

Fact sheet #1: The Ontario Human Rights Code

The Ontario *Human Rights Code* (the *Code*) provides protection from discrimination in five areas of our lives. It states that every person has a right to freedom from discrimination in the following areas, known as social areas:

- **Services, goods and facilities** – including schools, hospitals, shops, restaurants, sports and recreation organizations and facilities
- **Housing** – the place where you live or want to live, whether you rent or own the premises
- **Contracts** – includes both written and oral agreements
- **Employment** – includes job ads, application forms, job interviews, work assignments, work environment, training, promotions, discipline, terminations, volunteer duties, etc.
- **Membership in vocational associations and trade unions** – such as the Ontario Secondary School Teachers' Federation or United Steelworkers.

Prohibited grounds of discrimination

The *Code* recognizes that discrimination occurs most often because of a person's membership in a particular group in society. In the five social areas above, the *Code* protects people based on the following grounds:

- **Age** – 18-65 years (employment); 16+ years (housing); 18+ years (all other areas)
- **Ancestry** – family descent
- **Citizenship** – membership in a state or nation
- **Colour** – associated with race
- **Creed** – religion or faith
- **Disability:** There are two common ways of looking at what disability is. One way is to see a disability as a medical condition that a person has. From this perspective, disability covers a broad range and degree of conditions, some visible and some not visible. A disability may have been present from birth, caused by an accident, or developed over time. There are physical, cognitive, mental and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, and other conditions.

A newer way of looking at disability is that it is not something a person has. A person with a medical condition is not necessarily prevented (or disabled) from fully taking part in society. If society is designed to be accessible and include everyone, then people with medical conditions often don't have a problem taking part. From this point of view, disability is a problem that occurs when a person's environment is not designed to suit their abilities.

- **Ethnic origin** – social, cultural or religious practices drawn from a common past
- **Family status** – a parent/child relationship

- **Gender expression** – the external attributes, behaviour, appearance, dress, etc. by which people express themselves and through which others perceive that person’s gender
- **Gender identity** – a person’s conscious sense of maleness and/or femaleness; this sense of self is separate and distinct from biological sex
- **Marital status** – applies equally to common-law, same-sex and opposite-sex relationships; includes widowhood, separation, divorce
- **Place of origin** – country or region
- **Race** – common descent or external features such as skin colour, hair texture, facial characteristics
- **Receipt of public assistance** – in housing only
- **Record of offences** – provincial offences or pardoned federal offences (in employment only)
- **Sex** – discrimination can be sexual in nature, or because of pregnancy. This ground includes the right to breastfeed in public areas or in the workplace
- **Sexual orientation** – includes lesbian, gay, bisexual, heterosexual, two-spirited, questioning, etc.

It is possible for a person to experience discrimination based on multiple grounds (for example, sexual orientation *and* race). In some cases, a person may be exposed to a particular kind of discrimination or disadvantage because of a unique combination of identities. For example, there are assumptions and/or stereotypes associated with “young Black males” that are not necessarily made about “older Black males” or “young Black females.”

Exceptions to the prohibited grounds

There are some exceptions to these prohibited grounds in the area of employment, such as:

- An organization that serves a group protected by the Code, such as religious, educational or social institutions serving ethnic groups, people with disabilities, religious groups, etc., may choose to employ only members of that group
- An employer may choose to hire or not hire, or to promote or not promote his or her own spouse, child or parent or the spouse, child or parent of an employee
- An employer may discriminate based on age, sex, record of offences or marital status if these are genuine requirements of the job. For example, a shelter for abused women may choose to hire only women as counsellors; a club may hire only male attendants to work in the men's locker room; or a child care facility may refuse to hire someone convicted of child molesting on the ground that the hiring would pose a safety risk to the children. In such instances, the employer must consider whether any accommodation can be made to enable that person to work in the job.

Fact sheet #2: Harassment

Protected groups have the explicit right to be free from harassment in school, housing and employment. The *Code* defines harassment as “engaging in a course of vexatious [annoying or provoking] comment or conduct which is known or ought reasonably to be known to be unwelcome.”

The most important word in the definition is “unwelcome.” We do not have the right to impose our words or actions on someone if they are not wanted. It does not matter if the person has done this intentionally or unintentionally.

Some people may be shy or afraid to respond to unwelcome comments or actions. That is why the *Code* includes the words “ought reasonably to be known to be unwelcome.”

