

GUIDELINES ON DEVELOPING HUMAN RIGHTS POLICIES AND PROCEDURES

**ONTARIO
HUMAN RIGHTS
COMMISSION**

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PLEASE NOTE

This Policy contains the Ontario Human Rights Commission's interpretation of provisions of the Ontario *Human Rights Code* relating to organizational policies and procedures to prevent and address human rights issues. It has been prepared, approved and published by the Commission to provide guidance on the application of the *Human Rights Code* in this area in accordance with s. 30 of the *Code* (as amended).

The Policy is subject to decisions of the Superior Courts interpreting the *Human Rights Code*. Any questions regarding the Policy should be directed to the staff of the Ontario Human Rights Commission.

Commission policies and guidelines set standards for how individuals, employers, service providers and policy makers should act to ensure compliance with the *Code*. They are important because they represent the Commission's interpretation of the *Code* at the time of publication.

Effective June 30, 2008, pursuant to s. 45.5 of the *Code*, the Human Rights Tribunal of Ontario (the Tribunal) may consider policies approved by the Commission in a human rights proceeding before the Tribunal. If a party or intervenor in a proceeding requests it, the Tribunal shall consider a Commission policy. Commission policies have been given great deference by the courts and Tribunal,¹ applied to the facts of the case before the court or Tribunal, and quoted in the decisions of these bodies.

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I. INTRODUCTION

The Ontario *Human Rights Code* (the "*Code*") states that it is public policy in Ontario to recognize the dignity and worth of every person and to provide equal rights and opportunities without discrimination. The aim is to create a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and feels able to contribute to the community.

The purpose of this publication is to provide some practical guidance to organizations in developing effective and fair ways to prevent human rights infringements and to respond to human rights issues, such as harassment, discrimination, and accommodation needs. Employers, landlords and service providers all have an obligation to ensure that human rights are respected, and can all benefit from the information provided in this publication.

Each organization differs in its needs, constraints, structures, culture, and resources. There is no "one size fits all" method for preventing and addressing discrimination and harassment. Large organizations will have different needs and capacities than small; a housing provider will have a different focus than an employer. This document is meant to provide ideas and guidance, but each organization will need to tailor its approaches to its own situation.

The Ontario Human Rights Commission ("the Commission") has developed policies and guidelines on many specific human rights issues, such as racism and racial discrimination, sexual and gender-based harassment, disability accommodation, pregnancy and breastfeeding, age discrimination, gender identity, sexual orientation, and family status. This document does not attempt to replicate the contents of these documents; its focus is on policies and procedures rather than identifying human rights issues and standards. Organizations are encouraged to carefully review those Commission policies and guidelines that are relevant to them, in order to develop an understanding of their human rights obligations and to help them identify potential barriers and issues specific to their situation.

II. ORGANIZATIONAL RESPONSIBILITY FOR PREVENTING AND ADDRESSING HUMAN RIGHTS ISSUES

A. Why Develop Positive Practices?

Respect for human rights, human dignity, and equality, is a core value in Canadian society, and a cornerstone of public policy. For this reason, human rights legislation has been recognized by the courts as having a unique importance, and indeed has been accorded quasi-constitutional status. Every Ontarian has an interest in the creation of a

society in which human rights are respected, and all have the opportunity to equally participate and contribute.

Moreover, respect for human rights is the law. Under the *Code*, employers, landlords and service providers are required to ensure that they are providing inclusive and non-discriminatory environments. Harassment and discrimination are a violation of the law, and organizations that fail to take adequate steps to prevent and address harassment and discrimination may be held liable.

Preventing and addressing human rights violations is also good sense. Housing providers, employers and service providers benefit from creating and maintaining environments that are inclusive, diverse, and free of discrimination.

Employers benefit when they are able to attract and retain the best employees, and maximize the potential and the performance of those employees. Discriminatory policies and programs may prevent employers from attracting, recruiting and promoting good employees, and can result in employee frustration, burnout and turnover. Workplace harassment creates conflict between employees, lowers productivity, and can result in the loss of valued employees. A workplace that respects human rights is likely one with fewer conflicts between employees, and higher levels of employee loyalty.²

Service providers benefit when they are better able to attract and serve a wide range of customers, and when they have the capacity to respond to diverse needs. For example, service providers that have a diverse workforce may be able to reach out to a wider range of potential clients. Similarly, housing providers who respect human rights will benefit from the ability to attract and retain good tenants, and from preventing conflict between tenants.

Human rights issues, if ignored or improperly handled, can lead to human rights complaints, workers' compensation claims, grievances under collective agreements, or wrongful dismissal claims. All organizations can benefit from avoiding the costs in time, money, reputation and morale associated with such claims. Human rights complaints can sully an organization's image and relationships with the community; conversely, organizations that show commitment to human rights and diversity will have an advantage in terms of their relationship with the community.

B. Legal Obligations

1. General Principles

Under the *Code*, employers, service providers and housing providers have the ultimate responsibility for ensuring a healthy and inclusive environment, and preventing and addressing discrimination and harassment. They must ensure that their organizations are free from discriminatory or harassing behaviour.

An organization can be held responsible for discrimination where the discrimination is

carried out indirectly. For example, an employer that authorizes an employment agency to discriminate on its behalf can be found liable for discrimination.

Discrimination need not be intentional. For example, an organization may be found to have discriminated where it has in place a policy or procedure that, while it appears neutral on its face, has a negative impact on persons identified by a *Code* ground, or where, with no malice intended, its efforts to accommodate or afford equal treatment simply fall short of the mark.

Organizations also violate the *Code* even where they do not directly infringe it, if they authorize, condone, adopt or ratify behaviour that is contrary to the *Code*. To condone or further a discriminatory act that has already occurred extends the life of the discriminatory action.

Organizations have an obligation to be aware of whether their policies, practices and programs are having an adverse impact or resulting in systemic discrimination based on a *Code* ground. Whether or not a formal complaint has been made, organizations must acknowledge and address potential human rights issues.

Organizations that fail to take steps to prevent or address discrimination or harassment may experience serious repercussions. Human rights decisions are full of findings of liability and assessments of damages that are based on, or aggravated by, an organization's failure to appropriately address discrimination and harassment.³ An important factor in the assessment of liability or damages is the presence or absence of appropriate policies and procedures for preventing and responding to discrimination and harassment.

An organization may respond to complaints about individual instances of discrimination or harassment, but it may still be found to have failed to respond appropriately if the underlying problem is not resolved.⁴ There may be a poisoned environment, or an organizational culture that excludes or marginalizes persons based on a *Code* ground. In these cases, the organization should take further steps, such as training and education, or barrier review and removal, in order to address the problem.

Unions, professional organizations and vocational associations are responsible for ensuring that they are not engaging in harassing or discriminatory behaviour against their members or prospective members. They are also responsible for ensuring that they are not causing or contributing to discriminatory actions in the workplace. A union may be held jointly liable with an employer where it has contributed towards discriminatory workplace policies or actions – for example, by negotiating discriminatory terms in a collective agreement, or blocking an appropriate accommodation, or failing to take steps to address a harassing or poisoned workplace environment.

2. Organizational Liability for the Actions of Employees

Under section 45 of the *Code*, a corporation, trade union or occupational association, unincorporated association, or employers' organization will be held responsible for discrimination, including acts or omissions, committed by employees or agents in the course of their employment. This is known as vicarious liability. Simply put, an organization is responsible for discrimination that occurs through the acts of its employees or agents, whether or not it had any knowledge of, participation in, or control over these actions.

