

POLICY ON

Preventing

sexual and gender-based harassment

INTERSECTING GROUNDS
DISCRIMINATION
violence
ABUSE OF
POWER
gender based
BULLYING
SEXISM
employment sexual harassment
EDUCATION
Poisoned environment
misogyny



Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

Summary

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What is sexual harassment?

In the Ontario Human Rights Code (the *Code*), sexual harassment is “engaging in a course of vexatious comment or conduct that is known or ought to be known to be unwelcome.” In some cases, one incident could be serious enough to be sexual harassment.

The reference to comment or conduct “that is known or ought reasonably to be known to be unwelcome” means that there are two parts to the test for harassment. First, we have to consider if the person doing the harassment knew how their behaviour would be received. Second, we must consider how someone else would generally feel about the behaviour – this can help us think from the perspective of a person who is being harassed.

What is gender-based harassment?

Gender-based harassment is one type of sexual harassment. Gender-based harassment is “any behaviour that polices and reinforces traditional heterosexual gender norms” (Elizabeth J. Meyer, “Gendered Harassment in Secondary Schools: Understanding Teachers’ (Non) Interventions,” *Gender and Education*, Vol. 20, No. 6, November 2008, 555 at 555). It is often used to get people to follow traditional sex stereotypes (dominant males, subservient females). It is also used as a bullying tactic, often between members of the same sex.

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.

Unlike some other forms of sexual harassment, gender-based harassment is not generally motivated by sexual interest or intent. It is more often based on hostility and is often an attempt to make the target feel unwelcome in their environment. In some cases, gender-based harassment may look the same as harassment based on sexual orientation, or homophobic bullying.

Forms of sexual harassment

Sexual harassment can include:

- sexual solicitation and advances (your teacher asks for sex in exchange for a passing grade)
- a poisoned environment (pornographic images in the workplace)
- gender-based harassment (targeting someone for not following sex-role stereotypes)
- violence (if inappropriate sexual behaviour is not dealt with, it may move to more serious forms, including sexual assault and other violence).

Examples of sexual and gender-based harassment:

- demanding hugs
- invading personal space
- making unnecessary physical contact, including unwanted touching, *etc.*
- using language that puts someone down and/or comments toward women (or men, in some cases), sex-specific derogatory names
- leering or inappropriate staring
- making gender-related comments about someone’s physical characteristics or mannerisms
- making comments or treating someone badly because they don’t conform with sex-role stereotypes
- showing or sending pornography, sexual pictures or cartoons, sexually explicit graffiti, or other sexual images (including on-line)
- sexual jokes, including passing around written sexual jokes (for example, by e-mail)
- rough and vulgar humour or language related to gender
- using sexual or gender-related comment or conduct to bully someone
- spreading sexual rumours (including on-line)
- making suggestive or offensive comments or hints about members of a specific gender
- making sexual propositions
- verbally abusing, threatening or taunting someone based on gender
- bragging about sexual prowess
- demanding dates or sexual favours
- making offensive sexual jokes or comments
- asking questions or talking about sexual activities
- making an employee dress in a sexualized or gender-specific way
- acting paternally in a way that someone thinks undermines their self-respect or position of responsibility
- making threats to penalize or otherwise punish a person who refuses to comply with sexual advances (known as reprisal).

Sexual harassment is against the law

In Ontario, the *Code* prohibits all forms of discrimination based on sex – and this includes sexual harassment. The *Code* applies to five “social” areas:

- services, goods and facilities (including education)
- housing
- contracts
- employment
- membership in vocational associations such as trade unions.

The *Code* prohibits reprisal or “payback” where a person raises issues or complains of sexual harassment. Reprisal includes such things as being hostile to someone,

excessive scrutiny (for example, at work), excluding someone socially or other negative behaviour because someone has rejected a sexual advance or other proposition (such as a request for a date).

You do not have to object to the harassment when it happens for there to be a violation, or for you to claim your rights under the *Code*. You may be in a vulnerable situation and afraid to speak out.

Due to the power imbalance that often exists between the harasser and the person being harassed, and worries about what will happen if they object, people may go along with the unwelcome actions. But in these cases, it is still sexual harassment and it is still against the law.

When deciding if sexual harassment has happened, human rights tribunals look at the impact the conduct had on the person, and whether this had a discriminatory effect. The intention of the harasser does not matter. A lack of intent is no defence to an allegation of sexual harassment.

Who is affected?

The *Code* protects both men and women from sexual harassment, but women are more affected than men. International human rights conventions and Canadian legal decisions have recognized sexual harassment as an abuse of power that may reinforce a woman's historic lower status compared to men.

Sexual harassment can happen in all social and economic classes, ethnic groups, jobs and places in the community.

A person may be more vulnerable to sexual harassment if they identify by other *Code* grounds, such as race, sexual orientation, disability, *etc.* Also, sexual harassment can have a worse effect if it is combined with discrimination or harassment based on other *Code* grounds.

