

## 2023 Wilson Moot Problem

### *Daniel Nakashima v. Cape Breton Regional Municipality*

Daniel Nakashima was employed as a City Planner at the Cape Breton Regional Municipality (the “**Municipality**”) in Sydney, Nova Scotia. In July 2022, Daniel was terminated from his employment for non-compliance with the Municipality’s remote working policy. Shortly after, Daniel brought an application to challenge the policy under which his employment was terminated. Daniel claimed that the policy infringed his rights to life, liberty, security of the person, and equality under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”).

In March 2022, the Council of the Municipality approved the *Flexible Work Arrangements Policy* (the “**Policy**”) to set minimum standards for municipal employees regarding flexible working arrangements. The relevant portions of the Policy are set out in **Schedule “A”** to the Problem.

Following his termination, Daniel commenced an application in the Supreme Court of Nova Scotia, seeking:

- (a) a declaration that the Policy infringes his rights to life, liberty and security of the person under section 7 of the *Charter*;
- (b) a declaration that the Policy infringes his equality rights under section 15 of the *Charter*;
- (c) a declaration that the infringements of sections 7 and 15 of the *Charter* do not represent reasonable limitations on these rights; and
- (d) an order under section 24(1) of the *Charter* awarding damages for the breach of his *Charter* rights.

Daniel’s application was heard by Madam Justice Nixon in August 2022. The Court accepted the following facts:

1. Daniel was born in May 1994 and grew up in Lunenburg, Nova Scotia. He is a cisgender East Asian man and identifies as gay. Daniel is an only child and does not have any meaningful relationships with his extended family, who do not live in Nova Scotia.
2. Daniel left home to attend St. Francis Xavier University after having achieved strong grades in high school. Daniel struggled during his first two years of university, finding the transition to living away from his parents, to whom he had always been close, to be very

difficult. Daniel also found that he was having difficulty focusing and was prone to periods of extreme restlessness and loneliness.

3. After being placed on academic probation after his second year in university, Daniel's parents insisted he attend counselling. Daniel began seeing a psychiatrist on campus, who diagnosed him with attention deficit hyperactivity disorder ("**ADHD**") and prescribed medication to help treat it. After commencing therapy and taking medication to treat his ADHD, Daniel's grades improved and he began forming strong friendships on campus.
4. In October 2016, after graduating from university, Daniel was hired as a Records Clerk at the Planning Department of the Municipality in Sydney, Nova Scotia, where he worked full time in person. All positions in the Planning Department are non-unionized.
5. Daniel rented a small house when he moved to Sydney. Between 2018 and 2019, his boyfriend, Rohan Shaw, moved into the house with him, but they ended their relationship in November 2019. Daniel continued to live in the house by himself.
6. When he moved to Sydney, Daniel also began seeing a therapist, Shaun Srikanthan, who was recommended by St. Francis Xavier's Student Psychiatric Services department. Daniel continued to take medication for his ADHD, now prescribed through his family physician, Dr. Maxine Goldfarb.
7. In March 2020, at the onset of the COVID-19 pandemic, Daniel and all other employees in the Planning Department began working remotely. Daniel was issued a work laptop to facilitate this. He found that he could easily do his work remotely and continued to receive strong performance reviews.
8. On March 22, 2022, the Nova Scotia provincial government declared a state of emergency due to the pandemic. Among other things, the province prohibited social gatherings of more than five people (whether indoors or outdoors) and all indoor social gatherings with individuals other than those in one's one immediate household. Most non-essential businesses were also required to close.
9. Effective May 1, 2022, the provincial government loosened the restrictions on social gatherings by implementing an "immediate household bubble" policy, permitting members

of two households to exclusively “bubble” with one another and to gather indoors despite social distancing restrictions.<sup>1</sup>