Vicarious liability does not apply to breaches of the sections of the *Code* dealing with harassment. However, since the existence of a poisoned environment is a form of discrimination, when harassment amounts to or results in a poisoned environment, vicarious liability is restored. Further, in these cases the "organic theory of corporate liability" may apply. That is, an organization may be liable for acts of harassment carried out by its employees if it can be proven that management was aware of the harassment, or the harasser is shown to be part of the management or "directing mind" of the organization.⁵ In summary, the decisions, acts, or omissions of the employee will engage the liability of the organization in harassment cases where:

- The employee who is part of the "directing mind" engages in harassment or inappropriate behaviour that is contrary to the *Code*; or
- The employee who is part of the "directing mind" does not respond adequately to harassment or inappropriate behaviour of which he or she is aware, or ought reasonably to be aware.

Generally speaking, managers and central decision-makers in an organization are part of the "directing mind". Employees with only supervisory authority may also be part of the "directing mind" if they function, or are seen to function, as representatives of the organization. Even non-supervisors may be considered to be part of the "directing mind" if they have *de facto* supervisory authority or have significant responsibility for the guidance of employees. For example, a member of the bargaining unit who is a lead hand may be considered to be part of the "directing mind" of an organization.

III. DEVELOPING ORGANIZATIONAL POLICIES, PROGRAMS AND PROCEDURES

A complete strategy to prevent and address human rights issues should include the following elements:

1. A barrier prevention, review and removal plan
2. Anti-harassment and anti-discrimination policies
3. An internal complaints procedure
4. An accommodation policy and procedure
5. An education and training program

An effective strategy will combine *all* of these elements. For example, an education and training program, while an essential component of any human rights strategy, will not on

its own remove underlying systemic barriers. On the other hand, without education and training, it will be difficult to ensure organizational support for, and compliance with, human rights policies, programs and procedures.

No strategy will be effective without strong, visible, and ongoing commitment from the senior levels of the organization.

It is helpful when designing any human rights plan, policy or procedure, to get input from all parts of the organization. For example, input from employees will be invaluable in developing and implementing workplace anti-harassment and anti-discrimination policies, plans or procedures. In a unionized workplace, the union should be a key partner in the development and implementation of any human rights strategies. Housing providers may wish to consult tenants, and service providers to seek the views of their clients.

There may be circumstances where it would also be wise, where feasible, to seek advice or input from community organizations representing racialized persons, women, persons with disabilities, etc. For example, public service organizations that are dealing with complex, novel, or systemic barriers may wish to consult with the community when identifying strategies and best practices. Not only will such consultation help identify issues and effective solutions, but it will also increase buy-in and commitment to the policy, plan or procedure that is developed.

Policies, plans and procedures must take into consideration the size, complexity, and culture of an organization. The complaints procedure for a small organization will probably be considerably simpler than that for a large, multi-site, unionized organization, for example.

Sound communication strategies are essential to the success of any human rights plan, policy or procedure. Employees, tenants or customers must clearly understand, not only the content of the strategy and their rights and responsibilities, but also why the strategy was developed and how it will be implemented. Information should be readily accessible and easy to understand. Issues or factors that may cause opposition or resistance to the policy and program should be identified and addressed. It is important to regularly remind existing employees, tenants and clients about organizational human rights policies and procedures, as well as to ensure that individuals who are new to the organization receive orientation and training.

All policies, plans and procedures require regular review and revision to ensure that they

- reflect the current state of human rights law and policy,
- take into account changes in organizational structures or resources,
- address new human rights issues emerging within the organization, and
- continue to be effective.

Organizations may be well advised to seek assistance from lawyers or other experts in

developing policies, procedures or education programs that will effectively meet their needs. Certainly, the more complex the organization or the human rights issues within the organization, the more likely that it will be advisable to seek specialized assistance.

IV. BARRIER PREVENTION, REVIEW AND REMOVAL

The Supreme Court of Canada has made it clear that society must be designed to be inclusive of all persons, including those who are members of a *Code*-protected group.⁶ It is no longer acceptable to structure systems in a way that ignores needs or barriers related to *Code* grounds; rather the systems should be designed in a way that does not create physical, attitudinal or systemic barriers. Whenever an organization is constructing new buildings, launching new websites, setting up new policies and procedures, offering new services, or purchasing new equipment, design choices should be made that do not create barriers for persons identified by *Code* grounds. Essentially, this means that organizations should take a proactive approach, incorporating a human rights mindset into all that they do.

As a corollary to this notion that barriers should be prevented at the design stage through inclusive design, where systems and structures already exist, organizations should be aware of the possibility of systemic barriers, and actively seek to identify and remove them. Where barriers have been identified, organizations must remove the barriers rather than making “one-off” accommodations.

A. *Barrier Review*

Barrier review is a large and complex subject and can only be lightly touched upon here. The methodology for a barrier review will differ depending on the size, nature and complexity of the organization, and on whether the review is focussing on service, employment, or housing barriers.

A barrier review should include an examination of:

1. **Physical accessibility:** The organization’s physical premises should be reviewed to identify barriers preventing equal access for persons with disabilities, including persons with sensory, environmental, or intellectual disabilities.⁷ While the *Ontario Building Code* sets out minimum standards for accessibility, compliance with the *Building Code* provisions in effect at the time of construction or renovation is no guarantee that the physical environment meets the standards required by the *Human Rights Code*. The *Code* has primacy over the *Building Code*, and compliance with the *Building Code* is no defence to a claim of discrimination under the *Human Rights Code*.⁸
2. **Organizational policies, practices and decision-making processes:** These may be either formal or informal. For example, in the area of employment, policies and practices on recruitment, selection, compensation, training, promotion and termination may contain barriers, either on their face or in their

effect, to persons identified by *Code* grounds.⁹ A frequent barrier is the *lack* of formal policies and practices, which can allow subjective considerations and differing standards to be applied. The Commission's policies on specific *Code* grounds and social areas provide examples of frequently encountered barriers.

3. **Organizational culture:** Organizational culture includes shared patterns of informal social behaviour, such as communication, decision-making and interpersonal relationships, which are the evidence of deeply held and largely unconscious values, assumptions and behavioural norms. An organizational culture that is not inclusive can marginalize or exclude persons identified by *Code* grounds.

B. Barrier Removal Plans

Once barriers to inclusion have been identified, organizations should develop plans for the removal of barriers. Such plans should:

- set specific, measurable goals for the removal of identified barriers,
- create clear timelines for achieving these goals,
- allocate adequate resources towards meeting goals,
- ensure accountability and responsibility for meeting goals, and
- include a mechanism for regularly reviewing and evaluating progress towards the identified goals.

V. ANTI-HARASSMENT AND ANTI-DISCRIMINATION POLICIES

A. Description and Rationale

Anti-harassment and anti-discrimination policies make it clear that harassment and discrimination will not be tolerated, and set standards and expectations for behaviour. An anti-harassment or anti-discrimination policy should describe the types of behaviour that are discriminatory or harassing, and send the message that these issues are taken seriously. The policy should also set out roles and responsibilities. These human rights policies should be linked to existing organizational policies and integrated into the way that the organization operates on a daily basis.

B. Considerations

Harassment is a specific form of discrimination. Because harassment raises unique issues, some organizations have separate policies for harassment and for other forms of discrimination.

As well, because harassment and discrimination related to the various *Code* grounds often manifest themselves differently, some organizations have specific policies related to discrimination and/or harassment based on sexual orientation, race and race-related grounds, sex and gender, etc.¹⁰

Anti-harassment and anti-discrimination policies set out expectations and standards, while anti-harassment and anti-discrimination complaint procedures set out how potential violations of these policies will be addressed. Many organizations choose to combine their anti-harassment /anti-discrimination policies and procedures into a single document.

C. Elements

PLEASE NOTE: *The sample wording provided in the sections below is provided for an employment context, but may be modified to address housing or service contexts. The sample wording is provided **only** as an example. There is no single best policy or procedure, and policies and procedures should **always** be reviewed for compliance with current human rights law and policy and for appropriateness to the particular context.*

1. Organizational Commitment

A policy should contain a clear statement of the organization's commitment to creating and maintaining respect for human rights, and fostering equality and inclusion.

