

## **BULLYING POLICY NO. 2: BULLYING COMPLAINTS**

TO: Chief and Council and all Staff  
Lower Kootenay Band (“LKB”)

FROM: Chief and Council

DATE: April 11, 2012

RE: **Bullying Complaints by LKB Personnel about LKB Members**

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This memo sets out the Policy to be followed by any member of Chief and Council or any LKB staff person (altogether, the “**Personnel**”) wishing to lodge a complaint against an LKB member using bully tactics with any Personnel.

### **1. Bullying Defined**

“**Bullying**” means aggressive, abusive or hostile conduct, humiliation, intimidation, or threats, which could be considered by a reasonable person to create a negative impact on any Personnel, or produce an environment detrimental to work for any Personnel. “Bullying” includes all the conduct listed in the following sections of the *Criminal Code*:

- (a) s. 264 (1) and (2), criminal harassment;
- (b) s. 264.1, uttering threats;
- (c) s. 175(1), causing a disturbance;
- (d) s. 265(1), assault;
- (e) s. 423(1) intimidation; and
- (f) s. 430(1), mischief.

The conduct listed in paragraphs (a) through (f) is described in detail in section 3, Legal Remedies of Personnel Who Are Bullied, of the LKB Bullying Policy No. 1: Gathering Evidence (the “**Gathering Evidence Policy**”).

Conflict, stress, difficult conditions of employment, professional constraints and questions about how LKB money and other resources are being spent, do not constitute “Bullying”.

### **2. Hearing of a Complaint of Bullying**

- (a) **Bullying Complaint:** Any Personnel (the “**Complainant**”) may at any time make a written complaint of Bullying against an LKB member. Personnel make the Complaint by setting out particulars of the Bullying in a letter signed and dated, addressed to Chief

and Council (the “**Complaint**”) and delivered to the Chief Operating Officer (the “**COO**”), together with any written statements from witnesses, also signed and dated.

- (b) **Written Notice of Hearing:** The COO shall give both the LKB member in question and the Complainant, written notice of the time and place of the Chief and Council meeting where the Bullying Complaint will be heard, and a copy of this Policy, the Complaint and any witness statements. The written notice of the time and place will also be given to any witnesses.
- (c) **Opportunity to be Heard:** The LKB member in question and the Complainant shall be given an opportunity to be heard at the Chief and Council meeting, to present evidence, and to question each other and any witnesses. That LKB member, the Complainant and all witnesses shall answer questions by any member of Chief and Council.
- (d) **Hearing Open to LKB Membership:** The hearing of the Bullying Complaint shall be open to the LKB membership, subject to the next paragraph.
- (e) **Hearing in Camera:** The LKB member in question, the Complainant or the COO may at the beginning of the hearing make application to Chief and Council for the hearing to be in camera, that is closed to the LKB membership. The application can be made on the basis of confidential information to be disclosed to the hearing, or other prejudice to either the LKB member in question, any other LKB member, any Personnel, or to LKB as a whole, as the case may be, created if the hearing is open to the LKB membership.
- (f) **Decision by Chief and Council:** Following the hearing of the Bullying Complaint, Chief and Council shall either:
  - (i) designate the LKB member in question as a “**Bully**”, that is a person who is for a period of six to 18 calendar months following the date of the hearing, which period is determined by Chief and Council, put on restricted access in accordance with this Policy to:
    - (A) all Personnel;
    - (B) the LKB Administration Office (the “**Administration Office**”);
    - (C) the Yaqan Nukiy school operated by LKB (the “**School**”);
    - (D) the parking lots for the Administration Office and the School (the “**Parking Lots**”); and
    - (E) any LKB reserve lands:
      - (I) upon which any Personnel are ordinarily resident; or
      - (II) upon which are located any premises or facilities either owned or operated by LKB;

- (ii) dismiss the Bullying Complaint; or
- (iii) determine that the LKB member in question must do any one or more of the following:
  - (A) apologize in writing to the Complainant, within a specified time period, with a copy of the apology to be provided to the COO;
  - (B) apologize to the Complainant at the next LKB community meeting;
  - (C) perform a specified number of hours of community service for LKB;  
or
  - (D) do whatever else is determined by Chief and Council to make amends with the Complainant.

