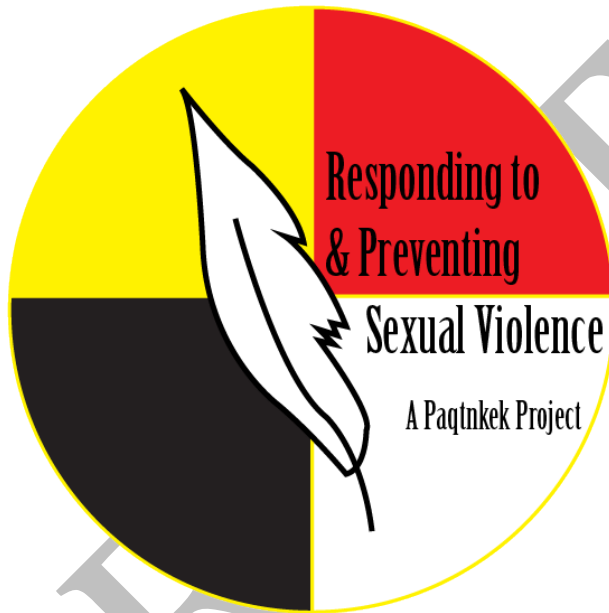


# Responding to and Preventing Sexual Violence Project Paqtnekek Mi'kmaw Nation



**Policies and Procedures Report**  
**December 2015**



**Status of Women  
Canada**    **Condition féminine  
Canada**



## Table of Contents

Executive Summary.....	3
Background on the Issues.....	3
Introduction to the Paqtnkek Project.....	4
Purpose and Hope for the Polices & Procedure Report.....	4
Brief Summaries Highlighting each Mi'kmaq Community Included.....	5
Sexual Harassment and Violence for Aboriginal Peoples in Canada.....	6
Overview the Canadian and Nova Scotian Human Rights Act in relation to Harassment.....	7
Additional Definitions and Examples.....	
Impact of Sexual Harassment.....	
Overview of Personnel Policy for Band Staff in Four Mi'kmaq Communities.....	
Challenges Faced within Mi'kmaq Communities the Implementation of Polices & Procedures.....	
Moving Forward: Best/Promising Practices for Policy & Procedure Creation & Implementation.....	
Canadian Human Rights Commission.....	
HR Proactive.....	
Band Council Resolutions.....	
Mi'kmaw Legal Support Network & Customary Law.....	
Restorative Justice.....	
Conclusion.....	

## Executive Summary

**\*NOTE:** To be written after final revisions/suggestions have been made to the report

### Background on Issues

Sexual violence is an issue across all communities in Canada and Aboriginal women are particularly vulnerable to and victimized by sexual violence. “Aboriginal women have faced historical violence and brutality that still continues today. This abuse affects aboriginal women physically, socially, emotionally, and spiritually” (Researched to Death: B.C. Aboriginal Women and Violence, 2005).

- Aboriginal women 15 years and older are 3.5 times more likely to experience violence than non-Aboriginal women (Statistics Canada’s 2004 General Social Survey (GSS)).
- 54% of Aboriginal women reported severe forms of family violence, such as being beaten, being choked, having had a gun or a knife used against them, or being sexually assaulted, versus 37% of non-Aboriginal women (Statistics Canada’s 2004 General Social Survey (GSS)).
- Approximately 75% of survivors of sexual assault in Aboriginal communities are young women under 18 years of age. Approximately 50% of these girls are under the age of 14 and approximately 25% are under the age of 7 (Newfoundland Labrador Violence Against Aboriginal Women Fact Sheet, 2008).
- Aboriginal women between the ages of 25 and 44 years are 5 times more likely than all other women in the same age group to die as a result of violence (Newfoundland Labrador Violence Against Aboriginal Women Fact Sheet, 2008).
- 1, 181 women and girls identified as Indigenous were murdered or disappeared between 1980 and 2012 (Royal Canadian Mounted Police’s 2015 Missing and Murdered Aboriginal Women: A National Operational Overview).

Community members of Paqtnkek Mi’kmaq Nation have expressed a concern, sharing that “when sexual violence happens or is disclosed, the community as a whole does not know what to do.”

To strengthen community-based solutions and to break the silence around sexual violence, the Paqtnkek Health Centre and the Antigonish Women’s Resources Centre & Sexual Assault Services Association developed Mi’kmaq-specific initiatives for response and prevention.

### Introduction to the Paqtnkek Project

*Responding to and Preventing Sexual Violence* is a collaborative, two-year project, funded by Status of Women Canada, between the Paqtnkek Health Centre and the Antigonish Women’s Resource Centre & Sexual Assault Services Association with key support from Paqtnkek Chief & Council and other partners to strengthen how sexual violence against Aboriginal women is addressed.

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**Comment [2]:** This is a simplification of a complex problem – the silencing rests in the consequences of colonialism

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This project focuses on both the response to sexual violence and the prevention of it, based in a culturally relevant, revitalizing, and safe approach.

While the focus of the work is in Paqtnkek, connection will be made with other Mi'kmaq communities in Nova Scotia to share knowledges and to help build local capacities.

The phases of the project are: 1) partnership development, 2) needs assessment, 3) collaboration, 4) strategy development & pilot implementation, 5) knowledge sharing. In Year 1 of the project (March 2014-2015), the main activities focused on developing partners and assessing needs.

## Purpose and Hope of the Policy & Procedure Report

This report reviews the current policies and procedures surrounding harassment and sexual harassment and the best practices in other comparable First Nation communities to make recommendations to leadership. Policies and Procedures within the Human Rights Act, Band Council Resolutions, Mi'kmaq Legal Support Network, Customary Law (i.e. Circles) and Personnel Policy for Band Staff will be overviewed for this report and to provide training for Banff Staff and Chief & Council. This report will also include any challenges various Mi'kmaq communities have expressed when implementing their Personnel Policy and Procedures dealing with harassment and sexual harassment and how those challenges have been overcome in the past. Any identifiers from each community will not be included in respect to the confidentiality of the community.

