

CUPE's Harassment and Discrimination Response Procedure

1. Introduction

- a) Pursuant to Article F.2(d) of the Constitution, the National Executive Board adopted an alternate process to respond to complaints of harassment or discrimination contrary to Appendix F, Article F.1(m). This alternate process is referred to as the Harassment and Discrimination Response Procedure. It is set out below.
- b) Harassment undermines our solidarity as workers. CUPE is committed to creating a union which is inclusive, welcoming, and free from harassment and discrimination.
- c) Harassment is objectionable behaviour which may include actions, language, gestures, and/or written material, and which the harasser knows or ought reasonably to know is abusive and unwelcome. Bullying is a form of harassment which is serious ongoing behaviour, which targets an individual or group, and which threatens that person or persons' mental and/or physical well-being. Harassment also includes offensive behaviour that is discriminatory based on grounds outlined in Appendix F, Article F.1(m).
- d) A member is found guilty of an offence against the CUPE Constitution pursuant to Appendix F, Article F.1(m), if they are found to have acted in a way that constitutes harassment or discrimination on the basis of sex, sexual orientation, gender identity, gender expression, language, age, race, ethnicity, ancestry, colour, place of origin, creed, disability, family status, marital status or record of offences.
- e) The Harassment and Discrimination Response Procedure provides members in good standing with an internal process to have complaints of harassment or discrimination against other members in their local, dealt with in a fair, multi-partial and trauma-informed manner, and, if necessary, determined by an impartial adjudicator. This procedure can apply to any complaint alleging harassment and/or discrimination that would constitute a violation of Article F.1(m). It may also apply to other offences under the Constitution, which are included in the complaint and relate to the same facts.
- f) The cost of the Adaptable Resolution (5.1) and the Adjudicative Pathway (5.2) will be borne by the Local Union where the complaint originates. The cost of conducting an Adaptable Resolution process (wherein CUPE staff are not the facilitators) and/or adjudication will include the Adaptable Resolution facilitator(s) and Adjudicator's fees and reasonable expenses and the cost of a meeting room.

- g) The Local Union is responsible for neither the costs of the complainant nor the respondent(s). However, should the Local Union agree to pay the costs for one party to the complaint then they are obligated to pay the costs for both parties.

2. Representation and Support

- a) At any interview or proceeding related to the decision-making process of a complaint under the Harassment and Discrimination Response Procedure, individuals may bring a support person who may be internal or external to CUPE and/or be accompanied by a representative (legal or otherwise).
- b) Persons involved in proceedings must advise the Safer Union Spaces Office (SUSO) Director of their intention to be accompanied, as well as the identity of the support person or representative in attendance in advance of any proceeding. The SUSO may deny, with reasons, the request for a particular support person or representative.

3. Filing a Complaint

- a) If, following consultation or an Informal Intervention Process, there is no resolution, the individual bringing forward the concern may choose to file a complaint. The complaint must be submitted in writing to the Safer Union Spaces Office (SUSO) Director (or designate). Members can use the Harassment and Discrimination Complaint Form.
- b) The complaint will include: the alleged offence under Article F.1 of the Constitution, the name of the respondent(s), the facts of the complaint, and the date and location of the alleged offence.
- c) The SUSO staff may be available to provide guidance on the preparation of a complaint or response to a complaint.
- d) Upon receipt of a complaint, the SUSO Director (or designate) will address the complaint. The SUSO Director (or designate) will determine whether the complaint may go forward, considering whether the issues noted in the complaint fall within the scope of this process set out in Appendix F of the Constitution as well as whether the allegation(s) would, if proven true, constitute an offense under the Constitution. SUSO may request additional information from the parties during the screening process. The SUSO will provide the decision on whether the complaint will go forward to the complainant, respondent(s), and Recording Secretary of the Local Union.

- e) Article F.1(m) complaints shall be submitted within twelve (12) months of the incident(s) that is the subject of the complaint. Where the subject matter of a complaint is ongoing, the date of the last incident shall have occurred within the previous twelve (12) months.
- f) Time limits may be extended by the SUSO where delay was incurred in good faith and no substantial prejudice has been caused, which deprives the respondent of a fair opportunity to respond to the complaint. Where a time limit is extended, the SUSO will notify the parties in writing.

