stage Four: Validating the facts - Preliminary Summary of Facts**

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### **Stage Five: Analysis and Conclusion**

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### **Stage Six: Report**

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### **Stage Seven: Administrative Closure**

## Stages of the Administrative Investigation

### Stage One - Selecting and Mandating the Investigator

The key to conducting an investigation that is fair, prompt, and impartial starts with the selection of an investigator who can create an environment of trust and confidence throughout the investigation. Equally important is the establishment of a proper investigation mandate for the investigator. A sample investigation mandate can be found at [Annex 1](#).

In selecting and mandating the investigator, it is important to remember that:

- The investigator appointed must be capable of conducting an independent investigation in a thorough, timely, impartial, unbiased, discreet, and sensitive manner.
- The investigator must meet the *Competencies Profile for Harassment Investigators*.
- Once appointed, the investigator will be provided with a written mandate that will authorize, govern and focus the activities associated with the investigation.

### Stage Two – Planning the Investigation – Preparing the File

In order to plan the investigation and prepare the file, the following steps should be followed by the investigator:

1. Obtain, review, clarify and negotiate and sign the mandate assigned by the person responsible for managing the harassment complaint process;
2. Review the allegations and ensure that the specific allegations are clear and have been provided in writing to the respondent and that he or she has been given an opportunity to respond to them. If the allegations have not been provided to the respondent, the investigator should contact the person responsible for managing the harassment complaint process and ask him/her to do so.

3. Review applicable legislation, policies and related jurisprudence, as well as the criteria to be met under the Policy and Directive;
4. Prior to the commencement of the investigation, confirm with the person responsible for managing the harassment complaint process whether the parties understand their rights and responsibilities, including their right to be accompanied during the investigation process;
5. Prepare an investigation plan ([Annex 3](#) of this Guide provides further details on preparing an investigation plan); and
6. Obtain and review all supporting documents relevant to the matters under investigation.

### **Stage Three – Conducting the Investigation – Establishing the Facts**

Applying the principles of procedural fairness (see [Section II](#)), the investigator should interview the parties as well as any pertinent witnesses with respect to each allegation to ascertain all relevant facts relating to the complaint. In particular, the investigator should consider the following questions:

- Is there information to support or refute the allegations? If yes, what is it?
- What was the period of time over which the conduct took place?
- Is there information available to suggest that the conduct was intentional?
- Does it appear that the conduct was persistent, pervasive?
- What have the repercussions and impact of the situation been for the parties?

Should additional allegations be made during the course of the investigation, such allegations are to be brought to the attention of the person responsible for managing the harassment complaint process to determine whether they should be included in the mandate for investigation. If these allegations become part of the investigation, they are to be presented in writing to the respondent.

Should opportunities for the use of an informal resolution processes arise, at the suggestion of either party, during the investigation process, this should be discussed with the person responsible for managing the harassment complaint process who will suspend the investigation pending the outcome of the informal process.

#### **Stage Four – Validating the Facts – Preliminary Summary of Facts**

Once the investigator has gathered the relevant facts he or she must validate this information with the parties. In order to do so, the investigator will:

1. Prepare a preliminary summary of facts containing the following elements:
  - A description of the allegations; and
  - A description of the background and evidence that has been collected in relation to each allegation.
2. Submit the preliminary summary of facts to the person responsible for managing the harassment complaint process, ensuring respect of the requirements of the *Privacy Act* and *Access to Information Act*.
3. Ensure the parties have the opportunity to provide written comments.
4. Consider any additional information provided by the parties and incorporate it into the report if it is deemed appropriate to do so.

To obtain a sample preliminary summary of facts, please consult [Annex 8](#) of this Guide.

#### **Stage Five - Analysis and Conclusion**

After final disclosure of the facts to the parties, the investigator will:

- Determine and identify the substance of each allegation;
- Determine whether or not, according to the balance of probability, the behaviour occurred and if so, whether the behaviour meets the definition of harassment set out in the Policy; and

- If the allegations are not founded, determine whether the allegations were made vexatiously or in bad faith, if asked to do so by the person responsible for managing the harassment complaint process; and
- Comment on any underlying factor(s) encountered during the course of the investigation that may have contributed to the situation or may have had a negative effect on the work environment, if asked to do so by the person responsible for managing the harassment complaint process.

For further information about analysing the facts, refer to [Annex 7](#) of this Guide.

### **Stage Six - Report**

The investigator will then prepare the final report relying on the information from the preliminary summary of facts. The final report should contain the following elements:

- A description of the allegations;
- A description of the investigation process followed;
- A description of the background information and evidence that supports or refutes each allegation;
- An analysis of the evidence in respect to each allegation; and
- A statement as to whether or not the behaviour described in each allegation constitutes a breach of the Policy.

The final report must also be written in accordance with the requirements of the [Privacy Act](#) and [Access to Information Act](#). It is then submitted to the person responsible for managing the harassment complaint process with all related supporting documents and statements from the parties and the witnesses with the complete investigation file.

[Annex 9](#) of this Guide may be helpful in drafting the investigation report.

### **Stage Seven - Administrative Closure**

In order to achieve administrative closure, the person responsible for managing the harassment complaint process:

- Informs the parties of his/her decision with respect to the allegations;
- Provides the parties with a copy of the final report; and
- Informs the parties' managers and provides them with a copy of the final report where a decision on disciplinary measures has to be made by the manager or when deemed appropriate. Disciplinary decisions will be made by the manager in consultation with the Labour Relations Officer.

The final report accompanied by the decision letter is sent to the parties and constitutes administrative closure for the purpose of the harassment resolution process.

## **Section II**

### **Stage One: Selecting and Mandating the Investigator**

#### **Selecting an Investigator**

The investigator appointed by the person responsible for managing the harassment complaint process must be capable of conducting an independent investigation in a thorough, timely, discreet, and sensitive manner in the language of the parties' and witnesses' choice and should be trained in harassment investigation techniques. The investigator must be impartial and unbiased.

At times, it may be necessary to obtain an investigator from outside the Federal Public Service. In determining whether it would be appropriate to use the services of an external investigator, the person responsible for managing the harassment complaint process should consider the following factors:

- Cost;
- Timeliness, degree of urgency;



- Real or perceived objectivity;
- Availability of internal investigators;
- The predicted length and complexity of the investigation and the organization's ability to use an internal resource for a lengthy period of time; and
- Level of security required.

The investigator must have a security clearance appropriate for the case being investigated and must meet the *Competencies Profile for Harassment Investigators*. Public Works and Government Services Canada provides a list of external investigators approved to investigate harassment complaints in the Public Service. In certain cases, there may be occasions where an investigation team of two or more investigators is warranted. In determining whether this approach is warranted, the person responsible for managing the harassment complaint process should consider the impact of gender, race, organizational culture, and language, among other things, on the investigation as well as its scope and complexity.

## **Roles and Responsibilities of the Investigator**

The investigator is responsible for managing the harassment investigation. Essentially, the investigator is accountable for:

- Researching and planning the investigation including gathering, examining and recording all relevant evidence from available documentation;
- Presenting an investigation plan to the person responsible for managing the harassment complaint process;
- Identifying gaps in information, potential sources of additional information and persons who may be able to supplement or corroborate information;
- Planning and preparing investigative and interviewing questions to assist in obtaining the necessary evidence about the alleged incidents;

- Conducting interviews with the parties and relevant witnesses;
- Analyzing the evidence and circumstances and determining the substance of each allegation;
- Preparing the preliminary summary of facts and the investigation report; and
- Ensuring that the parties are aware of their rights and responsibilities, including the right to be accompanied and assisted by a person of their choice.

## **The Investigator's Mandate**

Once appointed, the investigator will be provided with a written mandate by the person responsible for managing the harassment complaint process that will authorize, govern, and focus the activities associated with the investigation. The accountabilities listed above should be clearly spelled out in the mandate.

In order to assist the investigator in understanding the requirements of the investigation, the mandate should contain:

- A clear and detailed statement of the allegations to be investigated, together with a description of the purpose and scope of the investigation to be undertaken;
- A clear delineation of roles and responsibilities vis-à-vis the departmental representative(s) including the person responsible for managing the harassment complaint process;
- Specific instructions regarding issues such as security designation, Access to Information and Privacy, the handling of new allegations, requirements for handling information related to possible criminal activity or other information of wrongdoing under the *Public Service Disclosure Protection Act*, or action to be taken if the possibility of using informal resolution processes becomes evident during the investigation;

- The requirement that the complete investigation file, including all notes and documents collected or created by the investigator in relation to the investigation, are the property of the employer and must be relinquished to the person responsible for managing the harassment complaint process, at his or her request;
- Expected timeframes within which the investigation is to be completed and the date by which the final report is required; and
- A description of the type of resources available to the investigator (e.g. clerical support, meeting space, etc.), if applicable.

An example of a mandate is provided in Annex 1 of this Guide for further clarification. Matters such as the availability of departmental resources, travel costs, contract costs, method of payment, or any other financial matter should be included separately as part of the contract for services.

### **Other Important Considerations**

Investigators must strictly adhere to the investigation mandate. Any issues that arise in the course of the investigation that fall outside of the investigator's mandate should be brought to the attention of the person responsible for managing the harassment complaint process and the mandate should be amended accordingly. The mandate should be limited to investigating allegations of harassment and the investigator should not be mandated nor should he or she undertake informal resolution processes such as mediation or conduct a workplace assessment in conjunction with an investigation since this could lead to a conflict in role and responsibilities.

If the investigator discovers the possibility of a criminal offence having been committed, fraud or wrongdoing under the Public Service Disclosure Protection Act during the investigation, the investigator must inform the person alleging such behaviour that this falls outside his or her mandate and that the person who mandated the investigator will be notified accordingly.

The investigator should be sensitive to the possibility of using informal resolution processes as a means of resolving the dispute since this could be beneficial and desirable for the parties. At any time in the process, if the parties are interested in resolving the dispute informally, the person responsible for managing the harassment complaint process should be informed without delay. The use of ICMS processes could lead to resolution of the dispute, or partial resolution of the dispute. In cases where some of the issues are resolved informally, the person responsible for managing the harassment complaint process may ask the investigator to investigate any outstanding issues that were not resolved in this fashion.