This report will be made accessible to the public. The sharing of this report is an opportunity for Paqtnkek and other First Nations communities throughout Mi'kma'ki (Mi'kmaq traditional territory) to build best/promising practices and local capacities to respond to and prevent sexual violence.

Seven (7) surrounding Mi'kmaq communities were contacted and their personnel policies researched online to support the writing of this report. Four (4) of the Seven (7) communities provided sections or their entire Personnel either through email or online, with one (1) community requesting a copy of this Policy and Procedure report to build a culturally relevant personnel policy report and best/promising practices for leadership.

## Brief Summaries Highlighting each Mi'kmaq Community Included

### *Indian Brook*

Part of Sipekne'katik First Nation (formerly Shubenacadie), Indian Brook was established on May 8, 1820. The community is 1, 234.2 hectares and located 28.8 km southwest of Truro. With a population of 2, 555 registered band members and composed of Indian Brook, New Ross, Pennal, Shubenacadie (Grand Lake), and Wallace Hills, Sipekne'katik is the second largest Mi'kmaw community in Nova Scotia.

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For more information, visit Sipekne'katik's website here: <http://sipeknekatik.ca>.

### ***Membertou First Nation***

Named after the Grand Chief Membertou (1510-1611) the community of Membertou identifies itself within the greater tribal group of the Mi'kmaq Nation. Membertou is situated 2 km from the city of Sydney, Nova Scotia and is one of five Mi'kmaq communities in Cape Breton. Membertou is considered an urban First Nation communities consisting of over 1,400 people.

For more information, please visit Membertou's website here: <http://www.membertou.ca>

### ***Paqtnkek Mi'kmaw Nation***

Paqtnkek Mi'kmaw Nation, established on March 3, 1820, is located 24 km east of Antigonish, Nova Scotia. The meaning of the community's name, "by the bay," emphasizes the importance of the local bay and its resources to the Mi'kmaw people.

For more information, please visit Paqtnkek Mi'kmaw Nation's website here: <http://paqtnkek.ca>

### ***Pictou Landing First Nation***

Pictou Landing First Nation is composed of Fisher's Grant, Boat Harbour, Merigonish Harbour and Frankin Manor. The community identifies as being the Lnu or Mi'kmaq who were part of the Algonquin nation; a people who lived a traditional life as fishers, hunters and gatherers throughout their territory and around a small tidal estuary, which was so important to the life of the ancestors that they treated it as part of their home and called it "A'Se'K" (the other room in Lnu).

For more information, please visit Pictou Landing First Nation's website here: <http://www.plfn.ca>

## **Sexual Harassment and Violence for Aboriginal Peoples in Canada**

Aboriginal peoples (First Nation, Métis, or Inuit) have experienced high levels of violence and sexual abuse within their communities for many decades with women and children particularly affected (AHF 2006: 6). However, as LaRocque (1994) notes, "men of all backgrounds, cultures, classes and economic circumstances have assaulted women; sexual violence appears to be a global and universal phenomenon" (AHF 2006:6).

Many Aboriginal tribes, Brant (1990) describes as having had behavioural norms that "promoted positive interpersonal relations by discouraging coercion of any kind, be it physical, verbal, or

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psychological” (as cited in AHF 2006:6). Known as the “ethic of non-interference,” this ethic was one of the widely accepted principles of behaviour in Aboriginal cultures and it contributed to the “maintenance of harmonious relations and was highly effective in suppressing intragroup and intergroup hostility” (AHF 2006: 6). In addition, Aboriginal societies educated children about sexuality, which sought to teach the balance between sexuality as a natural part of life but that there must be boundaries and limits (Bopp and Bopp 1997a; 1997b as cited in AHF 2005: 7). These boundaries, AHF (2005) asserts, were learned early in life and reinforced by specific “taboos, warnings, proverbs and prescribed protocols” to provide guidance in the sexual area of life (p.7).

An individual who engages in sexual abuse is seen in the Aboriginal perspective as someone who is “unhealthy and has lost touch with spiritual and cultural roots and teachings” that effects not only the victim’s well-being but the community’s well-being as well by “interfering with the victim’s development” and “undermining traditional cultural and social dynamics within families and communities” (AHF 2006: 7). The Aboriginal notion of justice is aligned with regaining community harmony, which is based on the belief that all aspects of life are closely interconnected (AHF 2006: 7). Therefore, the abuser, the person(s) harmed and the community each have an important role in “resolving the dispute and healing the wounds” (AHF 2006: 7).

### ***Historical Context of Sexual Abuse and Violence Against Aboriginal Peoples***

The Aboriginal Healing Foundation (2006) purports that there is a “general consensus among experts” that European contact played a significant role in undermining traditional values and practices in Aboriginal communities, such as “justice, equity and respect” (p. 7). This undermining of traditional Aboriginal practices and beliefs allowed increased incidences of sexual abuse and violence to go “unchecked” as resources within Aboriginal communities to address the abuse were severely diminished (AHF 2006: 7). This is especially true due to the establishment of reserves and residential schools, which Ellerby and Ellerby (1998) explains left communities without the ability to educate community members about healthy living or provide proper sexual education (as cited in AHF 2006: 8). Subsequently, “standards of behaviour have changed so drastically in some Aboriginal communities” that family violence and sexual abuse are regarded as part of an everyday reality (AHF 2006: 8).

It is also noted that the current imbalance in some Aboriginal communities “centres around the distress experienced by the Aboriginal family” (AHF 2006: 9). The Royal Commission on Aboriginal Peoples (1996b) observed that there was a distinct division along sex lines in most Aboriginal societies with gendered roles that “complimented one another and contributed to the well-being of the family and community (AHF 2006: 8). Survival, as explained in the AHF report and by Patterson (1982) is dependent upon the “equal balance and respect for the roles of both men and women” (p. 8). However, the AHF (2006) argues that the internalization of racism and sexism perpetuated by colonization has been a powerful force in shaping present circumstances (p. 8).