XYZ Organization is committed to providing an environment free of discrimination and harassment, in which all individuals are treated with respect and dignity, are able to contribute fully, and have equal opportunities.

Under the Ontario *Human Rights Code*, every person has the right to freedom from harassment and discrimination. Harassment and discrimination will not be tolerated, condoned, or ignored at XYZ Organization. If a claim of harassment or discrimination is proven, disciplinary measures will be applied, up to and including termination of employment.

XYZ Organization is committed to a comprehensive strategy to address harassment and discrimination, including providing training and education to ensure that everyone knows her or his rights and responsibilities; regular monitoring of organizational systems for barriers based on *Code* grounds; providing an effective and fair complaints procedure; and promoting appropriate standards of conduct at all times.

2. Objectives of Policy

The policy should set out its objectives, such as promoting human rights within the organization, preventing harassment and discrimination, and setting out principles and standards for behaviour.

The objectives of this Policy are to:

- **Ensure that members, clients and associates of XYZ Organization are aware that harassment and discrimination are unacceptable practices and are incompatible with the standards of this organization, as well as being a violation of the law.**
- **Set out the types of behaviour that may be considered offensive and are prohibited by this Policy.**

3. Application of Policy

The policy should set out the activities and persons to whom it applies. In the area of employment, for example, *Code* protections have been interpreted broadly, to include temporary, casual, and contract staff, as well as volunteers. Employees are protected, not only against harassment and discrimination by co-workers, management and superiors, but also against harassment and discrimination by others who enter the employment context, such as suppliers or clients. Employees may be protected while off the work site, or outside of normal working hours, where activities are connected to the workplace. Because employees are entitled to work in an environment free of harassment and discrimination from clients, suppliers or others who enter the employment context, the organization should ensure that the policy is publicly posted or otherwise made available to visitors to the organization.

The *Code* also requires organizations to avoid harassment and discrimination in the services they offer to the public. This includes dealings with customers, potential customers, and business associates, such as, for example, suppliers.

In the area of rental housing, the right to be free from harassment applies both to tenants and applicants. Landlords may be held liable if they do not take steps to ensure that tenants are protected from harassment by other tenants, or by persons visiting the premises, such as persons performing maintenance.

The right to freedom from discrimination and harassment extends to all employees, including full-time, part-time, temporary, probationary, casual and contract staff, as well as volunteers, co-op students, interns and apprentices.

It is also unacceptable for members of XYZ Organization to engage in harassment or discrimination when dealing with clients, or with others with whom they have professional dealings, such as suppliers or service providers.

This Policy applies at every level of the organization and to every aspect of the workplace environment and employment relationship, including recruitment, selection, promotion, transfers, training, salaries, benefits and termination. It also covers rates of pay, overtime, hours of work, holidays,

shift work, discipline and performance evaluations.

This Policy also applies to events that occur outside of the physical workplace such as during business trips, or company parties.

4. List and Explanation of Protected Grounds

The applicable *Code* grounds should be set out, together with definitions where necessary. It should be noted that the *Code* grounds vary somewhat, depending on the social area engaged. The ground of “record of offences” applies only in the social area of employment, while the ground of “receipt of public assistance” applies only in the area of housing.

While the *Code* prohibits discrimination on the basis of pregnancy and gender identity under the ground of sex, it may be helpful for policies to explicitly identify discrimination and harassment based on gender identity and pregnancy, as many are unaware of these *Code* protections, particularly with respect to gender identity.

The policy can also note that people may experience discrimination and harassment based on the intersection of multiple grounds of discrimination (“intersectionality”). For example, a person who experiences harassment because she is a Muslim woman can file a complaint based on both sex and creed.

Organizations may choose to extend protection beyond that mandated by the *Code*. For example, some organizations prohibit any form of psychological harassment, or prohibit discrimination and harassment based on political opinion.

This Policy prohibits discrimination or harassment on the basis of the following grounds, and any combination of these grounds:

- **Age**
- **Creed (religion)**
- **Sex (including pregnancy and breastfeeding)**
- **Gender Identity**
- **Family status (such as being in a parent-child relationship)**
- **Marital status (including the status of being married, single, widowed, divorced, separated, or living in a conjugal relationship outside of marriage, whether in a same sex or opposite sex relationship)**
- **Disability (including mental, physical, developmental or learning disabilities)**
- **Race**
- **Ancestry**
- **Place of origin**
- **Ethnic origin**
- **Citizenship**

- **Colour**
- **Record of offences (criminal conviction for a provincial offence, or for an offence for which a pardon has been received)**
- **Association or relationship with a person identified by one of the above grounds**
- **Perception that one of the above grounds applies.**

5. Definition of Key Concepts

Key concepts should be defined, consistent with human rights law and policy, and examples provided in order to clarify the concepts.

It may be helpful to provide definitions of related concepts, such as racism, heterosexism, ageism, etc., and to outline common manifestations of discrimination related to specific *Code* grounds. Further information can be obtained by consulting the relevant Commission policies.

It is important to note that persons experiencing harassment may not object, or may even appear to be going along with or participating in the comments or conduct. This type of behaviour does not defeat a complaint of harassment: persons experiencing harassment may feel unable to object, for example because they are in a vulnerable situation and are afraid of the consequences of speaking out.

The following behaviour is prohibited by this Policy:

Discrimination: means any form of unequal treatment based on a *Code* ground, whether imposing extra burdens or denying benefits. It may be intentional or unintentional. It may involve direct actions that are discriminatory on their face, or it may involve rules, practices or procedures that appear neutral, but have the effect of disadvantaging certain groups of people. Discrimination may take obvious forms, or it may occur in very subtle ways. In any case, even if there are many factors affecting a decision or action, if discrimination is one factor, that is a violation of this Policy.

Harassment: means a course of comments or actions that are known, or ought reasonably to be known, to be unwelcome. It can involve words or actions that are known or should be known to be offensive, embarrassing, humiliating, demeaning, or unwelcome, based on a ground of discrimination identified by this Policy. Harassment can occur on any of the grounds of discrimination.

Examples of harassment include:

- **Epithets, remarks, jokes or innuendos related to an individual's race, sex, disability, sexual orientation, creed, age, or any other ground;**
- **Display or circulation of offensive pictures, graffiti or materials,**

- whether in print form or via e-mail or other electronic means;
- Singling out an individual for humiliating or demeaning “teasing” or jokes because they are a member of a protected group;
 - Comments ridiculing an individual because of characteristics, dress etc. that are related to a ground of discrimination.

The fact that a person does not explicitly object to harassing behaviour, or appears to be going along with it does not mean that the behaviour is not harassing, and does not mean that it has been assented to.

Sexual Harassment: sexual harassment is a form of harassment that can include:

- gender-related comments about an individual’s physical characteristics or mannerisms;
- paternalism based on gender which a person feels undermines his or her self respect or position of responsibility;
- unwelcome physical contact;
- suggestive or offensive remarks or innuendoes about members of a specific gender;
- propositions of physical intimacy;
- gender-related verbal abuse, threats or taunting;
- leering or inappropriate staring;
- bragging about sexual prowess or questions or discussions about sexual activities;
- offensive jokes or comments of a sexual nature about an employee or client;
- rough and vulgar humour or language related to gender;
- display of sexually offensive pictures, graffiti or other materials, including through electronic means;
- demands for dates or sexual favours.

Sexual Solicitation: this Policy prohibits sexual solicitations or advances by any person who is in a position to grant or deny a benefit to the recipient of the solicitation or advance. This includes managers and supervisors, as well as co-workers where one person is in a position to grant or deny a benefit to the other. Reprisals for rejecting such advances or solicitations are also prohibited.