Information exchanged in the course of informal resolution processes is confidential and cannot be accessed by the investigator and should not be used or disclosed by the parties in the course of the investigation.

## **Stage Two: Planning the Investigation**

The approach presented in the following section is intended to help ensure the application of the principles of procedural fairness for the parties involved in the investigation. It includes criteria and guidance to help the investigator and the person responsible for managing the harassment complaint process.

Prior to the commencement of the investigation, the investigator should confirm with the person responsible for managing the harassment complaint process whether the parties understand their rights and responsibilities, including their right to be accompanied during the investigation process.

## **Policies and Legislation**

It is essential to have a solid understanding of the Policy, Directive and any related departmental policies, the *Privacy Act* and *Access to Information Act*, as well as any pertinent case law on the issues in dispute.

## **The Allegations**

The written allegations should contain a detailed explanation of the alleged incidents, the name of the respondent, the relationship between the parties, a description of the alleged incidents including the date, time and location and the names of witnesses, if applicable.

## **Witnesses**

The written allegations may include the names of people believed to have witnessed the alleged incidents or those who may have been aware of other information directly related to the allegations. In addition, the response of the respondent may include the names of witnesses.

If there is any uncertainty about their relevance to the investigation, the investigator should clarify their pertinence with the parties. Witnesses must have some direct correlation to the allegations. To determine the relevance of their testimony, the investigator could ask the parties to describe how a certain witness will contribute to the investigation. The investigator has the discretion to determine which witnesses to interview and may decide not to interview certain individuals if it is unlikely that they will add any value to the investigation. For example, in assessing whether the testimony of a witness is relevant, the investigator may decide that a great number of witnesses is not needed to substantiate the same allegation and that anything that is admitted by both parties will not need to be confirmed by a witness.

## **Documentation**

The preparation phase also involves another step – a review of the exhibits presented by the parties and the written allegations and response to the allegations. A review of the documents will allow the investigator to identify additional witnesses and will assist in understanding the basis for the allegations.

## **The Investigation File**

The investigation process is subject to the provisions of the Access to Information Act and the Privacy Act. Essentially, **this means that witnesses cannot be assured that the exchanges with the investigator will be kept confidential**. Any person questioned in the course of an investigation may have access to the investigation file to obtain information that relates to him or her since this is considered to be their own personal information. This principle applies to interview notes and any other documentation that the investigator uses during the investigation. The investigator should take care to record personal information only when it is relevant and appropriate, and to clearly distinguish between facts and opinions.

To obtain further information about access to information and privacy, the person responsible for managing the harassment complaint process may contact the Access to Information and Privacy Coordinator in their organization. In addition, Annex 11 of this Guide provides some tips on access to information and privacy.

## **The Investigation Plan**

The final stage of preparation entails creating the investigation plan. The plan is provided to the person responsible for managing the harassment complaint process prior to the commencement of the investigation to ensure that the investigation complies with the mandate.

The investigation plan can be used as an initial checklist to ensure that all of the critical elements will be covered; it includes:

- The names of the parties and witnesses that will be interviewed;
- Any documentary evidence that will be examined; and
- Timelines.

Depending on the complexity of the investigation, the plan will be either more or less detailed. It should be reviewed throughout the investigation to determine if there is a need to amend it as the investigation unfolds. The

person responsible for managing the harassment complaint process should be consulted to ensure that the mandate is being properly respected. Tips on preparing an investigation plan can be found at [Annex 3](#).

## **Stage Three: Conducting the Investigation**

### **The Concept of Procedural Fairness**

The duty to act fairly must be distinguished from the traditional principles of natural justice applicable to courts of justice and quasi-judicial tribunals. When a decision that will have serious consequences for those involved is made, there is a duty to provide certain procedural protections throughout the process. The more serious the allegations and potential negative repercussions for the person accused of harassment, the more stringent the aspects of procedural fairness should be. Investigators should always respect procedural fairness, but the extent to which measures are taken to protect these principles will depend on the nature of the allegations and the consequences for the parties; this concept is explained in greater detail in the following paragraphs.

The duty to act fairly in conducting administrative investigations was expressed in a decision of the Supreme Court of Canada (*Nicholson v. Haldimand Norfolk (Regional) Police Commissioners*, [1979] 1 S.C.R. 311):

*"In my opinion, the appellant should have been told why his services were no longer required and given an opportunity, whether orally or in writing as the Board might determine, to respond. The Board itself, I would think, would wish to be certain that it had not made a mistake in some fact or circumstance which it deemed relevant to its determination. Once it had the appellant's response, it would be for the Board to decide on what action to take (...) Such a course provides fairness to the appellant, and it is fair as well to the Board's right, as a public authority to decide, once it had the appellant's response, whether a person in his*

*position should be allowed to continue in office to the point where his right to procedural protection was enlarged. Status in office deserves this minimal protection, however brief the period for which the office is held.”*

For more information about procedural fairness, here is an extract from a decision of the Supreme Court of Canada (*Baker v. Canada (Minister of Citizenship and Immigration)*), [1999] 2 S.C.R. 817):

*“The duty of procedural fairness is flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker. Several factors are relevant to determining the content of the duty of fairness:*

- 1. The nature of the decision being made and process followed in making it;*
- 2. The nature of the statutory scheme and the terms of the statute pursuant to which the body operates;*
- 3. The importance of the decision to the individual or individuals affected;*
- 4. The legitimate expectations of the person challenging the decision;*
- 5. The choices of procedure made by the agency itself. This list is not exhaustive.”*

An investigation under the *Policy on Harassment Prevention and Resolution* and the *Directive on the Harassment Complaint Process* is administrative in nature. It is not a judicial remedy (court or tribunal), nor is it quasi-judicial (example: Adjudication under the *Public Service Labour Relations Act*). Nevertheless, investigators who are responsible for investigating alleged harassment must adhere to the principles of procedural fairness by behaving fairly and equitably towards all of the parties. The importance of procedural fairness is unquestionable; investigators must follow it strictly and at every step in the proceedings within the following principles:



## ***I. The Right to be Informed of the Allegation(s)***

The respondent has the right to know the totality of the allegation(s) made by the other party and must be afforded a reasonable opportunity to respond to them. It is generally the role of the person responsible for managing the harassment complaint process to notify the accused party of the allegations at the outset by providing him or her with a copy of the allegations and an opportunity to respond.

## ***II. Investigator Must be Impartial***

The parties have the right to an impartial investigator. Investigators must be neutral third parties with no interest or stake in the case or its outcome. It is imperative that their skills be exercised impartially and independently.

An investigator must refrain from taking part in an investigation should a situation arise where bias or a reasonable apprehension of bias may be perceived by the parties.

A written request by a party that the investigator withdraw from the case because of a real or reasonable apprehension of bias on his part must be presented at the outset of the investigation or as soon as the party has knowledge of circumstances that could justify this apprehension. In other words, the parties may be considered to have agreed to proceed before this investigator by the fact that they have not objected. If a request for the investigator to be removed from the investigation reveals circumstances that could give a reasonable person grounds to believe that the investigator could be seen to have an interest in favouring one party over another or if the investigator demonstrates bias towards one of the parties, the person responsible for managing the harassment complaint process should decide whether it would be appropriate to hire the services of a different investigator to maintain the integrity of the process.

*“Justice should not only be done, but should be seen to be done.”*

### ***III. The Right to be Heard and to Present Evidence***

The parties must be afforded the opportunity to present their version of the facts, identify witnesses and submit documentary evidence (documents, cassettes, tapes, electronic files, photographs, etc.).

It is then up to the investigator to decide whether the evidence submitted is relevant and admissible. Any evidence that confirms or refutes incidents related to the allegations should be admitted as evidence.

The investigator may disregard evidence that would be inadmissible in law because of:

- Rules relating to administrative secrecy in the public interest (e.g. national security);
- Laws governing privilege (e.g. lawyers, mediators); and
- Laws protecting the confidentiality of medical records or other documents (e.g. psychologists, physicians, psychiatrists, Employee Assistance Program counsellor).

### ***IV. The Right to be Accompanied***

The parties may designate someone to accompany them during the investigation. This person may select a union representative, a spouse, a friend, etc. This person does not represent the party, but is there to assist.

### ***V. The Right to Review Statements to Confirm their Accuracy***

Every person who testifies in the investigation should have access to the statements to verify their accuracy. To ensure this, the investigator should ask the witness to sign and date their statement, before the preliminary summary of facts is written and disclosed to the parties.

### ***VI. The Right to Access and Rebut the Findings***

Under normal circumstances, the facts will be gathered during an onsite investigation; the parties to the dispute and the witnesses will be questioned in-person. To satisfy the principles of procedural fairness, the parties must be afforded an opportunity to review the statements of the other party and witnesses through the preliminary summary of facts. This document is limited to reporting the facts as gathered by the investigator. This summary is disclosed to the parties, who have a reasonable opportunity to rebut, comment on or correct the information relied on by the investigator before completing the analysis and making the findings in the final report.

### **The Burden and Standard of Proof**

In resolving harassment situations through administrative investigations, the parties must be treated with dignity and respect. The allegations are simply that - allegations. Directly or indirectly, the complainant must establish to the investigator that harassment did, according to the balance of probability, take place. Until that happens, it must be assumed that the harassment did not occur. This is called the burden of proof.

When analyzing the facts, the investigator will base his or her conclusions on the balance of probability. This is the civil standard of proof that an incident was more likely to have occurred than not.

### ***Sexual Harassment***

Because sexual harassment does not generally occur in public, in order to make a determination as to whether someone was sexually harassed, circumstantial evidence is considered by drawing inferences from certain behaviour. For the same reason, the credibility of witnesses is even more critical in sexual harassment cases than in any other type of harassment. Cases may be determined based on an assessment of the credibility of the

parties and witnesses. Credibility implies that witnesses tell the truth without any attempt to hide or exaggerate the facts, in a straightforward and honest manner.