In addition, the Royal Commission on Aboriginal Peoples (1996b: 367) states, “[residential] schools were the opportunistic sites of abuse” (as cited in AHF 2006: 16) with the AFH (2006) claiming that widespread sexual and physical abuse in residential schools has been extensively

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documented (AHF 2006: 16). The AFH (2006) claims, “hundreds and hundred of individuals have stepped forward with accounts of abuse in many schools through the countries” (AHF 2006” 16). Many statements by former residential schools students before the Commission report “sexual abuse by nuns and priests, including: forced sexual intercourse and sexual touching, forced oral-genital contact, and the arranging or inducing of abortions in female children impregnated by men in authority” (AHF 2006: 16). Today, many criminal convictions have been made against perpetrators and Woodward (2000) states that there are around 10, 000 civil cases before the courts involving former residential schools attendees (as cited in AHF 2006:16). Regardless, the legacy of residential schools, its physical, sexual, emotional, spiritual, psychological, cultural and racial abuse, is still felt by Aboriginal individuals, families, and communities today (AHF 2006: 16).

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## Canadian Human Rights Act on Discrimination

### *Purpose of the Canadian Human Rights Act*

The purpose of the *Canadian Human Rights Act* is defined within the Act as: “[extending] the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered” (*Canadian Human Rights Act*, Section 2).

The Act can be reviewed more in-depth here: <http://laws.justice.gc.ca/eng/H-6/index.html>

### *Discrimination Defined*

Discrimination is defined by the **Canadian Human Rights Commission (Commission)** as “an action or a decision that results in the unfair negative treatment of a person or group because of their race, age, religion, sex, etc. The Commission further states that some types of discrimination are illegal under federal and provincial human rights laws.

### *Prohibited Grounds of Discrimination*

In the *Canadian Human Rights Act (Act)*, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offense for which a pardon has been granted or in respect of which a record suspension has been ordered (Part I, Section 3.1).

### *Multiple Grounds of Discrimination*

A discriminatory practice can also include a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds (Part I, Section 3.1).

### ***Discriminatory Practices***

The **Act** prohibits the following discriminatory practices, if they are based on one of the grounds of discrimination:

- Denying someone goods, services, facilities or accommodation (Section 5)
- Refusing to employ or continue to employ someone or treating them unfairly in the workplace (Section 7)
- Following policies or practices that deprive people of employment opportunities (Section 10)
- Paying men and women differently when they are doing work of the same value (Section 11)
- Harassing someone (Section 14)
- Retaliating against a person who have filed a complaint with the Commission or someone who has filed a complaint for them (Section 14.1)

### ***Harassment***

The **Commission** states that harassment occurs when someone:

- Offends or humiliates you physically or verbally
- Threatens or intimidates you
- Makes unwelcome remarks or jokes about your race, religion, sex, age, disability, etc.
- Makes unnecessary physical contact with you, this can also be assault

The **Commission** also states that employers are responsible for any harassment in the workplace and they must take appropriate action against any employee who harasses someone else. Each workplace should have an anti-harassment policy available to all employees.

### ***Duty to Accommodate***

The **Commission** explains that employers have a duty to accommodate only when an employee needs a change or modification, based on one of the grounds of discrimination.

### ***Special Treatment***

The **Act** allows special treatment to ensure that people are treated fairly because “equality does not always mean treating everyone the same” (Commission).

### ***Community-based and other Internal Dispute Resolution Processes***

The **Commission** enlightens that some situations can be solved within an organization or community. Thus, an individual can solve a dispute by:



- Using a customary process, such as asking Elders for guidance or using a healing circle; or
- Filing a grievance (if part of a union)

### ***The Commission and the Tribunal***

The **Act** created the Canadian Rights Commission (**Commission**) and the Canadian Human Rights Tribunal (**Tribunal**). These organizations work independently of each other and of the government.

#### **The Commission:**

- Deals with complaints of discrimination by federally regulated employers or service providers and sends them to the Tribunal for a hearing if more inquiry is needed
- Ensures that employers promote workplace equality for the groups named under the *Employment Equity Act*, these groups includes: women, Aboriginal peoples, people with disabilities, and members of visible minorities
- Promotes an understanding of human rights and informs federally regulated organization about respecting human rights in their organizations

#### **The Tribunal:**

- Holds hearings and decides on cases that the Commission sends it
- Makes orders to solve discrimination

### **Additional Definitions and Examples**

#### ***Sexual Harassment***

Section 10 of Ontario's Human Rights Commission (OHRC) defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought to be known to be unwelcome."

The Aboriginal Healing Foundation (AHF) defines sexual harassment or assault as "the use or attempted use of another person's body for sexual gratification, without that person's consent" (AHF 2006: 1). Sexual assault, the AHF (2006) explains, encompasses a range of behaviours that usually involve "force, emotional or physical threats, or the use or abuse of alcohol or drugs, and rendering a victim physical helpless in some way" (p.1). It is also important to realize that those harmed by sexual harassment often know their perpetrators (AHF 2006:1).

#### ***Gender-based Harassment***

Gender-based harassment is a type of sexual harassment in which “any behaviour that polices and reinforces traditional heterosexual gender norms” (Elizabeth J. Meyer, “Gendered Harassment in Secondary Schools: Understanding Teachers’ (Non) Interventions,” *Gender and Education*, Vol. 20, No. 6, November 2008).

Gender-based harassment is often used to enforce traditional sex stereotypes and/or as a bullying tactic, often between members of the same sex (OHRC website). However, it is not generally motivated by sexual interest or intent. The OHRC states that it is often based on “hostility and is often an attempt to make the target feel unwelcome in their environment” (OHRC website).

