

Legislative Framework for Human Rights/Diversity Policies in Legal Workplace

1. Purpose

This document provides guidance to all licensees as to their legal rights and responsibilities in maintaining and working in an inclusive and non-discriminatory workplace, that is free from workplace harassment and violence.

All licensees should be aware of these rights and responsibilities. This guide identifies the applicable legislation (including the [Rules of Professional Conduct](#) and the [Paralegal Rules of Conduct](#)) and provides resources for drafting policies and programs aimed at eliminating workplace discrimination, harassment, and violence.

2. Special Duty of Licensees

All licensees of the Law Society have a special duty to respect human rights legislation.

(a) Discrimination

When drafting and implementing a human rights /diversity policy for your legal workplace, it is important to note that under section 6.3.1-1 of the [Rules of Professional Conduct](#) (“the Rules”) lawyers have a “special responsibility” to respect human rights, including in their employment of others:

“A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other licensees or any other person.”

This rule is to be interpreted according to the provisions of the [Human Rights Code R.S.O. 1990, c. H.19.](#)

Similarly, under the section 2.03(4) of the [Paralegal Rules of Conduct](#):

Equality, Diversity and Inclusion

Working Together for Change

“A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability with respect to the employment of others or in dealings with other licensees or any other person.”

The commentary for section 6.3.1, Discrimination, of the Rules of Professional Conduct should be reviewed in detail as it provides definitions and examples of discrimination. For example:

- Discrimination can be defined as: “[d]ifferentiation on prohibited (Code) grounds that creates a disadvantage.” Eg. refusing to hire employees of a particular race, sex, creed, sexual orientation
- Adverse effect discrimination: an action or policy that is not intended to be discriminatory (a seemingly "neutral" rule) can result in an adverse effect that is discriminatory. Eg. “It would be necessary to revise the dress code if it does not already accept that a head covering worn for religious reasons must be considered part of acceptable business attire”
- The employer has a duty to accommodate an employee on the basis of any Code ground up to the point of “undue hardship” for the employer. (Section 11(2) of the Code states that “cost, outside sources of funding, and health and safety requirements” can be considered in the undue hardship analysis
- A licensee should take reasonable steps to prevent or stop discrimination by any staff or agent who is subject to the licensee's direction or control
- Ontario human rights law excepts from discrimination special programs designed to relieve disadvantage for individuals or groups identified on the basis of Code grounds (eg. A strategy to advance women and persons with disabilities cannot be deemed “discriminatory”)
- Harassment (by eg. superiors, colleagues, and co-workers) on the basis of any of the Code grounds is prohibited
- A licensee must ensure that “no one [eg. a client] is denied services or receives inferior service on the basis of the grounds set out in this rule”;

(b) Sexual Harassment

Section 6.3-3 of the Rules sets out the “Prohibition on Sexual Harassment”: a licensee “shall not sexually harass a colleague, a staff member, a client, or any other person.”

If a member sexually harasses a client, an employee, a student, or a fellow member, the member can face disciplinary proceedings. Decisions of the [Human Rights Tribunal of Ontario](#) have held that sexual harassment (towards clients or colleagues) constitutes professional misconduct. (Presumably discrimination and/or harassment on the basis of other Code grounds can also constitute professional misconduct.)

Sexual harassment is a serious breach of trust that brings discredit upon the legal profession. Penalties can include suspension and even disbarment for the licensee found to have sexually harassed a client or colleague.

Further, the [Human Rights Tribunal of Ontario](#) can (and has) made findings of sexual harassment against licensees who target clients or coworkers. Section 6.3-0 of the Rules defines sexual harassment as:

“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

- when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the recipient(s) of the conduct;*
- when submission to such conduct is made implicitly or explicitly a condition for the provision of professional services;*
- when submission to such conduct is made implicitly or explicitly a condition of employment;*
- when submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, allocation of files, matters of promotion, raise in salary, job security, and benefits affecting the employee); or*
- when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.”*

Equality, Diversity and Inclusion

Working Together for Change

This definition mirrors the themes in the rights set out in the Code (and must be interpreted in line with the Code). However, the references to “a condition of employment,” a “basis for any employment decision” (including allocation of files, promotions and raises) are of particularly relevant to the legal workplace and should be duly noted.

The Paralegal Rules of Conduct do not have a distinct section related to sexual harassment, but Rule 2.04(3) sets out a prohibition on all forms of Human Rights Code-based harassment:

“ A paralegal shall not engage in sexual or other forms of harassment of a colleague, a staff member, a client or any other person on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.”

