

**THE CORPORATION OF THE  
TOWN OF COBALT**

**BY-LAW NO. 2024-23**

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**Being a By-Law to Adopt a Workplace Violence & Harassment Policy and Program for the  
Town of Cobalt**

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**WHEREAS** Section 8(1) of the Municipal Act, S.O. 2001, c.25, as amended, provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

**AND WHEREAS** Section 9 of the Municipal Act, S.O. 2001, c.25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

**AND WHEREAS** Section 5(1) of the Municipal Act, S.O. 2001, c.25, as amended, provides that the powers of a municipality shall be exercised by its Council;

**AND WHEREAS** Section 5(3) of the Municipal Act, S.O. 2001, c.25, as amended, provides that a municipal power, including a municipality's capacity, rights, powers and privileges under Section 9, shall be exercised by By-Law unless the municipality is specifically authorized to do otherwise;

**AND WHEREAS** municipalities must comply with the *Occupational Health and Safety Act* R.S.O. 1990, as amended, and more specifically Section 32 which requires employers to adopt a policy and establish a program with respect to Workplace Violence and Harassment;

**AND WHEREAS** Section 25(2) of the *Occupational Health and Safety Act* requires that an employer take every precaution reasonable in the circumstances for the protection of a worker;


**AND WHEREAS** Section 217.1 of the *Criminal Code of Canada* states that everyone who undertakes or has the authority to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent harm to that person, or any other person, arising from that work or task;

**AND WHEREAS** the Council for the Corporation of the Town of Cobalt deems it in the best interest of the Corporation to establish a Workplace Violence and Harassment Policy and Program;

**AND NOW THEREFORE** the Council of the Corporation of the Town of Cobalt enacts as follows:

1. That Council has determined that this By-Law is a priority for the municipality and as such, changes in law which require amendments to this By-Law be delivered to Council in a report within thirty (30) days of the Clerk becoming aware of the changes.
2. That this By-Law be reviewed on an annual basis and a report be delivered to Council by March 31, of any given year, regarding the adequacy of the By-Law and attached Schedules and whether there are any recommended changes.
3. That Council adopts a Workplace Violence & Harassment Policy and Program for the Town of Cobalt, identified as Schedule "A", attached hereto and forming part of this By-Law.
4. That this By-Law supersedes any previous By-Law that is contrary to this By-Law.
5. That By-Law 2010-021 be repealed on the date that this By-Law becomes effective.
6. That the Clerk of the Corporation of the Town of Cobalt is hereby authorized to make minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to the By-Law and schedule as may be deemed necessary after the passage of this By-Law, where such modifications or corrections do not alter the intent of the By-Law.
7. That this By-Law shall come into force and take effect on the date of its final passing.

**READ a first and second time** this 25<sup>th</sup> day of June, 2024.

  
\_\_\_\_\_  
Mayor

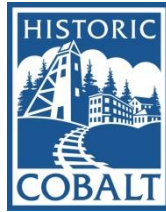
  
\_\_\_\_\_  
Clerk

**READ a third time and finally passed** this 23<sup>rd</sup> day of July, 2024.

**AND FURTHER THAT** the said By-Law be signed and sealed by the Mayor and Clerk.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk



**THE CORPORATION OF THE TOWN OF COBALT**

**Schedule "A" TO BY-LAW 2024-23**

**Being a By-Law to Adopt a Workplace Violence & Harassment Policy and Program for the  
Town of Cobalt**

## **Part 1 General Provisions**

### **1.1 Short Title**

This By-Law shall be cited as the "Workplace Violence & Harassment Policy".

### **1.2 Preamble**

Council has adopted an organizational structure in which all officers and employees of the Town report to the Clerk and it is the responsibility of the person occupying this position to ensure that all officers and employees of the Town perform their work in a manner that exhibits the fundamental values or principles established by Council and facilitates the achievement of Council's vision and mission.

Council is committed to maintaining a non-violent and harassment-free work environment in which everyone feels welcome and accepted.

Council further acknowledges that this By-Law and the attached schedules have been prepared by Expertise for Municipalities Non-Profit Association ("E4M") and legally reviewed by Wishart Municipal Law Group/Wishart Law Firm LLP ("WMG") for compliance with all applicable legislation and E4M or WMG are not responsible for the results of any edit to this policy other than expressly authorized or directed by E4M or WMG.