Poisoned environment: a poisoned environment is created by comments or conduct (including comments or conduct that are condoned or allowed to continue when brought to the attention of management) that create a discriminatory work environment such that it can be said that it has become a term and condition of one’s employment to have to be in such a workplace. The comments or conduct need not be directed at a specific individual, and may be from any individual, regardless of position or status. A single comment or action, if sufficiently serious, may create a poisoned

environment.

6. Roles and Responsibilities

The roles and responsibilities of the various parties present in the organization should be set out.

All persons present in XYZ organization are expected to uphold and abide by this Policy, by refraining from any form of harassment or discrimination, and by cooperating fully in any investigation of a harassment or discrimination complaint.

Managers and supervisors have the additional responsibility to act immediately on observations or allegations of harassment or discrimination. Managers and supervisors are responsible for creating and maintaining a harassment and discrimination-free organization, and should address potential problems before they become serious.

VI. COMPLAINT RESOLUTION PROCEDURES

A. *Description and Rationale*

The objective of a complaint resolution mechanism is to ensure that human rights issues are brought to the attention of the organization and are appropriately dealt with. A complaint resolution procedure should set out a clear, fair and effective mechanism for receiving and resolving complaints of discrimination and harassment.

B. *Considerations*

The design and implementation of complaint mechanisms can impact on organizational liability for discrimination and harassment.

At minimum,

- Complaints must be taken seriously;
- They must be acted upon promptly when received;
- Appropriate resources must be applied to resolve complaints;
- A viable complaint mechanism must be in place and have been communicated throughout the organization;
- The complaint procedure must ensure a healthy work environment is created and maintained for the complainant; and
- Decisions/actions taken by the organization must be communicated to the parties.¹¹

These objectives may be met in a variety of ways. Some organizations will adopt very formal mechanisms; others may opt for a simpler approach. There is no one perfect complaint mechanism; each organization must tailor its own approach, taking into account such factors as its mandate, size, resources, and culture.

C. Elements

PLEASE NOTE: *The sample wording provided in the sections below is provided for an employment context, but may be modified to address housing or service contexts. The sample wording is provided **only** as an example. There is no single best policy or procedure, and policies and procedures should **always** be reviewed for compliance with current human rights law and policy and for appropriateness to the particular context.*

1. Access to information and advice

Individuals who believe they may have witnessed or been subjected to discrimination or harassment, as well as individuals who are the subject of a complaint of discrimination or harassment, may benefit from having access to expert information and advice about the policy and procedures, as well harassment and discrimination in general. Ideally, the advisor will be neutral, as well as expert in the areas of harassment and discrimination, and can explain the various options for dealing with human rights issues. This advisor should be separate from the person designated to receive and investigate complaints, and should not act as an advocate, either for the organization or for the individual seeking advice. It is important that the advisor not be liable to pressure from the organization to divert or suppress complaints.

The advisor must ensure that all information is kept in the strictest of confidence, unless required to disclose the information under a legal obligation.

The procedure may describe how advisors will be selected, and specify that advisors will receive appropriate education and institutional support.

XYZ Organization will appoint a neutral and expert Human Rights Advisor, who will provide information about human rights and this Policy and Procedure to any person who is concerned about possible harassment or discrimination within the organization. The Advisor will not act as an advocate for any person and will not provide legal advice, and will maintain the confidentiality of communications with him or her, unless required to disclose information under a legal obligation.

2. Access to Code mechanisms

It is important to make it clear to employees that having an internal complaint resolution procedure in place does not in any way stop an individual from seeking redress under the mechanism set out in the *Code*, if she or he wants to. Individuals should be informed of

time limits for seeking redress under the *Code*.¹² In a workplace setting, employees may also have rights under employee collective agreements that will give them other choices for dealing with a problem.

The provisions of this Policy and Procedure in no way affect the right of any person to exercise his or her rights under the Ontario *Human Rights Code*, within the time limits specified by that legislation.

3. Making a complaint

Some complaint mechanisms permit complaints from any person who believes he or she has witnessed harassment or discrimination; other mechanisms restrict complaints to those who believe they have been subjected to harassment or discrimination.

Complaint procedures may differentiate between “formal” and “informal” mechanisms. Informal processes seek to resolve human rights issues without investigation or assessment of the merits of the allegations, for example through facilitation of communication between the individuals involved. This type of informal process is generally not appropriate where there are serious or systemic allegations. If an informal process is to be used, it must still be clear that the complaint will be taken seriously and addressed by the people who are responsible.

The procedure should set out forms and processes for making a complaint. However, organizations should address complaints whether or not they are in the proper format.

Since there may be power imbalances at play, or the potential complainant may fear reprisal, or there may be safety issues, complainants should not be required to address the matter directly with the potential respondent prior to engaging the complaint mechanism.

In some circumstances, it may be necessary to take temporary steps while the investigation or dispute resolution is proceeding to safeguard the environment of the complainant. For example, it may be necessary to limit contacts between the respondent and the complainant. It is important to ensure that the steps taken do not have the effect of penalizing the complainant for making the complaint. Any concerns regarding the safety of the complainant should be treated with the utmost seriousness.

Complainants are encouraged to explain to the person who is harassing or discriminating against them that the conduct is unwelcome, but are not obliged to do so. Indeed, each case is different. If addressing the person responsible could lead to an escalation of the harassment or discrimination, or to safety risks, he or she should not be expected to have to directly interact with that person. If a complainant feels that they can safely make it known to the person responsible that the behaviour is unwelcome, of course this may resolve the matter, or may assist them later

if they make a complaint, but the complainant should never feel obliged to do so, against their better judgement.

If the situation cannot be resolved by speaking to the person responsible, a complaint may be made by speaking to either: (1) the manager, (2) the Manager of Human Resources.

Where possible, the complaint should be made in writing, including details of:

- What happened – a description of the events or situation
- When it happened – dates and times of the events or incidents
- Where it happened
- Who saw it happen – the names of any witnesses, if any.

The person receiving the complaint will notify the person(s) complained against (“the respondent(s)”) of the complaint and provide the respondent(s) with a copy of the written complaint.

If it is necessary, the complainant or the respondent will be placed on a paid leave of absence, moved to a different location within the organization, or provided with alternative reporting relationships. The decision will be made on a case-by-case basis having regard to the principle that the complainant will not be penalized for making the complaint.

4. Reprisal

Persons who make a complaint, as well as anyone else who is involved, should not be penalized for their participation in the complaint process. That is, they should be free from "reprisal". Protection under the *Code* from reprisal covers:

- i) complainants,
- ii) witnesses,
- iii) advisors,
- iv) representatives of complainants and witnesses,
- v) investigators, and
- vi) decision makers/management.

A person who believes that he or she has been subjected to reprisal should be able to file a complaint under the Procedure.

Every person has a right to claim and enforce their right to a workplace free of harassment and discrimination. No person shall be negatively treated for bringing forward a complaint, providing information related to a complaint, or assisting in the resolution of a complaint. It is a violation of XYZ Organization Policy to discipline or punish a person because he or she has brought

forward a complaint, provided information related to a complaint, or otherwise been involved in the complaint resolution process. Reprisal may be the subject of a complaint under this Procedure, and persons engaging in reprisal are subject to disciplinary measures, up to and including termination of employment.

5. Dispute Resolution

When developing complaint procedures, it is a good idea to use Alternative Dispute Resolution (ADR) as part of a "best practices" approach.

ADR can provide a means of resolving a situation at any stage during the complaint process.¹³

ADR can be a simple, informal procedure using a peer review panel or other trained internal employee. However, the sensitivity of human rights complaints from both an employer/organizational and employee perspective, coupled with the need for strict confidentiality, suggest that a more formalized type of ADR might be more appropriate.

