



ONTARIO NURSES' ASSOCIATION

Human Rights and Equity A Guide for ONA Members

August 2021

The Ontario Nurses' Association (ONA) is the union representing 68,000 registered nurses and health-care professionals, as well as more than 18,000 nursing student affiliates, providing care in hospitals, long-term care facilities, public health, the community, clinics and industry.

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ONA STATEMENT OF BELIEFS

Equity, Diversity and Inclusion

The Ontario Nurses' Association (ONA) believes that every member has the right to equal opportunity and full participation in the workplace and in the union. ONA recognizes and values the diversity of its membership and will work to promote equity and diversity in the workplace and in the union. It is the union's responsibility to see that diversity is reflected in its leadership.

Diversity is about acknowledging differences that can impact on the fair and equitable treatment of people. Diversity can include differences in sex, age, race, ethnicity, language, religion and spiritual beliefs, culture, physical or mental ability, socio-economic status, sexual orientation, gender identity and gender expression, family status, and education.

To achieve its commitment, ONA will strive to:

- Provide and promote education with respect to the human right values of equity, diversity and inclusion.
- Promote awareness of the diversity of our membership and the needs of diverse groups.
- Integrate diverse perspectives throughout ONA's educational programs and communications.
- Implement initiatives to develop the leadership skills of members from under-represented groups in ONA's leadership.
- Identify barriers to equal opportunity and full participation and develop effective policies and procedures to eliminate these barriers.
- Provide an inclusive environment that recognizes members' differences.
- Ensure that services, organizational structures, activities and policies include and address the needs of diverse members.

Discrimination, Harassment, Bullying and Accommodation

ONA believes that every member has the right to be treated with dignity and respect.

ONA is committed to working towards the elimination of all forms of discrimination and harassment in the workplace and in the union. This includes discrimination and harassment based on grounds prohibited in the *Ontario Human Rights Code*, which are race, ancestry, place of origin, colour, ethnic origin, citizenship, creed (religion), sex (including pregnancy), sexual orientation, gender identity and gender expression, family status, age, record of offences, marital status, family status and disability. ONA will also work to eliminate personal harassment and workplace bullying (*Code* and non-*Code* harassment).

Accommodation may be required when dealing with members' needs related to disability, religion, family status, pregnancy or other grounds in the *Human Rights Code*. ONA is

committed to pursuing accommodation in the workplace and providing accommodation at union functions.

To achieve its commitment, ONA will strive to:

- Provide educational programs and communications addressing discrimination, bullying, Code and non-Code harassment and accommodation issues.
- Conduct strategic collective bargaining on discrimination, bullying, Code and non-Code harassment and accommodation issues.
- Address breaches of members' rights through the grievance and arbitration procedure.
- Advocate for effective workplace policies and complaint investigation procedures.
- Provide policies and procedures for the investigation and resolution of membership complaints.
- Provide support mechanisms for members experiencing discrimination, bullying and Code and non-Code harassment.
- Provide a supportive and welcoming environment for members requiring accommodation.
- Provide services, organizational structures, activities and policies concerning human rights and equity issues.

PURPOSE OF THIS GUIDE

This guide provides a general overview of many aspects of human rights and equity and will help answer questions that you may already have.

Specifically, it provides:

- Information on the rights and responsibilities of employers, unions and employees.
- Concrete examples to illustrate the commentary.
- Definitions of many human rights and equity terms.
- Information on filing complaints under your employer's workplace policy.
- Information on filing grievances under your collective agreement.
- Information on available ONA resources, how you can contact ONA offices, ONA's Human Rights and Equity Team and the Ontario Human Rights Tribunal.

This guide is only an overview. Your Bargaining Unit's Human Rights and Equity Representative, Bargaining Unit President, Labour Relations Officer and ONA's Human Rights and Equity Team can assist you further.

THE ONA HUMAN RIGHTS AND EQUITY TEAM

In 1997, ONA established a Human Rights and Equity Team, and you will see many references to the team throughout this guide.