4. Response

- a) The SUSO will report the filing of a complaint under the Harassment and Discrimination Process to the National Presidents Office, Recording Secretary of the Local Union, and the respondent(s). The SUSO will provide complaint details to the respondent(s).
- b) The respondent(s) may provide a written response to the complaint, which should be filed with the SUSO as soon as reasonably possible, and in accordance with timelines established by the SUSO.
- c) The SUSO will work with both parties to determine if supportive measures are deemed appropriate pending the outcome of the complaint process. SUSO will communicate such mutually agreed upon measures to the impacted parties in writing. The authority to approve interim measures will rest with the SUSO Director (or designate). Supportive measures will be reviewed on an ongoing basis by the SUSO Director (or designate) to ensure the measures remain necessary and appropriate. Supportive measures are temporary and do not extend beyond the final resolution of a complaint. Supportive measures are not intended to be punitive in nature and shall not be construed as evidence of a finding of guilt.
- d) If supportive measures are alleged to have been violated, evidence of such violation(s) may be submitted at adjudication of the complaint, if any.

5. Resolution Pathways

The Complainant may choose either Adaptable Resolution or the Adjudication Process when initiating their complaint. They may also begin with Adaptable Resolution and proceed to adjudication if they are not satisfied with the process.

5.1 Adaptable Resolution

- a) A complainant may request Adaptable Resolution with the submission of their complaint or at any point in the process to the Director or designate.

- b) Adaptable Resolution is a voluntary, resolution-focused, structured process between or among affected parties that balances safety, support and, when appropriate accountability. This option focuses on the expressed needs of the harmed party(ies) without the imposition of formal disciplinary action against a respondent. This process is co-created by both the complainant and respondent.
- c) Options may include, but are not limited to:
 - i. Submission of an Impact Statement;
 - ii. Accountability Counseling;
 - iii. Facilitated Dialogue/Mediation, and;
 - iv. Restorative Process.
- d) If a resolution is achieved through an Adaptable Resolution process, the details will be documented in a written agreement that must be reviewed and signed by all parties.
- e) If the measures set out in the agreement are violated, the Complainant may request the SUSO Director (or designate) that the original complaint be reactivated and moved to the Adjudicative Pathway. The SUSO Director (or designate) will determine whether the allegation of violation of the agreement would, if proven true, compromise the core commitments made in the agreement or materially undermine the intention of the agreement and if the allegation is brought forward within a reasonable time. If the original complaint is moved to adjudication, the Adjudicator will, at the request of the respondent, review the alleged violation of the resolution agreement and decide whether the violation justifies reactivation of the complaint.

5.2 Adjudicative Pathway

- a) A complainant may request adjudication with the submission of their complaint or at any point in the process.
- b) Complaints dealt with by the Adjudicative Pathway are private but not confidential. This means the outcome of the process will be shared with the parties, SUSO, National President and Local membership to ensure accountability, but the process itself is private and solely between the complainant(s) and the respondent(s).

5.2.1 *Appointment of Adjudicator*

- a) Where the complainant has elected resolution of their complaint through adjudication the National President will appoint a neutral Adjudicator.
- b) If two or more complaints charge one or more respondents with an offence or offences based on facts, issues, or circumstances that are similar or related, as determined by the National President, one Adjudicator will be selected to hear and adjudicate the complaints.
- c) The Adjudicator may direct questions on CUPE process, structure, and programs to the National President.