A mediator is a neutral third party who acts as a facilitator to help the parties reach a negotiated settlement to which both parties agree. ADR can take the form of internal or external mediation, depending on whether persons with the requisite skills, expertise and neutrality are available within the organization.

It is generally wise for mediation to be separate from the investigation process. Parties may find it easier to speak freely and reach agreement if information from the mediation process is kept separate from any investigation process.

It is important to recognize that ADR will not be appropriate in all circumstances – for example, in situations where there are significant power imbalances. The Commission recommends that ADR be offered as a voluntary option.

Where appropriate, the person receiving the complaint will offer the parties an opportunity to mediate the complaint. No person will be required to undertake mediation. Mediation will be conducted by a neutral and expert third-party mediator. Mediation may take place at any stage during the complaint process.

6. Appointment of an investigator

The organization must take steps to investigate the circumstances of a complaint. The person selected to conduct the investigation should be independent and objective. Wherever possible, the investigator should not be in a position of direct authority over any of the people involved in a complaint, but should report to someone with the authority to make decisions and have them enforced.

An investigation may be conducted by a member of the organization, or by someone external. An investigation should not be carried out by anyone who is seen as taking sides with either party. For example, it is not very likely that a lawyer who often represents management in labour disputes will be seen as being objective by non-management employees. Similarly, a human resources manager who is normally involved in discipline and termination decisions may not be seen as independent. Also, the investigator should not be someone in a position to have any power or influence over the career progress of either of the parties.

Persons conducting investigations must be knowledgeable about:

1. human rights issues and principles in general,
2. the requirements of the *Code*;
3. the organization's anti-harassment/anti-discrimination policy and complaints procedure; and
4. methods for conducting investigations.

Similar considerations apply to any person whose role is to mediate or conciliate a complaint.

Where mediation is not appropriate or is not successful, the person receiving the complaint will refer the complaint to a expert external investigator.

7. Representation

The people involved in an internal complaint resolution process should be allowed to have someone represent them if they wish, whether during mediation or investigation. Representatives may include union stewards or a colleague.

Complainants and respondents are entitled to seek representation of their choice, including legal counsel, during the complaints process, at their own expense.

8. Documentation

For everyone involved in the process, it is important to make and keep written notes about the events leading to the complaint. These details should include:

- i) what happened — a description of the events or situation;
- ii) when it happened — dates and times of the events or incidents;
- iii) where did it happen; and
- iv) who saw it happen — the names of any witnesses, if any.

As well, any other documents or materials that may have something to do with the

complaint, such as letters, notes, offensive pictures, *etc.*, should be gathered. It is important to note that allegations of systemic discrimination may require organizations to gather a safeguard a broad range of documents (e.g., it may be necessary to gather and maintain demographic information related to the organization).

Documentation related to the investigation should be collected and preserved. This includes witness interviews, notes of meetings, evidence gathered, any investigation report, and documentation related to the outcome of the investigation. These documents should be safeguarded at least until the conclusion of any human rights proceedings or of limitation periods related to human rights proceedings.

Every person who believes he or she has experienced harassment or discrimination, as well as every person who has been notified of a complaint against them, is advised to create and keep written notes about the events at issue, as well as maintaining any relevant written documentation.

9. Confidentiality and privacy

It may be very difficult to bring forward a complaint of harassment or discrimination. The protection of confidentiality and privacy is important, both to the person bringing forward the complaint, and the person(s) against whom the complaint has been made.

Information about the complaint should only be shared with those who need to know about it. For example, the person against whom the complaint is made will require fair disclosure of the particulars of the complaint, in order to be able to respond. Witnesses will require some information about the incidents they are said to have been involved in or allegations of which they have knowledge.

Investigators, mediators, advisors, and any other persons involved with the complaints process should take care to protect confidentiality and privacy, and maintain the security of all documents related to complaints, including contents of meetings, interviews, and investigation reports.

Advisors, investigators, mediators, and persons receiving complaints will, to the extent possible, protect the confidentiality and privacy of persons involved in a complaint, subject to the requirements of a fair investigation and resolution process.

All documents related to a complaint, including the written complaint, witness statements, investigation notes and reports, and documents related to the complaint, will be securely maintained by the Human Resources Department, separate from personnel files.

10. Investigation processes

The investigation of the complainant must be impartial, timely, fair, and address all relevant issues.

The investigator should thoroughly interview both the complainant and the person(s) alleged to have engaged in harassment or discrimination against the complainant. The respondents should be given the opportunity to respond to each of the specific allegations raised by the complainant. The investigator should also interview any relevant witnesses identified by either the complainant or the respondent(s), and gather any relevant documents. Proper notes should be taken during interviews.

The investigator should prepare a report summarizing the allegations, the steps taken during the investigation, and the evidence gathered. The report may make findings of fact and recommendations for further action, or these functions may be assigned elsewhere.

In most cases, investigations should start immediately after an investigator is chosen, and finish within a fixed time frame, for example, ninety days.

The investigator is responsible for ensuring a thorough, fair and impartial investigation of the allegations in the complaint. The investigator will interview the complainant, the respondent(s), and relevant witnesses suggested by the complainant or respondent(s), as well as gather documents relevant to the matters in the complaint.

All staff of the organization are required to cooperate with the investigator.

The investigator will, wherever possible, complete the investigation within 90 days of the receiving the assignment.

At the conclusion of the investigation, the investigator will prepare a written report summarizing the allegations and the investigation results, and will forward the report to the Human Resources Manager.

11. Potential Outcomes

Based on the findings of the investigation and human rights law and policy, a decision must be made as to whether or not the complaint is well-founded. If the complaint is well-founded, the organization must take steps to address the human rights violations, and prevent future occurrences.

Human rights laws are preventive and remedial rather than punitive, and this should be reflected in the outcomes of substantiated complaints.

The organization should ensure that, where harassment or discrimination is found to

have occurred, steps are taken to ensure that the complainant is, to the extent possible, “made whole” and the effects of the discrimination remedied.

Persons who violate the anti-discrimination/anti-harassment policy may be subjected to a range of consequences, including an apology, education, counselling, reprimands, suspension, transfer, or termination of employment, depending on the nature and severity of the behaviour.

As well, the organization should consider whether the complaint (whether it is determined to be founded or unfounded) reveals any broader issues that the organization should address. The investigation may, for example, point to specific barriers in the workplace, a perception of systemic discrimination, or a need for further training on particular human rights issues. If so, the organization should take steps to remedy the problem.

Complainants should not be automatically penalized where a complaint is determined to be unfounded, particularly as this may have the effect of deterring valid complaints. There may be very rare cases, however, where there is objective evidence to show that the complaint was maliciously filed, with deliberate intent to injure or mislead. Only where the evidence of malice in bringing a complaint is compelling and undeniable should disciplinary measures of any sort apply to complainants.

Based on the findings in the investigator’s report, the Human Resources Manager shall make a decision as to whether the Policy has been violated.

If it is determined that the Policy has been violated, the Human Resources Manager shall determine the appropriate consequences for person(s) who have been found to have violated the Policy. These may include:

- **An apology**
- **Counselling**
- **Education and training**
- **Verbal or written reprimand**
- **Suspension with pay**
- **Suspension without pay**
- **Transfer**
- **Termination of employment**

In determining the appropriate consequences, the Human Resources Manager shall take into account the nature of the violation of the Policy, its severity, and whether the individual has previously violated the Policy.

Where a violation of the Policy is found, the Human Resource Manager shall also take any steps necessary to repair the effects of the discrimination or harassment on the complainant, and to prevent any further recurrences of harassment or discrimination within the organization.

The Human Resources Manager will be responsible for monitoring the outcome of the complaint.

12. Communication

The complainant and the respondent(s) must be apprised of the outcome of the investigation, and in particular, whether the Policy was found to have been violated, and any actions that will be taken as a result.