### ***Forms of Sexual Harassment***

Examples of Sexual harassment from the OHRC website include:

- Sexual solicitation and advances
- A poisoned environment
- Gender-based harassment
- Violence

### ***Examples of sexual and gender-based harassment from the OHRC website:***

- Demanding hugs
- Invading personal space
- Making unnecessary physical contact, including unwanted touching, etc.
- Using language that puts someone down and/or comments toward women (or men, in some cases), sex-specific derogatory names
- Leering or inappropriate staring
- Making gender-related comments about someone’s physical characteristics or mannerisms
- Making comments or treating someone badly because they don’t conform with sex-role stereotypes
- Showing or sending pornography, sexual pictures or cartoons, sexually explicit graffiti, or other sexual images (including online)
- Sexual jokes, including passing around written sexual jokes (for example, by e-mail)
- Rough and vulgar humour or language related to gender
- Using sexual or gender-related comment or conduct to bully someone
- Spreading sexual rumours (including online)
- Making suggestive or offensive comments or hints about members of a specific gender
- Making sexual propositions
- Verbally abusing, threatening or taunting someone based on gender
- Bragging about sexual prowess
- Demanding dates or sexual favours
- Asking questions or talking about sexual activities
- Making an employee dress in a sexualized or gender-specific way
- Acting in a paternalistic way that someone thinks undermines their status or position of

responsibility making threats to penalize or otherwise punish a person who refuses to comply with sexual advances (known as reprisal).

## **Impact of Sexual Harassment**

### ***Impact of Sexual Harassment on Job Performance***

Alexander et al. (2005) state that numerous studies have shown that sexual harassment has had a negative effect on workers' job performance and longevity of employment (p. 5). Effects include: loss of confidence in superiors; deteriorating relationships with co-workers, lower organizational withdrawal, increased absenteeism; and increased turnover (Alexander et al. 2005: 5). Sexual harassment, Alexander et al. (2005) explain, has also been "associated with decreased morale, feelings of fear and humiliation, and less satisfaction with work, supervision, promotions, and organizations commitment, as well as decreased self-esteem for both the self and the self as a member of the organization in cases which a supervisor fails to acknowledge ongoing harassment or blames the...target of the harassment (p.5).

### ***Impact of Sexual Harassment on Individuals***

Research, Alexander et al. (2015) also illustrate, has found negatives effects on individuals (p.6).

Those who experience sexual harassment can have psychological symptoms, such as "depression, guilt, humiliation, embarrassment, social isolation, and a decrease in self-esteem, anxiety, anger and fear" (Alexander et al. 2005:6). Individuals can also experience physical symptoms that include, "sleep and energy problems, nausea, body pain, illness, and psychosomatic symptoms" (Alexander et al. 2005: 6). Most importantly, however, Alexander et al. (2005) address that "negative physical and emotional responses are experienced by a majority of women who have been sexually harassed" (p.6). Yet, negative effects are not limited to women as men who have experienced sexual harassment also report negative psychological effects (Alexander et al. 2005: 6).

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## **Overview of Personnel Policy for Band Staff in Various Mi'kmaq Communities**

### ***Indian Brook (Sipekne'katik)***

#### ***Harassment Policy***

Sipekne'katik's Human Resources Policy begins its Harassment Policy section with a statement that claims, "Sipekne'katik believes in promoting a harmonious, safe work environment and has zero-tolerance towards harassment" (Section 11). Further stating, "Chief and Councils,

supervisors, managers, directors and the Director of Operations are role models for staff and must maintain and enforce appropriate workplace behaviours” yet, each employee also has the responsibility to treat others with respect and the right to speak up if they are or someone else is being harassed or treated disrespectfully in the workplace (Section 11).

The purpose of this policy is outlined as to “protect employees from harassment (as stipulated in the Human Rights Code of Canada) based on any of the following: race, national or ethnic origin, social origin, colour, religion, age, sex, marital status, family status, disability, pardoned conviction, or sexual orientation. In addition, “all harassment no matter its basis is unacceptable and not permitted and will not be tolerated” (Section 11).

### *Lateral Violence*

Under Section 11.1 of Sipekne’katik’s Harassment Policy, lateral violence is explained as “a learned behaviour which for many Aboriginal peoples is deeply rooted in our past. It stems from the oppression that many First Nation peoples have felt for many generations. It is when people act out in rage, anger and frustration against members of our Nation, our co-workers or our family. It manifests as ugly competition among members of our Nation, our co-workers or our families. It presents in numerous ways such as jealousy, blaming, put-downs, shaming, envy, sarcasm, bickering, whining, ignoring, excluding or freezing people out, undermining staff or co-worker activities, blocking requests for promotion or training and backstabbing.”

Within the policy, Sipekne’katik expressed its understanding of this frustrations and anger and sympathizes, but encourages it employees to try and turn their anger and frustration into helpful and constructive action which will “rebuild the community” (Section 11.1) Although they express this understanding, it is expressed that lateral violence is a form of harassment and will not be tolerated.

### *Workplace Harassment*

Section 11.4 promotes protection from harassment in the workplace, which is explained as encompassing “all places that an employee can or is required to be for the purposes of work or work related activities.”

### *Sexual Harassment*

Under section 12, sexual harassment is defined as “any conduct, comment, gesture or contact of a sexual or personal nature that is likely to cause offence or embarrassment to a person; or that might, on reasonable ground, be perceived by an employee as placing pressures of a sexual nature on the chance of further employment, training or promotion.”

Sipekne’katik’s Sexual Harassment policy asserts that “every employee is entitled to an employment environment free of sexual harassment” and that sexual harassment can occur between any members of a workplace. It also affirms that Sipekne’katik takes incidents of sexual harassment seriously and will endeavor to protect all employees from any form of harassment (Section 12). In this way, “any employee suspected of and/or is causing sexual harassment will be duly investigated and punished and/or reprimanded” (Section 12).

Sipekne'katik places sexual harassment within two categories, "sexual coercion and "sexual annoyance." identifying sexual coercion as "sexual harassment which has a direct consequences on the victim's employment; whether either an open or implicit offer in keeping a job or getting a promotion is made by a person in a position of power or influence in exchange for sexual favors. Whereas, sexual annoyance is deemed as being harassment where a hostile environment is created and. Sexual annoyance is also considered demeaning and unwelcome sexually related behaviors that is offensive, hostile or intimidating to the victim.