Council acknowledges and agrees that all rights are reserved by E4M and WMG and no part of this By-Law may be reproduced or copied in any form or by any means (graphic, electronic, or mechanical, including photocopying, recording, taping or information and retrieval systems) without the written permission of E4M.

Council acknowledges that E4M has given license to the Town to print, copy, save or post on its official website for its own use only and the Town may not repurpose or resell this By-Law in any way.

### **1.3 Guiding Principles**

Council is committed to ensuring a civil and respectful work environment free of any form of harassment, discrimination, or abuse.

This commitment requires that all members of council, officers & employees, volunteer firefighters and other municipal volunteers actively demonstrate, at all times, a respect for others and an appreciation of differences.

Everyone has the right to work in an environment free from any form of harassment and unacceptable workplace behaviour. Such behaviour towards an individual because of race, creed, colour, religion, country of origin, ethnicity, citizenship, ancestry, gender, gender identity, sexual orientation, same-sex partnership status, age, marital or family status, or physical ability is unacceptable, and will not be tolerated. The Town will treat any allegation of such behaviour as a serious matter.

Furthermore, we must always treat ourselves, our colleagues, our stakeholders, and our residents with the utmost respect and goodwill. Strong relationships with our employees, clients and suppliers serve the Town tremendously. The Town is committed to maintaining a non-violent and harassment-free work environment in which everyone feels welcome and accepted. Doing so starts with you. You must always conduct yourself respectfully and in a manner reflective of the Town's core values.

This policy is designed to comply with the *Occupational Health and Safety Act* and provide guidance on how to conduct yourself. Rather than be exhaustive, this policy will give you a foundation for determining the types of behaviours that are expected and those that are not. Please read this policy in its entirety and consider how you can incorporate this policy and its guiding principles into your everyday interactions whether at work or in the community. Together we can build and maintain a stellar reputation as we continue to strive to provide excellent services to our residents. You are the key to success, and we thank you for being a part of the municipal team.

Who this policy applies to:

- a. Members of Council
- b. Officers & Employees of the Town
- c. Local Board & Committee Members
- d. Volunteer Firefighters
- e. Other Volunteers

#### 1.4 Inclusiveness and Social Responsibility

Having a diverse workforce helps us better understand and serve our clients. You are expected to be part of creating a respectful workplace that is free of violence, harassment and discrimination.

#### 1.5 Definitions

1. **"Alleged Aggrieved Person" ("AAP")** means the worker or official who has allegedly been the subject of a violation of this policy.
2. **"Clerk"** for the purposes of this By-Law means a person who has the statutory duties as defined in section 228 of the *Municipal Act* and may be a different entity than the person who has been appointed by the Town as their statutory Clerk (See Schedule "D" re: Investigation Committee)
3. **"Complainant"** means the person who has made a report about another individual whom they believe violated this policy. The complainant does not have to be the AAP.
4. **"Integrity Commissioner"** means the statutory officer appointed by Council.
5. **"Investigation Committee"** means a committee of Council established for the purpose of selecting and providing direction to the external investigator.
6. **"Investigator"** means the individual investigating reports received under this policy.
7. **"Official"** means a person who holds a public office (i.e. a Councillor or the head of Council) or membership on a Council Committee with the Town whether obtained by election, acclamation or nomination of Council or the Town.

8. **"Respondent"** means the person who is alleged to have violated this policy. To be clear, the respondent may or may not be a worker and their status as a person who is not employed by the Town is not determinative of any investigation or complaint.
9. **"Worker"** means any of the following, but does not include an inmate or a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program:
  - a. a person who performs work or supplies services for monetary compensation for the Town. This would include members of Council who receive a stipend or other remuneration.
  - b. A secondary school student who performs work or supplies services to the Town for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
  - c. A person who performs work or supplies services to the Town for no monetary compensation under a program approved by a college of applied arts and technology, university or other post-secondary institution.
  - d. An official.
  - e. Such other persons as may be prescribed under the *Occupational Health and Safety Act*, R.S.O, 1990, c O.1 (or other applicable legislation) who perform work or supply services to the Town for no monetary compensation.
10. **"Workplace"** means any land, premises, location or thing at, upon, in or near which a worker works including:
  - a. the site where the individuals are customarily employed; and
  - b. all other places which
    - i. result from employment responsibilities or employment relationships locations at work-related social functions, off-site work assignments, work-related conferences or training sessions, and work-related travel; or
    - ii. affect relationships in the workplace such as the internet, including but not limited to, chat rooms/ bash boards, social networking sites, blogs/vlogs, and gaming sites.
11. **"Workplace Harassment"** means
  - a. Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought to be reasonably known as unwelcome; or
  - b. Workplace sexual harassment.

