

The Discrimination & Harassment Policy can be viewed at:

<https://secretariat.mcmaster.ca/app/uploads/Discrimination-and-Harassment-Policy.pdf>

Anyone wishing to consult on the *Discrimination & Harassment Policy* can contact any of the following Intake Offices:

1. **Human Rights & Dispute Resolution Program, Equity and Inclusion Office** (All Community Members)
2. **Student Support & Case Management Office (SSCM), Student Affairs** (Students)
3. **Employee and Labour Relations (ELR), Human Resources Services** (Faculty and Staff members)
4. **Faculty of Health Sciences (FHS) Professionalism Office** (FHS Community Members)

The Intake Offices share responsibility for assisting with Early Resolution, and the intake of Complaints relating to Discrimination and/or Harassment.

## Recognize, Respond, Refer

All Community Members are responsible for contributing to an environment that is free of Discrimination and Harassment.

In order to appropriately support an individual who reports a potential violation of the Discrimination & Harassment Policy, community members are not expected to be experts, but rather to “recognize, respond, and refer”.

### Recognize

Does the concern fall under the Discrimination and Harassment Policy, based on:

- The understanding of the person with the concern. The person may say that they have been harassed, bullied, and/or discriminated against.
- Your preliminary judgment. Refer to the definitions of discrimination, harassment, sexual harassment and poisoned environment. Pay attention to words such as hostile, toxic, bullying, belittling, demeaning, humiliating.
- Related Policies/Codes. General misconduct, violence, threats of violence, sexual assault, and other Criminal Code matters do not fall under the Policy. Sexual harassment and other forms of sexual violence may fall under the *Sexual Violence Policy*.

### Respond

Listen and provide appropriate advising on confidentiality and reporting options.

- Ensure the safety of individual and offer supports as applicable.
- Advise on Confidentiality and the Limits to Confidentiality.
- Practice interactive listening to make the person with the concern feel heard.
- Advise on reporting options and ask the person with the concern what they want to do.
- Ask the person with the concern what they want to do.

They can choose:

1. Early Resolution (Supervisor can assist with this, or an Intake Office)
2. Reporting (under the Policy and includes filing a Complaint, and/or Early Resolution facilitated through an Intake Office)
3. Criminal Report
4. Other External Options

### Refer

- Refer the person to an appropriate supervisor and/or refer them to an appropriate Intake Office.
- Consult with an Intake Office for advice and guidance on how to proceed. You do not necessarily need to provide identifying information in this initial consultation.
- Report to an Intake Office when a matter is resolved or is unable to be resolved.

# Definitions

## Discrimination

- Differential treatment based on a prohibited ground
- Imposing burdens or denying benefits, based on any of the prohibited grounds articulated in the Human Rights Code
- Discrimination may take obvious forms, or it may happen in very subtle ways. It may involve direct actions that are discriminatory on their face, or it may involve rules, practices or procedure that appear neutral, but disadvantage certain groups of people (Systemic Discrimination)
- Even if there are many factors affecting a decision or action, if Discrimination is one factor, then that is a violation of the Policy

### Grounds articulated in the Ontario Human Rights Code:

- Age
- Ancestry
- Colour
- Race
- Citizenship
- Ethnic origin
- Place of origin
- Creed
- Disability
- Family status
- Marital status (including single status)
- Gender identity
- Gender expression
- Receipt of public assistance (in housing only)
- Record of offences (in employment only)
- Sex (including pregnancy and breastfeeding)
- Sexual orientation.

**Did you know that when Investigations reveal broader systemic issues** to be addressed (regardless of whether or not there has been a finding of Discrimination and/or Harassment) appropriate intervention measures may be recommended by Decision-Makers and /or the AVP Equity and Inclusion?

## Harassment

- A course of vexatious comments or conduct
- Known or ought reasonably to be known to be unwelcome
- “Vexatious” comment or conduct is comment or conduct made without reasonable cause or excuse
- Harassment includes Sexual and/or Gender-Based Harassment and Workplace Sexual Harassment

## Sexual Harassment

- Course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome on the basis of:
  - Sex
  - Sexual orientation
  - Gender identity
  - Gender expression

## Poisoned Environment

- A Poisoned Environment means an environment where harassing and/or discriminatory conduct is found to be sufficiently severe, intimidating, hostile, offensive, and/or pervasive to cause significant and unreasonable interference to a person’s study or work environment
- Although a person may not be the target of the conduct, a person may feel the effects of certain harassing or discriminatory conduct at their place of work or study

# Options for Community Members who believe there has been a violation of the Discrimination and Harassment Policy:

## 1. Early Resolution:

Individuals may inform/seek assistance from their Supervisor (or person who has formal oversight of their area), or from an Intake Office, to help address the situation.

Options for early resolution may include some fact-finding discussion, clarification of the issues, facilitated conversations, coaching, reconciliation, workplace restoration, settlement conferences, restoration processes, and mediation.