Further, in cases of alleged sexual harassment similar fact evidence can be used to demonstrate a pattern of behaviour by the respondent, however this is not usually considered in cases of general harassment. This evidence must be used very cautiously and in unique situations where there is limited evidence; it should be similar in nature to the incidents alleged in order to demonstrate a pattern of behaviour.

### ***Abuse of Authority***

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

Abuse of authority should not be confused with the legitimate exercise of managerial responsibilities, even when it involves actions which may be perceived by the employee as offensive or improper. It is more than just a flawed administrative decision and even mere errors or omissions would not generally meet the threshold of harassment.

Managers have the right to manage the workplace in accordance with governing legislation, collective agreements and policies; this includes imposing corrective and/or disciplinary measures, evaluating and managing performance, managing attendance, approving training and leave requests, among other things. However, the authority conferred upon those designated to manage the workplace is not limitless and managers must exercise their authority legitimately and in good faith.

In making a finding whether allegations of abuse of authority are founded or not, the investigator should consider whether there is any foundation for the actions, observations or conclusions reached by the manager or whether there is evidence of improper intent on behalf of the accused. In order to make a finding of abuse of authority, the conduct must also meet the definition of harassment.

### **Prepare an Interview Plan**

Based on the results of the previous steps and before conducting interviews, the investigator should be aware of which issues will need to be pursued for questioning.

When preparing for interviews, it is important to remember that the objective is to obtain information from individuals that is pertinent to the allegation(s), and that the burden of proof rests with the complainant. For example, if the complainant cannot provide evidence that supports a particular allegation or if there are no witnesses to support the allegation, then the burden of proof never shifts to the respondent and there is no need to investigate that particular allegation any further.

The interview questions should elicit the information from interviewees that can address key investigative areas of interest.

The investigator should identify all the pertinent issues that need to be addressed in preparing the investigation plan and adjust it as required throughout the course of the investigation. The complainant is normally interviewed first, followed by the respondent since they are most closely related to the allegations and will be in a position to provide the most relevant information. Other witnesses should be interviewed in the order of the expected value of their contribution for addressing key investigative questions.

All the parties involved in an alleged harassment situation should expect a professional, transparent, fair and thorough investigation.

## **Stage Four: Validating the Facts**

### **Reviewing and Disclosing the Information Gathered**

Upon completion of the information collection phase, the investigator should have collected information that will permit the formulation of a summary of facts as they relate to each allegation and any other requirements of the mandate.

### **Assessing the Completeness of the Information Collected**

The following questions are useful in assessing the completeness of the information collected:

- Are all of the key investigative issues which were identified in the planning phase adequately addressed?
- For each allegation, does the file contain each party's version of what happened?
- Have all the relevant witnesses been interviewed and their testimony recorded?
- Have all supporting documents been reviewed?
- Is there enough information to begin an analysis?
- Is there a need to go back and collect or verify additional information?
- Have new important questions emerged?

It is suggested that the investigator sort the data according to its relevance to the allegations, group it according to the allegations, distinguish facts from opinions and verify whether there is sufficient and clear information to be able to make a finding as to whether the allegations are founded or not.

The investigator should now be ready to prepare the preliminary summary of facts.

## The Preliminary Summary of Facts

### *Definition of the Preliminary Summary of Facts*

Since the gathering of facts has been done through the investigation, the parties do not have the opportunity to hear the other side (*audi alteram partem*). As discussed earlier, procedural fairness requires that each party have access to the version of facts presented by the other party and have the opportunity to respond to them.

To ensure that the parties have an adequate opportunity to comment on the information that will provide the basis for the analysis and conclusions, the investigator will prepare a preliminary summary of facts, setting out the substance of the relevant issues and related evidence. The summary is restricted to presenting the allegations, issues and facts *only*. Its purpose is to provide an objective and logical description of the relevant information that has been gathered.

The preliminary summary of facts will be presented by the investigator to the person responsible for managing the harassment complaint process who will first identify whether there are any gaps, weaknesses or areas that require further investigation, if required. At this stage, it is also important to ensure that the investigator has fulfilled the terms of his or her mandate. Once the person responsible for managing the harassment complaint process is satisfied with the content of the preliminary summary of facts, he or she will distribute a copy to the parties for their review and comment (once it has been reviewed by the organization to ensure adherence to the *Access to Information Act* and the *Privacy Act*).

## Stage Five: Analysis and Conclusion

### Preparation

After gathering information from the various witnesses, reviewing the files and documents, validating the information gathered through the preliminary summary of facts, and receiving the parties' comments on those facts, the investigator can analyze the information and draw conclusions.

Strong analysis is contingent upon carefully sorting through information which can sometimes be vast and contradictory. How the analysis is carried out is just as important as the information being analyzed. It is vitally important that the investigator weigh all available and pertinent evidence in an unbiased and objective manner.

### **Extenuating Circumstances and Explanations**

To ensure that the investigation is fair and thorough, the investigator should weigh the parties' explanations for each allegation which include aggravating and mitigating circumstances. Without excusing the behaviour, the circumstances may help to explain it and this analysis has an impact on the lens through which the situation is viewed.

### **Reaching a Conclusion**

At this stage of the investigation, the investigator should be in possession of:

- The facts;
- The policies or regulations relevant to the allegations;
- Jurisprudence, if applicable;
- Explanations or extenuating circumstances; and
- Any other relevant information.

The investigator must decide whether the behaviour amounts to harassment. Once the investigator has determined the facts based on the balance of probability, he or she must decide whether there was a breach of the *Policy on Harassment Prevention and Resolution* in that:



1. The person accused of harassment exhibited **improper and offensive** conduct, including objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat; and also including harassment within the meaning of the Canadian Human Rights Act (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).
2. The behaviour was **directed** at the complainant;
3. The complainant was **offended or harmed**;
4. The person accused of harassment **knew or reasonably ought to have known** that this behaviour would cause offence or harm; and
5. The behaviour occurred in the workplace or at any **location or any event related to work**, including while on travel status, at a conference where attendance is sponsored by the employer, at employer sponsored training activities/information sessions and at employer sponsored events, including social events; and
6. There was a **series of incidents or one severe incident** which had a lasting impact on the individual.

In order to make a finding of harassment, **each** of these elements must be present. If even one of these elements cannot be proven, there will not likely be a finding of harassment.

Depending on the investigator's mandate, once the investigation confirms each of the above-listed elements, the investigator may also determine:

- The exact nature of the behaviour;
- Whether the complainant communicated to the other party his or her discomfort or disagreement with the behaviour;
- Whether the evidence suggests any intent on the part of the respondent to cause offence or harm to the complainant;
- The impact or consequences of the behaviour on the parties;

- In the case of an isolated incident, whether it could be interpreted, in the circumstances, as so serious and with such an impact on the complainant that it meets the definition of harassment set out in the policy.

### **Determining Whether the Allegation is Vexatious or Made in Bad Faith:**

If there is evidence to demonstrate that the allegations are vexatious or made in bad faith, the investigator should establish whether the evidence indicates:

- The allegation was made merely for the purpose of vexing or annoying or embarrassing a person;
- The allegation was calculated to lead to no practical result;
- The probable presence of bad faith on the part of the person making the allegation which can be indicated by an intention to mislead the investigator or the presence of ill-will.

### **Definitions**

#### ***Vexatious***

Vexatious is defined by the Shorter Oxford English Dictionary as:

*“Instituted without sufficient grounds for the purpose of causing trouble or annoyance.”*

*Black’s Law Dictionary* defines vexatious as:

*“Without reasonable or probable cause or excuse. When the party bringing the proceeding is not acting bona fide and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result, such a proceeding is often described as “frivolous and vexatious” and the court may dismiss it on that ground...”*

A harassment complaint should not be characterized as vexatious if the evidence demonstrates a reasonable basis for filing and pursuing it. This is one of the reasons why the screening process to determine whether the

complaint is admissible is crucial.

### ***Bad faith***

The standard for establishing that a harassment complaint was made in bad faith is high. It entails more than just poor judgment or negligence. It implies the conscious doing of a wrong for a dishonest purpose or due to moral underhandedness on the part of the complainant. It is characterized by an intention to mislead.

A complaint can be characterized as vexatious or made in bad faith if no practical outcome would be achieved by its pursuit. In such cases, there may be some indication that the same issues raised by the complainant were addressed by proceedings under another redress process for which a remedy has already been granted.

In determining whether a particular allegation is vexatious or made in bad faith, the investigator should determine whether there is any reasonable ground upon which the complaint can be substantiated. In other words, the investigation should establish whether the filing or the pursuit of an allegation is reasonable in light of the circumstances of the case.

### **Where there are no Witnesses or Documents**

A situation where there are no witnesses or documents presents a real challenge for the investigator. This situation can occur when the alleged incident takes place in private, for example behind “closed doors” or when an employee meets a colleague outside of working hours, which may be the case in some sexual harassment situations.

What should be done when there are no witnesses to corroborate an allegation? One way to broach the subject is to rely on the degree of probability. If other similar incidents have been corroborated by witnesses, it

may be more likely that the incident under review occurred. The investigator should carefully consider whether there are sufficient elements to make the alleged behaviour believable.

To determine the likelihood of the allegations, the investigator should consider the following questions:

- Are the facts plausible?
- Do the facts flow logically?
- Are the facts well explained?
- Are the facts sufficiently detailed?

Factors that affect the credibility of the source (witness) include:

- Direct, firsthand knowledge of the allegations;
- Expertise in the relevant subject area;
- Level of maturity;
- Status of the source;
- Relationship between the source and the parties; and
- Consistency or contradictions in testimony.

## **The Report**

The investigator is ready to move to Stage Six – the Investigation Report – once he or she has established whether:

- The alleged conduct occurred, based on the balance of probability;
- There were any underlying factors that may have contributed to the situation (if required by the mandate); and
- The conduct meets the definition of harassment, in accordance with the Policy.

## **Stage Six: The Investigation Report**

### **Content of the Investigation Report**

An investigation report sets out the allegations, a logical description of the facts, an analysis of each incident, and a conclusion. Ideally, the report should be tendered in accordance with the format laid out in Annex 10.