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Section 13 outlines various ways to handle a Harassment Allegation, which include:

- Making it known
- Taking the complaint to the Harassment Committee
- Documentation of incident
- Mediation to resolve the complaint
- Making a formal complaint
- Investigation of Allegations(s)
- Summary of Findings
- Punitive measures
- Victims' Recompense

Please refer to the community's Human Resource Policy, which can be found online on their website here: <http://sipeknekatik.ca/sipeknekatik-human-resource-policy-updated-july-14-2015/>

### ***Membertou First Nation***

#### ***Harassment and Sexual Harassment Policy***

Section 8 of Membertou's personnel policy begins with a general statement (Section 8.3-1) that states, "Membertou is committed to a healthy, safe and supportive workplace. It is the right of all employees to work in an environment free from harassment, sexual harassment, and discrimination."

This statement also addresses the affects harassment, sexual harassment, and discrimination have on the workplace and the well-being of both employees and clients, affects which are stated to not be tolerated. It is also mentioned that Membertou's Harassment and Sexual Harassment Policy is intended to "promote awareness, prevention, and prompt resolution of offensive behaviors."

Finally that managers have an obligation to take appropriate action to protect their employees and others in the workplace by putting a stop to any offensive behaviors they are aware or become aware of through a filed complaint. Likewise, "employees have an obligation to treat all persons with respect and dignity and are encouraged to take appropriate action to ensure offensive behaviour is not tolerated or condoned" (Section 8.3-1).

### *Personal Harassment Policy*

Under section 8.3-2, personal harassment is identified as including “aggressive or threatening behaviour, which creates an environment not conducive to work.” Harassment is defined as “derogatory or vexatious conduct or comments that are known or ought reasonably to be known to be offensive or unwelcome” (Section 8.3-2). Harassment under Membertou’s Personal Harassment policy includes:

- Actions or comments that are directed at no person in particular but that create an intimidating, demeaning or offensive work environment;
- Any objectionable comment, act or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat; or
- Discriminatory practices that would amount to harassment involving any of the protected characteristics set out in the *Canadian Human Rights Act*

### *Sexual Harassment Policy*

Under section 8.3-3 of Membertou’s personnel policy, sexual harassment is identified as “unwanted sexual attention, sexual solicitation, or any other sexual orientated remarks or behaviour which has the effect of interfering with an individual’s work or creates an environment not conducive to work.” It is stated that sexual harassment may include:

- Comments, gestures or physical conduct of a sexual nature, or
- Actions or comments with a sexual connotation or component that are direct at no person in particular but that create an intimidating, demeaning or offensive work environment, where an individual knows or ought to reasonably know that the behaviour is unwelcome or offensive

### *Complaints*

It is stated within Membertou’s personnel policy that resolution to a situation should be sought within six months of the offensive behaviours or in extenuating circumstances the Director of Human Resources may consider complaints beyond six months.

### ***Paqtnkek Mi’kmaw Nation***

#### *Harassment Policy*

Under section 3.5 of Paqtnkek’s Personnel Policy, personal harassment is defined as “any improper behaviour by a person(s) employed by the Band that is either directed at or offensive to an employee and which the harasser knew or ought reasonably to have known would be unwelcome.” It is also stated that harassment includes objectionable conduct, comment or display made on either a one-time or continuous basis that seeks to demean, belittle or cause personal humiliation or embarrassment to an employee.

Abuse of Authority is identified under this section as: “a person improperly using their power/authority associated with a position held, in order to endanger and employee’s job, undermine the performance in that job, threaten the employee’s economic livelihood or in any way interfere with or influence the employee’s career goals.” This can include acts such as intimidation, threats, blackmail or coercion, but the policy states that it does not include legitimate managerial activities.

### *Sexual Harassment Policy*

In section 3.5.1, Paqtnkek’s sexual harassment policy applies to all staff members and Chief and Council, as well as clients/community members and other who visit Paqtnkek and states that to “sexual harassment by anyone whether in the office, at work assignments outside the office, at office sponsored social function, or elsewhere will not be tolerated.”

Sexual harassment is defined as “any type of sexually orientated conduct that ought reasonably to be known to be unwelcome and inappropriate” and is identified as being, but not limited to, sexual advances, request for sexual favors, and verbal or physical contact of a sexual nature when:

- Submission of such conduct is either implied or stated to be a term or condition of employment
- A factor in the evaluation of a staff member’s performance
- Promotability or any other component of employment
- Such conduct creates a hostile, offensive or intimidating environment
- Continued or repeated sexual jokes, languages, epithets, flirtation, leering, unnecessary touching or closeness
- The display in the workplace of sexually suggestive objectives, pictures, posters or cartoons
- Inquiries about sexual conduct, relationships or orientation are examples that may constitute harassment

This policy also recognizes that sexual harassment is illegal under human rights legislation and claims that reprisals against those who file complaints under this policy will not be tolerated, explicitly stating that violators of this policy will be subject to discipline and/or possible discharge.

### *Procedure for Dealing with Harassment*

It is encouraged that any staff member who feels harassed by a manager, co-worker, subordinate, client/Community member or other person takes the following actions:

- Keep a log of actions found to be objectionable with dates, times, and witnesses
- Tell the offending individual(s) to stop the harassment by stating clearly the specific behaviour that is found to be objectionable. It is suggested to have a witness present and to produce a written summary of what was said and how the responded that includes the

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time and date. However, it is stated that a staff member that does not feel comfortable with a discussion can provide written objections to the offending individual(s) or proceed to the following step, which is:

- Immediately complain to management or Chief and Council

It is asserted that all complaints will be dealt with in a “timely fashion” and investigations of the complaint will be conducted followed by a decision taken on the penalty if any is to be imposed on the offender.

### ***Harassment by Client’s/Community Members***

Built into Paqtnkek’s personnel policy on harassment is a section on harassment by client/community members. Under this section, it is stated that harassment from any source will not be tolerated and clients/community members will follow above-mentioned procedures in cases of alleged harassment. Paqtnkek’s policy states that the Director of Operations/personnel committee and/or Chief and Council will take prompt remedial action if investigations validate the complaint(s). Possible remedial steps mentioned:

- Letters of objection to the accused
- Refusal to continue the business/working relationship

However, it is also expressed that individuals filing complaints should be made aware of the limits that restrict Paqtnkek’s ability to control client/community member behaviors.