Chief and Council shall also:

- (iv) make any other order, direction, declaration or record necessary to dispose of the Bullying Complaint; and
  - (v) give the LKB member in question and the Complainant written notice of its decision.
- (g) **Bringing the Decision into Effect:** Following the decision by Chief and Council on the Bullying Complaint, the COO shall take whatever steps are necessary to bring that decision into effect.

### 3. Removal of Bully Designation

- (a) **Request to Chief and Council:** An LKB member who has been designated as a Bully for a specified period, in accordance with this Policy, may after half that specified period has passed, request in writing in a letter, signed and dated, addressed to Chief and Council and delivered to the COO (the “**Request**”), a meeting with Chief and Council, to ask Chief and Council to remove that designation. The Bully shall also provide to the COO any written statements from witnesses, also signed and dated, that he or she will be relying upon in support of the Request.
- (b) **Written Notice of Hearing:** The COO shall give both the Bully and the Complainant, written notice of the time and place of the Chief and Council meeting where the Request will be heard, and a copy of this Policy, the Complaint, the Request, copies of any witness statements filed on the Complaint or the Request, and the Chief and Council decision on the Bullying Complaint. The written notice of the time and place will also be given to any witnesses appearing on the Request.
- (c) **Opportunity to be Heard:** The Bully and the Complainant shall be given an opportunity to be heard at the Chief and Council meeting, to present evidence, and to

question each other and any witnesses. The Bully, the Complainant and all witnesses shall answer questions by any member of Chief and Council.

- (d) **Hearing Open to LKB Membership:** The hearing of the Request shall be open to the LKB membership, subject to the next paragraph.
- (e) **Hearing in Camera:** The Bully, the Complainant or the COO may at the beginning of the hearing make application to Chief and Council for the hearing to be in camera, that is closed to the LKB membership. The application can be made on the basis of confidential information to be disclosed to the hearing, or other prejudice to either the Bully, the Complainant, any other LKB member, any Personnel, or to LKB as a whole, as the case may be, created if the hearing is open to the LKB membership.
- (f) **Decision by Chief and Council:** Following the hearing of the Request, Chief and Council shall either:
  - (i) remove the Bully designation from that person; or
  - (ii) continue the Bully designation for that person for the remainder of the period originally specified by Chief and Council.

Chief and Council shall also:

- (iii) make any other order, direction, declaration or record necessary to dispose of the Request; and
  - (iv) give the Bully and the Complainant written notice of its decision.
- (g) **Bringing the Decision into Effect:** Following the decision by Chief and Council on the Request, the COO shall take whatever steps are necessary to bring that decision into effect.

#### 4. Restricted Access

- (a) **Sections 5-14 of the Gathering Evidence Policy Apply:** Sections 5-14 of the Gathering Evidence Policy set out restrictions on access to Personnel or the Administration Office by an LKB member, determined by Chief and Council to be an “**Alleged Bully**”. These sections also set out the procedure for Personnel to gather legal evidence about the Alleged Bully. All these sections all apply, with any necessary changes in points of detail, to any LKB member who has been designated by Chief and Council as a “**Bully**” in accordance with this Bullying Complaints Policy.

For the purpose of this Bullying Complaints Policy, any reference in sections 5-14 of the Gathering Evidence Policy to an “Alleged Bully” shall be replaced with “Bully”.