At an earlier stage, the preliminary summary of facts would have already been disclosed to the parties. If the comments from the parties do not justify any additional investigative actions, the investigator writes the investigation report in consideration of these comments. In reading the final report, the person responsible for managing the harassment complaint process must be able to readily understand the allegations, issues, and observations as well as the analysis and conclusions.

At the end of the investigation process and once the person responsible for managing the harassment complaint process receives a copy of the investigation report, he or she will need to review the relevant information and decide whether or not to accept the conclusions of the investigator. To do this, he or she has to be able to make a reasoned decision that is based, among other things, on the facts, analysis and conclusions in the report.

It is imperative that the report present the relevant information gathered through the investigation objectively and logically. The parties will more readily accept a decision that is well-reasoned and clearly written, thereby mitigating the risk that the report will be challenged.

The person responsible for managing the harassment complaint process will consider whether procedural fairness has been respected, the soundness of the facts and the reasonableness of the analysis and the conclusions. It is the responsibility of the person responsible for managing the harassment complaint process to communicate his or her decision to the parties and to disclose the investigation report in accordance with the *Directive on the Harassment Complaint Process*.

The investigation report will be viewed by at least four people with specific needs and vastly different expectations:

1. The person responsible for managing the harassment complaint process who must approve its content and make a decision to accept or reject its conclusions;
2. The complainant,
3. The respondent; and
4. The manager, in consultation with a labour relations advisor, where disciplinary and/or corrective measures will be imposed.

## **Stage Seven: Administrative Closure**

### **Submission of the Investigation Report to the Person Responsible for Managing the Harassment Complaint Process**

#### **Reviewing the Facts, Analysis and Conclusions**

If the person responsible for managing the harassment complaint process does not fully accept or agree with the investigator's findings, he or she should provide a detailed written rationale to the parties explaining why.

#### **Release of the Investigation Report**

##### *Responsibility for Release*

The person responsible for managing the harassment complaint process is responsible for releasing the final investigation report to the parties. Before the report is released to the parties, it is subject to the provisions of the Access to Information Act and the Privacy Act.

The person responsible for managing the harassment complaint process should inform the parties of his or her decision in writing without undue delay and provide them with a copy of the report. The decision letter constitutes administrative closure of the formal resolution process.

##### *Reactions of the Parties to the Release*

Following the release of the investigation report, it is possible that one of the parties will contact the investigator to communicate his or her dissatisfaction. If it relates to the content of the report, the investigator should refer the individual to the person responsible for managing the harassment complaint process.

If the person personally attacks the investigator, he or she should remain calm and demonstrate respect and dignity. If the person makes either implicit or explicit threats, the investigator should take note of them and immediately inform the person responsible for managing the harassment complaint process or if they are criminal in nature, contact local authorities. In the case of an internal investigator who is personally affected by comments made, he or she can also contact a representative from the Employee Assistance Program for support.

### **Challenges to the Investigation Report**

Parties who are dissatisfied with the investigation report may challenge it through different means:

1. By applying for judicial review to the Federal Court of Canada;

#### **From the *Federal Court Law* - Subsection 18.1, Grounds for review**

The Trial Division may grant relief if it is satisfied that the federal board, commission or other tribunal:

- acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
- erred in law in making a decision or an order, whether or not the error appears on the face of the record;
- based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the

- material before it;
  - acted, or failed to act, by reason of fraud or perjured evidence; or
  - acted in any other way that was contrary to law.
2. By filing a grievance in accordance with the grievance procedure under the employee's collective agreement, if applicable.
  3. By filing a complaint with the Canadian Human Rights Commission if a prohibited ground of discrimination was a factor.

# Annex 1 - Sample Investigation Mandate

## I. Purpose of this Mandate

The purpose of this investigation mandate is to:

- a. Establish the terms and conditions in accordance with which this investigation is to be conducted; and
- b. Outline the authorities of the investigator to interview the parties and witnesses, and to view and collect any information or documents needed for this purpose.

### Investigator

**Name:** [name]

**Company:** [company]

### Person Responsible for Managing the Harassment Complaint Process

**Name:** [name]

**Title:** [title]

## II. Allegation(s) to be Investigated

Investigation of harassment allegation(s) by [name of the complainant] in regard to harassment allegedly committed by [name of the respondent].



The allegations to be investigated are attached to this mandate.

### **III. Scope of the Investigation;**

[Subject to the provisions in the professional services contract], the investigator shall conduct the investigation of the allegation(s) attached to this mandate.

The investigator will investigate to determine whether there has been a breach of the Treasury Board *Policy on Harassment Prevention and Resolution* in accordance with the *Directive on the Harassment Complaint Process* and the accompanying Investigation Guide.

The investigator will conduct the investigation in accordance with the principles of procedural fairness while using his or her discretionary power to conduct the investigation in the manner deemed most appropriate.

The investigator will limit the investigation to the allegations referred by the person responsible for managing the harassment complaint process. In the event that additional allegations are raised during the course of the investigation, such allegations are to be submitted to the person responsible for managing the harassment complaint process to determine whether they should be considered as part of the mandate for the investigation. If these allegations are accepted as part of the investigation, they are to be presented in writing by the person responsible for managing the harassment complaint process to the respondent and the investigator's mandate will be amended accordingly.

### **IV. Investigation Process**

The investigator will review the allegations attached hereto and any additional allegations accepted by the person responsible for managing the harassment complaint process to ensure that all relevant documentation has been

identified. The investigator will also review all documentation and responses, as applicable. He or she will then submit an investigation plan to the person responsible for managing the harassment complaint process.

The person responsible for managing the harassment complaint process may designate a person of his or her choosing (such as a departmental harassment advisor) to assist with the administrative aspect of the investigation such as assisting the investigator in arranging interview schedules and meeting locations. The investigator will ensure that the parties have been notified of their right to be accompanied during the investigation process and of the importance of maintaining confidentiality.

The investigator will provide the parties and witnesses with the opportunity to be heard and conduct all interviews in a fair, impartial and professional manner. He or she will ensure that witnesses are asked to sign and date witness statements once they have had an opportunity to review the interview notes to confirm their accuracy.

The investigator will take every reasonable precaution to ensure that the investigative process is carried out with due diligence and respect for the rights of those being interviewed and to perform these duties within the confines of the law.

The investigator will inform the person responsible for managing the harassment complaint process in the event that the parties, the persons accompanying them or the witnesses do not fully cooperate in or jeopardize the process.

## **V. Reporting:**

The investigator will provide the person responsible for managing the harassment complaint process verbal progress reports on the status of the investigation at regular intervals or at the request of the person responsible

for managing the harassment complaint process to allow him or her to monitor the timeliness of the process and to ensure that the mandate is being adhered to.

Upon completion of the initial interview phase, the investigator will submit a preliminary summary of facts outlining the evidence and the facts of the case to the person responsible for managing the harassment complaint process.

He or she will then provide the parties with a copy of the preliminary summary of facts, once they have been reviewed by the organization to ensure adherence to the Access to Information Act and the Privacy Act, and provide them with an opportunity to make comments regarding accuracy and completeness and to provide additional relevant information.

The investigator will examine all the information submitted by the parties as well as the other evidence gathered during the investigation. He or she will provide a thorough analysis of the evidence in the investigation report.

The investigator will use the criteria contained in the Policy on Harassment Prevention and Resolution and the Directive on the Harassment Complaint Process, in order to conclude whether there has been a breach of the Policy by establishing whether:

- The allegations are founded in whole or in part; or
- The allegations are not founded.

The investigator will submit the investigation report to the person responsible for managing the harassment complaint process in a timely manner. He or she will complete the investigation report even if the parties or witnesses refuse to cooperate in the investigation process and shall indicate the reason, if any, for such refusal. If applicable, the investigator's report will also include the reasons for which a witness proposed by either of the parties was not interviewed.

Copies of the investigation report will be provided to the parties, by the person responsible for managing the harassment complaint process once the report has been reviewed by the organization to ensure adherence to the Access to Information Act and the Privacy Act.

A final decision to accept or not the conclusions of the report will be made by the person responsible for managing the harassment complaint process based on the findings of the investigation report.

## **VI. Additional Requirements**

**(Optional:** *The following paragraphs can be inserted and amended based on the specific needs of the organization*)

The investigator will also make a determination on whether the allegations are vexatious or made in bad faith. The investigator will also comment on underlying workplace factors that may have contributed to the situation.

## **VII. Documentation**

Supporting documentation and relevant submissions collected by the investigator will be included and clearly identified as an Appendix to the investigation report.

At the conclusion of the investigation, the investigator will submit the investigation file including all information and documentation collected in the course of the investigation to the person responsible for managing the harassment complaint process.

## **VIII. Confidentiality and Disclosure**

The investigator shall conduct the investigation with the utmost discretion.

The investigator will take every reasonable precaution to safeguard, secure and protect all information, documentation and materials that may come into his or her possession while investigating the allegations.

The person responsible for managing the harassment complaint process will ensure in advance that the parties and witnesses are provided with a copy of the *Policy on Harassment Prevention and Resolution* and the *Directive on the Harassment Complaint Process*, and are advised of their rights and responsibilities with respect to the investigation, particularly attendance at interviews, accompaniment and confidentiality.

The investigator cannot guarantee the parties or witnesses that conversations or information communicated during the course of the investigation will remain confidential. Anyone interviewed during the investigation must be informed that his or her name will appear in the investigator's report and that the information provided may be disclosed in the investigation report.

The investigator must compile and communicate all information in compliance with the *Privacy Act* and the *Access to Information Act*.

## **IX. Informal Resolution Process**

If a request for informal resolution such as mediation is made by one of the parties, the investigator will inform the person responsible for managing the harassment complaint process. If an informal resolution process is commenced to resolve the allegations, the investigation will be suspended by the person responsible for managing the harassment complaint process.

The investigator shall not participate, under any circumstances, in the informal conflict resolution process or attempt to obtain or use information disclosed in the context of an informal resolution process if the investigation resumes.

