

## A. Sample Policy on Human Rights Code-Based Discrimination and Harassment

A detailed sample policy that can be adopted for use by the licensee's legal workplace. For a sample policy addressing workplace harassment, including sexual harassment, see the "Sample Policy on Workplace Harassment (Including Sexual Harassment)"<sup>1</sup>

**Effective Date:\***

**Revised Date:\***

**Approved By:\***

### References:

- *Human Rights Code*, R.S.O. 1990, c. H.19
- *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1
- *Law Society Act*, R.S.O. 1990, c. L.8, s. 33 – "Prohibited conduct"
- Rules of Professional Conduct, s. 6.3 - "Sexual Harassment"
- Rules of Professional Conduct, s. 6.3.1 - "Discrimination"
- Paralegal Rules of Conduct
- "A policy primer: Guide to developing human rights policies and procedures", Ontario Human Rights Commission (December 2013)
- "Policy on preventing sexual and gender-based harassment", Ontario Human Rights Commission (May 2013)

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## PURPOSE

XYZ Organization (the "Organization") is committed to providing an environment free of discrimination and harassment, where all individuals are treated with respect and dignity, can contribute fully, and have equal opportunities.

The purpose of this policy is:

- To ensure that XYZ meets its obligations under the *Human Rights Code* ("the Code") and the *Occupational Health and Safety Act (OHS)* to prevent and address discrimination and harassment;
- To identify the types of behaviour prohibited by this policy;

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<sup>1</sup> Provisions regarding harassment are included in both the *Ontario Human Rights Code*, which is referred to as "Code-based Harassment", as well as in the *Occupational Health and Safety Act*, which is referred to as "Workplace (non-Code) Harassment". Code-based harassment is a separate policy from Workplace Sexual Harassment because the *Occupational Health and Safety Act* sets out distinct requirements for reporting and investigating complaints of Workplace Harassment. An employer is therefore entitled to have a different (and perhaps less onerous) procedure for Code-Based Harassment.

- To provide procedures to follow when complaints of discrimination or harassment are made by partners or employees of XYZ;
- To ensure that all partners and employees of XYZ are aware that harassment and discrimination are unacceptable and incompatible with the standards of this organization, as well as being a violation of the law; and
- To ensure that all partners and employees of XYZ recognize that under the Rules of Professional Conduct (section 6.3.1-1), a licensee has a special responsibility to respect the requirements of human rights laws in Ontario and:

*“to honour the obligation not to discriminate on the grounds... (as defined in the Ontario Human Rights Code), with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.”*

## **APPLICATION**

This policy:

- Applies at every level of XYZ, and extends to all partners, employees (including full-time, part-time, temporary, probationary, casual, and contract staff), and students;
- Applies to every aspect of the employment relationship, including recruitment, selection, promotion, transfers, training, salaries, benefits, discipline, performance appraisals, and termination. It covers rates of pay, hours of work, leaves of absences, and holidays.
- Applies to the physical offices of XYZ; and
- Extends outside of the offices of XYZ, such as off-site client meetings, business travel, firm-sanctioned social events, and to electronic communications.

## **PROHIBITED CONDUCT**

XYZ upholds and supports the right to equal treatment without discrimination or harassment. Discrimination and harassment are prohibited by sections 5(1) and 5(2) of the *Human Rights Code* (“the Code”), respectively. Anyone at XYZ found to have engaged in conduct constituting Code-based discrimination or harassment may be subject to disciplinary action, up to and including termination.

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

- Age
- Creed (includes religion)
- Sex (including pregnancy and breastfeeding)\*
- Gender Identity\* and Gender Expression\*

- Sexual Orientation\*
- Family status (such as 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) (applies to employment only)
- Association or relationship with a person identified by one of the above grounds
- Perception that one of the above grounds applies.

\* Note that harassment on the grounds marked with an asterisk (\*) have distinct requirements under the *Occupation Health and Safety Act (OHSA)*. Refer to the “Sample Policy on Workplace Harassment (Including Sexual Harassment)”.

## DEFINITIONS

**Discrimination:** Refers to 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.

**Employee:** For the purposes of this policy, the term “employee” includes full-time, part-time, temporary, probationary, casual, contract staff, and independent contractors.