- (b) **Additional Restrictions on a Bully, not applicable to an Alleged Bully:** The additional restrictions on a Bully, not applicable to an Alleged Bully are:

- (i) a Bully is not allowed in the School;
  - (ii) a Bully is allowed in the Parking Lots for the Administration Office and the School only for the purpose of conducting business in the Administration Office in accordance with section 6 of the Gathering Evidence Policy;
  - (iii) a Bully is not allowed to wait in a vehicle in the Parking Lots; and
  - (iv) a Bully is not otherwise allowed to be within the legal boundary of any LKB reserve lands:
    - (A) upon which any Personnel are ordinarily resident; or
    - (B) upon which are located any premises or facilities either owned or operated by LKB, other than for the purpose of attending a community meeting of LKB members called by Chief and Council.
- (c) **Bully Breaching Restrictions Shall be in Trespass:** A Bully breaching any of the restrictions in paragraphs (a) and (b) shall be in trespass upon LKB reserve lands, and subject to all legal remedies available to LKB and any of its members, for such trespass.

## 5. Scope of Decision

A decision of Chief and Council on a Bullying Complaint is made for administrative purposes of LKB only, and does not affect any of the other legal rights of the parties to the Bullying Complaint, all of which are preserved. All the parties to the Bullying Complaint may pursue any other legal remedies both before and after Chief and Council has made a decision on a Bullying Complaint.

A decision of Chief and Council on a Bullying Complaint is final, conclusive and binding, and not subject to appeal, but is subject to judicial review in Federal Court.

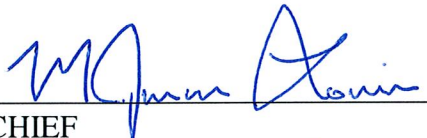
**6. Conclusion**

By following this Policy when confronted by a Bully, LKB Personnel will be:


- (a) protecting themselves from harm;
- (b) preserving the security and safety of the work place; and
- (c) giving LKB the evidence it needs to pursue legal remedies against the Bully.

**LOWER KOOTENAY BAND**

Per:

  
CHIEF

  
COUNCILLOR

  
COUNCILLOR

  
COUNCILLOR

  
COUNCILLOR

# **BULLYING POLICY NO. 1:**

## **GATHERING EVIDENCE**

TO: Chief and Council and all Staff  
Lower Kootenay Band (“**LKB**”)

FROM: Chief and Council

DATE: April 11, 2012

RE: **Gathering Evidence:**  
**Bullying of LKB Personnel by LKB Members**

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This memo describes the Policy for gathering legal evidence about LKB members who attempt to bully any member of Chief and Council or of the LKB staff (altogether, the “**Personnel**”).

### **1. Application by Chief Operating Officer to Chief and Council**

This Policy can in the discretion of the LKB Chief Operating Officer (the “**COO**”), following consultation with Personnel, be proposed for application to any LKB member for whom there is written evidence of Bullying, as defined in section 2 of this Policy, in any dealings with any Personnel.

(a) **Written Notice:** The COO will advise in writing:

- (i) all Personnel of the names of any LKB member to whom this Policy is proposed for application; and
- (ii) the LKB member in question of the proposed application of this Policy to him or her (the “**Application**”), the reasons, and for what length of time, not to exceed three calendar months from the date of the Chief and Council meeting where the Application will be decided.

The COO will provide to the LKB member in question the Application, a copy of this Policy, copies of any witness statements, and written notice of the time and place of the Chief and Council meeting where the Application will be decided. The written notice of the time and place will also be given to any witnesses.

- (b) **Opportunity to be Heard:** The LKB member in question and the COO shall be given an opportunity to be heard at the Chief and Council meeting, to present evidence, and to question each other and any witnesses. That LKB member, the COO and all witnesses shall answer questions by any member of Chief and Council.
- (c) **Hearing Open to LKB Membership:** The hearing of the Application shall be open to the LKB membership, subject to the next paragraph.

