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# NDP PEI - Policy on Discrimination, Harassment, and Sexual Violence

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Approved by NDP PEI Provincial Council

13 June 2018

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## **POLICY REGARDING DISCRIMINATION, HARASSMENT AND SEXUAL VIOLENCE**

The following document addresses prevention, protocols and responses to allegations of discrimination, harassment and sexual violence.

### **POLICY**

The New Democratic Party of PEI (NDP PEI) is committed to providing an environment free of discrimination, harassment and sexual violence, while being supportive of the self-esteem and dignity of every person who is a member or is working or volunteering within the NDP PEI.

The NDP PEI's intent is to ensure there is a climate of understanding, cooperation, and mutual respect. To be successful in this objective, it is incumbent upon all members and employees of the NDP to not condone or tolerate behavior that constitutes discrimination, harassment or sexual violence.

The NDP PEI will provide a fair and prompt investigation of any complaint or concern without fear of reprisal.

### **SCOPE**

This policy applies to complaints of discrimination, harassment, bullying and sexual violence that involve management, employees, volunteers, officers, candidates, MLAs and members of the NDP PEI involved in all events sanctioned by the NDP PEI, NDP PEI Youth, and District Associations.

This policy covers complaints of discrimination, harassments and sexual violence in the NDP as defined below.

### **DEFINITIONS**

All definitions and examples herein contained may be superseded by the Canadian Human Rights Act or the Prince Edward Island Human Rights Act (including any successive Legislation).

#### **Member**

A member for the purpose of this policy shall mean, but not limited to, NDP PEI member, NDP PEI Youth member, District Association Executive, NDP PEI Provincial Council (as defined in the NDP PEI Constitution), Candidate, MLA, Employee and/or Volunteer.

#### **Discrimination**

Discrimination is an act, behavior or practice, whether intended or unintended, that has the purpose or effect of imposing burdens, obligations, disadvantages or preferences on a person or group of people which are not imposed on others.

Discrimination can be on the basis of gender identity or gender expression, race, ethnicity, language, class or financial status,

creed, sexual orientation, disability or difference abilities, or age.

Systemic Discrimination and systems of oppression related to different elements of identity interact on multiple levels and reinforce many forms of discrimination that people experience.

#### **Harassment**

Harassment is defined as any unwelcome or objectionable physical, visual, or verbal conduct, comment, or display, whether intended or unintended, that is insulting, humiliating or degrading to another person, or creates an intimidating, hostile or offensive environment, made by a member;

- Directed at and offensive to any other member, any other individual or group that the perpetrator knew or reasonably ought to have known would be offensive.

Examples of harassments include, but are not limited to:

- Threats (physical, cyber or otherwise) made or perceived, that are malicious, or vexatious.
- Derogatory written or verbal communication or gestures (e.g. name-calling, slurs, taunting pictures or posters, bullying, graffiti), that are malicious or vexatious.
- Application of stereotypes or generalizations.

#### **Sexual Harassment**

Sexual harassment means any unwelcome conduct, comment, gesture, or contact of a sexual nature, whether on a one-time basis or in a continuous series of incidents that:

- Might reasonably be expected to cause offence, embarrassment or humiliation;
- Might reasonably be expected to be perceived as placing a condition of a sexual nature on participation, employment, services, or on any opportunity for training or advancement

Examples of sexual harassment include, but are not limited to:

- Remarks, jokes, innuendoes, or other comments regarding someone's body, appearance, physical or sexual characteristics, or clothing
- Displaying of sexually offensive or derogatory pictures, cartoons or other material (physical or electronic)
- Persistent unwelcome or uninvited invitations or requests
- Unwelcome questions or sharing of information regarding a person's sexuality, sexual activity, or sexual orientation
- Conduct or comments intended to create, or having the effect of creating an intimidating, hostile or offensive environment

## **Bullying**

Bullying is offensive, cruel, intimidating, insulting, or humiliating behavior which includes physical violence or the threat of physical violence. It can be physical, written or verbal, direct or indirect, such as gossip or through social media platforms. Bullying is considered harassment in general, unless there is physical contact or a threat of violence, in which case it is considered violence. Bullying is ill treatment which is not addressed by legislation or criminal codes.

## **Workplace**

For the purposes of this policy, workplace includes any location in which members are engaged in NDP PEI business activities necessary to perform their assignments.

This includes, but is not limited to, NDP offices and buildings; member parking lots; member organized work or social gatherings; field locations such as campaign offices; members' homes; and during NDP PEI-related business travel.

## **Abuse of power**

Abuse of power happens whenever a member abuses or misuses their power and discretion for personal benefit, on in benefit of another person or organization.

Abuse of power, for the purposes of this policy, includes situations involving a minor, situations that involve a reporting relationship, or any situation that includes an accusation from a member against another member or other person who is providing a service upon which the reporting member depends.