Workplace harassment may include (this is NOT an exhaustive list but is provided for explanation purposes):

- a. Making remarks, jokes or innuendo that demean, ridicule, intimidate or offend;
- b. Displaying or circulating, offensive pictures or materials in print or electronic form;
- c. Bullying;
- d. Repeated offensive or intimidating phone calls or emails; or

- e. Any inappropriate conduct, comment, display, action, or gesture that:
  - i. is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry, or place of origin; or
  - ii. constitutes a threat to the health or safety of the worker.

12. **"Workplace Sexual Harassment"** means

- a. Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or
- b. Making sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant, or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

Workplace Sexual Harassment may include (this is NOT an exhaustive list but is provided for explanation purposes):

- a. A direct or implied threat of reprisal for refusing to comply with a sexually-oriented request;
- b. Unwelcome remarks, jokes, innuendos, propositions or taunting about a person's body, attire, sex or sexual orientation;
- c. Displaying pornographic or sexually explicit pictures or materials;
- d. Unwelcome physical contact;
- e. Unwelcome invitations or requests, direct or indirect, to engage in behavior of a sexual nature; or
- f. Refusing to work with or have contact with workers because of their sex, gender, or sexual orientation.

13. **"Workplace Violence"** means

- a. the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker;
- b. an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker;
- c. a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

Workplace Violence may include (this is NOT an exhaustive list but is provided for explanation purposes):

- a. verbally threatening to attack a worker;
- b. leaving threatening notes at or sending threatening emails to a workplace;
- c. shaking a fist in a worker's face;
- d. wielding a weapon at work;

- e. hitting or trying to hit a worker;
- f. throwing an object at a worker;
- g. sexual violence against a worker;
- h. kicking an object the worker is standing on such as a ladder; or
- i. trying to run down a worker with a vehicle or equipment.

## **Part 2**

### **Workplace Violence & Harassment Policy**

#### **2.1 What is Not Workplace Harassment or Workplace Violence?**

The following is NOT workplace harassment or workplace violence:

- a. Reasonable action or conduct by the Town, a manager, or supervisor, that is part of the normal work function. Examples include changes in work assignments, scheduling, job assessment, and evaluation/performance management, implementation of any dress code and disciplinary action.
- b. Harassment that arises out of circumstances unrelated to the worker's employment. Physical contact necessary for the performance of the work using accepted industry standards.
- c. Conduct which all parties agree is inoffensive or welcome.
- d. Accidental situations – such as a worker tripping over an object and pushing a co-worker as a result.

#### **2.2 Reporting Policy Violations**

Consistent with the requirements of the *Occupational Health and Safety Act*, all staff **must** report violations of this policy and raise concerns about risks to the Town. When you make a report, it helps us correct specific problems and identifies areas which require improvement.

If you believe that a violation has taken place, report the situation promptly to the Town's highest ranking officer, the Town Clerk. Where the alleged respondent is the Town's highest ranking officer, a member of Council, or all of Council, you may report the situation to the Town's legal counsel:

Wishart Law Group  
C/O Wishart Law Firm LLP  
390 Bay Street, Suite 500  
Sault Ste. Marie, ON P6A 1X2  
P: (705) 949-6700    F: (705) 949-2465    E: [reportwishart@wishartlaw.com](mailto:reportwishart@wishartlaw.com)

In any of the cases where the alleged respondent is the Town's highest-ranking officer, a member of Council, or all of Council, legal counsel for the Town will be involved.

In all cases involving a member or members of Council, but not all of Council, an Investigation Committee will be struck composed of the uninvolved members of Council.