The complainant and the respondent(s) shall each be provided with a copy of the investigator's report, and with the Human Resources Manager's decision regarding outcomes.

Where a complainant is dissatisfied with the outcome of the complaint, he or she shall be reminded of his or her rights under the Ontario *Human Rights Code*.

VII. ACCOMMODATION POLICY AND PROCEDURE

A. *Description and Rationale*

Under the *Code*, organizations are required to prevent and remove barriers and provide accommodation to the point of undue hardship. The principle of accommodation arises most frequently in the context of creed, family status, sex (pregnancy), and disability, as well as age and gender identity.

Organizations, including their officers, managers, supervisors, and union representatives, have a shared obligation to design for inclusion of persons identified by *Code* grounds, as well as to remove barriers and provide accommodation. Failure to fully explore accommodation options and to fulfil the duty to accommodate is a violation of the *Code*.

A clear and effective accommodation policy and procedure ensures that accommodation seekers feel comfortable raising their accommodation needs, and that accommodation requests are effectively dealt with.

While accommodation is in most cases straightforward and simple, it can also be a lengthy and complex process. In any case, it is important that the accommodation process, as well as the accommodation itself, be effective and respectful of the dignity of accommodation seekers.¹⁴ Both accommodation providers and persons seeking accommodation benefit from clearly understanding their roles and responsibilities, and the accommodation process. Clear, fair and comprehensive accommodation policies and procedures help to ensure that organizations meet their duty to deal fairly, thoroughly and effectively with accommodation requests.

B. Considerations

The standards and principles for accommodation are set out in the relevant Commission policies and guidelines, such as the *Policy and Guidelines on Disability and the Duty to Accommodate*, the *Guidelines on Accessible Education*, the *Policy and Guidelines on Discrimination on the Basis of Family Status*, the *Policy on Creed and the Accommodation of Religious Observances*, the *Policy on Discrimination because of Pregnancy and Breastfeeding*, and the *Policy on Discrimination against Older Persons because of Age*. Readers are advised to consult these documents for a fuller understanding of the standards and legal requirements regarding accommodation, and of accommodation issues related to particular Code grounds.

It should be noted that some accommodations are very simple and straightforward, and do not require a formal or complex process.

The manner in which an accommodation is provided and the methods by which it is implemented are subject to human rights standards. The principles of dignity, individualization, and inclusion and full participation apply both to the substance of an accommodation, and to the accommodation process.

At the heart of the accommodation process is the responsibility, shared by all parties, to engage in meaningful dialogue about accommodation, and to work together respectfully towards accommodation solutions. Everyone involved should co-operatively engage in the process, share information, and avail themselves of potential accommodation solutions.

C. Elements

PLEASE NOTE: *The sample wording provided in the sections below is provided for an employment context, but may be modified to address housing or service contexts. The sample wording is provided **only** as an example. There is no single best policy or procedure, and policies and procedures should **always** be reviewed for compliance with current human rights law and policy and for appropriateness to the particular context.*

1. Statement of Commitment

An Accommodation Policy and Procedure should include a clear statement of the organization's commitment to providing an environment that is inclusive and barrier-free, and to providing accommodation to the point of undue hardship.¹⁵

XYZ Organization is committed to providing an environment that is inclusive and that is free of barriers based on age, race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (including pregnancy and gender identity), sexual orientation, record of offences, marital status,

family status, and disability. XYZ Organization commits to provide accommodation for needs related to the grounds of the Ontario *Human Rights Code*, unless to do so would cause undue hardship, as defined by the Ontario Human Rights Commission's *Policy on Disability and the Duty to Accommodate*.

Accommodation will be provided in accordance with the principles of dignity, individualization, and inclusion. XYZ Organization will work cooperatively, and in a spirit of respect, with all partners in the accommodation process.

2. Objectives of the Policy and Procedure

The Policy and Procedure should have clearly identified objectives.

The purpose of this Accommodation Policy and Procedure is to:

- **Ensure that all members of the organization are aware of their rights and responsibilities under the Ontario *Human Rights Code* with respect to accommodation;**
- **Set out in writing the organization's procedures for accommodation and the responsibilities of each of the parties to the accommodation process.**

3. Application of the Policy and Procedure

The Policy and Procedure should set out the scope of its application.

Accommodation should be provided, not only to existing employees, tenants or clients, but also to applicants for housing, employment or services. For example, employment applicants may require accommodation during the interview or screening process. Procedures should be developed to inform applicants of their right to accommodation for needs related to *Code* grounds, and to assure applicants that accommodation requests will not negatively impact the evaluation process. Similarly, in a service setting, accommodation policies and procedures should be prominently posted in a place that customers have regular access to, so that clients are aware of and able to make use of the Policy and Procedure.

This Policy and Procedure applies to all employees, including full-time, part-time, temporary, casual and contract staff, as well as those who work to gain experience or for benefits, such as volunteers, co-op students, interns and apprentices. It also applies to individuals who are applying for employment with the organization.

It applies at all stages and to all aspects of the employment relationship, including recruitment and selection, promotions and transfers, and conditions of work such as hours of work and leaves of absence.

It applies to all organization locations.

All new and existing employees will be provided with a copy of this Accommodation Policy and Procedure. All job applicants who are selected for an interview will be notified of the Accommodation Policy and Procedure prior to the interview.

4. Requests for Accommodation

It is very important to note that some individuals may be unable to disclose or communicate accommodation needs, due to the nature of their disability. For example, persons with some mental disabilities may be unaware of their accommodation needs, or may be reluctant to disclose them because of fear of stigma and stereotypes. Organizations should offer assistance and accommodation to persons who are clearly unwell and in need of assistance, or who are perceived to have a disability, even where no accommodation request is made.

While it may be preferable that accommodation requests be made formally and in writing, organizations should nevertheless take all accommodation requests seriously, regardless of the format of the request.

Requests for accommodation should be made to the employee's manager.

Accommodation requests should, whenever possible, be made in writing. The accommodation request should indicate:

- **The Code ground with respect to which accommodation is being requested;**
- **The reason why accommodation is required, including enough information to confirm the existence of a need for accommodation; and**
- **The specific needs related to the Code ground.**

All accommodation requests will be taken seriously. No person will be penalized for making an accommodation request.

5. Provision of Information

The parties to the accommodation process must share information about accommodation needs and potential solutions. It may in some cases be necessary to obtain expert opinions or information in order to confirm the need for accommodation, or to determine appropriate accommodations.

Organizations should, however, be careful to collect *only* information that is necessary. In some cases, the need for accommodation is obvious and there is no need for special documentation: for example, persons who use wheelchairs will have difficulty accessing

buildings that are approached by steps, and pregnant employees will often need more frequent bathroom breaks. Even where some documentation is required, this does not justify a “fishing expedition”. For example, a request for adjustments to computer equipment related to diminishing eyesight would not usually justify a request to review the accommodation seeker’s complete medical file. A careful approach to the collection of documentation not only protects the privacy of the accommodation seeker, it protects the accommodation provider from potential complaints. All parties must exercise good faith in seeking and providing information.

The policy should address the question of *who* collects and keeps documentation related to accommodation requests, taking into account the nature and complexity of the accommodation request, the sensitivity of the information involved, and the organizational capacity. Where a workplace has a medical or human resources department, that department should be the custodian of an employee’s medical or personal information, communicating to an employee’s supervisor not the details of the accommodation-seeker’s medical condition or personal situation, but rather, the duties the person can and cannot perform.