The NDP PEI considers incidents that involve an abuse of power as gravely serious.

## **POLICY APPLICATION**

### **Prevention**

Prevention is always the first line of defense against occurrences of harassment. It is the responsibility of all members to ensure their behaviour do not violate this policy and fosters an environment based on respect, with the highest level of care for all in our movement. In addition, there is a duty upon all to prevent harassment by discouraging inappropriate activities and by reporting incidents, as per this policy.

### **Rights**

Everyone has the right to:

- An environment that is free from harassment or violence
- File a complaint if they experience harassment or the environment is otherwise not free from harassment, without fear of embarrassment or reprisal
- Be informed of complaints made against them
- Obtain an investigation of the complaint without fear of embarrassment or reprisal
- Have a fair hearing
- Be kept informed throughout the process and of remedial action taken

- A fair appeal process for both the respondent and complainant
- Confidentiality
- Support from a third party

### **Obligations**

The people in an organization have the responsibility to ensure the health and safety for all those who come in contact with the NDP PEI, regardless of the level the member is within the organization.

Organizations are obligated legally to take all complaints seriously by:

- Using due diligence, which is the obligation to take reasonable measures to provide appropriate attention and care
- Being very familiar with the harassment policy and following it closely
- Following the process without bias
- Documenting all information from the first disclosure to the final resolution
- Recording only relevant facts
- Signing and dating all documents
- Using Reasonable and measure processes and systems for response

### **Member responsibilities:**

All employees and volunteers are responsible for contributing to a positive work environment and for identifying and discouraging comments or activities contrary to this policy. This includes advising the alleged harasser that their behaviour is unwelcome should the member feel it safe to do so.

Where a situation occurs or where an employee or volunteer believes a situation has occurred, they are obligated to report it, following the reporting process detailed in the Complaint section of this policy.

Unionized employees may also use the grievance processes contained within their Collective Bargaining Agreement.

### **Party President (PP) responsibilities:**

The Party President is expected to eliminate any aspects of the environment that are not in keeping with this policy working in consultation as appropriate with Provincial Council or appropriate members.

The Party President, or their assigned delegate(s), will:

- Advise parties of the process and legal parameters
- Facilitate communication between parties with a view to resolving conflict
- Ensure the process is followed within the prescribed time frame
- Arrange for investigation or expertise, as required
- Coordinate follow up actions
- Maintain original copies of all documentation pertaining to the resolution of differences
- Educate employees and volunteers on the application of this policy.

### **Investigator**

As required, an impartial, neutral party may be appointed as investigator to address allegations and facilitate redress. Any concerns by either party about the investigator's competence or judgement (concern about bias) may be raised for consideration with the Party President. If the concern is with the Party President the complainant may, at their option, elect to have an alternative officer fulfill the role contemplated in these procedures. All of the other provisions of these procedures shall remain in effect.

The Investigator shall:

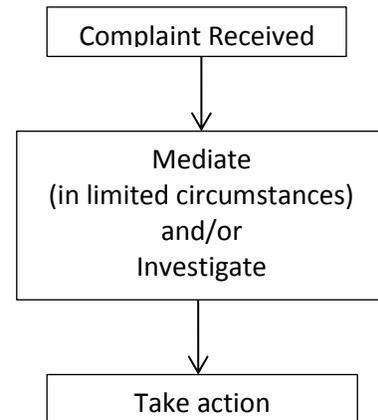
- Determine the parties' needs and understand what they want to get out of the process
- Investigate in a timely and discreet manner
- Inform all parties of their rights and responsibilities
- Secure all complaints and responses in writing, with dates, names, witnesses, full descriptions of the incident(s) and any additional relevant documentation
- Interview the parties involved and any witnesses to the behavior, if necessary
- Notify any individual interviewed of their right to be accompanied by the representative or support person of their choice, this does not include legal counsel.
- Keep the parties to the complaint informed during the process, including providing the alleged harasser with full particulars of the allegation and a copy of the written complaint.
- Ensure that a member accused of discrimination, harassment or sexual violence will be entitled to respond to the complaint and may wish to offer their perspective regarding the allegations and/or present a proposal for resolution
- Prepare a written report for the President outlining the allegations of the complainant, the response of the alleged harasser, the evidence of any witnesses, and the conclusion reached. If the President is involved then the report shall be delivered to the alternative officer, selected above. All of the other provisions of these procedure shall remain in effect

The NDP PEI Recording Secretary shall:

- Keep a confidential record of the number of complaints filed, the nature of these complaints, the outcome of the investigation and the type of corrective action taken.