In all cases involving the entirety of Council, the Town's legal counsel and Integrity Commissioner will constitute the Investigation Committee and will cause an investigation to be commenced.

### **2.3 Report Content**

Where possible, our report of a perceived policy violation should be made in writing and include details of:

- a. What happened – a description of the events or situations;
- b. When it happened – dates and times of the events or incidents;
- c. Where it happened – location(s);
- d. Who saw it happen – the names of any witnesses, if any.

Although a verbal report is possible, the Town is obligated to conduct an investigation appropriate in the circumstances whenever they come into possession of information leading the Clerk to suspect the existence of workplace harassment, workplace sexual harassment or workplace violence.

When an incident of workplace violence is reported, the person receiving the report will notify police or emergency responders for immediate assistance where necessary. If the incident results in a worker incurring a lost time injury, the person receiving the report will submit a report of the incident to the Ministry of Labour.

### **2.4 No Derogation of Rights**

The provisions of this policy in no way affect the right of any person to:

- a. Contact the police or other law enforcement agency on their own initiative;
- b. Exercise their right(s) under any legislation including, their right to refuse unsafe work as provided by the Ontario *Occupational Health and Safety Act*; or
- c. Take any other available legal action.

### **2.5 No Reprisal**

You can report any violation of this policy without fear of reprisal. The Town does not permit or condone reprisal against anyone who, in good faith, reports or participates in an investigation of a possible violation of this policy. Good faith means that you have made a genuine and honest attempt to provide accurate information, even if it turns out you were mistaken.

It is a violation of this policy to discipline or punish a person because they have made a report in good faith of any violation of the policy. Reprisal may be the subject of a report under this policy, and persons engaging in reprisal are subject to disciplinary measures up to and including termination of employment.

### **2.6 Frivolous, Vexatious, and Bad Faith Reports**

If you make a report that is frivolous, vexatious and made in bad faith ("weaponizing" the policy) you will be subject to appropriate action and possible disciplinary measures up to and including

termination of employment (or of volunteer services) with the Town. Examples of bad faith include, but are not limited to, making a report knowing the allegations therein are untrue or making a report for an improper purpose.

## 2.7 Investigations

All reports of violations of this policy will be promptly investigated in a manner appropriate in the circumstances. Investigations will follow the process set out in Part 4.

It may be necessary to consult with legal counsel or obtain the services of one or more external investigator(s). The following factors may be considered by the Town in determining whether it is appropriate to use external investigation services:

- a. Cost;
- b. Timeliness, degree of urgency;
- c. Real or perceived objectivity;
- d. Staff time and availability;
- e. Anticipated investigation complexity and length;
- f. Degree of information security required;
- g. Staff will not investigate complaints against members of Council, or against the Clerk. In such cases, an external investigator will be involved.

## 2.8 Complaint Screening

An initial screening of the complaint will be conducted to ensure it includes sufficient information. The complainant may be contacted if additional information is required to determine whether the complaint can advance (i.e. be screened in).

Complaints are presumed to be screened in, unless there is a reason to screen out a complaint. The following is a non-exclusive list of factors that may justify a complaint being screened out:

- a. **Fivolous**: complaints that lack substance, are trivial, or lack an air of reality.
- b. **Vexatious**: complaints that are made out of anger or a desire to seek retribution. Vexatious complaints may lack a reasonable purpose or be made with the intention to harass or annoy. Such complaints are often repeatedly filed after a previous complaint has been screened out.
- c. **Bad Faith**: complaints made for improper purposes including deceiving the Town or where the issues raised have previously been addressed by proceedings under another redress process for which a remedy has been granted.
- d. **Not About This Policy**: complaints that do not disclose allegations that, if true, would constitute violation(s) of this policy.

Should a complaint be screened out, the complainant will be advised in writing.

## 2.9 What Investigations Will Include:

Complaints screened in will proceed to investigation.

The Town's investigation will include:

- a. Disclosing as much information to the parties as necessary to facilitate the investigation and ensure procedural fairness;
- b. Interviewing AAP, the complainant (where the complainant has not chosen to remain anonymous and where the investigator(s) deem such interview appropriate), any person involved who may have knowledge of the incident(s) related to the report or any other similar incident(s);
- c. Ensuring the results of interviews are documented either through audio recording or being reduced to writing; and
- d. Reviewing any relevant documentation.