For example, everyone is expected to know that racial, ethnic or homophobic slurs or jokes are unwelcome—the speaker should not need to be told that the comment is unwelcome. However, sometimes it is necessary to point out that certain behaviours are causing discomfort.

“Engaging in a course of” means that a comment or action would usually have to occur more than once for it to be considered harassment. However, an employer need only make a comment such as “People like you have no business here” once to a racialized person or a woman, for the employee to believe that he or she will not get equal treatment. Comments like these create a poisoned environment for members of that group as well as others.

The principles of harassment also apply in the area of services such as schools. For instance, if students harass others because of their race, sex, sexual orientation, disability, religion, etc., this could be grounds to file a human rights complaint – called an application. Education is a “service” to which all are equally entitled.

Fact sheet #3: Sexual and gender-based harassment and your education

Sexual harassment is a type of discrimination that can interfere with a person’s education, make them feel unsafe and stop them from reaching their full potential in life. Sexual harassment can include:

- Asking for sex in exchange for something, like offering to improve a test score
- Repeatedly asking for dates, and not taking “no” for an answer
- Demanding hugs
- Making unnecessary physical contact, including unwanted touching
- Using rude or insulting language or making comments that stereotype girls, women, boys and men
- Calling people unkind names that relate to their sex
- Making sex-related comments about a person’s physical appearance or actions
- Saying or doing something because you think a person does not fit sex-role stereotypes
- Posting or sharing pornography, sexual pictures, cartoons, graffiti or other sexual images (including online)
- Making sexual jokes
- Bragging about sexual ability
- Bullying based on sex or gender
- Spreading sexual rumours or gossip (including online).

Sometimes when a person experiences these things, they don’t realize it is sexual harassment, or don’t realize the impact it is having on them. Students might back off from school work or school activities, skip or drop classes, or drop out of school completely.

If you are being sexually harassed you might find yourself feeling:

- Isolated and alone
- Embarrassed or ashamed
- Depressed, anxious and uncertain about yourself or your future
- Angry
- Unsafe at school or in your community.

Some people who are sexually harassed also lose their appetite, get stomach aches and find it hard to concentrate. In some cases, students have reported using drugs or drinking to cope. In extreme cases, they might think about or even try suicide.

All adults who are in contact with students must make sure schools are safe, secure environments for students, and are free from sexual harassment.

Sexually harassing or bullying someone because of their sexual orientation or gender is not acceptable. It is against the law.

Know your rights

As a student, you have the right to an education where you are not sexually harassed. This includes primary, secondary and post-secondary education, and school activities such as sports, arts and cultural activities, field trips and tutoring.

Sexual harassment, and harassment because of sexual orientation, can also occur as part of school rituals, like initiations.

Sexual solicitation from people who are in positions of power is prohibited under the Code. Sexual advances or comments might come from teachers or staff:

Example: The Ontario College of Teachers withdrew a 29-year-old teacher's licence because he sexually harassed a female student through email. The teacher used a false name and sent messages to the student that included information about what she had been wearing that day, what route she took to school, and sexual suggestions.

Or it can take the form of bullying from other students:

Example: To hurt a rival, a girl starts a rumour that another girl is sexually promiscuous and performs sex acts on boys behind the school.

Students who are seen as not fitting into gender norms can be left open to gender-based harassment.

Example: A grade 9 male student has many female friends and is more interested in the arts than athletics. A group of boys at his school repeatedly call him "fag," "homo," "queer" and other names.

What is homophobic and gender-based bullying?

At all levels of school, sexual harassment can be used to bully people because of their gender, gender identity, sexuality or sexual orientation. It can include name-calling, jokes, and isolating a person because they do not fit what other people want them to be. It is different from other kinds of bullying because the harassment focuses on a person's sexuality, sexual characteristics, sexual reputation, or gender and sexual stereotypes.

Homophobic and gender-based bullying can affect anyone. In many cases, targets are people who:

- Say they are gay, lesbian, bisexual or transgender
- Are thought by others to be gay, lesbian, bisexual or transgender
- Don't conform to male and female stereotypes
- Have same-sex parents or caregivers
- Have friends that are, or are thought to be, gay, lesbian, bisexual or transgender.

Anti-gay and homophobic comments and behaviour are discrimination, even if the target does not identify as lesbian, gay, bisexual, transgender (LGBT). Some cases of homophobic bullying are considered hate crimes.

What you can do

If you or someone you know is being harassed, you can ask the person to stop and you can ask someone in authority at your school to take steps to stop it from happening.