### **INVESTIGATION PROCESS**

Situations where there has been an accusation of harassment are extremely sensitive and often complex. At all time, the emotional and physical safety of the complainant is paramount, and this may involve taking steps that are not outlined herein. In general, however, the following process should be taken:



The NDP PEI will endeavour to take action in as timely a manner as is possible. The duration may vary depending on the complexity of the case and may require extensions.

### **Complaint:**

A person who wishes to make a formal complaint should submit it

- (i) to whatever person is in a supervisory position, who shall refer it to the Party President; or
- (ii) if there is not a relevant supervisory person, to the Party President; or
- (iii) if the complaint is about the Party President, to the Chairperson of the Harassment Sub-Committee, and the Chairperson shall act in place of the Party President.

The Party President shall conduct an initial informal inquiry to consider whether there are valid grounds for proceeding. Any one of three courses of action may result.

- (a) If the Party President determines that there are no findings of discrimination, harassment or sexual violence, they shall inform the complainant that no further action is to be taken.

(b) If it is determined that there are grounds for proceeding with the complaint, the Party President shall inform both the complainant and the person complained against, and — if the President, using such criteria as may be provided by the Harassment Sub-Committee, believes that the alleged misconduct is of a relatively less serious nature — shall offer them the option of mediation to resolve the matter.

(c) If

- (i) either party to the complaint does not wish to use mediation,
- (ii) subsequently mediation fails to produce a satisfactory resolution, or
- (iii) the President, using such criteria as may be provided by the Harassment Sub-Committee, judges that the alleged misconduct is significant in moderate or severe degree or is an abuse of power, the President shall instigate a formal investigation.

**Mediate:** The alleged harasser will be advised of the complaint, if this has not already happened. A mediator will be chosen by the Party President, and confirmed provided the parties to the complainant agree. In the case where there is no agreement, alternative names will be considered to a maximum of three (3) alternatives. Should there continue to be no agreement of a mediator by the aggrieved parties, and the parties would like to continue with mediation, The Party President or their delegate shall choose a Mediator at random of the four (4) names presented. This selection shall be binding. Mediation takes place and the situation is resolved to the satisfactions of both parties. A written report on the final status of the mediation is provided to the Party President. Should there be no agreement on the selection of a mediator or the parties to the complaint decide an investigation is preferable rather than have a mediator appointed by the PP, then the case is referred to investigation.

The decision to change from mediation to an investigation may only occur before the confirmation of the mediator.

**Investigate:** Where, for whatever reason, the complaint remains unresolved, then the Party President (PP) chooses an investigator, unless the PP are themselves implicated in the complaint as a complainant, respondent or witness.

The investigator will conduct a thorough and unbiased investigation and provide a written report to the complaint being filed, including recommendations for action, to the PP and Party Legal Counsel. They will confer with one another, and others as required and the applicable person will make a decision as to the appropriate action within a reasonable time of receiving the investigator's report.

The outcome of an Investigation and Mediation shall reviewed by both the PP, or the chairperson of the Sub-Committee on Harassment where the PP is party to a complaint, and Party Legal Counsel to ensure that all applicable legislation has been satisfied to ensure the resultant Action is the appropriate and warranted outcome.

**Action:** When considering the appropriate action, the PP will consider the evidence, the nature of the harassment or violence, whether physical contact was involved, whether the situation was isolated, and whether there was an abuse of power.

Actions may include, but are not limited to:

- Verbal and/or written apologies
- A letter of reprimand or suspension
- A referral to counseling
- Sensitivity training
- Demotion or transfer
- Suspension without pay or temporary suspension of volunteer position
- Termination of employment, volunteer activity and/or membership to the NDP
- Resignation or withdrawal/removal from caucus
- Withdrawal of support for candidacy
- Referral to police or other legal authorities
- Other sanctions
- Counselling and/training may be recommended instead of, or in addition to, disciplinary action

In cases where termination of Party membership is the resultant action, the Operations Director and Party President of the Federal NDP shall be given written notification of the expulsion after the appeal period has closed.

In all cases, except the latter, there will be a progressive discipline process outlined to ensure sufficient change in behavior is occurring.

### Appeal

Either the complainant or alleged harasser may, within thirty (30) calendar days of being notified, by registered mail, of the action, submit an appeal, in writing to the PP.

Upon receipt of an appeal, the Officers of the NDP PEI shall meet and review the Investigation, within fourteen (14) calendar days. Any officers that are themselves implicated in the complaint as a complainant, respondent or witness shall be excluded from the meeting and vote. A minimum of 3 officers are required to review and vote; if the President is excluded the Chair of the Harassment Sub-Committee will Chair the Review. A two-thirds (2/3) majority of Officers present are needed to recommend further action.