The team is comprised of the following members:

- Chair: Vice-President, Human Rights and Equity Portfolio.
- Designated Membership Equity Groups:
 - Indigenous Members.
 - Members with Disabilities.
 - Francophone Members.
 - Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Two-Spirit Members (LGBTQI2S).¹
 - Racialized Members.

Note: Every effort is made to ensure there are members representing each designated equity group.

- ONA Staff:
 - Human Rights and Equity Specialist.
 - Administrative Assistant.
 - Project Manager, Human Rights and Equity Team

As part of its mandate to promote ONA's development as diverse, inclusive and equitable organization, the Human Rights and Equity Team deals with all issues covered by the *Ontario Human Rights Code* and other areas of disadvantage.

For further information on ONA's Human Rights and Equity Team, visit the Human Rights and Equity section of the ONA website at www.ona.org/hre.

See the resources listed at Section 4 of this Guide for specific information on how to contact the Human Rights and Equity Team.

¹ Acronym used by Egale Canada as of 2019 based on a national survey they conducted. See <https://egale.ca/about/>. Note that these acronyms evolve over time and some terms can be used interchangeably. For example, "Q" can be interpreted to mean queer or questioning. "T" can be interpreted as transgender or transitioning.

THE ONA ANTI-RACISM ADVISORY TEAM

Mandate/Terms of Reference

ONA stands in solidarity with Black, Indigenous and People of Colour communities and allies in Canada and around the globe calling for justice. The equal treatment of our members, and the freedom from all forms of racism, discrimination and harassment in the workplace are core tenets of our union. ONA's priority is to continue to take proactive steps in the short- and long-term to address and take action against racial discrimination. ONA is committed to learning and unlearning racism at all levels of the organization.

Scope of Work

All work of this Team is recommendatory in nature and subject to Board approval

- Recommend to the Board annually a work plan of deliverables for the Team.
- Recommend proactive steps in the short- and long-term to address and take action against racial discrimination.
- Work actively with Board members, staff and members to take proactive and corrective steps to facilitate more opportunities to name, address and educate about anti-racism and anti-oppression.
- Other projects as identified by the ONA Board.

Composition

- Chair of Committee - ONA Board member with HRE Portfolio.
- Nine (9) members who have responded to an Expression of Interest:
 - At least three Black members.
 - At least three Indigenous members; and
 - Up to three members from other racialized communities
- President and CEO serve as ex-officios.
- Staff support:
 - Human Rights & Equity Specialist.
 - Business Manager, Human Resources.
 - 2-3 Subject matter experts, as necessary.

For further information on ONA's Anti-Racism Advisory Team, visit the Human Rights and Equity Section of the ONA website at www.ona.org/hre.

See the resources listed at Section 4 of this Guide

SECTION 1: HUMAN RIGHTS

The Need for Human Rights Laws

“To deny people their human rights is to challenge their very humanity.”

~ Nelson Mandela ~

The need for laws to protect human rights grows out of a global history of marginalization and oppression. When we devalue or exclude people because of characteristics that they cannot change (such as race) or characteristics they can change only at great personal cost (such as religion), the stage is set for inequality.

Human rights continue to be a global issue. Legislative and policy responses such as the *Universal Declaration of Human Rights*, the *Canadian Charter of Rights and Freedoms* and the *Ontario Human Rights Code* show that a growing commitment to the equitable and humane treatment of all people is a major concern on the world stage.

Human rights laws in Canada and Ontario provide protection for members of specific, equality-seeking groups. Without these laws, the right to full participation in society would not be achieved. We know this because of the history of each of these groups.

History provides us with insights into the profound effects of discrimination that linger in the values and beliefs of our society. The need for human rights laws and related initiatives in Canada are rooted in history.

Current laws demonstrate the value we place on ensuring, creating and maintaining a society free of discrimination. To create such a society, we must recognize the realities that interfere with this goal. Canada has its own history of discrimination against those people currently protected by the law. Many of these groups – for example, individuals with disabilities, racialized Canadians, Indigenous People, the LGBTQI2S (lesbian, gay, bisexual, transgender, queer, intersex, two-spirit) community, and women – still struggle against systemic inequality and discrimination.