- (d) **Hearing in Camera:** The LKB member in question or the COO may at the beginning of the hearing make application to Chief and Council for the hearing to be in camera, that is closed to the LKB membership. The application can be made on the basis of confidential information to be disclosed to the hearing, or other prejudice to either the LKB member in question, any other LKB member, any Personnel, or to LKB as a whole, as the case may be, created if the hearing is open to the LKB membership.
- (e) **Decision by Chief and Council:** Following the hearing of the Application, Chief and Council shall decide whether this Policy applies to the LKB member in question, and for what length of time not to exceed three calendar months from the date of the hearing.

Chief and Council shall also:

- (i) make any other order, direction, declaration or record necessary to dispose of the Application; and
  - (ii) give the LKB member in question and the COO written notice of its decision.
- (f) **Designation as Alleged Bully:** Any LKB member to whom Chief and Council decides this Policy applies is referred to as an “**Alleged Bully**”.
  - (g) **Bringing the Decision into Effect:** Following the decision by Chief and Council on the Application, the COO shall take whatever steps are necessary to bring that decision into effect.

## 2. Responsibility of Personnel to Gather Overwhelming Legal Evidence of Bullying

- (a) **Internal Disruption:** The experience of LKB has been that the reason some LKB members get away with the internal disruption of the LKB administration by Bullying, for a considerable length of time, is that:
  - (i) some of the time the member acts in a way that is only slightly offensive or threatening, which Personnel tend to shrug off and forget;
  - (ii) when the member does something that is totally outrageous, which scares Personnel or disrupts the administration, Personnel are so upset, that they fail to simply write down what happened or what was said, word for word; and
  - (iii) the result is that there may not be overwhelming legal evidence of Bullying, sufficient to allow LKB to take legal action against the member.
- (b) **All Personnel are Responsible:** Bullying can go unchecked for a long time, unless all Personnel take individual responsibility to take the steps required by this Policy to gather overwhelming legal evidence of Bullying.
- (c) **Written Evidence:** For LKB to deal with an Alleged Bully, the first step is for all Personnel to start writing down as required by this Policy, every single encounter with the Alleged Bully, even when it seems like there is nothing going on.



Then the next time the Alleged Bully bullies Personnel, the Personnel may have the overwhelming amount of written legal evidence necessary for a legal remedy by LKB against the Alleged Bully.

(d) **What the Legal Evidence Must Show:** This legal evidence must:

- (i) show consistent threatening, abusive or aggressive behaviour by the Alleged Bully against the Personnel;
- (ii) be strong enough to justify a legal remedy against the Alleged Bully; and
- (iii) be so overwhelming as to overcome all the different explanations the Alleged Bully will come up with for his or her behaviour.

### 3. Legal Remedies of Personnel Who Are Bullied

Legal remedies of Personnel who are bullied by LKB members can include:

- (a) **Bullying Complaint:** A written complaint by one or more Personnel of Bullying, may be made to Chief and Council, in accordance with the LKB Bullying Policy No. 2: Bullying Complaints (the “**Bullying Complaint Policy**”).
- (b) **Criminal Harassment Charge:** A written complaint may be made by one or more Personnel to the police of criminal harassment, under s. 264 of the *Criminal Code*. S. 264(1) and (2) state:

Criminal harassment

264 (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

Prohibited conduct

(2) The conduct mentioned in subsection (1) consists of

- (a) repeatedly following from place to place the other person or anyone known to them;
- (b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
- (c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
- (d) engaging in threatening conduct directed at the other person or any member of their family.

- (c) **Uttering Threats Charge:** A written complaint may be made by one or more Personnel to the police of uttering threats, under s. 264.1 of the *Criminal Code*. S. 264.1 states:

## Uttering threats

264.1 (1) Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat

- (a) to cause death or bodily harm to any person;
- (b) to burn, destroy or damage real or personal property; or
- (c) to kill, poison or injure an animal or bird that is the property of any person.

- (d) **Causing a Disturbance Charge:** A written complaint may be made by one or more Personnel to the police of causing a disturbance, under s. 175(1) of the *Criminal Code*. S. 175(1) states in part:

Causing disturbance, indecent exhibition, loitering, etc.