Should circumstances warrant, the respondent's employment with the Town may be suspended with pay during all or part of the Town's investigation.

When the investigator determines that it is appropriate and, in any case, before interviewing the respondent about the merits of the complaint, the investigator shall prepare a Notice of Investigation and provide a copy to the respondent. The Notice of Investigation shall include particulars of the allegations made against the respondent.

After a copy of the Notice of Investigation is provided to the respondent:

- a. The respondent is invited to reply in writing to the allegations, and the reply will be made known to the complainant before the investigation proceeds further.
- b. To the extent possible, details of the incident being investigated and the identities of the AAP, complainant, and the respondent as well as any witnesses will be protected from unnecessary disclosure.
- c. During the investigation, the AAP, the complainant, and the respondent will be interviewed, as will relevant witnesses.
- d. While the incident is being investigated, to the extent possible, contact between the parties involved will be limited.
- e. Upon completion of the investigation, the Town will inform both the complainant and the respondent in writing of the findings of the investigation and any corrective action that has been or will be taken as a result of the investigation.

If it is determined that harassment in any form has occurred, appropriate corrective measures will be taken as soon as possible. Possible measures may include:

- a. a letter of apology or a performance agreement, if the parties will agree to these;
- b. referral for counselling;
- c. education and training;
- d. verbal or written reprimand;
- e. reprimand, suspension (with or without pay), dismissal, transfer or removal;
- f. establishing appropriate security measures; or
- g. any other corrective action deemed appropriate under the circumstances;

- h. note that a breach of this policy by a Councillor may be a breach of the Town's Code of Conduct.

## **2.10 Confidentiality**

Information about complaints and incidents shall be kept confidential to the extent possible. Information obtained about an incident or complaint under this policy, including identifying information about any individuals involved, will not be disclosed unless disclosure is necessary to protect workers, to investigate the complaint or incident, to take corrective action or otherwise as required by law.

While the investigation is on-going, the AAP, complainant, respondent(s) and any witnesses should not discuss the incident or complaint or the investigation with each other or other workers or witnesses unless necessary to obtain advice about their rights. The investigator may discuss the investigation and disclose the incident or complaint related information only as necessary to conduct the investigation.

All records of the investigation will be kept confidential to the extent permitted by applicable law.

## **2.11 No Interference with Investigation**

It is a violation of this policy to hinder, obstruct, molest, interfere with or attempt to hinder, obstruct, molest or interfere with an investigation. Individuals engaging in such conduct will be subject to disciplinary measures, up to and including termination of employment with the Town of Cobalt.

## **2.12 Record Keeping**

The Town will keep records of the investigation including:

1. a copy of the complaint or details about the incident;
2. a record of the investigation including notes;
3. a copy of the investigation report (if any) except in cases where legal counsel for the Town is involved in the complaint processes as, in such cases, all copies of the investigation report shall be kept by legal counsel for the Town;
4. a summary of the results of the investigation that was provided to the complainant and the respondent, if a worker; and
5. a copy of any corrective action taken to address the complaint.

All records of the investigation will be kept confidential. The investigation documents, including the report shall not be disclosed unless necessary to investigate an incident or complaint, take corrective action, or otherwise as required by law.

Records will be kept in accordance with the Town of Cobalt's Retention By-Law.

## **2.13 Municipal Freedom of Information and Protection of Privacy Act (MFOIPPA)**

No records of an investigation, complaint or an investigation report are subject to production pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*. They are excluded from the *Act* by s. 52(3) and the IPC decision in Order MO-3385, Appeal MA16-62

from *The Corporation of the Municipality of St. Charles*. Unauthorized disclosure of these records is an unjustified invasion of privacy contrary to the *Act*.

#### **2.14 Assessing the Risks of Workplace Violence**

The Town will conduct a risk assessment of the work environment to identify any issues related to potential violence that may affect the Town's operations, and will institute measures to control any identified risks to worker safety. This assessment will take into account:

- a. circumstances that would be common to similar workplaces;
- b. circumstances specific to the workplace; and
- c. any other elements prescribed by applicable legislation.