In addition to its written policy prohibiting harassment and taking all harassment complaints seriously, Paqtnkek personal policy states Paqtnkek will also will:

- Train/review Harassment Policy with all supervisors on harassment prevention
- Incorporate the harassment policy into new employee orientation
- Establish an effective compliant procedures that encourages employees to come forward with allegation of harassment
- Quickly investigate all complaints pursuant to a well-planned investigative procedures
- Take swift action to eliminate harassment when it is identified, in such a manner that both victim and harasser are treated fairly
- Be vigilant in its efforts to prevent harassment from occurring
- Communicate the policy to all employees on a regular basis

### ***Pictou Landing First Nation***

#### ***Harassment Policy***

“Pictou Landing First Nation believes that all employees share the responsibility for ensuring that co-workers and customers are treated with mutual respect and dignity, and are free from any an all forms of harassment. This Band Office will not tolerate any form of harassment by an employee against another employee or customer” (p. 77).

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**Comment [9]:** Is this procedure clear? Do all members know about this?

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**Comment [10]:** How often? Has this happened?



Harassment is defined within Pictou Landing First Nation's personnel report as "behavior that consists of words and/or action that cause insult or humiliation to another person on the basis of race, ancestry, place of origin, color, ethnic origin, citizenship, creed, age, appearance, record of offences, marital status, family status, disability or handicap, or sexual orientation" (p. 78).

Sexual harassment in this policy is referred to "a form of discrimination based on sex, which is prohibited by the Canadian Human Rights Act. It is any sexually oriented behaviour that" endangers an individual's continued employment, or negatively affected her or his work performance, or undermines her or his person dignity" (pg. 78). Further stating that sexual harassment includes coercive sexual harassment and an abusive work environment as well as that sexual harassment may occur as a single incident or it may be a series of incidents, innuendoes or threats, which diminish a person's self worth, dignity and self-respect" (pg. 78).

*Harassment Procedure:*

- 1) Pictou Landing First Nation's Harassment Policy encourages "any employee who believes they have be subjected to personal harassment should confront the harasser personally or in writing informing them that the behaviour is unwelcome and that it must stop. If possible, the employee should get another person to witness this action"
- 2) Or that any employee subjected to personal harassment should promptly report their complaint to the appropriate person
- 3) Any employee who is witness to, or aware of, harassment committed by an employee against a customer should report the harassment, in accordance with the serious occurrence reporting procedure
- 4) The CEO, or their designate, will ensure that an immediate and thorough investigation of the complaint is undertaken
- 5) If an employee's complain of harassment is substantiated, disciplinary or corrective action will be taken by the employer against the harasser, up to and including termination of employment
- 6) If an employee's complaint is found to be "trivial, frivolous, vexatious, or made in bad faith," disciplinary or corrective action will be taken against the complaint

**Collective Summary**

**Challenges Faced within Mi'kmaq Communities the Implementation of Polices & Procedures**

**NOTE:** No community commented on this aspect

**Moving Forward:**

## **Best/Promising Practices for Policy & Procedure Creation & Implementation**

### **Canadian Human Rights Commission**

#### ***General Recommendations***

##### *1. Encourage Leadership Commitment*

Leaders should publicly commit to human rights and appoint a human rights officer or assign a human rights portfolio to an employee.

##### *2. Review Organization's Operations from a Human Rights Perspective*

Review current policies, practices and office-by-laws. Keep records of any efforts made to improve policies and practices. Ask: "Do they consider people's various needs? Have they been developed with consideration for the 11 ground of discrimination under the Canadian Human Rights Act?"

##### *3. Provide Human Rights Training*

Have human rights training available for leadership, managers, and employees. This ensures that everyone is aware of their rights and responsibilities as well as the potential human rights implications of your organization's policies, practices, and by-laws can prevent discrimination.

#### ***Prevent Discrimination in the Workplace***

##### *1. Create Human Rights Protection Policies*

Such as: a duty to accommodate policy; a pregnancy and parental leave policy; and an anti-harassment policy.

##### *2. Think about Physical Workplace*

Assess your building, facilities, office layout and safety policies to judge whether everyone's needs are met.

##### *3. Confront Discrimination as soon as it happens*

Provide staff with instructions on how to confront and resolve discrimination the moment it happens. Always document any attempts to resolve a conflict.

#### ***How to Resolve Conflicts when they arise***

The Commissions suggests developing a fair, flexible, efficient and effective process to resolve issues through an **internal dispute resolution process**. An internal dispute resolution process can:

- Prevent discrimination complaints
- Help resolve disputes before they get worse
- Allow people to have an active role in resolving the dispute
- Resolve the issue easier and faster
- Save legal fees and/or court costs

Communities may seek to use the **Human Rights Maturing Model** as a tool to create a healthier workplace. This model is voluntary and free.

The **Ontario Human Rights Commission (OHRC)**'s website includes a comprehensive section that addresses the issues that arise when an employer is called on to resolve human rights issues using existing human rights policies and complaint resolutions procedures. For more detailed information, please visit: <http://www.ohrc.on.ca/en/iv-human-rights-issues-all-stages-employment/12-resolving-human-rights-issues-workplace>.

### **HR Proactive**

HR Proactive, founded by human rights specialist Diane C. Mason, provides companies and organizations with online resources, training products and tools to better understand and comply with their legal responsibilities as employers. HR Proactive has "Eight Organizational Best Practices to Prevent and Manage Sexual Harassment," which include: inoculate against sexual harassment through positive corporate culture, keep your harassment policy current and remind employees regularly of its content; educate your employees about harassment and do this more than once; set expectations for your supervisors and provide them with the support they need; invest in an effective complaint process and share it with your employees; take quick action in response to complaints; follow through after the investigation; and be vigilant to subtle signs of bullying or sexual harassment.