If the parties do not expeditiously resolve the situation through informal resolution, the person responsible for managing the harassment complaint process will inform the investigator that the investigation will resume. If the

parties resolve the situation informally, the investigation will be terminated and all documentation will be returned to the person responsible for managing the harassment complaint process.

## **X. Timeframes:**

It is recognized by all parties that this Mandate may be terminated or extended at any time at the direction of the person responsible for managing the harassment complaint process.

The investigation report will be submitted to the person responsible for managing the harassment complaint process on a date not later than [date].

**In Witness Whereof** this mandate is accepted and signed, at [city], this [day] day of the month of [month] [20 ].

[Person Responsible for Managing the Harassment Complaint Process]

[Investigator(s)]

## **Annex 2 - Investigator's Checklist**

- Obtain and review mandate, seek clarification if needed
- Review the written allegations and response to allegations
- Review the applicable policies, legislation and jurisprudence, as applicable
- Develop an investigation plan and provide a copy to the person responsible for managing the harassment complaint process
- Meet with the complainant
- Meet with the respondent
- Explain the parties' rights and responsibilities with respect to the investigation
- Record the parties' statements and have them date and sign them
- Meet with the witnesses
- Record the witnesses' statements and have them date and sign them

- Review and adapt your investigation plan, as needed
- Proceed with further interviews, as needed
- Visit the premises, if relevant and appropriate
- Provide the person responsible for managing the harassment complaint process with periodic verbal progress reports
- Prepare the preliminary summary of facts and submit it to the person responsible for managing the harassment complaint process for onward submission and review by the parties
- Obtain and review comments and submissions from the parties
- Assess whether further investigation is warranted
- Analyze the evidence
- Prepare the investigation report and present it to the person responsible for managing the harassment complaint process
- Submit the investigation file to the organization

## **Annex 3 - Preparing an Investigation Plan**

The following key elements should be considered and included in the investigation plan before proceeding with the investigation.

### **Definition of the Subject(s)/Issues**

- What are the allegations?
- Are there any other questions or points that require clarification?

### **The Required Elements for Determining a Breach of the Policy**

- What elements must be proven to determine that there has been a breach of the Policy?

### **Logistics**

- Where will the interviews be conducted?

- Are there any special accommodations required?

## **Information Critical to the Investigation**

- What documents or records will need to be examined?
- Which witnesses or experts will need to be questioned?
- What is their relevance to the allegations?
- In what order will they be questioned?
- What policies and/or directives will need to be reviewed?

## **Key Areas of Inquiry**

- How will the questions be tailored to each specific event or subject?
- What extent of questioning will be required to determine a particular issue?
- What issues will be likely to require follow-up depending on the answers given?

## **Order in which the Information Should be Obtained**

- In what order should the information be gathered?
- Should some records be reviewed before certain witnesses are questioned?
- Should some witnesses be interviewed before others?

# **Annex 4 - Interviewing Tips**

## **Introduction**

Questioning the parties and witnesses in a harassment situation is a sensitive task. There is an enormous amount of emotion involved; some interviewees may be quite uncooperative, others aggressive. In the absence of familiarity with the person who will be interviewed, the investigator should be cautious



and try to anticipate a wide array of possible reactions during the interview. It is imperative that the investigator demonstrate objectivity throughout the interview. The most successful interviews entail gaining the trust of the person being interviewed. The investigator should attempt, as much as possible, to establish a climate of trust as early as possible in the interview. Preparation is key and these interviewing tips are meant to help prepare the investigator.

Throughout the investigation process, the investigator must ensure that procedural fairness is respected and refrain from behaving in a way that could be seen to jeopardize that notion. The role of the investigator is to review the matter in an objective manner. He or she must be prepared to consider all of the versions of the events giving rise to the allegations. At the same time, it is important to consider how the parties and witnesses presented their version of events because their approach and demeanour may affect the way that information is interpreted.

## **Six Key Questions**

Establishing facts is contingent upon obtaining responses to six key questions:

Who? What? Where When? Why? How?

In order for the investigator to be in the best position to answer those questions, he or she should develop a plan that can be used to guide and simplify the interview process. In doing so, it is important to determine beforehand:

- The date, time and place for the interviews;
- The order in which the parties and witnesses will be questioned;
- The questions and the order in which the investigator will ask them for each interview; and

- How much time the investigator intends to allow for each interview so that he or she can prepare a schedule accordingly.

It is important to keep in mind that the plan is only a guide and it is far more important for the investigator to be able to adapt his or her questions or approach as the interview unfolds. For example, a new or unexpected piece of information can shed new light on the situation and may warrant a shift in direction; the investigator can adapt by asking additional questions and requesting clarification or additional details. New information can also mean that the investigator will need to go back and interview the parties or previous or new witnesses.

## **Understand the Organizational Structure and the Workplace**

If the investigator is not familiar with the structure of the organization or with the layout of the workplace and this information is relevant to the allegations, he or she should request an organization chart or floor plan to help situate the parties and understand the location of where the events allegedly occurred. In addition, if deemed necessary, the investigator can do a site visit before the interviews. Whenever practicable, these visits should occur in the absence of employees, outside regular office hours so as not to disturb or distract the employees.

## **Choose an Appropriate Location**

The choice of location for the interviews is critical since it allows investigators to create an atmosphere conducive to trust, comfort and openness. Such locations should be quiet, very private and neutral (i.e. not in one of the parties' offices or at their home).

## **Establish Contact**

The investigator should determine, in advance, whether the interviewee has any special needs that will need to be accommodated during the interview and ensure that they are able to participate in the language of their choice. The investigator should also take this opportunity to remind the interviewee of his or her rights and responsibilities and ensure that they are understood (e.g. information disclosed will not be considered confidential, right to be accompanied, importance of not sharing testimony or allegations with others, etc.)

## **Explain the Interview Protocol**

At the beginning of the interview, the investigator should explain how the interview will be conducted and what is expected from the interviewee. He or she should also verify that he or she clearly understands the purpose of the interview. At this point, it would be a good idea to allow the person to ask any questions they might have.

The investigator should also explain he/she cannot ensure the confidentiality of the testimony because the parties have the right to know what has been said about them and by whom.

## **Accompaniment**

If one of the parties is accompanied by a union representative, a non-represented employee advisor, legal counsel, or any other person of their choice, the investigator should clarify this person's role at the outset of the interview.

If the parties attempt to bring more than one person to accompany them, the investigator should ask why they feel this is necessary and determine whether this presence is justified. The investigator is entitled to request the exclusion of observers if the process will be hindered in some way.

The accompanying person may not answer questions for the person being interviewed or inhibit the proceedings in any way. His or her role is to provide support and guidance to the person being interviewed. The role of advisors can be summed up as follows:

- To help the person they accompany gather and present evidence;
- To help the parties draft their allegations and respond to those allegations;
- To help the person they accompany to determine the appropriateness of informal conflict resolution;
- To make themselves available so that the investigation can proceed in a timely manner;
- To prepare the person they accompany for the interview by helping him or her present the facts in a logical and coherent fashion;
- To attend the interview and provide moral support to the person they accompany;
- To encourage the person they accompany to remain calm and objective and if necessary, request a caucus or an adjournment;
- To help the person they accompany to manage anger or frustration; and
- To review the preliminary summary of facts and ensure procedural fairness has been observed.

## **Records of the Interview**

The investigator should inform the interviewee that he or she will take notes during the interview and explain the reasons for taking notes:

- To ensure a common understanding of what was said;
- To have a record of the exchange;
- To assist in compiling the report; and
- For verification at a later date.

The use of video or audio recording devices is not advisable. This practice is not conducive to building an atmosphere of trust and may serve to intimidate interviewees who are already experiencing stress and anxiety about the interview. Under such circumstances, they may have a tendency to withhold information. Moreover, the investigator must be prepared to provide, upon request, copies of these transcripts which can be very costly and time consuming.

## **Managing the Interview**

The investigator is responsible for the interview and should have some degree of control over the proceedings. However, the investigator cannot guarantee certain factors such as the outcome of the interview, the interviewees' participation or the accuracy of their statements. While the investigator leads the interview, his or her role should consist primarily of listening to the parties and witnesses.

Investigators should demonstrate active listening skills. This could include:

- Showing open body language (e.g. arms uncrossed, facing the interviewee, etc.); and
- Making eye contact and acknowledging comments made by the interviewee (e.g. nodding, verbal cues, etc.).

There may be situations where the interviewee attempts to invoke a strong reaction from the investigator; it is important that the investigator avoid being provoked. The investigator must concentrate on obtaining all of the information that is required to better understand the situation under investigation. If the person being questioned contradicts him or herself or one of the other witnesses or parties, clarifying questions could be asked to help the investigator weigh the information.

During the course of an investigation, it is not uncommon for the parties and the witnesses to demonstrate strong emotions such as fear, stress, anger and frustration. The investigator should know how to recognize these emotions, show empathy (not sympathy) toward the interviewee and re-establish a stable and comfortable atmosphere for the interview. If it is determined that it would not be appropriate to continue the interview or that a break is warranted, either by the investigator or by at the request of the interviewee, the investigator should not hesitate to suspend or reschedule the interview at a time that is mutually convenient.

## Questioning

The order and type of questions that will be asked during the interview should be determined beforehand. At the beginning of the interview, it is a good idea to begin with conciliatory questions that are less likely to be invoke strong emotions. After a few introductory remarks, the investigator can begin by asking the interviewee routine questions such as his or her full name, position, group, level, work telephone number, and section within the organization.

At some point in the interview, the investigator should ask the interviewee to describe the incidents or behaviour relating to the allegations and ask him or her to explain any related workplace norms, if deemed relevant. The focus of the investigator should be on obtaining facts and direct evidence – not hearsay. This is important because the investigation report must reflect the facts.

Generally, the investigator should not share the allegations with the interviewee during the interview. The allegation is the personal information of the parties and their privacy must be respected to the greatest extent possible. In the case where the allegation may have to be disclosed to a witness, the investigator should state that, *“It has been alleged that...Would you*

*please comment?"* Also, the investigator should not reveal information discovered from other sources. Such information may prejudice the response and could violate the privacy of the person who provided it.