175. (1) Every one who

- (a) not being in a dwelling-house, causes a disturbance in or near a public place,
  - (i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language,
  - (ii) by being drunk, or
  - (iii) by impeding or molesting other persons . . .
- (c) loiters in a public place and in any way obstructs persons who are in that place . . .

is guilty of an offence punishable on summary conviction.

- (e) **Assault Charge:** A written complaint may be made by one or more Personnel to the police of assault, under s. 265(1) of the *Criminal Code*. Please note that an attempt or threat to apply force to another person is all that is required, physical contact is not necessary. S. 265(1) states in part:

## Assault

265. (1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose . . .

- (f) **Intimidation Charge:** A written complaint may be made by one or more Personnel to the police of intimidation, under s. 423(1) of the *Criminal Code*. S. 423(1) states in part:

## Intimidation

**423.** (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing

anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

(a) uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her property . . .

(c) persistently follows that person. . .

(e) with one or more other persons, follows that person, in a disorderly manner, on a highway;

(f) besets or watches the place where that person resides, works, carries on business or happens to be; or

(g) blocks or obstructs a highway.

- (g) **Mischief Charge:** A written complaint may be made by one or more Personnel to the police of mischief, under s. 430(1) of the *Criminal Code*. S. 430(1) states in part:

Mischief

430. (1) Every one commits mischief who wilfully. . .

(c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or

(d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

#### 4. Bullying Defined

“**Bullying**” means aggressive, abusive or hostile conduct, humiliation, intimidation, or threats, which could be considered by a reasonable person to create a negative impact on any Personnel, or produce an environment detrimental to work for any Personnel. “Bullying” includes all the conduct listed in the following sections of the *Criminal Code*:

(a) s. 264 (1) and (2), criminal harassment;

(b) s. 264.1, uttering threats;

(c) s. 175(1), causing a disturbance;

(d) s. 265(1), assault;

(e) s. 423(1) intimidation; and

(f) s. 430(1), mischief.

Conflict, stress, difficult conditions of employment, professional constraints and questions about how LKB money and other resources are being spent, do not constitute “Bullying”.

## 5. No Communication With Alleged Bully

All Personnel are forbidden to have any verbal or written communication, either during or after working hours, with any Alleged Bully, except if authorized by this Policy.

## 6. Alleged Bully Coming Into Reception Area

- (a) **Chief and COO Shall Act Together:** If an Alleged Bully comes into the reception area of the LKB administration office (the “**Administration Office**”), the receptionist shall inform him or her that the only persons authorized to speak to the Alleged Bully on behalf of LKB are the Chief and COO, acting together, and that an appointment must be set up with the Chief and COO in advance.
- (b) **Restriction to Reception Area:** The receptionist will restrict the Alleged Bully to the reception area in the Administration Office, and will immediately notify all Personnel in the Administration Office of the presence of the Alleged Bully.
- (c) **After Appointment Set Up:** After the appointment is set up with the Chief and COO, the receptionist will ask the Alleged Bully to leave the Administration Office. If the Alleged Bully does not leave immediately, the receptionist will ask all staff to come to the reception area to as gently as possible guide the Alleged Bully out of the Administration Office. If there is any further difficulty, the receptionist shall contact the police immediately.
- (d) **Alleged Bully May Bring Friend:** The Alleged Bully may bring one friend who is not a member of the Personnel, to an appointment set up with the Chief and COO in the Administration Office.
- (e) **Appointment Scheduled in Advance:** When the Alleged Bully comes into the reception area for an appointment that has been scheduled in advance with the Chief and COO, the receptionist will direct the Alleged Bully to be seated in the reception area until the Chief and COO together come out to meet the Alleged Bully.

The receptionist will notify the Chief and COO that the Alleged Bully is present for a scheduled appointment.

The Alleged Bully will remain in the reception area until permission is received from the Chief and COO, for the Alleged Bully to accompany the Chief, COO and another staff person designated by the COO as a witness (the “**Witness**”), to another room in the Administration Office.