The Town may use a third party to assess workplace violence, threat levels, and advice about maintaining a safe workplace.

#### **2.15 Communicating the Results of the Workplace Assessment**

Upon completion of the assessment, the Town will advise the joint health and safety committee or safety representative, if any, of the results of the assessment and provide a copy if the assessment is in writing. If there is no joint health and safety committee or safety representative, the Town will advise the workers of the results of the assessment and, if the assessment is in writing, provide copies on request or advise the workers how to obtain a copy.

#### **2.16 Reassessment**

The Town will reassess the risks of workplace violence as often as is necessary to ensure that this policy continues to protect workers from workplace violence. The Town can and, where necessary, will access the services of a qualified third party to assist in conducting a risk assessment.

#### **2.17 Domestic Violence**

A person who has a relationship with a worker – such as a spouse or former spouse, current or former intimate partner or a family member – who may physically harm or threaten to harm that worker at work. In these situations, domestic violence is considered workplace violence.

If the Town becomes aware, or ought to be aware, that domestic violence would likely expose a worker to physical harm that may occur in the workplace, the Town shall take every precaution reasonable in the circumstances for the protection of the worker. Note: in reviewing the risk of domestic violence exposing a worker to harm, the worker in question may or may not be the spouse, former spouse, etc. but could be any worker of the Municipality.

#### **2.18 Violations of the Policy by Third Parties**

This policy covers all forms of workplace violence and harassment. Residents, clients, suppliers, contractors or their workers and others invited to the workplace who could engage in workplace violence or harassment against a worker are subject to this policy.

The Town may have limited ability to investigate or control the conduct of these third parties. However, the Town will take reasonable practicable action to stop or reduce the risk to its workers from violations of the policy by third parties.

Such actions may include, but are not limited to:

- a. posting this policy in a location visible to third parties;
- b. requiring certain suppliers or contractors and their workers to accept and meet the terms of this policy;
- c. removing third party violators;
- d. contacting law enforcement; and
- e. taking legal action against third party violators.

Where a third party engaged in workplace harassment has been asked to stop and does not, all workers are authorized to:

- a. end telephone conversations;
- b. politely decline services;
- c. ask the third party to leave the workplace; and
- d. remove themselves from the presence of the third party.

Where any of these actions are taken, the worker MUST report this to their immediate supervisor or the Clerk.

## **2.19 Policy Information and Training**

The Town will ensure all workers have read this policy and signed an acknowledgement of same in substantially the form attached to this policy. Training to enhance understanding of how to prevent and respond to harassment will be conducted by the Town at least annually as part of the policy review. More frequent training may be requested or directed to individuals or groups as required.

## **Part 3 Workplace Violence Risk Assessment**

### **3.1 Purpose**

This workplace violence risk assessment is designed to assist the Town in assessing the hazards of workplace violence and identifying measures, procedures and controls that can be implemented to control the risk of violence in the workplace.

**“Workplace Violence”** means

- a. the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker;
- b. an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker;

- c. a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

Workplace Violence may include (this is NOT an exhaustive list but is provided for explanation purposes):

- a. verbally threatening to attack a worker;
- b. leaving threatening notes at or sending threatening emails to a workplace;
- c. shaking a fist in a worker's face;
- d. wielding a weapon at work;
- e. hitting or trying to hit a worker;
- f. throwing an object at a worker;
- g. sexual violence against a worker;
- h. kicking an object the worker is standing on such as a ladder; or
- i. trying to run down a worker with a vehicle or equipment.

### **3.2 Council Direction**

The Clerk shall:

1. Hold meetings with workers to seek their input in order to:
  - a. Identify risks that workers perceive and their sense of personal safety in the workplace;
  - b. Consider workers' experience of violence and whether the situation involved;
  - c. strangers, clients, co-workers, students, estranged partners or family members
  - d. Identify jobs, practices or locations in which workplace violence is a concern; and
  - e. Gather opinions about the effectiveness of the controls currently in place.
2. Prepare an Assessment Report that identifies areas of workplace violence with recommendations for necessary risk control measures.