The manager, Human Resources Manager, or Medical Department may require further information related to the accommodation request, in the following circumstances:

- **Where the accommodation request does not clearly indicate a need related to a Code ground;**
- **Where further information related to the employee’s limitations or restrictions is required in order to determine an appropriate accommodation;**
- **Where there is a demonstrable objective reason to question the legitimacy of the person’s request for accommodation.**

Where expert assistance is necessary in order to identify accommodation needs or potential solutions, the accommodation seeker is required to cooperate in obtaining that expert advice. Any costs associated with obtaining such expert advice will be borne by XYZ Organization.

Failure to respond to such requests for information may delay the provision of accommodation.

The Manager, Human Resources Department or Medical Department will maintain information related to:

- **The accommodation request;**
- **Any documentation provided by the accommodation seeker or by experts;**
- **Notes from any meetings;**
- **Any accommodation alternatives explored; and**
- **Any accommodations provided.**

This information will be maintained in a secure location, separate from the accommodation seeker's personnel file, and will be shared only with those persons who need the information.

6. Privacy and Confidentiality

Requests for accommodation may involve the disclosure of private or highly sensitive information. Persons requesting accommodation should be asked only for information required to establish the foundation of the accommodation request, and to respond appropriately to the accommodation request. In order for individuals to feel comfortable to make accommodation requests, they must feel confident that the information that they provide will be treated confidentially, and shared only as necessary for the accommodation process. It is generally advisable, in an employment context, to keep information related to accommodation requests separate from the individual's regular personnel file.

The organization will maintain the confidentiality of information related to an accommodation request, and will only disclose this information with the consent of the employee or applicant.

7. Accommodation Planning

The accommodation process is a shared responsibility, and everyone involved must work together cooperatively, share information, and avail themselves of potential accommodation solutions. It is in everyone's best interests that congenial and respectful relationships be maintained throughout the accommodation process.

It is helpful to document the accommodation process and the result in a formal accommodation plan. This ensures that the parties clearly understand their roles and responsibilities, and facilitates accountability and regular monitoring.

Accommodation requests will be dealt with promptly. Where necessary, interim accommodation will be provided while long-term solutions are developed.

The Manager, the person requesting accommodation related to a Code ground and, where appropriate, the Human Resources Manager and any necessary experts will work together cooperatively to develop an Accommodation Plan for the individual.

The Accommodation Plan, when agreed on, will be put in writing, and signed by the individual requesting accommodation, the Manager, and the Human Resource Manager.

An Accommodation Plan may include the following:

- **A statement of the accommodation seeker’s relevant limitations and needs, including any necessary assessments and information from experts or specialists, bearing in mind the need to maintain the confidentiality of medical reports;**
- **Arrangements for necessary assessments by experts or professionals;**
- **Identification of the most appropriate accommodation short of undue hardship;**
- **A statement of annual goals, and specific steps to be taken to meet them;**
- **Clear timelines for the provision of identified accommodations;**
- **Criteria for determining the success of the accommodation plan, together with a mechanism for review and re-assessment of the accommodation plan as necessary; and**
- **An accountability mechanism.**

8. Appropriate Accommodations

Accommodation may take many forms. What works for one individual may not work for another. Each person’s situation must be individually assessed. In each case, the organization must implement the most appropriate accommodation, short of undue hardship. An accommodation will be appropriate where it results in equal opportunity to attain the same level of performance or to enjoy the same level of benefits and privileges experienced by others, and where it respects the principles of dignity, inclusion, and individualization.

The aim of accommodation is to remove barriers and ensure equality. Accommodations will be developed on an individualized basis. Appropriate accommodations may include:

- **Work station adjustments**
- **Job redesign**
- **Modifications to organizational policies and practices**
- **Technical aids**
- **Human support**
- **Provision of materials in alternative formats**
- **Building modifications**
- **Counselling and referral services**
- **Temporary or permanent alternative work**
- **Modification of performance standards**
- **Leaves of absence**
- **Changes to scheduling or hours of work**
- **Changes to work uniforms.**

This list is not exhaustive.

9. Monitoring Accommodations

Accommodation needs and organizational structures may well change over time. As well, accommodations may require adjustments during and after implementation, in order to improve effectiveness or efficiency. It is therefore important to ensure regular monitoring and review of the accommodation plan.

The Manager and the person receiving accommodation shall monitor the success of the Accommodation Plan, and shall promptly address any deficiencies or any relevant changes in the workplace or the employee's needs.

10. Undue Hardship

Accommodation must be provided to the point of undue hardship. It is the Commission's position that, in assessing undue hardship, only the three legislated factors of cost, outside sources of funding, and health and safety may be taken into account. The standard for undue hardship is high, and the burden of proof is on the accommodation provider. Careful analysis and research is required prior to reaching the conclusion that a particular accommodation will result in undue hardship. The determination that an accommodation will cause undue hardship is a complex decision, with potentially significant legal consequences, and should therefore be made at the senior levels of the organization. The basis for this conclusion should be thoroughly documented, and the accommodation seeker provided with clear reasons for the decision.

The determination that a particular accommodation would result in undue hardship does not end the accommodation process. Accommodation is not an all-or-nothing proposition, and can be seen as a continuum. Where the most appropriate accommodation would result in undue hardship, the organization must consider other alternatives, such as phased-in or next-best accommodations.

Accommodation will be provided to the point of undue hardship, as defined by the Ontario Human Rights Commission's *Policy and Guidelines on Disability and the Duty to Accommodate*. A determination regarding undue hardship will be based on an assessment of costs, outside sources of funding, and health and safety. It will be based on objective evidence.

A determination that an accommodation will create undue hardship may only be made by the Chief Administrative Officer of XYZ Organization.

Where a determination is made that an accommodation would create undue hardship, the person requesting accommodation will be given written notice, including the reasons for the decision and the objective evidence relied upon. The accommodation seeker shall be informed of his or her recourse under XYZ Organization's Anti-Discrimination Policy and Procedure, and under the Ontario *Human Rights Code*.

Where a determination has been made that an accommodation would cause undue hardship, XYZ Organization will proceed to implement the next best accommodation short of undue hardship, or will consider phasing in the requested accommodation.

VIII. EDUCATION AND TRAINING PROGRAMMES

A. *Description and Rationale*

Education and training are core elements of any organization's human rights strategy. They are central to any effort to build a "human rights culture" within an organization. Education and training can deepen understanding and awareness of human rights issues, and build support for the organization's human rights initiatives. As well, every member of the organization should have a solid understanding of their rights and responsibilities under the *Code*, and of the organization's policies, programs and procedures for preventing and addressing human rights issues.

However, it is important to remember that education is not a panacea for all human rights issues. For example, education will not, on its own, remove systemic barriers. Education works best along with a strong proactive strategy to prevent and remove barriers to equal participation, and effective policies and procedures for addressing human rights issues that do arise.

B. *Considerations*

An effective human rights education program will include training on:

- organizational policies and procedures related to human rights;
- the principles and specific provisions of the *Code*; and
- general human rights issues such as racism,¹⁶ ableism, sexism, homophobia, ageism, etc.

Training must be tailored to specific needs of the various members of the organization. All members of the organization will need to be aware of their rights. As well, specific education is required for:

- Those responsible for complying with policies (everyone);
- Those responsible for implementing policies (manager, supervisors);
- Those responsible for providing expert advice, ensuring compliance (e.g, HR); and
- Those responsible for overall human rights strategy (e.g., the CEO).

Organizations should engage in ongoing monitoring of human rights issues that affect them, and provide their members with human rights education that is timely and appropriate.

Organizations should ensure that those who carry out human rights training have expertise in the specific subject area.

Training should emphasize that human rights policies and programs are in harmony with the organization's objectives, and have the full support of senior management.

Human rights education should not be a one-time event. Ongoing training should be provided to address developing issues, and regular refreshers provided to all staff. The effectiveness of training should be monitored, and any identified gaps should be promptly addressed.