10. Daniel made efforts to stay in touch with friends on outdoor walks and on Zoom calls. After the provincial government implemented its “immediate household bubble” policy, he bubbled with his parents, despite the distance. He was usually able to visit with them in person once per week. However, Daniel began to feel increasingly lonely and isolated.
11. In August 2020, Dr. Srikanthan retired from practice. Daniel made some efforts to find a new therapist, but there was significant new demand for counselling and therapy during the pandemic and despite referrals from Dr. Goldfarb, Daniel was unable to find a practitioner who was accepting new patients. Daniel found himself growing increasingly depressed. By October 2020, Daniel had stopped taking his ADHD medication regularly. Dr. Goldfarb referred Daniel to an online group therapy program, but Daniel was uncomfortable with the virtual format and did not return after attending two sessions.
12. Daniel’s performance at work began to decline. The Director of Human Resources for the Planning Department, Gina Russell, became concerned with Daniel’s performance and asked to meet with Daniel in mid-November 2020. Up to that point, Daniel had not disclosed his ADHD diagnosis with his employer as he felt uncomfortable discussing it. In his meeting with Gina, Daniel became emotional and blurted out that he was struggling with his ADHD and other personal issues. He said that he was finding it very difficult to work and wanted to take a leave of absence. Gina was supportive and agreed that Daniel could take leave from his job for as long as he needed to.
13. Daniel’s leave began in December 2020. His parents suggested that he move back into their home in Lunenburg while he got back on his feet, which he happily accepted. He found that living with his family had a positive impact on his mood, and his mother helped him find a therapist, who he began seeing weekly. Daniel began taking his ADHD medication again. He also reconnected with some friends from high school, who had started a running club.

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<sup>1</sup> For the purposes of the Wilson Moot, mooter should not make reference to laws, orders, or government policies imposing restrictions related to the COVID-19 pandemic other than those set out in the Official Problem.

14. In March 2021, Daniel told Gina that he was ready to start work again and intended to stay in Lunenburg for the foreseeable future. Gina was glad to welcome Daniel back, but mentioned that the Municipality was considering requiring employees to return to work in person in the coming months. Daniel said he would prefer to work remotely but would be prepared to discuss returning to Sydney if and when the Municipality began its formal return to work process.
15. Daniel received two doses of an approved COVID-19 vaccine in May and July 2021.
16. Between June and September 2021, the Nova Scotia government significantly eased many pandemic-related restrictions, including permitting most non-essential businesses to re-open (with capacity limits and masking requirements), and permitting social gatherings of up to 25 people indoors and 50 people outdoors.
17. Daniel excelled upon his return to work and was given a promotion to City Planner in September 2021. Daniel's new role required him to manage a team of planners, all of whom lived in Sydney and were working remotely.
18. Near the end of September 2021, the Municipality began encouraging – but not requiring – employees to return to work in person for one or two days each week. At that time, Gina contacted Daniel to ask when he was planning on moving back to Sydney. Daniel was non-committal, mentioning that he was comfortable at home and was managing his team effectively while working remotely. Gina reminded him that while it was not yet a formal requirement to work in person at the office, the Municipality could begin requiring more regular attendance in the office. She also suggested to him that it would set a good example for Daniel's team for him, as the team leader, to come into the office from time to time.
19. To placate Gina, Daniel drove to Sydney every few weeks to stay in a hotel so that he could work from the office for a couple of days and meet his co-workers in person. He found the 5-hour drive to be very tiring and found that he would fall behind on work on days when he was in the office. When working in person, Daniel was frequently interrupted by colleagues, which made it difficult for him to focus. He began to feel anxious on days that he worked in the office.

20. At the onset of the Omicron wave of COVID-19 in December 2021, the Municipality returned to fully remote work. This was a relief to Daniel, who felt much more productive at home.
21. In February 2022, both of Daniel's parents were tragically killed in a car accident on icy roads not far from their house. Daniel was in shock. He inherited his family's house in Lunenburg as he had no other relatives. Daniel took bereavement leave in February and March 2022.
22. In early March 2022, Council of the Municipality adopted the Policy, which effectively required all municipal employees to return to work a minimum of two days a week.
23. Daniel returned from bereavement leave at the end of March 2022. The Planning Department's Flexible Work Plan, developed with input from employees during Daniel's leave, required employees to work in person at the municipal office three days a week, one of which had to be Wednesday, which was designated as a "community day". Daniel's position was deemed "in person essential" under the Policy as he was directly managing a team of planners, and it would require him to be in Sydney for site visits.
24. However, Gina agreed that Daniel should be given a temporary accommodation because of his recent family tragedy and his ADHD diagnosis. Daniel was not required to move to Sydney immediately and could work remotely from Lunenburg for two more months, before being required to move to Sydney by the beginning of June. Once settled in Sydney, Gina agreed that Daniel would initially only be required to attend the office once a week – on Wednesdays. However, Gina told Daniel that the Municipality's expectation would be that Daniel gradually transition to full compliance with the department's flexible work plan, including the requirement that he attend at the office three days per week.
25. Gina also informed Daniel that all employees in the Planning Department were now subject to monitoring while working remotely, and that such monitoring would be restricted to the ability to review work emails and messages sent internally using Microsoft Teams during work hours. Daniel did not object to this monitoring.
26. Daniel accepted Gina's offer and began work remotely while he made arrangements to rent out his parents' house in Lunenburg, and looked for a home in Sydney. Daniel moved to Sydney on June 1, 2022 and began to go to the office every Wednesday as required.