5.2.2 Adjudication

- a) An adjudication proceeding by written submissions and/or by hearing will start within 30 days of the Adjudicator's appointment. Should more time be necessary to hold the adjudication, reasons will be provided to the National President.
- b) Prior to the commencement of the private adjudication, the Adjudicator will hold a case management meeting with the complainant and respondent and their respective representatives to deal with preliminary matters concerning the adjudication, including procedural questions. At the Adjudicator's discretion, the meeting can be held separately with each party.
- c) After the case management meeting both the complainant and the respondent are required to provide all documents, they intend to rely on in the adjudication to the Adjudicator.
- d) At the Adjudicator's discretion, the adjudication may proceed in writing and/or by hearing in person or virtual. Written submissions by the parties may be provided after the case management call in accordance with a schedule set by the Adjudicator.
- e) If a hearing occurs, the adjudicator will give at least 14 days' written notice to the complainant and the respondent of the time and place of the hearing by e-mail. For adjudications proceeding by writing, the Adjudicator will set a schedule to exchange submissions with 14 days notice to start the process.
- f) At the discretion of the Adjudicator, the information obtained from the parties in advance of an adjudication will be considered, as appropriate, in deciding the complaint. It is anticipated that in many instances only limited additional evidence during an oral hearing will be admitted by the Adjudicator.
- g) The complainant is required to prove that the respondent has committed an offence or offences in order for the complaint to be upheld.
- h) The respondent and the complainant have the right to participate in the adjudication by making representations, and, if necessary and proportionate, call witnesses and to cross-examine witnesses called by the other side.
- i) A SUSO staff member will not provide representation to the parties. SUSO Staff will not provide evidence at adjudication.

- j) Where the Adjudicator exercises their discretion to admit additional evidence, it shall be done in the manner that is most appropriate considering expedition, cost, relevance, scope of harm to those involved, and any other applicable criteria. Examples of evidence include written witness statements, documents, electronic records or other materials. If deemed appropriate or needed by the Adjudicator, oral testimony that includes one or both parties calling witnesses and cross-examining of witnesses called by the other side may be permitted.
- k) If either the complainant or the respondent does not attend the adjudication or decides not to participate, the Adjudicator can dismiss the complaint, adjourn the proceeding or hold the adjudication and decide the complaint in their absence. The Adjudicator may set terms that they consider appropriate for granting an adjournment.
- l) The Adjudicator will make their decision after the completion of the hearing or written submissions. The decision of the Adjudicator shall be final and binding on the complainant and respondent and not subject to appeal.

5.2.3 Scope of Adjudicator's Powers

- a) The Adjudicator determines their own procedure considering all the circumstances including the principles of natural justice, the duty to accommodate, and a trauma-informed approach. The Adjudicator can accept any oral or written evidence that it considers proper, so long as every member receives a fair and impartial adjudication. The Adjudicator can recommend interim safety measures to be accepted by the parties, decide any preliminary objection, adjourn, decide a complaint, impose penalty and dismiss the complaint.
- b) The Adjudicator may decide any complaint alleging harassment and/or discrimination which would constitute a violation of Article F.1(m), even if other offences to the Constitution are included in the complaint.
- c) The Adjudicator decides whether the respondent has committed an offence pursuant to Appendix F, on the balance of probabilities, based on an assessment of the credibility of the parties and the evidence provided.
- d) If the Adjudicator finds the respondent violated the Constitution, the Adjudicator will decide any penalty and what, if anything, the respondent must do or not do. The decision may include:
 - i. a reprimand
 - ii. a fine, where permitted by law
 - iii. a suspension or expulsion from membership except where such suspension or expulsion from membership would lead to termination of employment
 - iv. a ban against holding membership or office
 - v. an order to stop doing the act or acts complained of
 - vi. an order to correct the act or acts complained of

- vii. requiring the respondent to attend an education course, coordinated by SUSO, with respect to issues of harassment or discrimination
 - viii. requiring the respondent to participate in accountability coaching coordinated by SUSO
 - ix. any other order that the Adjudicator finds appropriate in the circumstances
- e) The Adjudicator will report their decision, including brief reasons, to the respondent, the complainant, the SUSO Director (or designate), and the National President.
- f) The SUSO will report the decision, without reasons, to the Recording Secretary of the Local Union. The Adjudicator may direct SUSO to provide the full decision, or any portion of the decision, to the Recording Secretary. The decision will be recorded in the minutes of the next general membership meeting.