C. *Elements*

1. General Human Rights Training

Human rights education is essential to developing a "human rights culture" within the organization, one that supports the values and principles that underlie the *Code*. Without an understanding of human rights issues, and support for a human rights culture, human rights policies and procedures are unlikely to be successful.

Beyond knowledge of the legal rights and responsibilities set out in the *Code*, it is important to understand discrimination and harassment related to the various *Code* grounds, and how they manifest themselves. For example, it will be very difficult for an organization to address and prevent systemic racial discrimination without educating its members about what racism is, how it operates, common manifestations of racism and racial discrimination, and the legacy of racism in Canada.

2. Training on the Ontario *Human Rights Code*

All members of the organization should know the principles of the *Code*, and their legal rights and responsibilities related to human rights. Persons responsible for developing organizational strategy on human rights issues, and for developing and implementing policies and procedures will require more in-depth training on human rights laws, and regular updates on new issues, policies, and legal developments.

3. Training on Organizational Policies and Procedures

Organizations should ensure that all members are aware of internal human rights policies and procedures. Everyone should know what the standards are, what their rights and responsibilities are under the policies and procedures, and how they can obtain advice or assistance with respect to human rights issues. Policies and procedures should be provided to everyone, together with training, at the time that they are introduced, and shared with newcomers when they join the organization. As well, regular reminders and refreshers should be provided to all.

Persons who will be responsible for implementing human rights policies and procedures

will require more extensive training and information on these documents. This includes managers and supervisors, as well as staff who may be receiving, investigating, mediating or deciding on complaints or accommodation requests.

FOR FURTHER INFORMATION

For more information about the Ontario Human Rights Commission or this policy statement, please call 1-800-387-9080 (toll free) or in Toronto (416) 326-9511 (TTY: (416) 314-6526 (local) and 1-800-308-5561 (toll free), during regular office hours from Monday to Friday. You can also visit our website at www.ohrc.on.ca.

ENDNOTES

*In *Quesnel v. London Educational Health Centre* (1995), 28 C.H.R.R. D/474 at para. 53 (Ont. Bd. Inq.), the Board of Inquiry applied the United States Supreme Court's decision in *Griggs v. Duke Power Co.*, 401 U.S. 424 (4th Cir. 1971) to conclude that Commission policy statements should be given "great deference" if they are consistent with *Code* values and are formed in a way that is consistent with the legislative history of the *Code* itself. This latter requirement was interpreted to mean that they were formed through a process of public consultation.

² For a review of some of the research on human rights and workplace productivity, see Bates, Michael and Este, Dr. David, *Creating Workplace Environments that Reflect Human Rights Values*, Cultural Diversity Institute, University of Calgary, May 2000; Gandz, Dr. Jeffrey, "A Business Case for Diversity", available online at www.hrsdc.gc.ca; and Iacobucci, Edward M., "Antidiscrimination and Affirmative Action Policies: Economic Efficiency and the Constitution", (1998) Osgoode Hall L.J. 293-337.

³ See, for example, *Naraine v. Ford Motor Co. of Canada (No. 4)* (1996), 27 C.H.R.R. D/230 (No. 4) (Ont. Bd. Inq.) aff'd (1999), 34 C.H.R.R. D/405 (Ont. Ct. (Gen. Div.)), Board of Inquiry's order upheld except with respect to the issue of reinstatement (2001), 41 C.H.R.R. D/349 (Ont. C.A.), leave to appeal denied [2002] S.C.C.A. No. 69; *Smith v. Mardana Ltd. (No. 2)* (2005), CHRR Doc. 05-434 (Ont. Div. Ct.). rev'g in part (2002), 44 C.H.R.R. D/142 (Ont. Bd. Inq.).

⁴ *School District No. 44 (North Vancouver) v. Jubran*, 2005 BCCA 201, (2005) 52 C.H.R.R. D/1.

⁵ *Olarte v. DeFilippis and Commodore Business Machines Ltd. (No. 2)* (1983), 4 C.H.R.R. D/1705 (Ont. Bd. Of Inq.), aff'd (1984), 14 D.L.R. [4th] 118 (Div. Ct.).

⁶ In *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 [hereinafter "*Meoirin*"], the Supreme Court of Canada stated:

Employers designing workplace standards owe an obligation to be aware of both the differences between individuals and differences that characterize groups of individuals. They must build conceptions of equality into workplace standards. By enacting human rights statutes and providing that they are applicable to the workplace, the legislatures have determined that the standards governing the performance of work should be designed to reflect all members of society, in so far as this is reasonably possible. [at 38]

⁷ Considerations for an accessibility review are set out in the Commission's 2001 *Policy and Guidelines on Disability and the Duty to Accommodate*, available online at www.ohrc.on.ca. The Commission's publication, *Dining Out Accessibly*, also available online, provides an example of an approach to reviewing and addressing accessibility issues, in the context of the restaurant industry. The Accessibility Directorate of Ontario provides information and resources on accessibility planning: <http://www.mcass.gov.on.ca/mcass/english/pillars/accessibilityOntario>.

⁸ *Quesnel v. London Educational Health Centre*, *supra*, note 1.

⁹ Employers may find of some assistance the materials that the Canadian Human Rights

Commission has prepared to assist employers with conducting employment systems reviews under the *Employment Equity Act*. See in particular the December 2002 *Employment Systems Review: Guide to the Audit Process*, available online at www.chrc-ccdp.ca. The Appendix to the Commission's *Policy on Racism and Racial Discrimination* summarizes common workplace policies, practices and decision-making processes that may lead to systemic discrimination based on race and race-related grounds.

¹⁰ Commission policies, available online at www.ohrc.on.ca, provide examples of forms of harassment and discrimination that are specific to each of the various *Code* grounds.

¹¹ In *Wall v. University of Waterloo* (1995) 27 C.H.R.R. D/44 (Ont. Bd. of Inq.), the Board of Inquiry set out six elements of a reasonable response to a complaint: 1) the complaint is dealt with promptly; 2) the employer is addressing the issue of harassment/discrimination and providing appropriate resources to deal with it, including ensuring that management and employees are aware of the standards of behaviour; 3) the complaint is taken seriously; 4) there is an adequate complaint mechanism in place, which includes ensuring adequate access to information and advice to complainants, and of which management and employees have been advised; 5) a healthy work environment is restored for the complainant; and 6) management communicates its actions to the complainant.

¹² Currently, where the facts on which a complaint of discrimination is based occurred more than six months before the complaint was filed, the Commission has discretion to decide not to deal with the complaint, unless it is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. Under the *Human Rights Code Amendment Act, 2006*, S.O. 2006, c. 30, which will take effect on June 30, 2008, an application to the Tribunal may be made within one year of the incident, or of the last in a series of incidents. The Tribunal may accept late applications if satisfied that the delay was made in good faith and no substantial prejudice will result to any person affected by the delay.

¹³ The Commission's *Guide to Releases with Respect to Human Rights Complaints* (2006), available online at www.ohrc.on.ca, provides information on structuring agreements and releases that accord with human rights principles.

¹⁴ In assessing whether the duty to accommodate has been met, the procedure to assess accommodation is as important as the substance of the accommodation. *Meoirin, supra*, note 6 at para. 66.

¹⁵ Human rights statutes in some jurisdictions refer to "reasonable accommodation". Despite the difference in wording, "reasonable accommodation" imposes the same requirements as "accommodation to the point of undue hardship" – the standard set out in the *Ontario Code*. As was stated by the Supreme Court of Canada in *Central Okanagan School District No. 23 v. Renaud* [1992] S.C.R. 970, at para. 19 "The extent to which the discriminator must go to accommodate is limited by the words "reasonable" and "short of undue hardship". These are not independent criteria, but are alternate ways of expressing the same concept."

¹⁶ Please see the Commission's *Policy and Guidelines on Racism and Racial Discrimination* for suggestions on developing and implementing an anti-racism vision statement and policy.