Daniel had a difficult time with the adjustment, finding that his anxiety would spike while in the office and he had a very difficult time focusing. He began to arrive late and leave early every Wednesday trying to minimize the time spent in the office.

27. From the time that Daniel returned from his bereavement leave, the planners on Daniel's team began to complain that they found him difficult to reach to answer their questions or provide input on their projects. They also often found his instructions to be unclear.
28. In mid June, a pipe broke in his parents' house in Lunenburg and flooded the basement, causing significant damage. Daniel asked Gina's permission to work entirely remotely for two weeks while dealing with the repairs. Gina was sympathetic, but expressed her concerns about what she described as Daniel's "inconsistent performance" and reluctance to spend time in the office. Daniel told Gina that he had "no choice" but to return home and that in his view, his request fell under the "Family Care" section of the Policy, as he was dealing with his family's house.
29. Gina replied to Daniel that the Policy was not meant to be used in that way and Daniel was already receiving "extraordinary" accommodations, not given to other employees. Gina denied Daniel's request for more remote work time and advised him that he was being put on a performance improvement plan. Gina told Daniel he could take a position a Regulatory Specialist in the Planning Department, which was not "in person essential" and would allow him to work remotely full-time. Daniel turned down the offer as it would entail a 15% pay cut.
30. Daniel's work performance continued to decline. He was forced to drive to Lunenburg and back every weekend to check in on the repairs, adding to his stress and anxiety. Daniel was upset further when he learned that one of his colleagues was allowed to work remotely for a week while visiting his elderly parents in Quebec, and others were able to work remote half-days to look after their children who were not in school for the summer.
31. Effective July 6, 2022, all remaining COVID-19 restrictions were removed in Nova Scotia.
32. Daniel grew increasingly frustrated. On Wednesday, July 13, Daniel could not focus at the office and left at lunch together with other colleagues who were going home to look after their children. Once at home, Daniel sent several angry messages to a colleague over Microsoft Teams, expressing his anger at the Policy and at Gina personally.

33. On July 18, 2022, Gina called Daniel into a meeting and informed him that he was being terminated, effective immediately, with six months' salary and benefits in lieu of notice. She informed him that the reason for the termination was that Daniel was not abiding by the Policy, despite having several accommodations made for him. She told him that she had also made aware of the Teams messages that Daniel had sent, and that she was "personally disappointed" by them, although this was not the "primary reason" for the termination.

34. In his affidavit in support of his application, Daniel stated:

I felt discriminated against by the Policy, which did not account for people like me and the situations I faced. My ADHD diagnosis meant that it was very difficult for me to focus while working at the office in close proximity to others. It was clear that I thrived while working remotely and I did my best work over the pandemic when I was working from home and able to focus properly. If I was able to work from home effectively for over two years, even getting a promotion during that time, I do not understand why I was being forced back to a working environment where I felt uncomfortable.

Any "accommodations" that Gina offered to me were of no value. I was still forced to move back to Sydney and come to the office every week even though I made it clear that my work performance would suffer. On top of that, I was told that even these "accommodations" were temporary and eventually I would be treated like everyone else. To me, that was effectively no "accommodation" at all.

I also think it was unfair to grant special privileges to other employees who had to look after parents and children, but not grant similar privileges to me just because I am single. Despite the fact that I no longer have a "family" in the traditional sense, I have personal obligations like anyone else. However, the Policy treats those obligations as unworthy of consideration because they do not involve a spouse, children, or parents.