You are encouraged and welcome to contact an Intake Office for consultation. The Intake Office can also assist with documenting the steps you have taken through Early Resolution.

**Community Members who have experienced unwelcome comment or conduct** by another person are encouraged, although not obliged, to make it known to the other person that their behaviour is unwelcome. In situations where it is believed that addressing the other person could lead to an escalation of the comment or conduct, or to safety risks, this approach is not recommended. If the problem is not resolved, or if the Community Member feels they cannot speak directly to the other person, they should notify an appropriate Supervisor and/or intake office (such as the EIO) within the University of the matter.

## **Competing Human Rights (The Ontario Human Rights Commission's Policy on Competing Human Rights):**

There may be times when conflicts arise as an individual or group tries to enjoy or exercise a right or interest at school, work or in business when those rights or interests are, or appear to be, in conflict with the rights or interests of others.

### **STAGE ONE: Recognizing competing rights claims**

**Step 1:** What are the claims about?

**Step 2:** Do claims connect to legitimate rights?

- a) Do claims involve individuals or groups rather than operational interests?
- b) Do claims connect to human rights, other legal entitlements or bona fide reasonable interests?
- c) Do claims fall within the scope of the right when defined in context?

**Step 3:** Do claims amount to more than minimal interference with rights?

### **STAGE TWO: Reconciling competing human rights**

**Step 4:** Is there a solution that allows enjoyment of each right?

**Step 5:** If not, is there a "next best" solution?

### **STAGE THREE: Making decisions**

Decisions must be consistent with human rights and other law, court decisions, human rights principles and have regard for OHRC policy.

## 2. Reporting (Option for Early Resolution or Complaint)

A Report occurs when an individual determines that they wish to pursue an official Complaint through one or more of the following avenues:

- A. Early Resolution under the Policy;
- B. Complaint to the University under the Policy;
- C. Criminal Report through the justice system;
- D. Other reporting options external to the Policy.

### Options Chart

#### EARLY RESOLUTION

Individuals may seek assistance from their Supervisor (or person who has formal oversight of their area) or from an Intake Office to help address the situation.

#### CRIMINAL REPORT

When an individual files a criminal report with a police service or with [Security Services](#). Filing a criminal report with Security Services will result in a report to Hamilton Police Services.

#### OTHER EXTERNAL OPTIONS

Options external to the University (e.g. civil litigation or Ontario Human Rights Code provisions) or other options external to this Policy (e.g. grievance provisions of applicable collective agreements)

#### COMPLAINT

A Complaint can be initiated through completion of an Incident Report submitted to a Supervisor, or through submitting a written Complaint through one of the Intake Offices (listed above) making an allegation of Discrimination and/or Harassment because they wish to initiate a University process, which may require an investigation and finding of facts.

#### VOLUNTARY RESOLUTION

Attempting a resolution of a Complaint at any time **before** the completion of an Investigation.



#### A. Early Resolution (voluntary):

In certain circumstances, a Complainant and Respondent may be interested in attempting a resolution of a Complaint at any time before the completion of an Investigation.

Early Resolution may be facilitated by a Supervisor and/or an Intake Office, and the methods may include fact-finding discussions, clarification of the issues, facilitated conversations, mediation, coaching, voluntary no contact agreements, reconciliation, restoration processes, workplace restoration processes.

A meeting between the Complainant and the Respondent will not be a requirement for Early Resolution.

The following conditions must be present before considering if Early Resolution is a viable option:

- a) the University is able to meet its legal responsibilities, including those pursuant to the *Occupational Health & Safety Act*; and
- b) the Complainant and the Respondent both agree to: (i) attempt to reach a resolution in good faith; (ii) the methods to be used to seek resolution; and (iii) the terms of what would constitute resolution.

## **B. Complaint**

Community Members may choose to contact any one of the Intake Offices to make a Complaint pursuant to the Policy.

A Complaint is made when an individual submits an Incident Report to their Supervisor, or a written statement of Complaint to an Intake Office, making an allegation of Discrimination and/or Harassment because they wish to initiate a formal University process, which may require an investigation into the allegations and finding of facts.

If an individual wishes to file a Complaint of Discrimination and/or Harassment for the University to address, they must contact an Intake Coordinator in one of the Intake Offices.

Any Community Member who is the subject of an allegation under the Policy will be assisted by an Intake Office who will ensure that they receive support and guidance, and are in receipt of relevant information, services and supports relating to the Policy and Procedures.

Respondents have the right to know the case against them, and to produce any relevant documentation, evidence, or other information, and identify witnesses to the Investigator in response to any allegations.

The Intake Coordinators are responsible for:

- ensuring that Complainants are aware of the options available to them in seeking a response
- assisting Complainants in understanding what may be involved in, and what may result from, each of the options; and
- assisting a Complainant who wishes to move forward with completing a Complaint Intake Form, which includes a description of: what happened; who was involved in the incident; when and where the incident occurred; who (if anyone) saw or heard the incident, or saw or heard something of relevance prior to or after the alleged incident(s) of Discrimination and/or Harassment.