### **3.3 Identification and Assessment of Specific Risks and Risk Factors**

Certain types of work or conditions can put workers at higher risk from workplace violence. The Clerk will establish and maintain a list of potential workplace hazards including, but not limited to:

1. Dealing with irate persons
2. Working alone
  - a. In the Municipal Office;
  - b. At a municipal facility other than the Municipal Office;
  - c. In an isolated area/worksites; and
  - d. Working during late evening or early morning hours;
3. Handling money or valuables; and

4. Working with unstable or volatile persons

### 3.4 Risk Assessment Method

The Clerk will evaluate each of the potential workplace hazards and determine a "Level of Risk Score".

A Level of Risk Score is calculated as follows:

## Level of risk = Severity + Frequency

"Risk" will be considered any hazard or threat inherent in the job assuming there are no controls in place.

"Frequency" will be categorized using the following terms:

- a. Rarely
- b. Occasionally
- c. Regularly

### 3.5 Level of Risk Matrix

Frequency	Severity	Level of Risk
<p><b>"Regularly" Score = 3</b> Exposure may be part of the normal work routine or assignment</p>	<p><b>"Regularly" Score = 3</b> - potential for fatal or critical injury - may be exposed to physical injury from physical assault, punching, kicking, hitting, weapons</p>	<p><b>"Regularly" Total Score = 6</b></p>
<p><b>"Occasionally" Score = 2</b> Exposure is infrequent</p>	<p><b>"Moderate" Score = 2</b> - potential for lost time or health care - may be exposed to threatening behaviour such as hostile, intimidating, frightening etc. (e.g. shouting, pushing a table etc.)</p>	<p><b>"Moderate" Score = 4 - 5</b></p>
<p><b>"Rarely" Score = 1</b> Not a normal part of the work routine or employees are exposed to risk</p>	<p><b>"Low" Score = 1</b> - potential for first aid - may be exposed to behaviours that are disruptive and aggressive (e.g. slamming the door, walking out, etc.)</p>	<p><b>"Low" Score = 1 - 3</b></p>



### **3.6 Assessment Report**

The Clerk shall prepare an Assessment Report that includes:

1. Identified threats/hazards to workplace safety related to workplace violence;
2. Calculated Level of Risk for each threat/hazard;
3. Priority threats/hazards;
4. Safety strategies; and
5. Implementation plan.

Upon completion, the Assessment Report will be submitted to Council for information only. This may be submitted in closed session pursuant to at least s. 239(a), possibly (b) and maybe even (d)(e).

## **Part 4 Investigation of Alleged Violations**

### **4.1 Investigations**

Investigations will be confidential to the largest extent possible. Investigations of alleged violations of the Workplace Respect Policy ("Policy") will be conducted in an independent, objective manner. The investigator will provide an opinion as to whether the allegations, as proven, constitute harassment, discrimination or otherwise a breach of law or policy and, will make appropriate recommendations regarding remedial (but not disciplinary) actions.

Investigations will be conducted in a neutral manner that provides due process to all parties.

### **4.2 Investigation Guidelines**

Any person investigating allegations that an individual contravened the policy will follow this process:

#### **1. Notification of Parties**

The Clerk, or in some circumstances the investigator, will give notice to:

1. The complainant acknowledging receipt of the complaint and name the investigator.
2. AAP (if the AAP is not the complainant) advising of the complaint, that the allegations are under review and naming the investigator.
3. The respondent advising of the receipt and nature of the complaint, that the allegations are under review and naming the investigator.

#### **2. Crystallization of the Complaint & Preliminary Review**

The complainant/AAP may not have submitted sufficient detail to clearly understand (crystallize) the allegations and the investigator will need to speak with/interview the complainant to ensure they have sufficient relevant information to first determine that the matter is properly investigated as a contravention of the policy and to provide the respondent with an account of the allegation(s).

Within seven (7) days of crystalizing the allegations, the investigator will determine if a full investigation.

Upon deciding not to proceed with an investigation, the investigator will notify the complainant and the respondent that an investigation will not be proceeding, and a report will be delivered to the Clerk.

### **3. Investigation Plan**

Prior to commencing an investigation, the investigator will prepare a plan that will include:

1. Summary of Complaint.
2. Identification of Applicable Law/Policy.
3. Investigation Timeframe.
4. Identification of Parties to be Interviewed and Key Topics to Cover.
5. Documents to be Obtained and Relevance.