35. Daniel also tendered expert opinion evidence from Dr. Rhonda Shiner, a psychiatrist specializing in mental health issues at the workplace. In her affidavit, Dr. Shiner's stated, among other things, that:

- a. Over the pandemic, there has been a significant increase in the number of full-time workers who rate their mental health as fair or poor – from 8% in December 2019 to 31% in May 2022.
- b. In a study of 2500 knowledge industry workers published in late 2021, 55% of full-time workers under the age of 40 self-reported greater productivity while working remotely compared to working in an office. Of those employees, 72% indicated

that they “agreed” or “strongly agreed” that remote working arrangements had contributed to an overall improvement in their mental health. Of that same group, 58% reported experiencing feelings of stress, anxiety, or dread about the prospect of returning to working in an office full-time.

- c. Individuals with ADHD have had worse mental health outcomes during the pandemic compared to the general population. Individuals with ADHD are more than three times as likely to report increased anxiety and twice as likely to report feelings of depression since the pandemic began.
  - d. Individuals with ADHD have disproportionately benefitted from remote work policies. Compared to the general population, they are more likely to report increased productivity and lessened stress and anxiety when working from home. When returning to the office, individuals with ADHD are significantly more likely to experience performance and productivity declines than the general population.
  - e. Workers living alone have faced greater personal demands and stress over the pandemic. On average, single employees living alone are twice as likely to experience burnout compared to employees living with family at home. Dr. Shiner attributes this result to the greater support network available to employees living with family.
36. On cross-examination, Dr. Shiner conceded that:
- a. Some employees experience productivity increases while working in the office because of increased structure and routine.
  - b. She is aware that some individuals with ADHD prefer to work in the office for the same reason and that the outcomes are highly based on individual needs and diagnoses.
  - c. Some employees who work exclusively remotely have reported increased feelings of stress and burnout because they experience greater demands on their time and report greater difficulty maintaining a healthy work-life balance.



- d. She is aware of studies that have shown that employees report increased satisfaction with their jobs and stronger connections in the workplace while working in person.
37. Councillor Nikita Mason, who supported the Policy, provided evidence that:
- a. The Municipality experienced an overall employee productivity decline during the pandemic. The productivity decline slowed and reversed as employees returned to work and after remote monitoring software was installed on work computers.
  - b. Employee turnover greatly increased during the pandemic. Employees who left work overwhelmingly reported a decreased motivation to work and feelings of disconnection from their colleagues and supervisors. Employees also felt that they lacked opportunities for professional development, particularly when working in teams.
  - c. The Municipality carefully reviewed each position and only designated a small number of positions as “in person essential”. These positions all required in-person attendance, either because of team supervision needs or because the nature of the position required personal attendance to effectively perform.
38. On cross-examination, Councillor Mason conceded that she could not be certain that remote monitoring software directly contributed to increased employee productivity, and that the Municipality Manager had received complaints from some employees who objected to being monitored in this way. Councillor Mason also admitted that some employees expressed a strong preference for continued remote work and that several employees quit their jobs rather than accept a hybrid working arrangement. Finally, Councillor Mason conceded that HR directors did not ask for supporting documentation when approving a request for increased flexibility due to family care needs.
39. Gina stated in an affidavit that Daniel’s position as a City Planner required regular site visits to Sydney to personally assess building development and infrastructure projects. Daniel was aware of these requirements when he accepted the position. Daniel delegated a significant number of these tasks to other employees while working remotely, which contributed to his performance issues. Daniel’s team felt that there was a lack of

supervision and increased strain on team dynamics while he was working remotely. No other member of Daniel's team received individual accommodations under the Policy.

Madam Justice Nixon dismissed Daniel's application in September 2022, holding, in part:

The Policy does not violate section 7 or section 15 of the *Charter*. The guarantee of "liberty" in the *Charter* protects basic choices going to the core of what it means to enjoy individual dignity and independence. It does not protect a right to work where and when one chooses without regard to employer needs and the particular demands of the position. To hold otherwise would be to accept that the *Charter* guarantees positive rights. This argument has been considered and rejected in the past, and I am bound by those earlier decisions.

I accept that the guarantee of liberty does protect the right to choose where to make one's home and therefore find that the Policy infringed Mr. Nakashima's right to liberty by requiring him to live within a certain proximity of his office. However, the Policy respects the principles of fundamental justice, and therefore does not violate section 7 of the *Charter*. It is neither arbitrary, overbroad, nor grossly disproportionate. It only applies to employees holding certain essential positions that require in person attendance at the office. The evidence before me is that the Municipality carefully and reasonably assessed which positions required in person attendance and limited the Policy's scope accordingly. Moreover, in this case Mr. Nakashima's individual circumstances were taken into account and accommodated under the Policy.