If the appeal is defeated the complaint will be considered closed with the action items implemented. If the Officers of the NDP PEI determine that further investigation is required, any additional findings shall be disclosed to the parties, who will be provided with an opportunity to respond. The Officers will then review the amended record and determine whether or not a violation of the NDP PEI policy has occurred within a reasonable time of the appeal being filed. The decision of the Officers shall be final and not subject to review or further appeal. Further, the final decision of the Appeal process may not be re-opened. Should there be cause in the view of the Officers to impose higher or further Actions Items, up to and

including removal from the NDP PEI and/or termination of employment in the case of an employee, the amended actions are not subject to appeal.

### **Monitoring**

Once a resolution of the complaint has occurred, the PP or their delegate will ensure appropriate follow-up to ensure the successful application of the resolution. If during the implementation process there is insufficient change in behavior, the progressive discipline process will be applied.

### **Confidentiality**

Complaints of discrimination, harassment and sexual violence will be received and investigated in a confidential manner in accord with the procedures set out in this policy, including prescribing corrective action. Information that must be shared will be disclosed on a 'need-to-know' basis.

Any allegation or complaint of discrimination, harassment or sexual violence will be considered personal information 'supplied in confidence'. The name of complainant or the circumstances of the complaint will not be disclosed to any person except where disclosure is necessary for the purpose of investigating the complaint. The substance of the meetings held by those in authority regardless of whether it is substantiated will be protected from disclosure to third parties, except where required for legal reasons.

Confidentiality will be enforced to the best of the NDP PEI's ability. Strict confidentiality cannot be guaranteed to anyone who wants to make a complaint of harassment or violence. If a complaint goes through an investigation, the respondent and other people involved will have to learn about the complaint. The complainant can be assured that only people who 'need-to-know' will be told of the complaint.

No investigation information is to be kept on the employee file with the exception of the official disciplinary/termination papers. Similar to problem resolutions cases, harassment investigation information should be kept indefinitely in a separate file. Proven allegations of discrimination, harassment or sexual violence, including disciplinary action taken, shall be documented and form part of the employee's permanent record. In the case of a volunteer, if the complaint is made within a specific volunteer committee, organization or group, details of the disciplinary actions would be kept out of any meeting record, such as minutes.

### **Disciplinary action**

Harassment or violence by a member is a serious offence. If an accusation is substantiated, the harasser will be subject to immediate disciplinary action, up to and including dismissal in the case of an employee, or revocation of membership in the case of a member. Support for candidates may be withdrawn and MLAs may be expelled from the caucus.

Disciplinary action taken by the NDP PEI may include:

- Barring an individual from being nominated as a candidate or running for internal Party positions either at the District Level or Provincial level.
- Barring an individual from participation in any capacity in any NDP PEI associated campaign
- Barring an individual from being a delegate to Federal Convention
- Barring an individual from attending any events organized by the Federal NDP, Local NDP MP, Local NDP MLA, Local or Federal District association or local campaign

Intentionally accusing someone of discrimination, harassment or sexual violence, known to be false, is a serious offence and is subject to the disciplinary action of this policy and the Provincial Party. The NDP PEI reserves the right to discipline those whose complaints are deemed frivolous or vexatious.

Any interference with the conduct of an investigation, or retaliation against a complainant, respondent or witness, may itself result in disciplinary action.

Criteria in determining level of disciplinary action shall be based on the facts determined over the course of the mediation/investigation, and will take into account harm to the individual, harm to the NDP PEI and its reputations, and whether or not there was an unequal power relationship.

Where the conduct involves, or may involve, criminal activity, the NDP reserves the right to invoke criminal charges as recommended by party legal counsel.

Members have a duty to disclose criminal activity.

### **Human Rights Commission**

Nothing in this policy shall be deemed to limit the right of a member to seek assistance from the provincial or federal Human Rights Commission.

### **Unionized employees**

Nothing in this policy shall be deemed to limit the rights of unionized employees to avail themselves of the procedures and remedies set out in their collective agreements or under labour legislation.

### **Conflict of Interest**

Those involved in the discrimination, harassment or sexual violence resolution process will be objective and free of real or perceived conflict of interest. In the event the PP or Officers, if involved in the appeals process, are party to the incident or perceived to have a conflict of interest, the complainant may, at their option, elect to have an alternative officer fulfill the role contemplated in these procedures. All of the other provisions of these procedures shall remain in effect.

## **Responsibility**

An orientation to the policy will be provided to all members, as necessary, to ensure the policy is understood.

Member is obligated to read and understand this policy.

The Provincial Recording Secretary will prepare an annual report to Council of formal and informal complaints in relation to this policy, provided this does not jeopardize confidentiality.

The First (1<sup>st</sup>) Vice-President in conjunction with the Chairperson of the Harassment Sub-Committee will ensure this policy is reviewed and revised as required at least every four years. Also, that the policy be distributed to all members.

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