## **Recap**

At the conclusion of the interview, the investigator can provide a brief recap to ensure that the person agrees with the investigator's understanding of what was said. The investigator should also ask the interviewee whether he or she has anything to add.

In addition, the investigator must have the interviewee verify and sign his or her notes to ensure their accuracy. If the investigator prefers to have the interviewee sign a statement at a later date, he or she should inform the interviewee accordingly and have it signed by him or her at this time.

## **Some Final Tips for the Investigator**

- Bring a copy of your mandate to the interview. There may be times when you have to refer to it or even show it, either to identify yourself or to assert your investigative authority.
- Refrain from allowing any interruptions during the interview such as telephones or other electronic devices unless this has been agreed to beforehand.
- For the comfort of the interviewee, ensure that water and tissues are available during the interview and that the room is comfortable and conducive to this type of exchange. For example, consider lighting, seating, noise level, level of privacy, accommodation needs, etc.).
- To the greatest extent possible, schedule your interviews to ensure that you have sufficient time to prepare for the interview, interview the parties and witnesses, complete your notes and reflect on the outcome of the interview. *"Memory is the faculty that forgets."*
- Number your pages of handwritten notes during the interviews.

- Remember that your notes could be accessed at a later date and so anything you record should be written with this in mind.
- The interviewee is not normally provided with a copy of your notes. This is in part to ensure the integrity of the investigation process.
- He or she will be allowed to review and sign a statement which will then be put on the investigation file.
- At no point during the interview should you exit the interview room and leave your notes or documents unattended.
- Refrain from expressing surprise, distrust or disbelief; maintain objectivity and impartiality.
- In cases where there is tension, fatigue or strong emotions, suggest breaks or spread your interview over more than a day.

## **Annex 5 - Interview Protocol**

### **At the Beginning of the Interview:**

1. Welcome the interviewee and the person accompanying him or her (if present), noting the latter's name in the file.
2. Provide a brief explanation of the context of the investigation, taking into account that the allegations should not be shared with the witnesses as they are confidential and considered to be the personal information of the parties.
3. Explain the role of the investigator; his or her neutrality and impartiality with regard to the allegations, and the requirements of the mandate (have a copy of the mandate).
4. Confirm that the interviewee has been informed of his or her rights and obligations under the Policy. If interviewing the respondent, confirm that he or she has received a copy of the allegations and has been invited to respond to it in writing.



5. Inform the interviewee that all relevant information communicated during the interview will be documented and that no information can be considered confidential in the context of the investigation. Furthermore, witnesses cannot be given anonymity.
6. Explain how the interview will be conducted and the roles and responsibilities of any person accompanying the interviewee, including the importance of discretion in relation to the information revealed during the interview.
7. Explain the process of validating the notes taken by the investigator during the interview. For example will they be presented to the interviewee at the end of the interview for his or her signature or will they be transcribed and presented for validation and signature at a later date?
8. Ask the interviewee to provide his or her title, position and brief work history (if relevant), as well as their working relationship with the parties. This information should be recorded in the investigator's notes.
9. Permit the interviewee the opportunity to ask questions about the interview and subsequent process.
10. Ask the interviewee if he or she is ready to proceed, and ask the questions.

### **At the End of the Interview:**

1. Ask the interviewee if he or she has any questions or anything to add.
2. Remind him or her about the obligations of confidentiality and discretion that are essential to a fair investigation procedure for the parties and the importance of not discussing the allegations or the interview with the parties or any other person.
3. Make any necessary arrangements to meet at a later date, if necessary, so that the interviewee can review and sign his or her statement.
4. If another interview will be required, schedule the interview at a time that is mutually convenient.

# Annex 6 - Note Taking

## Note Taking

Remember that much of the information collected in the course of the investigation is subject to the *Access to Information Act* and the *Privacy Act* and may be accessed by the parties at a later date. The investigator must be careful to only record facts. Moreover, the persons interviewed can expect to review their statement as recorded by the investigator, to confirm its accuracy, prior to submission of the investigation report.

During the interview, the investigator should weigh the information provided by the parties and witnesses. In gathering the evidence, the investigator should be able to weigh the importance of the information provided. For example, is it direct evidence, opinion or hearsay? Gaps or weaknesses in evidence will require further investigation before accurate conclusions can be drawn.

The investigator's notes are of vital importance to the investigation. What follows is a list of considerations that should be taken into account in recording notes so as to avoid complications following an investigation:

- Subject to the *Access to Information Act* and the *Privacy Act*, notes may be accessed by the parties;
- The collection and recording of notes should reflect the principles of procedural fairness;
- Poorly written notes, which can be characterised by a lack of detail, bias or inaccuracies, may lead the participants to question the integrity of the process;
- Poorly written notes may have to be corrected and could lead to challenges, thereby throwing the investigative process into disrepute; and
- Poorly written notes will prove difficult to interpret and analyse for the purpose of writing the preliminary summary of facts.

- Good quality notes can be characterized as:
  - Written in neutral language;
  - Organized coherently to facilitate the writing of the preliminary summary of facts;
  - Signed by the interviewee, if applicable; and
  - Bearing the security designation of PROTECTED “B”.

## **What are Some Suggested Note-Taking Practices?**

- Identify the witness’ name, address, telephone number, fax number and e-mail address, as applicable;
- Clarify the witness’ title (both at the time of the alleged incidents and at the present time) and his or her role within the organization;
- Specify which party identified the witness;
- Identify the issues discussed including the date, time and location of any alleged incidents;
- If the witness relies on documentary evidence or makes reference to a document, include this document in the file, if appropriate; and
- Determine whether the evidence provided by the witness is direct evidence, opinion or hearsay and record the facts.

## **What Note-Taking Practices should be avoided?**

- Recording your personal opinions or value judgments about the witness or information that was disclosed to the investigator.
- Recording too much information, including irrelevant information.
- Overuse of abbreviations, acronyms or symbols. The information should be easily understood by a third party.
- Attempting to diagnose the physical or psychological health of the person being interviewed; investigators do not possess such expertise.

# **Annex 7 - Analyzing the Facts**

## **Compare Similarities and Differences**

All statements made by interviewees should be compared to identify similarities (those accounts which are strikingly similar) and differences (those accounts which bear major discrepancies).

The investigator will need to gain a clear understanding of the facts, based on the evidence compiled. In order to do this, the investigator will compare the statements provided by the parties and the witnesses to uncover where the similarities and the differences lie.

While the various statements of the alleged incidents may bear certain similarities, it is equally possible for the perceptions of those involved to vary considerably. If there are important differences in testimony, the investigator should weigh it according to the validity or strength of the information (e.g. direct, firsthand evidence vs. hearsay, personal perceptions) and the credibility of the witnesses. If the statements of the parties are in conflict, the investigator should review the witnesses' versions to determine whether they serve to support or refute either party's statement and to what extent. For example, if a majority of the witnesses interviewed support the allegations, the investigator may reasonably conclude that the allegations are more than likely to have occurred. However, the number of witnesses that support a version of events should not be the only consideration; the investigator should also consider whether their testimony is credible and whether there is other supporting evidence.

## **Create a Chronological Description of Key Evidence**

A chronological description will help establish the sequence of events related to the allegations and can be a useful tool for preparing the analysis. The information should be organized in chronological order according to the allegations and the evidence that either supports or refutes these allegations.

Once completed, the description should be reviewed to identify any gaps or inaccuracies which may require further investigation.

The following chart can be used to record the chronological description related to the allegations and can prove to be a useful tool in preparing the analysis.

<b>Date &amp; Time</b>	<b>Alleged Incidents</b>	<b>Description of Evidence</b>

## **Weigh the Information**

Once all of the information is collected, it should be weighted against the following considerations:

- How important is the evidence?
- What is the relevance of the fact to the allegation?
- Does it prove or disprove the allegation?
- If the evidence is not directly related to the allegation, does it reveal other important information or lead to another source?
- Are there gaps or inaccuracies that require further investigation?

It is important to note that the fact that evidence may not appear to be relevant at the time that it is revealed to the investigator does not mean that it may not gain importance at a later stage in the investigation.

In determining the accuracy of evidence provided, the investigator should identify whether there is conflicting information and seek additional sources to establish whether the evidence is valid or not. The investigator will need to reconcile the data while also taking into consideration the fact that it is natural for witnesses to observe and remember situations differently given the subjectivity of the perceptions of each individual. The more time that elapses, the more difficult it is for people to recollect events clearly.

In determining the credibility of the witness, the investigator should consider whether the witness has provided direct or first hand knowledge of the incidents or whether the witnesses is providing a personal opinion or repeating hearsay. A credible witness is one that is believed to be telling the truth without any attempt to hide or exaggerate the facts, in a straightforward and honest manner.

In examining the facts, the investigator should examine each piece of information individually and as a whole. Information that could be considered weak if viewed on its own might be strengthened by supporting evidence. On the other hand, evidence that appears strong on its face can be weakened by the provision of contradictory evidence.

## **Important Principles for the Investigator to Consider**

Even if the body of information contains significant contradictions or if there is a lack of convincing evidence, the investigator is still required to draw a conclusion. In order to determine that the allegation is founded, the evidence must demonstrate on a balance of probability that the allegation is likely to have occurred. In the absence of such evidence, the investigator must conclude that the allegation is not founded. The complainant bears the onus of proof and the standard of proof is “more likely than not”, in assessing if that person has been subjected to workplace harassment. Drawing such conclusions can be especially challenging in situations where two people present different versions of incidents. However, two conflicting views should not necessarily lead the investigator to conclude that the allegations are not founded. Rather, each account should be carefully assessed in light of all of the other information and evidence collected. Facts analysis is more than a counting game; the number of witnesses who can support a version of events should not be the only consideration. At times, fewer strong pieces of

information may outweigh a larger number of weaker pieces of information. The investigator must be able to account for and explain the different weight allotted to the evidence collected.