### **4. Notification of Investigation to the Complainant & Respondent**

If the investigator decides a full investigation is warranted, they will notify the complainant that an investigation has commenced.

They will also provide the respondent notice which includes a summary outlining the allegations of breach and sufficient evidence that the respondent can provide a response. The investigator does not have to provide the respondent with the complainant and/or witness evidence, only what they believe is necessary to allow the respondent a chance to respond.

### **5. Analysis of the Evidence and Preparation of Findings**

Findings of contravention will be based on the civil burden of proof being a balance of probabilities. Balance of probabilities means that there is evidence to support the allegation that the actions/conduct "more likely than not" [50.1%] took place, and that the behaviour is a contravention of the policy.

As required, assessments of credibility will be made based on:

1. whether or not the individual has firsthand knowledge of the situation;
2. whether or not the individual had an opportunity to observe the events;
3. whether or not the individual may have bias or other motive;
4. the individual's ability to clearly describe the events;
5. consistency within the story;
6. the attitude of the individuals as they are participating; and
7. any admission of dishonesty<sup>1</sup>

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<sup>1</sup> *Faryna v. Chrony* (1951), 2D.L.R. 354 (B.C.C.A), at Para 10, 11.

*Alberta (Department of Children and Youth Services) v A.U.P.A.* (2009), 185 LAC (4<sup>th</sup>) 176 (Alta.Arb.)

## **6. Presentation of Findings to Respondent**

Prior to the finalization of the Investigation Report, the investigator will provide the respondent with their findings.

The respondent has seven (7) calendar days to provide feedback to the investigator. Any respondent requiring additional time to respond must notify the investigator within three (3) days of receiving the investigator's findings citing the reason for the extension and the respondent's preferred response date.

In the sole discretion of the investigator, an extension may be granted. If an extension has not been granted, the respondent must submit their response by the original date.

## **7. Finalization and Presentation of Report**

Within fifteen (15) days of receiving the respondent's feedback on the findings, the investigator will finalize and present the investigative report to the Clerk.

The investigation plan, any evidence collected by any investigator as well as any documents provided to the parties are the "record" of the investigator, will not form part of the personnel file of any of the parties and will remain in the care and control of the investigator.

## **8. Report of Findings and Corrective Action**

Upon completion of an investigation, the Clerk will ensure the AAP and the respondent are provided with the findings and any corrective action that involves them. To be clear:

- 8.** The AAP advising them that a contravention of the policy was or was not found to have occurred and if applicable that corrective action will be taken. The AAP will not be advised of the corrective action unless an action is being taken that directly impacts the AAP.
- 9.** The respondent advising them that a contravention was or was not found to have occurred and if applicable what corrective action will be taken.

## **Part 5**

### **Investigation Committee Formation and Terms of Reference**

#### **5.1 Investigation Committee**

The investigation committee will be automatically struck when allegations are made that a member of Council has contravened the Workplace Violence & Harassment Policy.

The investigation committee will consist of the members of Council not involved in the proceedings. In all circumstances, the investigation committee will receive advice from the Town's Solicitor. The investigation committee is responsible for:

1. Appointing a Clerk who is not the Town Clerk for the purpose of having meetings if there is a quorum of Council on the investigation committee;

2. Appointing a recording secretary if there is less than a quorum of Council on the investigation committee;
3. Reviewing the complaint received; and
4. Causing an investigation and engaging an external investigator.

The investigating committee will remain in effect as long as is necessary to complete the proceedings, receive the reports and make recommendations arising from the reports and thereafter, the implement the decisions of Council.

## **5.2 Terms of Reference**

The Terms of Reference for the committee are as follows:

1. The committee will receive advice from the Town Solicitor and/or other agents directly involved in the proceedings and will provide to the Municipal Solicitor and/or other agents all necessary instructions;
2. The committee will receive a presentation about the report(s) when they are completed and will make recommendations to Council with respect to any decisions that arise from the presentation;
3. Pursuant to section 239(2) of the *Municipal Act, 2001*, all meetings of the committee will not be open to the public and will be conducted in accordance with the closed meeting and other procedures of the Town of Cobalt's Procedural By-Law.