



Human Rights Complaints: Discrimination and Harassment

DISCLAIMER: The following InfoGuide is intended for use as general information and is prepared for purposes of convenience only. It is not to be relied upon as legal advice or legal authority. If you have inquiries as to legal proceedings, or if you would like more detailed information regarding legislation, you should consult a lawyer.

Please be aware that significant changes to the Ontario *Human Rights Code* will take effect on June 30, 2008.

A revised InfoGuide about the new system will be available in the spring.

What is the Ontario Human Rights Code?

- The Ontario *Human Rights Code* (the *Code*) protects everyone in Ontario from discrimination and harassment. All other laws in Ontario must be consistent with the *Code*. The Ontario Human Rights Commission administers the *Code* and is responsible for making sure that the *Code* is adhered to and respected.
- You may make a complaint to the Commission if you believe you have been discriminated against or harassed based on the basis of race, sex, sexual orientation, colour, ancestry, place of origin, ethnic origin, marital status (including common-law, divorced and separated relationships), age, disability, citizenship, family status, receipt of public assistance with regards to accommodation, and record of offences with respect to employment or religion. These categories are known as the prohibited grounds of discrimination.
- Protecting human rights is everyone's responsibility. We all have an obligation to respect each other's human rights and to speak out against any discrimination and harassment for ourselves and for others.

What is discrimination?

- Discrimination means unfair treatment because of your race, sex, sexual orientation, colour, ancestry, place of origin, ethnic origin, marital status (including common-law, divorced and separated relationships), age, disability, citizenship, family status, receipt of public assistance with regards to accommodation, record of offences with respect to employment or religion.
- You have the right to be free from discrimination and harassment in facilities and services (shops, restaurants, transit, hospitals, schools and other public places), housing, contracts, employment and membership in unions or vocational associations.

What is harassment?

- Harassment is a form of discrimination. It includes offensive behaviour, comments or insults based on one or more of the prohibited grounds of discrimination in the *Code*. Harassment also occurs when an individual says something that they know will make you feel uncomfortable.
- Examples of racial harassment include racial slurs or jokes and insults due to your racial identity. Examples of sexual harassment include displaying sexually offensive pictures and staring or making unwelcome comments about your body.

What is “indirect discrimination” and “constructive discrimination”?

- Indirect discrimination takes place when the discrimination is carried through another person. For example, a landlord has indirectly discriminated if he tells a superintendent not to take tenants with a disability.
- Constructive discrimination refers to policies or practices which may not be intentionally or obviously discriminatory but which have a discriminatory *effect* on a group or groups which are protected under the *Code*. For example, if an employer has a policy that nobody is allowed to have a beard, the employer has constructively discriminated against persons whose religion requires them to have a beard.

What is “accommodation” and “undue hardship”?

- The duty to accommodate refers to the obligation of an employer or service provider (such as a hospital) to take reasonable steps to change discriminatory rules or practices by making other arrangements that work for you. Accommodation will be different for each person and depends on a person's unique needs. Some examples of accommodations include: increased flexibility in work hours or break times; providing sign language interpreters for persons who are deaf so they can participate in meetings; and job restructuring, retraining or assignment to an alternative position.

- Accommodation must take place unless it causes undue hardship. Three factors are looked at to determine if there is undue hardship: cost; whether other sources of funding are available; and health and safety requirements. For instance, your employer may claim undue hardship on the basis of a health and safety risk if you are a truck driver but taking medication that makes you drowsy while driving.

Is mental illness considered a disability?

- Yes, mental illness is considered a disability under the *Code*. You cannot be discriminated against or harassed because of your mental illness, your status as a patient in a hospital, or any illness that you may have.

What can I do if I have been discriminated against or harassed?

- You have the right to bring a complaint to the Commission if you have been discriminated against or harassed because of your disability or any other prohibited grounds in the *Code*.
- Unfortunately, matters before the Commission can take a long time to be resolved, as long as 5 years.

What can you do about discrimination or harassment?

- If you think you have been discriminated against or harassed:
 - a) Tell the person who has acted offensively in a clear and firm way that you find the behaviour unacceptable and ask the person to stop. If you find this difficult to do alone, ask a friend or colleague to come with you.
 - b) It is important to keep a written record of:
 - what happened
 - when it happened
 - where it happened
 - what was said or done and who said or did it
 - who saw what happened
 - what you did at the time
 - c) If the discrimination or harassment happens at work, you should check to see if there is a union agreement or a company policy in place that forbids this kind of behaviour. If you are in a mental health facility, you should check with ward staff or your Patient Advocate to see if there is a discrimination and harassment policy. If there is, notify the proper authorities. If there is no policy in place to deal with your situation and the person does not stop the behaviour, call the Commission for confidential advice.

How do I file a complaint with the Commission?

- You can call the Commission from Monday to Friday during office hours at 1-800-387-9080. People with a hearing disability may call their TTY at 1-800-308-5561. Further information is available on their website at <http://www.ohrc.on.ca/en>. Commission staff will tell you if your concerns are covered by the *Code* and how the complaint procedure works. Sometimes a human rights matter should be dealt with elsewhere. For example, if a union exists at your workplace, the union may be able to deal with your complaint.
- Commission staff will ask for your name, address and telephone number and will send you a package with a form, called the Human Rights Complaint Form, for you to fill out and return. After you return the completed complaint form, it will be sent to the person(s)/company about whom you are complaining.
- You should file your complaint **within 6 months** of the last incident of discrimination. Otherwise, the Commission may not deal with your complaint.
- When you file a complaint, the Commission will work with you and the person/company you have filed against to try and resolve the complaint through mediation.
- If it is not possible to successfully resolve the complaint through mediation, the Commission will begin an investigation.
- After the investigation, you and the other parties will be given another chance to resolve the complaint by meeting together with the investigator. This is called conciliation.
- If conciliation does not work and there is sufficient evidence to support your case, the Commission has the authority to refer your complaint to the Ontario Human Rights Tribunal for a decision.
- The Commission is neutral – it does not take sides in the complaint. The Commission will help you with questions about the complaint procedure. However, if you require legal advice, please contact a lawyer.

Can the Human Rights Commission refuse to accept my complaint?

- The Commission has the ability to refuse complaints if they do not believe that the matter relates to their work or if they believe it is not a valid complaint.

Do I have any other legal options if I have filed a complaint with the Human Rights Commission?

- Yes, there may be other legal routes available to you instead of, or in addition to a human rights complaint. However, a complaint may impact on other options. You should speak to your lawyer about the best process for you.

Questions?

- If you have questions, contact your local Patient Advocate or call the central office of the Psychiatric Patient Advocate Office at 1-800-578-2343.