- (f) **Talking Only to Specified Personnel:** The Alleged Bully will at any time he or she is in the Administration Office talk only to those Personnel as authorized by this section 6 of this Policy, being the receptionist, Chief, COO and Witness, and to no one else.

- (g) **Alleged Bully to be Accompanied at all Times:** The Chief, COO and Witness will from the time of first contact with the Alleged Bully in the reception area, stay with the Alleged Bully at all times the Alleged Bully is in the Administration Office.
- (h) **Written Notes:** In any meeting between the Alleged Bully, the Chief and COO, the Witness is to take detailed written notes, and then is to turn these over to the COO, immediately after the meeting. The meeting notes prepared by the Witness are the sole and exclusive property of LKB, and are not to be released to or copied for the Alleged Bully. The Alleged Bully and his or her friend may also take written notes of the meeting, which are the sole and exclusive property of the Alleged Bully, and are not to be released to or copied for LKB.
- (i) **Further Bullying:** If in any meeting between the Alleged Bully, the Chief and COO, the Alleged Bully or friend engages in any Bullying, the Chief or COO is to end the meeting immediately, and the Chief, COO and Witness are to immediately escort the Alleged Bully and friend out of the Administration Office.
- (j) **Meeting Notes to be Signed and Dated:** The Chief and COO shall immediately verify the date, beginning time and end time of the meeting with the Alleged Bully, and the contents of the meeting notes, to confirm that the notes completely and accurately record what each of the Chief and COO individually saw and heard at that meeting. Each of the Chief and COO shall immediately sign the notes which shall be kept in a locked secure location by the COO. The meeting notes may be handwritten as long as they are easily read.
- (k) **Alleged Bully Leaving Administration Office:** Once the meeting is over, the Chief, COO and Witness are to escort the Alleged Bully and any friend out of the Administration Office, without allowing the Alleged Bully to talk to any other Personnel. The Chief, COO and Witness are then all to observe that the Alleged Bully immediately leaves the parking lot for the Administration Office.
- (l) **Contacting Police:** If the Alleged Bully or friend does not comply with any portion of this section 6, the receptionist is to contact the police immediately.
- (m) **Alleged Bully Breaching Restrictions Shall be in Trespass:** An Alleged Bully being in the Administration Office in breach of any of the restrictions in this section 6 shall be in trespass upon LKB reserve lands, and subject to all legal remedies available to LKB, for such trespass.

## 7. Assemble Legal Evidence

All Personnel must document in writing in a file under the sole control of the COO, all instances of written or verbal contact with the Alleged Bully. This includes all Personnel providing to the COO, for the Alleged Bully:

- (a) all correspondence received in any form;

- (b) written witness statements of all offensive behaviour;
- (c) transcripts of all offensive voice mail or phone messages;
- (d) written details of all phone calls received from the Alleged Bully, including those made in quick succession or in large numbers;
- (e) the receptionist's phone log of all calls to the Administration Office; and
- (f) particulars of all statements given by Personnel to the police.

These six items are dealt with in the next six sections of this policy.

## 8. Correspondence

- (a) **All Correspondence to be Turned Over to COO:** Any correspondence from the Alleged Bully whether received by any Personnel by delivery, mail, fax or e-mail, may contain threats, allegations, and direct personal attacks on Personnel.

These threats, allegations and personal attacks can be demoralizing, stressful, and create conflict for Personnel.

Any Personnel in receipt of any written correspondence in any form, from the Alleged Bully shall turn the correspondence over, unopened and unread, to the COO. This applies whether or not the correspondence is offensive.

- (b) **Response by LKB to Alleged Bully:** The COO has the responsibility of consulting staff, or Chief and Council, as appropriate, to co-ordinate the response in writing from LKB to the Alleged Bully.

All correspondence from LKB to the Alleged Bully is to be signed by the Chief, and not by any other Personnel.