3. Human Rights Code

(a) Right to be free from harassment on all Code grounds

Under section 5(2) the Human Rights Code (the Code) every employee has a right to be free from harassment in the workplace on the basis of: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

(b) Right to be free from sexual harassment and solicitation

Section 7(2) and (3) of the Code provides that every employee has a right to be free from:

- *harassment in the workplace because of sex, sexual orientation, gender identity or gender expression;*
- *sexual solicitation by made by a person “in a position to confer, grant or deny a benefit or advancement ...where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome”;* and
- *a reprisal or a threat of reprisal for the rejection of a sexual solicitation made or threatened by a person in a position to confer, grant or deny a benefit or advancement.*

The Ontario Human Rights Commission created a resource called the [Guide to Your Rights and Responsibilities Under the Human Rights Code](#).

(c) Policies

The Ontario Human Rights Commission's [Guidelines on Developing Human Rights Policies and Procedures](#) is useful for employers who wish to draft their own anti-harassment and discrimination policies. However, it should be noted that this document does not (yet) integrate the [Occupational Health and Safety Act \(OHSA\)](#) amendments, which have some different requirements for investigating and dealing with complaints of sexual harassment. Nor does it integrate the [Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c. 11](#).

4. Workplace Harassment (OHSA)

The [Occupational Health and Safety Act, R.S.O. 1990, c. O.1](#) (OHSA) was amended in 2016 to add obligations on employers to prevent workplace harassment, including workplace sexual harassment.

(a) Definitions

Under section 1 of OHSA, “workplace harassment” means “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

Defined further “workplace sexual harassment” means,

- *engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or*
- *making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.*

(b) Requirements

All employers (regardless of size) must:

- have a policy and program (including training) in place to address workplace harassment
- ensure that an investigation is conducted into incidents and complaints of workplace harassment
- have procedures to report incidents of workplace harassment if the alleged harasser is the person to report to

The focus of the OHSA is on the responsibilities of employers in ensuring a workplace free of harassment. The OHSA does not provide a venue for an employee to seek monetary damages.

(c) Policies/ Complaints

The [Ministry of Labour](#) has templates for policies and programs on their website that can be adapted to a member's workplaces so that members can be compliant with OHSA. See:

- Sample Workplace Harassment Policy
- Sample Workplace Harassment Program

5. Workplace Violence (OHSA)

(a) Definitions

Under Section 1 of OHSA "workplace violence" means:

- *the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker;*
- *an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker;*
- *a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.*

(b) Requirements

OHSA also provides that employers must have policies and programs in place to prevent workplace violence. These amendments came into force in 2009.

Under Section 32.0.2 (1) the program must:

- include measures and procedures to control the risks identified in the assessment required under subsection 32.0.3 (1) as likely to expose a worker to physical injury
- include measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur
- include measures and procedures for workers to report incidents of workplace violence to the employer or supervisor
- set out how the employer will investigate and deal with incidents or complaints of workplace violence

The employer must (under 32.0.3 (1)), assess the risks of workplace violence that may arise from the nature of the workplace, the type of work, or the conditions of work.

[Public Services Health and Safety Association](#) has created assessment and policy creation tools that are a good resource:

- [Workplace Violence Assessment Tools](#)
- [Developing Workplace Violence and Harassment Policies and Programs: A Toolbox](#)

General and specific risks must be assessed, and in the above toolkits, some of the specific risks identified are applicable to licensees, including: “Direct Contact with Clients” (p. 25); “Working Alone or in Small Numbers” (p. 40); and “Mobile Workplace” (p. 48).

6. Accessibility for Ontarians with Disabilities Act

Licensees should also be aware of their obligations under the [Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c. 11](#) (“AODA”), and [O. Reg. 191/11 “Integrated Accessibility Standards”](#) under AODA.

Depending on the size of the legal workplace, your legal workplace is required to:

Equality, Diversity and Inclusion

Working Together for Change

- Provide accessible customer service
- Provide accessible emergency and public safety information
- Provide accessible emergency information to staff
- File an Accessibility Compliance Report
- Create accessibility policies
- Train your staff on Ontario's accessibility laws
- Make it easy for people with disabilities to provide feedback when asked
- Make your public information accessible when asked
- Make your employment practices accessible
 - This includes how you hire, retain and provide career development opportunities to all your employees.
- Make new or redeveloped public spaces accessible