The Policy does not violate Mr. Nakashima's right to security of the person. Even if I were to agree that the Policy imposed serious physical or psychological suffering on Mr. Nakashima, which I do not, any such imposition occurred in accordance with the principles of fundamental justice. I also reject Mr. Nakashima's alternative argument that this Court ought to recognize that the guarantee of "security of the person" encompasses the right to a basic level of economic security.

I also find that the Policy does not violate section 15 of the *Charter*. While I accept that the Policy creates a distinction on the protected ground of disability, the evidence before me is that the Policy is carefully designed to allow for individual accommodations on the basis. Mr. Nakashima availed himself of these accommodations, and other accommodations that predate the Policy's imposition. I would not accede to his argument that "family status" should be considered an analogous ground of discrimination under section 15.

Because I find that the Policy does not infringe section 7 or section 15 of the *Charter*, I do not need to consider section 1 of the *Charter* or the issue of what remedies are appropriate. With respect to Mr. Nakashima's claim for damages, however, I note that to the extent that he considers severance package offered by the Municipality to be inadequate, the common law provides him with clear recourse.

Daniel appealed the decision of the Supreme Court of Nova Scotia, and in December 2022, a majority of the Nova Scotia Court of Appeal allowed Daniel's appeal. Writing for himself, Mr. Justice Hamilton wrote, in part:

With respect, I find myself in disagreement with the application judge's conclusion. I find that the Policy infringes section 7 of the *Charter* and I would allow the appeal on that basis.

Nothing could be more fundamental to the right to liberty than deciding where to make one's home. This right has been given new importance over the past few years as more and more Canadians have seen their homes transformed into their offices. By requiring Mr. Nakashima to live near his office, the Municipality purported to control Mr. Nakashima's inherently personal choice of where to live. This the government cannot do.

I also find that the Policy does not respect the principles of fundamental justice. The Municipality designated certain positions as "in person essential" on an apparently arbitrary basis, without consulting employees. The evidence shows that Mr. Nakashima was able to work effectively as a City Planner during those periods where all employees were working remotely. The decision whether to grant increased working flexibility to employees on a case-by-case basis further indicates that the Policy is arbitrary.

The Policy's infringement of section 7 is not saved by section 1 of the *Charter*. While I can accept that the need to foster a collaborative and productive working environment is indeed a pressing and substantial objective, the Policy is not rationally connected to these aims, is not minimally impairing, and has a disproportionate impact on Mr. Nakashima's rights.

I would award Mr. Nakashima *Charter* damages for the infringement of his section 7 right in accordance with section 24(1). *Charter* damages in this case would serve the purposes of compensation, vindication, and deterrence. The limited government immunity under section 24(1) does not apply to employment policies of public sector employers.

Madam Justice Luft concurred in Mr. Justice Hamilton's opinion, writing, in part:

I agree with and adopt the reasons of my colleague, Mr. Justice Hamilton. However, I would go further. Implicit in section 7's guarantee of "liberty" is respect for individual privacy. This is an important value that finds expression throughout the *Charter* and in other quasi-constitutional statutes. The time has come to recognize that an infringement of the *Charter* value of respect for individual privacy is an infringement of the right to liberty under section 7. The Policy clearly infringes Mr. Nakashima's right to privacy by forcing him to move and by monitoring his working activities without a clear rationale for doing so.

I also find that the Policy infringes section 15. I would recognize "family status" as an analogous ground of discrimination. In the past, courts have deferred recognition of "family status" as an analogous ground to another day. That day has

now come. There is ample evidence before me that the Policy created a distinction on the basis of Mr. Nakashima's family status. The Policy provided a benefit to other employees based on their family status. That benefit was not available to Mr. Nakashima solely because he is single. While I commend the Municipality's efforts to encourage child care and elder care, it cannot do so in a way that deprives others of these benefits based on a personal situation largely beyond their control.

In addition, the Policy infringes section 15 because, in its impact, it creates a distinction on the protected ground of disability and imposes a burden on Mr. Nakashima on this basis. It is clear to me based on the evidence that individuals such as Mr. Nakashima, who have diverse mental health needs, should not be forced to return to the workplace when a reasonable alternative exists. The Policy did not sufficiently accommodate Mr. Nakashima's disability and is not saved by section 1 of the *Charter*.