**Harassment (Code-Based):** Provisions regarding harassment are included in both the *Ontario Human Rights Code*, which is referred to as “Code-based Harassment”, as well as in the *Occupational Health and Safety Act (OHSA)*, which is referred to as “Workplace (non-Code) Harassment”. This policy deals with Code-based harassment.

Section 10(1) of the *Code* defines “harassment” as “*engaging in a course of vexatious comment or conduct that is 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. Harassment can occur based on any of the *Code*-protected grounds of discrimination.

According to this definition of harassment, more than one event, or a “course of vexatious comment or conduct” must take place for there to be a violation of the *Code*. However, one incident could be significant or substantial enough to be interpreted as harassment under the *Code*.

One incident could be interpreted by an individual as having an impact that is substantial enough to create a “poisoned environment”, as described in more detail below. A key element of harassment is the way in which an individual “perceives” the harassing incident. Therefore, even if the comment or conduct was not intended to be harassment, it may be considered harassment if it has had the effect of unreasonably interfering with the employee’s work performance or creating an intimidating, humiliating, hostile, or offensive environment.

There is no legal obligation for an individual to tell a harasser to stop. 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 or that it has been consented to.

A few common examples of harassment may include, but are not limited to:

- Making remarks, slurs, jokes or innuendos related to a person’s race, disability, creed, age, or any other *Code*-based ground;
- Posting or circulating offensive pictures, pornography, pinups, graffiti or materials, whether in print or via e-mail or other electronic means;
- Singling out a person for humiliating or demeaning “teasing” or jokes because they are a member of a group protected under the *Code*; and/or
- Ridiculing a person’s dress, speech or other practices that may be related to their race, disability, or creed.

**Licensee:** A person licensed as a lawyer or paralegal in the province of Ontario.

**Poisoned Environment:** The *Code* prohibits the creation of a 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. The comments or conduct need not be directed at a specific person, and may be from any person, regardless of position or status. A single comment or action, if sufficiently serious, may create a poisoned environment.

**Sexual Harassment (Code-Based):** Provisions regarding sexual harassment are included in both the *Ontario Human Rights Code* and the *Occupational Health and Safety Act (OHSA)*. Under the *Code*, sexual harassment is defined as “*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. Rule 6.3-0 of the Rules of Professional Conduct supports this, stating that “*sexual harassment is one incident or a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature.*”

**Gender-Based Harassment:** A type of sexual harassment defined as “*any behaviour that polices and reinforces traditional heterosexual gender norms*”. It is often used to get people to follow traditional sex stereotypes (e.g., dominant males, subservient females, etc.) and is also used as a bullying tactic, often between members of the same sex.

A few common examples of sexual and gender-based harassment may include, but are not limited to:

- Making unnecessary physical contact, including unwanted touching, invading personal space, demanding hugs, 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;
- Showing or sending pornography, sexual pictures or cartoons, sexually explicit graffiti, or other sexual images (including online);
- Sexual jokes, including passing around written sexual jokes (for example, by e-mail);
- Using sexual or gender-related comments or conduct to bully someone;
- Spreading sexual rumours (including online);
- Making sexual propositions, demanding dates, and/or sexual favours;
- Verbally abusing, threatening, or taunting someone based on gender;
- Bragging about sexual prowess, asking questions, or talking about sexual activities; and/or
- Making an employee dress in a sexualized or gender-specific way

**Gender:** Gender can refer to the individual and/or social experience of being a man, a woman, or neither. Social norms, expectations, and roles related to gender vary across time, space, culture, and individuals.

**Gender Expression:** How a person publicly presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language, and voice. A person’s chosen name and pronoun are also common ways of expressing gender. All people, regardless of their gender identity, have a gender expression and they may express it in any number of ways.

**Gender Identity:** A person’s internal and individual experience of gender. It is a person’s sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person’s gender identity may be the same as or different from their birth-assigned sex.

**Sex:** The classification of people as either male, female, or intersex. Sex is usually assigned at birth and is based on an assessment of a person’s reproductive systems, hormones, chromosomes, and other physical characteristics.

**Sexual Orientation:** The direction of one’s attraction. Some people use the terms gay, straight, bi, pan, or lesbian to describe their experience.