Furthermore, when analyzing the evidence the investigator should avoid trying to read into the motives of the person against whom the allegations are made, unless there is evidence to demonstrate that malicious intent was indeed a factor. In situations involving allegations of abuse of authority, the intent of the manager may be an important factor in determining whether he or she harassed a subordinate. For example, if the manager was carrying out his or her managerial responsibilities in an appropriate manner with no express intent to harm his or her subordinate but rather to achieve a legitimate performance management objective; this should be taken into account in determining whether his or her actions constituted harassment.

In most cases, the intent of person alleged to have harassed another should not be a factor in determining whether harassment occurred. While the intent to harass another individual may be an aggravating factor for the manager in determining appropriate corrective and/or disciplinary measures, the investigator should not be overly concerned with this aspect of the allegation. The investigator must simply apply the criteria identified in this Guide to determine whether the behaviour meets the definition of harassment.

## **Identify Areas that Require Further Inquiry**

The investigator should ensure that he or she has collected the information required by the Mandate, including information to support or refute each individual allegation. In the absence of this, the investigator will need to determine the reason for the lack of information – e.g. lack of sources, limited scope of questioning or witnesses, poor understanding of the issues or allegations, etc.

If collecting further information is not feasible, the investigator will have to describe what information is lacking and how it affects the outcome of the investigation. If the evidence does not demonstrate on the balance of probability that an allegation is founded, it should be deemed unfounded in accordance with the burden and standard of proof required in harassment situations.

The following table may prove useful in helping the investigator reconcile evidence that is conflicting or inconclusive. It can be completed for each allegation in order to identify the discrepancies or gaps in evidence.

### Consolidated Analysis

	<b>Allegation #1</b>				<b>Factual vs. Perception</b>	
	<b>Version</b>	<b>Similarities</b>	<b>Differences</b>	<b>Explanations</b>	<b>Direct Knowledge of Events</b>	<b>Status of Source</b>
<b>Complainant</b>	<i>Alleges harassment</i>					
<b>Respondent</b>	<i>Denies the conduct</i>					
<b>Witness #1</b>	<i>Saw the alleged conduct</i>				Yes, was in the room	
<b>Witness #2</b>	<i>Did not see the alleged conduct</i>				No, was in the hallway	
<b>Documents</b>	<i>None used</i>					
<b>Physical Information</b>	<i>None used</i>					
	<b>Allegation #2</b>				<b>Factual vs. Perception</b>	



	Allegation #1				Factual vs. Perception	
	Version	Similarities	Differences	Explanations	Direct Knowledge of Events	Status of Source
	Version	Similarities	Differences	Explanations	Direct Knowledge of Events	Status of Source
<b>Complainant</b>	<i>Alleges harassment</i>					
<b>Respondent</b>	<i>Denies the conduct</i>					
<b>Witness #1</b>	<i>Saw the email</i>				After the fact	
<b>Witness #2</b>	<i>Saw the email</i>				After the fact	
<b>Documents</b>	<i>Email</i>					
<b>Physical Information</b>	<i>None used</i>					

## Annex 8 - Preliminary Summary of Facts

[Name of the Organization]

**PROTECTED "B"**

**File No. -**

### Preliminary Summary of Facts

Further to harassment allegations made by [Name of the complainant, title, section, division] regarding [Name of the respondent, title, section, division], this preliminary summary of facts is submitted in accordance with the terms and conditions of the mandate assigned to the below-mentioned investigator.

[Investigator Signature]

[Name of the investigator]

[Date]

## Body of the Summary

**The interviews were held at (location) between (dates) and the following persons were interviewed:**

- The complainant [name, title, organization], accompanied by [name, title, organization];
- The respondent [name, title, organization], accompanied by [name, title, organization]; and
- The witnesses, [name, title, organization].

**The following documents were reviewed:**

- The allegations of harassment;
- The organization chart; and
- The Policy on Harassment Prevention and Resolution and the Directive on the Harassment Complaint Process

## Mandate

The first paragraph of the preliminary summary of facts indicates the basis upon which the investigation is conducted and provides information about the parties.

*Example:*

*“This investigation is conducted under the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process, pursuant to allegations of workplace harassment made by [name and title of complainant] regarding [name and title of respondent.]”*

The investigator then describes the mandate and the name of the person responsible for managing the harassment complaint process.

*Example:*

*“On [date], [Name of person responsible for managing the harassment complaint process], assigned to [Name of investigator] the mandate to investigate allegations of workplace harassment between the parties named above. This investigation was conducted according to the Policy on Harassment Prevention and Resolution and the Directive on the Harassment Complaint Process.”*

## **Background**

The purpose of this section is to provide general information about the allegations. The information must be factual and relate directly to the allegations. Usually, it contains information such as general data about the parties, the workplace, a brief background of the situation, a list of witnesses and, if necessary, a reference to an organization chart. For example, the investigator might situate the parties in relation to the organization chart and describe their working relationship with each other. In addition, the investigator could summarize the allegations including any preceding incidents or events and the nature of the allegations, the reported impact on the complainant.

## **Preliminary Objections (if applicable)**

During the interviews with the parties, the investigator may receive preliminary objections from them. It is recommended that the investigator discuss these objections with the person responsible for managing the harassment complaint process and address these objections accordingly. For the most part, such objections should not delay the fact gathering process. However, if the objections raised concern over the application of procedural

fairness, such as an alleged breach of impartiality, the investigator must promptly deal with it in conjunction with the person responsible for managing the harassment complaint process.

## **The Allegations**

The allegations must reflect those put forth by the complainant which would have accompanied the investigator's mandate, and any additional allegations approved by the person responsible for managing the harassment complaint process and reviewed by the respondent.

## **The Purpose of the Investigation**

Clearly identify the issue that is to be decided through investigation.

*Example:*

*"Did [Name of the respondent] harass [Name of complainant] in the workplace?"*

## **The Facts**

This part can vary in length and detail depending on the nature and complexity of the allegations.

With all this information in mind, the investigator should write the summary in a way that gives the reader enough information about each allegation in a way that is easily understood and logical. The preliminary summary of facts must present both parties' version of the facts as well as the witnesses' testimony. It must also present any relevant information obtained through documentary evidence.

The role of the investigator is not to repeat verbatim every single piece of information communicated by the parties and witnesses in the course of the investigation but to sort through the information and filter it according to its relevance to the allegations. He or she must separate what is relevant from what is not, group the information by allegation and distinguish facts from

opinions. Any information that does not specifically relate to the investigation but warrants attention from management should be brought to the attention of the person responsible for managing the harassment complaint process at the earliest opportunity and should not be included in the preliminary summary of facts unless specifically instructed by the mandate.

The investigator must set aside evidence that would be inadmissible in law by reason of:

- Rules related to administrative secrecy in the public interest (e.g. national security);
- Laws governing privilege (e.g. client-solicitor); and
- Laws protecting the confidentiality of medical records or any other documents from medical practitioners.

To ensure that adequate information is included in the preliminary summary of facts, the investigator should consider whether:

- There are sufficiently detailed notes of the statements of the parties and witnesses;
- The appropriate persons were interviewed and whether the right questions were asked; and
- There is sufficient information upon which to conclude whether harassment did or did not occur.

If there are gaps in information, the credibility of the investigation will be significantly affected and every effort should be made to resolve these issues before the submission of the preliminary summary of facts.

## **Submission of the Preliminary Summary of Facts**

The investigator submits the preliminary summary of facts to the person responsible for managing the harassment complaint process. Once it has been reviewed by the organization to ensure adherence to the Access to

Information Act and the Privacy Act, the latter will distribute a copy of the summary to the parties. This will allow them each an opportunity to make written submissions. For ease of reference, a sample letter to the parties disclosing the preliminary summary of facts is included at the end of this Annex.

Upon receipt of the summary, the parties are given a reasonable amount of time (10 working days) to respond to the information provided therein. The preliminary summary of facts is not meant to disclose every detail of the investigation, but rather the key facts that will form the basis of the decision as to whether the harassment allegations are founded or not; this will assist both the investigator and ultimately the person responsible for managing the harassment complaint process in rendering a decision.

If further investigation is required following the submission of the preliminary summary of facts, the investigator will be required to disclose any new or additional information that is obtained in the course of this investigative process if it will be used to substantiate the final report. Again, the parties should be given an opportunity to respond to this additional information.

After considering the parties' response to the preliminary summary of facts, the investigator analyzes the information and then prepares the investigation report which includes the analysis and conclusions of the investigation.

**SAMPLE LETTER  
SUBMISSION OF THE PRELIMINARY SUMMARY OF FACTS  
TO THE PARTIES**

**PROTECTED "B"**

**[File No. -]**

[Name of party]

[Party's address]

Dear [Name of party],

This is further to the allegations of workplace harassment by [Name of complainant] concerning [Name of respondent].

Please find attached a copy of the preliminary summary of facts which sets out the facts gathered through the investigation. The attached summary is a protected document that must be treated as confidential and shared only on a need-to-know basis.

If, after reviewing the summary, you wish to provide further information or dispute any information contained in the summary, you are asked to provide these comments in writing to the undersigned no later than [ten working days]. If your comments are not received by this date, you will be deemed to be in agreement with the summary. A copy of this summary has been provided to [Name of the other party] who has been given the same opportunity to comment.

Any submissions by the parties within the allotted timeframe will be taken into consideration before conclusion of the investigation and submission of the final report which will be forthcoming.

If you would like to obtain further information about this matter, please do not hesitate to contact me.

Yours truly,

[Name of the person responsible for managing the harassment complaint process]

[Title]

[Telephone number]

Attachment

## **Annex 9 - Report Writing**

## Characteristics of a Good Report

These objectives should be applied throughout the report-writing exercise, in order to ensure that the investigation report is concise and readable.

- The report must achieve its objective – to respond to the requirements of the mandate and answer the questions raised (i.e. are these allegations of harassment founded or not?).
- The report must be designed to meet the needs of the person responsible for managing the harassment complaint process.
- The report must be logical, sufficiently detailed and accurate. It should not include extraneous or irrelevant information or unsubstantiated opinions. The person responsible for managing the harassment complaint process must be able to rely on the facts set out in the report and render a decision accordingly.