### **Time Limitations for Bringing Forward a Complaint**

Individuals are encouraged to report a Complaint at the earliest opportunity but must do so within one year of the date on which the incident of Discrimination and/or Harassment is alleged to have occurred. If there was a series of incidents it must be reported within one year of the date of the last event.

However, if the Response Team is satisfied there are compelling reasons and/or extenuating circumstances, or where a Complainant engages the Policy and the Sexual Violence Policy and the allegations cannot be separated from one another, Complaints may be pursued outside of this timeframe.

### **Reprisal**

The University prohibits reprisal or threats of reprisal against any person who, sincerely and in good faith, makes use of the Policy or participates in any process held under its jurisdiction.

### **Interim Measures and Ongoing Support of All Parties**

At any stage in the proceedings under the Policy it may be necessary to take Interim Measures in order to safeguard the environment of Community Members who are involved or may be affected. Interim Measures shall not be construed as evidence of either guilt or a finding of violation of the Policy, or as an affirmation of innocence/finding of non-violation of the Policy.

If implemented, Interim measures will be reviewed on an ongoing basis throughout the proceedings to ensure they remain necessary and appropriate in the circumstances.

## **C. Criminal Report**

A Criminal Report is made when an individual files a report of an incident with a police service or with Security Services. Filing a Criminal Report with Security Services will result in a report to Hamilton Police Service.

## **D. Other External Options**

Individuals may exercise other University options external to this the Policy (e.g. the grievance provisions of applicable collective agreements, or other options external to the University (e.g. through civil litigation or Ontario Human Rights Code provisions).

# Confidentiality and its Limits

Individuals may speak in confidence to an Intake Coordinator, subject to the provisions of this section and the limitations below.

Confidentiality refers to the obligation of an individual or organization to safeguard entrusted information. The practice of confidentiality includes obligations to protect information from unauthorized access, use, disclosure, modification, loss, or theft.

The University will share identifying information only in circumstances where it is necessary in order to address safety concerns or to satisfy a legal reporting requirement. In such circumstances, the minimum amount of information needed to allow such concerns to be addressed, or to meet such requirements, will be disclosed.

Such circumstances include those where:

- a)** an individual is at risk of harm to self;
- b)** an individual is at risk of harming others;
- c)** there are reasonable grounds to be concerned about risk of future violence or the safety of the University and/or broader community;
- d)** disclosure is required by law, for instance, suspected abuse of someone under the age of 16, reports of intimate partner/domestic violence or to comply with the Occupational Health and Safety Act, the Workplace Safety and Insurance Act, or with human rights legislation; and/or
- e)** to comply with the reporting requirements of regulatory bodies and/or professional licensing bodies.

\* Some offices and Community Members have additional limitations to confidentiality because of their particular reporting requirements or professional obligations.

Where there are reasonable grounds to be concerned about risk of future violence or the safety of the broader community or the public, or where the University is otherwise obligated to do so, the University may report the incident to Hamilton Police Services.

In these situations:

- a)** the relevant Decision-Maker will be responsible for making the decision to disclose information to Hamilton Police Services
- b)** the name of the Respondent, if known, will be shared; and
- c)** the name of the Complainant will not be shared without their consent, unless doing so would address a reporting obligation or mitigate a safety risk.

## **Where there are circumstances that constitute Limits of Confidentiality,**

Community Members are expected to immediately inform their direct supervisor and/or an Intake Office. If a Community Member is unsure about the commitment and limits to confidentiality, they should consult with an Intake Office.

## **Support for the University Community**

- Equity and Inclusion Office
- Faculty of Health Sciences Professionalism Office
- Security Services
- Chaplaincy Centre

## **Additional Support for Students**

- Student Wellness Centre (personal counselling and medical services)
- Student Support & Case Management (support and guidance about the Code of Student Rights and Responsibilities)
- Indigenous Student Services (community support and resources for Indigenous students)
- Women and Gender Equity Network, McMaster Student Union (peer support and resources)
- Graduate Students Association Health & Dental Plans (health benefits include access to psychological counselling in the community)

## **Additional Support for Staff and Faculty**

- Union or Association
- Employee & Labour Relations
- Employee and Family Assistance Program (access to professional counsellors, legal guidance and other supportive services available to staff and faculty)

## **Support in the Broader Community**

- Good2Talk (24/7 phone support for students offered by professional counsellors)
- Sexual Assault/Domestic Violence Care Centre
- Hamilton Police Services – Victim Services Branch
- John Howard Society and/or Elizabeth Fry Society (for individuals in conflict with the law)

## **Independent Resource**

- Ombuds Office provides an independent, impartial, and confidential process through which students may pursue a just, fair and equitable resolution of a University related concern.