

## HARASSMENT RECOURSE ROUTES



There are various recourse mechanisms available to employees who experience harassment in the workplace. With the exception of collective agreement provisions (which cover unionized employees only), all employees have the right to access one or more of the following routes for addressing workplace harassment.

*Any PSAC member experiencing harassment should inform her/his union representative and discuss which recourse route is best for them, in the circumstance.*

### COLLECTIVE AGREEMENT

- All collective agreements provide for the right of a PSAC member to file a grievance. In most collective agreements, grievances which involve the interpretation of the collective agreement (such as alleging a violation of the “No Discrimination” Article) require the approval of the union to proceed. The grievance procedure in the collective agreement sets out the process to be followed.
- In most collective agreements, grievances *related to discrimination* that are not resolved during the grievance procedures can be sent to a third-party (adjudication/arbitration) for resolution.
- It is prudent when filing a harassment grievance under prohibited grounds outlined in either the *Canadian Human Rights Act (CHRA)* or the *BC Human Rights Code (BCHRC)* to also file a complaint with the applicable Human Rights Commission. The Commission may choose to put your complaint in abeyance until the matter has been settled internally first.

### HUMAN RIGHTS COMPLAINT

- The Canadian Human Rights Commission (“the Commission”) and the BC Human Rights Tribunal (the “Tribunal”) accept complaints of discrimination

and harassment based on the areas and grounds listed in their respective human rights legislation.

- The Commission and the Tribunal are impartial (do not take sides) in human rights complaints. If the complaint goes to a hearing, the Commission or the Tribunal may intervene if it is the general public's best interest.
- Complaints may be resolved through mediation or conciliation at any point in the process.
- You may file an harassment complaint based on prohibited grounds to the Commission or the Tribunal at the same time as you have accessed other harassment recourse routes. It is likely, however, that the Commission or the Tribunal will choose to put your complaint in abeyance until the matter has been settled internally first.

### **WORKERS COMPENSATION CLAIM**

- There are provisions in the BC Workers' Compensation Act for claims based on mental disability.
- The onus of proof is on the individual to prove a connection between the workplace and their condition.
- To be compensable, the psychiatric or psychological disability must result from physical or emotional reactions to workplace trauma and be diagnosed by a psychiatrist or psychologist.
- All employees (including federal government employees) working in BC are covered under the BC Workers' Compensation Act.
- Division 6 (Sections 150 to 153) allows for complaints alleging discrimination on a prohibited ground. The Act defines what a discriminatory action is and also sets out what corrective actions are available if the complaint is upheld. The complaint can be against an employer or a union.
- There is no mention of "harassment" or "bullying" in the legislation.

## COMPLAINT UNDER THE CANADA LABOUR CODE – PART 2

- For all intents and purposes, there is no recourse mechanism for discrimination or harassment through the Occupational Health and Safety section of the Canada Labour Code (Part 2).

### EMPLOYER HARASSMENT FREE AND RESPECTFUL WORKPLACE POLICY AND POLICY GUIDELINES

- Most employers have a Harassment Free or Respectful Workplace Policy which provides for various formal and informal recourse routes for resolving harassment. The Union's role where members are concerned is to ensure due process.
- Employers, particularly larger ones including the federal government and Agencies, usually provide a Guide for Applying their Harassment Free and Respectful Workplace Policy. This Guide should outline procedures as well as roles and responsibilities of the parties, for both formal and informal harassment recourse routes, as outlined in that policy.
- Recourse routes under the policy may include:

**Direct Response** – where safe and reasonable to do so, an employee should advise another person if their behaviour is offensive and request that it stop. Where an employee does not feel safe to do so, the policy may state that the employee should advise their supervisor. *For unionized employees, the union recommends that members talk to their union representative if they experience harassment.*

#### Facilitated Discussion or Mediation

**Facilitated Discussion** as outlined in the Policy would involve managers facilitating discussion between the parties as a resolution tool. **Mediation** involves formal agreement of both parties and is facilitated by an outside party who is acceptable to both parties. It can occur any time during the process. *[Facilitation or mediation can only be effective when both parties are committed to the process. It is usually only effective at early stages and where power relations are not heavily imbalanced]*