The purpose is so that only the Chief and COO on behalf of LKB, deal with correspondence from the Alleged Bully. The Alleged Bully is not then able to disrupt, by his or her correspondence with LKB, the rest of the Personnel in carrying out their functions for LKB.

## 9. Written Witness Statements

- (a) **Contents:** Any Personnel witnessing any offensive or threatening behaviour by the Alleged Bully, must immediately prepare a signed and dated witness statement, which includes all the following:
  - (i) the offensive or threatening behaviour, exactly as it was stated or observed;
  - (ii) whether there was any yelling or other aggressive behaviour;

- (iii) confirmation that the offensive or threatening behaviour was seen or heard directly by the witness;
- (iv) whether the witness was frightened and why;
- (v) where the witness was located in relation to the offensive or threatening behaviour;
- (vi) where the incident occurred;
- (vii) whether anyone else was present, and where that other person was located;
- (viii) what happened just before and just after the threat or offensive behaviour, in other words, why was the Alleged Bully upset; and
- (ix) the time, date and place.

Without each of these elements set out above, a written witness statement may have no value in any later legal proceeding involving the Alleged Bully.

- (b) **Writing Witness Statements Immediately:** The importance of writing witness statements immediately while the incident is still in the witness's short term memory cannot be overemphasized.
- (c) **Examples:** A witness statement that says, "I heard X make a threat to Y, but I do not remember what was said", is of little value in any legal proceeding.

A witness statement that says the following will provide good evidence in any legal proceeding:

I personally saw X walk into the LKB Office through the front door at approximately 9:15 a.m. on *[insert date]*.

I personally heard X yell at Y in an angry threatening tone, which became a scream, "I am going to XXXXXX".

I personally saw X raise his fist and lunge at Y at the same time X was screaming at Y.

This made me afraid because it appeared to me that X was going to punch Y.

I was standing approximately 10 feet away from X and 15 feet away from Y at the time.

This entire incident happened in the reception area of the LKB Office.

I personally saw that J and L were also present in the reception area during the incident.

I personally saw that X then left the LKB Office out the front door, got into his/her vehicle, and drove out of the parking lot.

- (d) **Witness Statements Turned Over to COO:** All written witness statements are to be turned over immediately by all Personnel to the COO.

## 10. Offensive Voice Mail or Phone Messages

- (a) **Written Out as a Witness Statement:** Any offensive voice mail or phone message received by any Personnel from the Alleged Bully is to be written down immediately, word for word, in a witness statement signed by the person receiving it, with notes as to:
- (i) the date, time and place received;
  - (ii) the type of device the message was received on, for instance, cell phone, voice mail at work, or answering machine at home;
  - (iii) how the person receiving the message is certain who left it;
  - (iv) the telephone number of the person sending the message, if that showed on the call display for the person receiving the message;
  - (v) a description of the tone of voice of the caller leaving the message, for instance, angry, threatening, or becoming louder;
  - (vi) whether the person receiving the message was frightened by the message, and why; and
  - (vii) what was going on between the sender and receiver of the message at that time, for instance, "X had applied to me as the social development worker for LKB, for social assistance, but did not have all his documents in order, so his application could not be approved".
- (b) **Confirmation of Contents:** A second member of the Personnel should verify the contents of the voice mail or phone message by listening to it, and then signing and dating the written witness statement confirming that he or she personally heard it, before the message is deleted.
- (c) **Witness Statements Turned Over to COO:** All voice mail or phone messages once written down as witness statements are turned over immediately to the COO.