More information on each organizational best practice can be found here:  
[http://www.preventsexualharassment.ca/practices\\_prevent\\_sexual\\_harassment.html](http://www.preventsexualharassment.ca/practices_prevent_sexual_harassment.html)

**Best Practices in Sexual Harassment Policy and Assessment by Alexander, P., Alexander, E., and Warner, S. (2005).**

### ***Prescriptions for An Effective Sexual Harassment Prevention Program***

#### *Designing a Sexual Harassment Policy*

Alexander et al. (2005) purport that an effective sexual harassment policy needs to include: a clear statement that sexual harassment is illegal and will not be tolerated within the company; a clear statement that the prohibition against sexual harassment applied to everyone within the

organization; a complaint mechanism; an explanation of what constitutes sexual harassment; and assurances that complaints will be investigated and that no retaliation will be taken against an employee making a complaint (p. 32).

### *Statement of Sexual Harassment Policy*

Sexual harassment policy should be crafted carefully and both quid pro quo and hostile environment harassment should be explicitly covered in the policy (Alexander et al. 2005: 32).

Secondly, the policy should also cover the actions of individuals who are not employees of the organization, further indicating that the sexual harassment policy applies to outsiders and company employees (Alexander et al. 2005: 32).

Finally, the policy must set forth sanctions for violations and be clear that the employee can be sanctioned not only for behaviour that is illegal but also for behaviour that is inappropriate in the view of the organization's position regarding sexual harassment (Alexander et al. 2005: 32-3).

### *Organizational Climate and Sexual Harassment*

Organizations are in a position to "take positive steps to insure that the climate within the organization is one which does not facilitate the development of a hostile climate" (Alexander et al. 2005: 33). Alexander et al. (2005) claim that the seriousness with which an organization approaches its sexual harassment policy and the enforcement of it makes a significant impact on the attitudes of its employees (p. 33).

### *Compliant Procedures*

Alexander et al. (2005) suggest a phone number be provided to which employee complaints can be directed (p.33). In addition, they advocate that employees be allowed to bypass their immediate supervisor in making a complaint and rather to someone they feel comfortable with (Alexander et al. 2005: 33). Complaints should also be allowed to be filed verbally with a written complaint that constitutes a second level if the complainant is not satisfied with the resolution of the verbal complaint (Alexander et al. 2005: 33).

They also put forward that how a complaint is addressed is critical to its effective resolution. Complaints should be heard "carefully suspending judgment and taking complete notes" (Alexander 2005: 33). This process, they suggest, should be explained without making promises as to the outcomes, but the appropriate third party, with both male and female investigators, should be notified so that investigations can begin (Alexander 2005:33).

Once relevant facts have been collected and compiled, Alexander et al. (2005) assert that investigators should determine whether the complaint is credible (p.33). Then, appropriate disciplinary action should be prescribed (Alexander et al. 2005: 33).

Alexander et al. (2005) explain that the entire investigation should be documented and that the complaint process should provide limited but not absolute assurances of confidentiality (p.34).

They say, “allegations of discrimination, harassment and retaliation should be kept confidential except when needed to conduct an investigation and take corrective action. The accused has the right to know the identity of people have filed complaints against the individual. Without such knowledge, it is impossible for the accused to provide mitigating evidence” (Alexander et al. 2005: 34).

### *Communication of Sexual Harassment Policy and Procedures*

Alexander et al. (2005) posit that multiple coordinated communication media provides for the most effective communication within organizations (p. 34). This can be done though distributing the policy in an “easy to read” and informative way beyond the company’s personnel policy (Alexander et al. 2005: 34). However, Alexander et al. (2005) advise that follow up is necessary through the use of bulletin boards, organization’s newsletters and magazines, training session, Intranet sites, and videotapes (p. 34).

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### *Training on Sexual Harassment Issues*

It is suggested that training programs on sexual harassment include a “focus on employees’ thoughts and perceptions about the relationship between [those harmed], actions, harassment and outcomes, they should sensitize individuals to both their own and the [individual who is harmed]’ feelings about the situations, and they should try to address the behaviour of sexual harassment, even as it varies widely in different situations” (Alexander et al. 2005: 35).

Alexander et al. (2005) provide several ideas from writers, such as Goldstein (1993), York et al., (1997), and Wexley and Latham (1991). Goldstein (1993), for example, has suggested that “learning through observation (“modeling”)” is more effective but less damaging than learning through direct experience (Alexander et al. 2005: 36). This, York et al. (1997) explain, could be done through videos and cases (Alexander et al. 2005: 36). Wexley and Latham (1991) highlight the importance of “conditions of practice,” and suggest “the potential of role-playing in the prevention of sexual harassment” (Alexander et al. 2005: 36). Alexander et al. (2005) further mention from Wexley and Latham’s (1991) writing that it is necessary for employees “to develop an awareness of how not to interact at work, but also the ... equally important awareness of how to interact” (Alexander et al. 2005: 36).

### **Band Council Resolutions**

Encourage Chief and Council in corresponding Mi’kmaq community to propose and approve Band Council Resolutions that ensure that personnel policy and procedures are culturally relevant and safe and which take into account the context of colonization and international trauma experienced by Aboriginal peoples, while not trivializing the experiences of those harmed.

**NOTE:** I am not sure what you are looking for here or what Band Council Resolutions are entirely. Chief PJ Prosper did say that Paqtnkek Chief and Council are active in making Band Council Resolutions for various cases, but did not touch on any for instances or cases regarding harassment/sexual harassment, which leaves possibility for Band Council Resolutions to be

created for such cases. With a brief discussion with Chief PJ Prosper and my limited knowledge, I believe that Band Council Resolutions could be proposed by Chief and Council to ensure that personnel policy and corresponding procedures are culturally relevant and safe and which take into account the context of colonization and intergenerational trauma experienced by Aboriginal peoples, while not trivializing the experiences of those harmed.

### **Mi'kmaq Legal Support Network & Customary Law**

The Mi'kmaq Legal Support Network (MLSN) is a justice support system unique to Aboriginal peoples who are involved in the criminal justice system in Nova Scotia. In addition to providing legal support services to all Mi'kmaq/Aboriginal people, MLSN recognizes the gaps in provision of mainstream justice programs and works towards making the non-Mi'kmaq system of justice better for Aboriginal peoples through the incorporation of Aboriginal cultural values and concepts of justice.