Costs of sexual and gender-based harassment

Sexual harassment can limit a person's ability to earn a living, get housing, get an education, feel safe and secure, and take part fully in society. Victims of sexual harassment can have physical and emotional effects, including anxiety, depression, fatigue, weight loss, nausea and stomach problems, inability to sleep, withdrawal from relationships, self-blame, reduced self-esteem, and post-traumatic stress disorder.

The effects of sexual and gender-based harassment on young people may be particularly harsh. As well as feeling the effects listed above, they may back off from schoolwork and all school-related activities, they may skip or drop classes, or they may drop out of school entirely. They may also abuse drugs and/or alcohol to cope. In extreme cases, they may think about or attempt suicide.

Organizations that do not take steps to prevent sexual harassment can face major costs in decreased productivity, low morale, increased absenteeism and health care costs, and potential legal expenses.

Preventing sexual and gender-based harassment

Organizations and institutions operating in Ontario have a legal duty to take steps to prevent and respond to sexual harassment. Employers, housing providers, educators and other responsible parties must make sure they have poison-free environments that respect human rights. From a human rights perspective, it is not acceptable to ignore sexual harassment, whether or not someone has formally complained or made a human rights complaint.

When deciding if an organization has met its duty to respond to a human rights claim, tribunals are likely to think about:

- the procedures in place at the time to deal with discrimination and harassment
- how quickly the organization responded to the complaint
- how seriously the complaint was treated
- the resources made available to deal with the complaint
- if the organization provided a healthy environment for the person who complained
- how well the person who complained was told about the action taken [see *Wall v. University of Waterloo* (1995), 27 C.H.R.R. D/44 at paras. 162-67 (Ont. Bd. Inq.)].

Employers, housing providers, educators and other responsible parties can prevent many cases of sexual harassment by having a clear, comprehensive anti-sexual harassment policy in place. In cases of alleged sexual harassment, the policy will alert all parties to their rights, roles and responsibilities. Policies must clearly set out how the sexual harassment will be dealt with promptly and efficiently. The OHRC's *Policy on preventing sexual and gender-based harassment* includes the suggested contents of an anti-sexual harassment policy.

Everyone should know about the anti-sexual harassment policy and the steps in place for resolving complaints. This can be done by:

- giving policies to everyone as soon as they are introduced
- making all employees, tenants, students, *etc.* aware of them by including the policies in orientation material
- training people, including people in positions of responsibility, about the policies, and educating them on human rights issues.

An effective sexual harassment policy can limit harm and reduce liability. It also promotes the equity and diversity goals of organizations and institutions and makes good business sense.

All responsible parties should monitor their environments regularly to make sure they are free of sexually harassing behaviours. Taking steps to keep a poison-free environment will help make sure that sexual harassment does not take root, and is not given a chance to grow.

The *Policy on preventing sexual and gender-based harassment* provides details on the specific responsibilities that apply to employers, housing providers, educators and other responsible parties.

I think I am being sexually harassed. Who should I contact?

If you believe that you have experienced sexual or gender-based harassment, try, where possible, to resolve the problem through any internal policies or resolutions mechanisms your organization may have. If you are in a union, you may wish to contact your union for assistance. Using an internal mechanism does not always replace your right to file a human rights claim, or to proceed in other ways.

If you are being harassed (including sexual harassment) where you work, you may be able to have action taken under the *Occupational Health and Safety Act*. Contact Ontario's Ministry of Labour for more information.

In more extreme cases, sexual harassment is a criminal offence. It is a crime if the harassment involves attempted or actual physical assault, including sexual assault, or threats of an assault. Stalking is a crime called "criminal harassment." Where sexual harassment includes any of these things, you can contact your local police service.

If you think you have been a victim of sexual or gender-based harassment, you can make a complaint (called filing an application) with the Human Rights Tribunal of Ontario (HRTO). You will need to file this within one year of the last incident of sexual harassment. The Human Rights Legal Support Centre may help you file this application.

For more information on human the human rights system in Ontario, visit:

www.ontario.ca/humanrights

The Human Rights System can also be accessed by telephone at:

Local: 416-326-9511

Toll Free: 1-800-387-9080

TTY (Local): 416-326 0603

TTY (Toll Free) 1-800-308-5561

To file a human rights claim (called an application), contact the Human Rights Tribunal of Ontario at:

Toll Free: 1-866-598-0322

TTY: 416-326-2027 or Toll Free: 1-866-607-1240

Website: www.hrto.ca

To talk about your rights or if you need legal help with a human rights application, contact the Human Rights Legal Support Centre at:

Toll Free: 1-866-625-5179

TTY: 416-314-6651 or Toll Free: 1-866-612-8627

Website: www.hrlsc.on.ca

For human rights policies, guidelines and other information, visit the Ontario Human Rights Commission at www.ohrc.on.ca

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