Schools, including colleges and universities, have a legal duty to act to prevent and respond to sexual harassment—and they must make sure they offer environments that respect human rights.

The Ontario Ministry of Education requires Ontario school boards to respond to homophobia, gender-based violence, sexual harassment and inappropriate sexual behaviour. To read more about these policies visit: www.edu.gov.on.ca/eng/safeschools/bullying

If the harassment continues or is not being dealt with appropriately, you can file a human rights claim.

If you feel the harassing behaviour is getting worse, or that your safety is threatened, you can contact the police.

Fact sheet #4: Poisoned environment

A poisoned environment is created by comments or conduct that ridicule or insult a person or group protected under the *Code* and cause them to feel that the environment is hostile or unwelcoming. It violates their right to equal treatment with respect to services, goods and facilities, housing and employment. The actions or comments do not have to be directed specifically at individuals. For example, insulting jokes, slurs or cartoons about gay and lesbian people or racial groups, or pin-up photos that demean women, all contribute to a poisoned environment for members of those groups.

A poisoned environment can also be created even when the insults are not necessarily directed at a person. For example, a heterosexual male may be offended by homophobic jokes because some of his friends may be lesbian, gay or bisexual. Or a person belonging to a racialized group may believe because of insults that he or she will not be treated fairly.

It must be clearly evident that such behaviour is making people feel uncomfortable in a school or work situation. A single incident may or may not be enough to create a poisoned environment. Other factors, such as the seriousness of the behaviour, the relative positions of the persons involved (teacher to student, employer to employee, landlord to tenant, etc.), and/or the impact upon the individual's access (perceived or real) to equal treatment without discrimination would need to be considered.

Under the *Code*, the employer is responsible for making sure that a poisoned environment does not exist in the workplace. In the same way, the teacher and administration, who represent authority at the school, must make sure that a poisoned environment does not exist for students.

Fact sheet #5: Constructive discrimination

Constructive discrimination occurs when a seemingly neutral requirement has a discriminatory effect (or adverse impact) when applied to a group protected under the *Code*. For example, a requirement that all employees work on Saturdays could discriminate against people who must worship on that day as part of their religious practice. Or a height or weight requirement could in general exclude women and some ethnic or racialized groups from certain jobs.

In these cases, to avoid a finding of constructive discrimination, the employer or organization would need to prove that:

- The requirement is bona fide, that is, sincerely believed to be necessary, and in an objective sense, necessary for safety, efficiency or economy
- The person from a protected group cannot be accommodated without causing undue hardship to the service or employer. That is, it would alter the essential nature of the activity or business, affect its economic viability or pose a substantial health or safety risk.

Neutral requirement: a requirement that, on the surface, appears to be unbiased.

Adverse impact: having a harmful result. Sometimes treating everyone the same will have a negative effect on some people.

Accommodation (in employment, services and housing): to adapt, adjust or eliminate existing requirements or conditions, to enable a person or group to carry out the essential duties of an activity or job.

Fact sheet #6: Systemic discrimination

Systemic discrimination is discrimination that is part of the social or administrative structures of many organizations, whether a business, service organization or social institution, such as a school, hospital, government office, law court, etc. Systemic discrimination can be found in an organization's policies or practices, and it may be invisible. Even if unintended, it can deny whole groups of people their rights or exclude them from taking part. For example:

- Racism or prejudice by people in positions of authority may violate the rights of members of certain groups, such as when an organization hires or promotes only White males.
- Biases against groups may mean that they are treated differently. For example, an organization hires only women in clerical positions and only men in sales positions.
- A school may discriminate against people with disabilities in a way that is systemic. For example, they may insist that all exams must be done in writing, which could exclude some people with learning or visual disabilities. Or a school could only deal with parents through emails, which would make it difficult for newcomers who may not have Internet access and who may need assistance understanding English.

The Ontario *Human Rights Code* allows special programs to relieve disadvantage or achieve equal opportunity to counter the effects of systemic discrimination. Such programs include measures to remove barriers that discriminate against groups and make sure that disadvantaged groups have the same advantages that others take for granted.

Bias – an inaccurate and limited way of perceiving a group. Negative bias towards members of a group can be expressed through language, published materials and other communication practices.

Equal treatment: treatment that brings about an equality of results and that may, in some instances, require different treatment. For example, to give all students equal treatment in entering a building, it may be necessary to provide a ramp for a student who uses a wheelchair