## 11. Phone Calls

- (a) **Written Record:** Personnel must immediately record in writing details of all phone calls received from the Alleged Bully, including those made in quick succession or in large numbers on any given day, together with:
- (i) the date, time and length of each call;
  - (ii) the name of the Personnel answering the call;



- (iii) whether the call was received at the Administration Office, at home, on a cell phone, or somewhere else;
  - (iv) what the call was about; and
  - (v) whether there were any threats or demands made.
- (b) **No Phone Conversations:** When the Alleged Bully phones the Administration Office, the receptionist or other Personnel who receives the call is to inform the Alleged Bully that LKB Personnel are not allowed to talk to him or her, and that the Alleged Bully is to put his or her request to LKB in writing, and forward it to the COO. The receptionist or other Personnel receiving the call is then to immediately end the conversation.
- (c) **Written Record to Receptionist:** Written details of all phone calls with the Alleged Bully are turned over by all Personnel immediately to the receptionist for inclusion in the phone log described in section 12.

## 12. Phone Log

A phone log shall be kept by the receptionist showing:

- (a) the date and time of all calls to the Administration Office by the Alleged Bully;
- (b) the name of the person answering the call;
- (c) the name of the person the Alleged Bully asked to speak to;
- (d) what the call was about; and
- (e) whether there were any threats or demands made.

This phone log is to be turned over by the receptionist immediately after the end of each calendar month to the COO.

## 13. Statements Given by Personnel to the Police

Personnel are to provide the COO with a brief written summary of any statements given to the police whether verbally or in person, about the Alleged Bully, including:

- (a) the name of the officer the statement was given to;
- (b) the threatening or offensive behaviour of the Alleged Bully;
- (c) where the incident occurred and where the statement was given;
- (d) the time and date of the incident, and the time and date the statement was given; and

- (e) why the behaviour of the Alleged Bully was threatening or offensive, including the exact wording of any threatening or offensive language.

It is better, if Personnel have time before speaking to the police about the Alleged Bully, for Personnel to prepare a written witness statement as set out in section 9 of this Policy, and give one copy to the police and one to the COO.

#### **14. Communication Protocol**

- (a) **Accessing Services:** An Alleged Bully has a right to access services such as social assistance and medical travel, from the Administration Office. The purpose for the communication protocol with the Alleged Bully set out in this Policy, is so that the Alleged Bully can access services, without subjecting any of the Personnel to Bullying.
- (b) **After Working Hours:** The protocol set out in paragraph 11(b) will apply if the Alleged Bully phones or otherwise communicates in any way with Personnel after working hours.
- (c) **Emergency:** If there is an after hours emergency involving the Alleged Bully, any Personnel receiving the communication shall direct it to the Chief or the COO, so that the response by LKB can be co-ordinated with a minimum of risk to any Personnel.

#### **15. Application of this Policy to Bullies**

Sections 5-14 of this Policy shall apply with any necessary changes in points of detail, to any LKB member who has been designated by Chief and Council as a “**Bully**” in accordance with the Bullying Complaint Policy.

For the purposes of the Bullying Complaint Policy, any reference in sections 5-14 of this Policy to an “Alleged Bully” shall be replaced with “Bully”.

#### **16. Scope of Decision**

A decision of Chief and Council on an Application under section 1, is made for administrative purposes of LKB only, and does not affect any of the other legal rights of the parties to the Application, all of which are preserved. All the parties to the Application may pursue any other legal remedies both before and after Chief and Council has made a decision on the Application.

A decision of Chief and Council on an Application is final, conclusive and binding, and not subject to appeal, but is subject to judicial review in Federal Court.

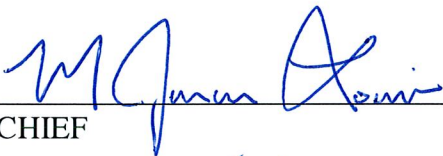
**17. Conclusion**

By following this Policy when confronted by an Alleged Bully, LKB Personnel will be:

- (a) protecting themselves from harm;
- (b) preserving the security and safety of the work place; and
- (c) giving LKB the evidence it needs to pursue legal remedies against the Alleged Bully.

**LOWER KOOTENAY BAND**

Per:

  
CHIEF

  
COUNCILLOR

  
COUNCILLOR

  
COUNCILLOR

  
COUNCILLOR