The investigator should ensure that the structure of the report is clear for the reader so that he or she can easily access and reference the information. The pages should be clearly numbered, dates and witnesses should be accurate and there should not be any spelling or grammar mistakes. Failing to write in a clear and coherent fashion may cause the person responsible for managing the harassment complaint process to be concerned that other critical errors in the content or methodology could have occurred.

To the greatest extent possible, the investigator should rely on simple and direct language to describe the facts and to develop the analysis. The person responsible for managing the harassment complaint process will expect the facts to be clearly spelled out and the analysis to be sound.

As a general rule, the investigator should avoid using:

- Ambiguous language;
- Abbreviations or acronyms;
- Overly long or complex sentences;



- Characterisations or descriptions which could denote bias; and
- Medical, legal or overly technical terminology.

Finally, it is a good idea for the investigator to set aside the report for a day or two and then read it anew. This will enable him or her to more readily flag any gaps or errors. Before submitting the report the investigator should consider the following questions:

- Would someone unfamiliar with the situation be able to easily understand the report?
- Is the report coherently and concisely written?
- Does the report satisfy the requirements of the mandate?

For a sample layout of the investigation report, please consult [Annex 10](#) of this Guide.

## Annex 10 - Investigation Report

**PROTECTED "B"**

**File No: [...]**

### Cover Page

#### Investigation Report

Complainant: [complainant]

Respondent: [respondent]

Nature of the allegations:

*(This a brief description of the type of allegations being made)*

The allegations are attached to this report as Annex 1.

The mandate, including any subsequent amendments, is attached to this report as Annex 2.

The complainant was sent the preliminary summary of facts on:

Comments on the preliminary summary of facts received on:

The respondent was sent the preliminary summary of facts on:

Comments on the preliminary summary of facts received on:

The parties' responses are attached to this report as Annex 3.

## **Body of the report**

### **Allegation(s)**

[Name of the complainant] alleges that [Name of the respondent] harassed him/her in the workplace.

The allegations that formed the subject of this investigation are as follows:

*(Reproduce the allegations)*

### **Mandate**

(The first paragraph of the body of the report indicates the basis upon which the investigation was conducted.)

### **The Investigation Procedure**

(The next four sections essentially repeat the information produced in the preliminary summary of facts.)

*The interviews were conducted in [location] from [date] to [date] at which point the following persons were interviewed:*

The parties to the dispute:

*[Name of the complainant] accompanied by [Name, title and organization of the person accompanying him or her].*

*[Name of the respondent] accompanied by [Name, title and organization of the person accompanying him or her].*

The witnesses:

*[Names, titles and organizations of the witnesses]*

The following documents were considered:

## **Preliminary Objections**

*(If applicable)*

## **Facts**

In addition to the facts that appear in the preliminary summary of facts, the comments received following disclosure of the summary may also be included in the investigation report. It is the investigator's responsibility to determine which elements should be included. However, the comments of the parties should be included in this report if, following the responses from the parties to the preliminary summary of facts, the investigator had to reopen the investigation.

## **Analysis**

The analysis section is found only in the final investigation report. The analysis brings together all of the salient evidence. The analysis should start with the description of the criteria to be met under the definition of Policy in order to conclude that there has been a breach of the Policy. The analysis is a critical component of the report; it requires sophisticated analysis on the part of the investigator who analyzes the evidence adduced and the arguments made by the parties, as well as any other relevant information gathered in the course of the investigation. The analysis must explain how the information gathered was assessed, and why the investigator reached a particular conclusion. Each allegation should be identified and analyzed separately and as a whole if there is an attempt to demonstrate a pattern of repetitive behaviour.

Note: Comments related to underlying workplace factors that may have led to the allegations can be included in the report if so required by the mandate.

## Conclusion

In determining whether the alleged conduct constitutes harassment, the investigator must determine whether the conduct meets the criteria set out in the Policy.

*For example:*

### 1. **Allegation** [*Identify the alleged conduct*]

#### a. **Evidence/Facts**

*"The evidence indicates that..."*

#### b. **Analysis**

*Example: "The conduct was improper in that...It was directed at and offensive to the person alleging harassment...the person knew or ought reasonably to have known that this conduct would cause offense of harm... it occurred within the workplace. Therefore, the allegation is founded."*

Or

*"The conduct was not improper in that..... Therefore, the allegation is not founded."*

### 2. **Allegation** (*if applicable*)

#### a. **Evidence/Facts**

#### b. **Analysis**

## Conclusions

In this section, the investigator summarizes his or her findings and draws conclusions with supporting rationale for each individual allegation.

Investigation reports should include a section with conclusions to summarize the main points and highlight the essential information of the report. The conclusions are often considered the most helpful element of the report, because they succinctly clarify the findings.

With respect to the allegations, the findings should never be inconclusive. If the investigator determines that there is not sufficient evidence to conclude that the allegations are founded or partially founded, the investigator must find that the evidence does not support the allegations, consistent with the required burden and standard of proof.

The conclusions on each allegation must give readers a clear understanding that:

- on the balance of probabilities, the evidence available does (or does not) support the allegation(s);
- and if supported, the conduct does (or does not) satisfy the criteria for harassment as per the Policy.

The conclusions must not contain any surprises, that is, they must all relate to the allegations and evidence contained in the report. The conclusions must be coherent (logical and easy to follow), clear (written in plain language), concise, and appropriate to the facts as stated.

*Example: "Given the above-noted evidence and in light of the available information, I conclude on the balance of probability that the allegations of harassment in the workplace made by [Name of the complainant] regarding [Name of respondent] are founded/not founded."*

If the mandate required the investigator to identify issues, the investigator would also need to include this finding in the investigation report.

*Example: It appears that roles and responsibilities of the parties are confusing and might be source of conflict between them. There seems to be an overlap in responsibilities which generates a conflict which has been ongoing for months.*

Note: The investigator's report does not contain recommendations on what administrative, corrective/ restorative, and/or disciplinary action should be taken.

### **Investigator's Closing Declaration:**

*I declare that, in conducting this investigation, the rules of procedural fairness were observed. I ensured that the parties were reminded of their rights and obligations with respect to the investigation process and gave all those involved, including witnesses, the opportunity to verify their statements. I also declare that I took into account all the comments made by the parties in regard to the preliminary summary of facts in my assessment of this case and in the conclusions presented above.*

**[Signature]**

**[Date]**

## **Annex 11 - Content and Disclosure of Harassment Investigation Reports**

This information is intended to assist in determining the type of information that should be disclosed or withheld during the course of an investigation conducted under the Policy.

In accordance with the *Policy on Harassment Prevention and Resolution* and the *Directive on the Harassment Complaint Process*, the parties to the harassment allegations (complainant and respondent) may expect to:

- Receive information related to the allegations in writing;

- Review a copy of the preliminary summary of facts for comment prior to the investigator's completion of the final report; and
- Be informed in writing of the outcome of the investigation and to receive a copy of the final report.

This means that, during the complaint process, these parties can generally expect to access their own personal information, which includes comments made about them by other individuals, as well as any other information (personal or otherwise) which is relevant to the investigation, the disclosure of which is consistent with resolving the complaint and ensuring a fair process.

Investigators should also be mindful that the information that they collect and record during the course of the investigation is subject to the Access to Information Act and the Privacy Act and may be accessed by the parties and other individuals (subject to limited exceptions). Therefore, investigators should generally not make promises of confidentiality to any of the interviewed parties.

Moreover, investigators should not include the following type of data in their investigation reports, unless it has a direct bearing on the outcome of the investigation:

- Private family, financial or medical data related to the parties involved in the allegations;
- The use of counseling services;
- Financial or other medical repercussions;
- Effects on other relationships;
- Personal identifiers (Social Insurance Numbers, Personnel Record Identifiers);
- Home addresses or phone numbers; and
- Any other data that has no bearing on the outcome of the investigation.

Failure to abide by this will require severing of the reports before copies may be provided to the parties to the harassment complaint in accordance with the Policy.

## **Annex 12 - Person Responsible for Managing the Harassment Complaint Process Checklist**

Upon receiving the investigation report and before releasing it to the parties, the person responsible for managing the harassment complaint process should ensure that the following elements, including those which ensure procedural fairness, are present:

- The requirements of the mandate are sound and they have been fulfilled;
- The respondent was informed of the allegations;
- The investigator is independent and has no vested interest in the outcome of the investigation;
- The investigator approached the investigation with an open mind and did not prejudice any of the parties;
- The language used is impartial and unbiased;
- The parties were given an opportunity to be accompanied or assisted during the investigation;
- The parties were made aware of statements made about them;
- The parties were given an opportunity to provide corroborating evidence;
- The parties were given an opportunity to comment on adverse statements made by the other party and witnesses;
- The parties were given an opportunity to clarify contradictions in evidence;
- The methods used to gather facts and the presentation of the facts are sound;
- The key witnesses have been identified and interviewed;
- All relevant documents and policies have been examined;



- The key investigative issues have been thoroughly explored (i.e. who, what, where, when, why, how);
- The investigator properly identified gaps and challenged inconsistencies in evidence;
- The investigator filtered the information and only included information that directly relates to the allegations;
- The onus and burden of proof have been properly understood and applied;
- The degree of proof is sufficient to conclude that an allegation was more likely or less likely to have occurred (i.e. based on the balance of probability);
- The analysis and findings are based on the facts which have been disclosed to the parties;
- The analysis and findings are logical and relate directly to the allegations;
- The investigation report is concise and is not a complete retelling of the investigation;
- Spelling and grammar are correct and there are no critical inaccuracies (e.g. names of witnesses, dates, locations, terminology);
- The investigation report is well organized (i.e. evidence, analysis, conclusion);
- The investigation report does not contain information that has no relevance or bearing on the outcome of the investigation;
- The investigation report meets the requirements of the applicable access to information and privacy laws;

If any of these elements are in doubt, the person responsible for managing the harassment complaint process should contact the investigator to discuss and such shortcomings should be rectified.

**Date modified:**

2015-08-21