## **REPORTING CODE-BASED DISCRIMINATION OR HARASSMENT**

This section outlines the reporting process for *Code*-based discrimination or harassment.<sup>2</sup>

### **1. How to Report Code-Based Discrimination or Harassment**

Partners or employees can report incidents or complaints of *Code*-based discrimination or harassment verbally or in writing. When reporting verbally, the reporting contact, along with the person complaining of discrimination or harassment, will fill out a complaint form.

The report of the allegation(s) should include the following information:

- a) Name(s) of (any) person(s) who has allegedly experienced *Code*-based discrimination or harassment, including their position and contact information.
- b) Name(s) of (any) person(s) alleged to be responsible for discrimination or harassment, including their position and contact information (if known).
- c) Names of witness(es) (if any) or other person(s) with relevant information to provide and contact information (if known).
- d) Details of what happened, including date(s), frequency, and location(s) of the alleged incident(s). Any supporting documents the person who complains of *Code*-based discrimination or harassment may have in their possession that are relevant to the complaint.
- e) List any documents the respondent, a witness, or other person may have in their possession that are relevant to the complaint.

### **2. Full Participation**

XYZ employees will not be penalized or disciplined for reporting an incident involving *Code*-base discrimination or harassment.

### **3. Confidentiality**

All reports of incidents or complaints of workplace harassment shall be kept confidential except to the extent necessary to protect workers, to investigate the complaint or incident, to take corrective action, or otherwise as required by law.

### **4. Timing of Complaint**

An incident or a complaint of *Code*-based discrimination or harassment should be reported as soon as possible after experiencing or witnessing an incident. This allows the incident to be investigated in a timely manner. **[designated person at the workplace]**

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<sup>2</sup> For the reporting process for non-*Code*-based harassment, including sexual harassment, see the “Sample on Workplace Harassment (Including Sexual Harassment)”.

will be responsible for ensuring that the incident is investigated promptly and completed within a reasonable timeline.

## **5. Who to Report Code-Based Discrimination or Harassment To**

Complainants are encouraged to report any incidents or complaints of *Code*-based discrimination or harassment to **[designated person at the workplace]**. If the **[designated person at the workplace]** is the person engaging in the discrimination or harassment, contact **[alternate designated person at the workplace]**. The person designated as the reporting contact should also not be under the direct control of the respondent. If that is the case, contact **[alternate designated person at the workplace]**.

The **[designated person at the workplace]** shall be notified of the workplace discrimination or harassment incident or complaint so that they can ensure an investigation is conducted that is appropriate in the circumstances. Depending on the nature of the allegations and the people involved, an external person qualified to conduct a workplace harassment investigation who has knowledge of the relevant workplace discrimination and harassment laws will be retained to conduct the investigation.

## **6. Report All Incidents**

XYZ encourages the reporting of all incidents of discrimination or harassment, regardless of who the alleged offender(s) might be.

## **REPRISAL**

All employees have a right to freedom from reprisals or threat of reprisals for refusing to accept discrimination or harassment in any form, for making a formal complaint, or cooperating in an investigation. No person shall be negatively treated for bringing forward a complaint, providing information related to a complaint, or helping to resolve a complaint. It is a violation of XYZ's policy to discipline or punish a person because they have 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.

## **INVESTIGATING COMPLAINTS**

### **1. Commitment to Investigate**

XYZ will ensure that an investigation appropriate in the circumstances is conducted when any **[designated person at the workplace]**, manager, or supervisor receives a complaint of *Code*-based discrimination or harassment. Complaints or incidents of *Code*-base discrimination or harassment will be investigated in a fair, respectful, and timely manner.

## **2. Full Participation**

All XYZ staff, including partners, lawyers, and staff are expected to adhere to this policy, and will be held responsible by the employer for not following it. XYZ employees will not be penalized or disciplined for participating in an investigation involving *Code*-based discrimination or harassment.

## **3. Confidentiality**

Information about complaints and incidents shall remain confidential. Information obtained about an incident or complaint of *Code*-based discrimination or harassment, including identifying information about any individuals involved, will not be disclosed unless disclosure is necessary to protect employees, to investigate the complaint or incident or to take corrective action, or otherwise as required by law.