In dissent, Madam Justice Singh largely adopted the reasoning of Madam Justice Nixon in the court below, adding, in part:

With respect, I must express my strong disagreement with my colleague Madam Justice Luft's use of "*Charter* values" to expand the ambit of section 7 of the *Charter*. *Charter* values have been strictly limited to developing the common law, as a tool of statutory interpretation, and as a constraint on administrative discretion. *Charter* values have no place in the analysis of the constitutional validity of laws under section 7 and certainly cannot be used to read new rights into the *Charter*. That is properly the role of a constitutional amendment.

Also, and again with respect, I disagree with my colleague Mr. Justice Hamilton's reasons for awarding *Charter* damages to Mr. Nakashima. While styled as a policy, in reality the Policy, which was subject to a Council vote, is akin to a bylaw passed by the Municipality. Limited government immunity under section 24(1) of the *Charter* therefore applies and, in my view, bars an award of damages in this case.

Daniel has been granted leave to appeal the Court of Appeal's judgment to the High Court of the Dominion of Canada on the following issues:<sup>2</sup>

- (1) Does the Policy infringe Daniel Nakashima's rights to life, liberty, and security of the person under section 7 of the *Charter*?
- (2) Does the Policy infringe Daniel Nakashima's equality rights under section 15 of the *Charter*?

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<sup>2</sup> Note that the High Court of the Dominion of Canada will not consider any legislative or adjudicative facts other than those found by Justice Nixon.

- (3) If the answer to either of questions 1 or 2 is “yes”, is the infringement a reasonable limitation on those rights that is demonstrably justified in a free and democratic society?
- (4) If an infringement is found and cannot be upheld as a reasonable limitation on Daniel Nakashima’s *Charter* rights, is this an appropriate case for an award of damages pursuant to section 24(1) of the *Charter*?<sup>3</sup>

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<sup>3</sup> Note that mooters are not asked to assess the quantum of damages awarded.

**Schedule "A"**

***Flexible Work Arrangements Policy***

**1.0 Policy Statement and Purpose:**

The Municipality is an organization that supports flexible working arrangements for its employees that take into account different personal needs and preferences. The Municipality also recognizes the need for productive and collaborative offices that requires in person attendance for some employees. This Policy is intended to provide minimum standards for all employees regarding flexible working arrangements that balance remote work and in person attendance at the municipal office.

**2.0 Definitions:**

In this Policy:

"Director" means the Director of Human Resources of each department in the Municipality;

"employee" means an employee of the Municipality;

"Flexible Work Plan" means a work plan established by the Director in accordance with Section 3.0 of this Policy, including any special accommodations made on an individual basis in accordance with sections 4.0 and 5.0;

"in person essential" means a category of employment where the nature of the employee's responsibilities requires the employee to work in person at the municipal office;

"Municipality" means the Cape Breton Regional Municipality;

"municipal office" means the office established by the Municipality for each municipal department;

"workplace" means an employee's place of work and includes, without limitation, home offices and municipal offices.

**3.0 Flexible Work Plan:**

The Director shall establish a Flexible Work Plan for each employee in the department whose employment is designated as "in person essential". The Flexible Work Plan shall, subject to sections 4.0 and 5.0 of this Policy, include the following standards:

- a) Each employee shall be required to attend in person at the municipal office a minimum of two (2) days a week;
- b) Each employee shall be permitted a minimum of two (2) remote working days a week; and

- c) Each employee shall establish their primary residence within 50 kilometres of the Municipality.

#### **4.0 Family Care:**

The Municipality recognizes that employees need to provide support to their families, which may require additional flexibility in working arrangements. Accordingly, the Director may modify a Flexible Work Plan upon consultation with an employee to accommodate time needed for the employee to provide child care, elder care, or other family care.

#### **5.0 Other Accommodations:**

The Director may modify a Flexible Work Plan to accommodate other employee needs on a temporary basis, upon being satisfied that the accommodation is necessary for the employee to perform their work effectively.

#### **6.0 Monitoring:**

The Director may, upon notification to the employee, install monitoring tools on equipment owned by the Municipality if such tools are necessary to detect employee misconduct at the workplace, including misuse of Municipality-issued technology, and ensure that workplace equipment is used securely.

#### **7.0 Non-compliance and Sanctions**

Any breach of this Policy, including non-compliance with a Flexible Work Plan established pursuant to this policy, shall be investigated by the Director and may be sanctioned, with consequences up to and including termination of employment.