

Fact Sheet

Policy on preventing sexual and gender-based harassment

What is sexual harassment?

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

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

What is gender-based harassment?

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

Example: A grade 9 male student has many female friends and is more interested in the arts than athletics. A group of boys at his school repeatedly call him “fag,” “homo,” “queer” and other names.

Unlike some other forms of sexual harassment, gender-based harassment is not generally motivated by sexual interest or intent. It is more often based on hostility and is often an attempt to make the target feel unwelcome in their environment. In some cases, gender-based harassment may look the same as harassment based on sexual orientation, or homophobic bullying. With the addition of the new grounds of “gender expression” and “gender identity” to the *Code*, many claims alleging gender-based harassment may also cite discrimination and/or harassment based on gender expression. Depending on the circumstances, it may be appropriate to cite gender identity as well.

Forms of sexual harassment

Sexual harassment can include:

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

Examples of sexual and gender-based harassment:

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

Sexual harassment is against the law

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

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

The *Code* prohibits reprisal or “payback” where a person raises issues or complains of sexual harassment. Reprisal includes such things as being hostile to someone, excessive scrutiny (for example, at work), excluding someone socially or other negative behaviour because someone has rejected a sexual advance or other proposition (such as a request for a date).

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

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

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

Who is affected?

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

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

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

Costs of sexual and gender-based harassment

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

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

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