A possible program Mi'kmaq communities across Mi'kma'ki can use to respond to sexual harassment is MLSN's **Mi'kmaq Customary Law Program (MCLP)**. This program works with Aboriginal and Mi'kmaq communities to find meaningful and culturally appropriate ways to hold individuals accountable for their wrongful actions. The benefit of MCLP is proposed as a "renewal of community interest, involvement, and support in the healing process of the Aboriginal victim and offender" (MLSN website). This revitalization of Mi'kmaq customary law is practiced within a Circle, which includes the person who has been harmed, the person who caused the harm, families and friends of both parties, Elders, community members, justice system representatives (judge, prosecutor, defense counsel, police, probation officer), and other resource professionals.

#### ***Circle & Circle Objectives***

Using a Circle is an alternative to non-Mi'kmaq or formal court processes and is often more attentive to the needs of the Mi'kmaq Community and offenders. An individual is accepted into the program when or if they accept the responsibility of their offense and are willing to make amends. MLSN explains, "Once someone sits in the circle, there are no special powers or privileges. Everyone in the Circle has the same power, as the circle operates on the basis of consensus. Consensus is a process of coming together for a common solution that meets the needs of all those present in the circle" (MLSN website). Participants in the circle discuss: what happened; why it happened; what the impact is; and what is needed to repair the harm and suggest ways to decrease the chance of it happening again (MLSN website). The circle is also intended to: provide an alternative to the formal court process and system that is understanding and respectful of Aboriginal heritage; develop an action plan that will engage the support and commitment of all participants and will reflect the collective efforts of the community (MLSN website). MLSN describes three different types of circles:

- *Justice Circles*: Pre/Post charge referrals from the police or Crown Attorney. Described as including the victim(s), family and community work with the individual to find suitable ways of holding the accused accountable. Through consensus, MLSN explains, an agreement is achieved with a list of recommendations for the individual to complete in

hopes of making amends for their wrongful act. Upon completion of the recommendations the charge is withdrawn.

- *Healing Circles:* Pre/Post charge referrals from police, Crown, or Courts. Participants include the wrongdoer, the person(s) harmed and support individuals. MLSN states that the purpose of the healing circle is “to share the pain of a person or persons who have experiences trauma or loss” (MLSN website). It is explained that this can be done without prejudice to sentencing and a plan for support beyond the Circle may be created but is not required of the Healing Circle.
- *Sentencing Circles:* Post conviction referrals from the Courts. MLSN expresses Sentencing Circles as an “opportunity to determine available community resources and sentencing alternatives for a judge to consider” (MLSN website). This processes encourages offenders to take responsibility for their action(s) and recognizes the impact those actions have on the individuals harmed and the community. Sentencing Circles provides all those affected with a choice to play a participatory role in creating and presenting recommendations to the courts that help in determining a sentence that is meaningful and promotes healing.

For more information, please visit MLSN’s website: <http://www.mlsn.ca>

### ***Restorative Justice***

Unlike the formal justice system, Aboriginal approaches have focused on the traditional practice of “restring peace and harmony in the community” (AHF 2006: 94). What becomes important in Aboriginal approaches to justice is that the offender, the victim and the community garner a sense that a “transgression has been dealt with appropriately and that divisiveness in the community has been healed” (AHF 2006: 94). In addition, through restorative justice, offenders are encouraged to take responsibility for their actions by “providing redress for victims, and by promoting reintegration within the community” (AHF 2006: 95). Thus, restorative justice stragerty can provide a culturally appropriate method to addressing the needs of Aboriginal offenders, victims, and communities and in a manner that aligns with emerging institutions of Aboriginal self-government while also providing opportunities for cooperation between Aboriginal and non-Aboriginal or mainstream ream justice approaches (AHF 2006: 94).

The Aboriginal Healing Foundation (2006) states that restorative justice approaches can be implemented at four different stages of criminal justice processing: 1) pre-charge; 2) pre-conviction; 3) pre-sentence; and 4) post-sentence (p. 95). The National Crime Prevention Centre (1998) states that some of the foundations of the restorative justice approach recognizes at the all stages that:

- Crime results in not only the harm of victims, but also in harm to families, communities and offenders
- A crime is seen as a violation against one or more person by another person rather than as an offense against the state

- Communities and criminal justice agencies can take responsibility for dealing with the crime
- Damage done to individuals, families, communities, and offenders can be healed
- Restorative justice approaches can provide an alternative to incarceration
- Greater community understanding and involvement may result in lower reoffending rates and motivate offenders to become productive members of society

Some examples of restorative justice programs include:

- Victim-Offender Mediation
- Family Group Conferencing
- Sentencing Circles
- Formal Cautioning

To conclude, Braithwaite (1998) explains that restore “property loss, injury, a sense of security, dignity, a sense of empowerment, deliberative democracy, and a sense of harmony and social support based on a feeling among offenders, victims and the community that justice has been done (AHF 2006: 96).

## **Conclusion**

The Royal Commission on Aboriginal Peoples has defined three interrelated objectives that Aboriginal social policy should seek to achieve (as cited in AHF 2006:140):

- 1) To address urgent social concern through institution building and program development congruent with the emergence of self-government
- 2) To pave the way for Aboriginal self-government by enhancing the capacity of Aboriginal citizens to engage in nation building
- 3) To stimulate adaption of mainstream institutions to provide services in a manner that recognizes and affirms Aboriginal identity, involves Aboriginal peoples in governance and decisions making, and assumes a complementary and supportive role in the development of Aboriginal service institutions

The Aboriginal Healing Foundation (2006) also encourages “building strong families and strong communities” through creating safe environments in which open discussions can be had about the problems of sexual abuse (p. 140). If victims are encouraged disclose the abuse they have endured then adequate and culturally appropriate services must be available for victims and offenders (AHF 2006: 140). This can be achieved through creating a stragerty that builds knowledge, trust and community capacity (AFH 2006: 140) and which can begin with culturally appropriate and effective harassment and sexual harassment personnel policy.



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