While the investigation is on-going, the person who has allegedly experienced discrimination or harassment, the respondent, and any witnesses should not be asked to discuss the incident, complaint, or the investigation with the other party, employees, or witnesses. The investigator may discuss the investigation and disclose the incident or complaint-related information only as necessary to conduct the investigation.

All records of the investigation will be kept confidential.

## **4. Timing of the Investigation**

The investigation must be completed in a timely manner, generally within 90 days or less, unless there are extenuating circumstances (i.e., illness, complex investigation, etc.) warranting a longer investigation.

## **5. Who Will Investigate**

The **[designated person at the workplace or other senior leader]** will determine who will conduct the investigation into the incident or complaint of *Code*-based discrimination or harassment. The person selected to do 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. Depending on the allegations and the people involved, the investigation may be referred to an external investigator to conduct an impartial investigation.

## **6. Representation**

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



## 7. Investigation Processes

The person conducting the investigation whether internal or external to the workplace will, at minimum, complete the following:

- a. Ensure the investigation is kept confidential and that any identifying information is not disclosed unless necessary to conduct the investigation. The investigator should remind the parties of this confidentiality obligation at the beginning of the investigation.
- b. Thoroughly interview the employee who allegedly experienced the *Code*-based discrimination or harassment and the respondent, if the respondent is an employee of the employer. If the respondent is not a partner or an employee of the organization, the investigator should make reasonable efforts to interview the respondent.
- c. Give the respondent an opportunity to respond to the specific allegations raised by the complainant. In some circumstances, the person who allegedly experienced the *Code*-based discrimination or harassment should be given a reasonable opportunity to reply.
- d. Interview any relevant witnesses employed XYZ Organization who may be identified by either the employee who allegedly experienced the *Code*-based discrimination or harassment, the respondent, or as necessary to conduct a thorough investigation. The investigator must make reasonable efforts to interview any relevant witnesses who are not employed by XYZ Organization if there are any identified.
- e. Collect and review any relevant documents.
- f. Take appropriate notes and statements during interviews with the individual who allegedly experienced *Code*-based discrimination or harassment, the respondent, and any witnesses.
- g. Prepare a written report summarizing the steps taken during the investigation, the complaint, the allegations of the person who allegedly experienced the *Code*-based discrimination or harassment, the response from the respondent, the evidence of any witnesses, and the evidence gathered. The report must set out findings of fact and come to a conclusion about whether *Code*-based discrimination or harassment was found or not.

## 8. Results of the Investigation

Within 10 days of the investigation being completed, the employee or person who allegedly experienced *Code*-based discrimination or harassment and the respondent, if they are an employee of XYZ, will be informed in writing of the results of the investigation

and any corrective action taken or that will be taken by XYZ to address *Code*-based discrimination or harassment.

## **9. Handling Complaints, Including Interim Measures**

It may be necessary to take interim measures during the investigation, including having persons involved in the investigation to move workstations, or in the case of serious allegations, remain off work.

If the investigator concludes that *Code*-based discrimination or harassment occurred, the individual found to be in violation of the policy may be disciplined, up to and including termination of employment.

## **10. Record Keeping**

The **[designated person at the workplace]** will keep records of the investigation including:

- a) A copy of the complaint or details about the incident;
- b) A record of the investigation, including notes;
- c) A copy of the investigation report (if any);
- d) A summary of the results of the investigation that was provided to the employee or partner who allegedly experienced the *Code*-based discrimination or harassment and to the respondent, if a partner or employee of the XYZ; and
- e) A copy of any corrective action taken to address the complaint or incident of *Code*-based discrimination or harassment.

All records of the investigation will be kept confidential. The investigation documents should not be disclosed unless necessary to investigate an incident or complaint of *Code*-based discrimination or harassment, take corrective action, or otherwise as required by law. Records will be kept for a minimum of one year after the conclusion of the investigation.

## **MEDIATION**

Where appropriate, the **[designated person at the workplace]** 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.

## **REVIEWING AND UPDATING THE POLICY**

The **[designated workplace representative]** will regularly review this policy and will make revisions as necessary. All employees will be invited to contribute to the review

process. The Organization will accept comments on the policy at any time and, unless a comment raises an urgent concern, they will be considered during the regular review.

## **INQUIRIES**

inquiries about this policy should be addressed to the **[designated workplace representative]**.