We can move forward towards the creation of a just society if we are able to look back and acknowledge the shadows that impede our progress.

Mary Seacole, born in Jamaica in 1805, was an unsung heroine of the Crimean War. Without waiting for Florence Nightingale, the woman most of us believe to be the first nurse, to arrive in the Crimea, she set out onto the battlefield to nurse the wounded. She arrived before Miss Nightingale and stayed longer, and yet history has forgotten her contribution to the nursing profession.

The following snapshots highlight the need to establish and protect the rights of vulnerable groups within our society:

- *A Disparate Impact*, the second 2020 interim report in the Ontario Human Rights Commission’s inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, confirms that Black people are more likely than

others to be arrested, charged, over-charged, struck, shot or killed by Toronto police.

- The Canadian Truth and Reconciliation Commission and the National Inquiry into Missing and Murdered Indigenous Women and Girls have exposed the ongoing crisis of inequality facing Indigenous Canadians and, in particular, Indigenous women and two-spirit people. Both reports identify colonialism and a century of Canadian policy dedicated to eliminating Indigenous communities and culture, as the root cause of this inequality, cultural genocide and genocide. The discovery of 215 unmarked graves of Indigenous children at a residential school in Kamloops has reignited awareness and a call for action regarding of Canada's painful history.
- Disability is the most common ground of discrimination claimed at the Ontario Human Rights Tribunal. In the union context, failure to accommodate disability is the most frequently filed grievance claiming a violation of the *Ontario Human Rights Code*. Employers are required to accommodate up to the point of undue hardship. Persons with disabilities – physical, learning and mental – continue to be excluded from employment and participation in society in general. Workers with mental disabilities have the lowest employment rates and often face significant social stigma from employers and colleagues.
- Women continue to earn less than men, though gains are being made by initiatives such as pay equity legislation. Indigenous and racialized women face an even greater pay gap: Indigenous women earn an average of 65 cents to the dollar earned by non-Indigenous men.
- Violence against women continues to be a pressing issue. In Canada in 2020 a woman or girl was killed every 2.28 days, most commonly by family members or intimate partners. (“#CallitFemicide, Understanding Sex/Gender related killings of women and girls in Canada”).
- Again, this problem is particularly severe for Indigenous women. Indigenous peoples are more likely to experience violent victimization than non-Indigenous peoples. More specifically, Indigenous women and girls are at a disproportionate risk and face among the highest rates of violent and non-violent victimization of all population groups in Canada (*Allen 2020; Boyce 2016; Perreault and Simpson 2016*).
- Sexual harassment and assault is a gendered issue and a major barrier to women's equality. One in three Canadian women will experience some form of sexual assault in their lifetime.
- Many First Nations continue to experience chronic water issues, even when neighboring municipalities enjoy access to safe, clean and reliable drinking water. These challenges are compounded by, and partially a result of, historical injustices First Nations face as a result of the legacy of colonialism, forced relocation, residential schools and systemic racism in Canada. (*Glass Half Empty? Year 1 Progress Toward Resolving Drinking Water Advisories in Nine First Nations in Ontario © February 2017 David Suzuki Foundation*).

- Indigenous peoples in Canada experience the highest levels of poverty: A shocking 1 in 4 Indigenous peoples (Aboriginal, Métis and Inuit) or 25% are living in poverty and 4 in 10 or 40% of Canada's Indigenous children live in poverty. (<https://www.povertyinstitute.ca/poverty-canada>)
- In 2017, hate crimes motivated by hatred of a race or ethnicity represented 43% of all hate crimes, followed by those targeting religion (41%) ([Table 1](#)). Crimes motivated by hatred of sexual orientation accounted for 10% of hate crimes, with those targeting other factors such as language, disability, age, and sex comprising 6%. (*The Canadian Centre for Justice Statistics, April 30, 2019*).
- Joyce Echaquan, a 37-year-old Atikamekw mother of seven, writhing in pain, filmed herself on Facebook live as a nurse and an orderly were heard making derogatory comments shortly before her death in September 2020 at a hospital in Joliette, Quebec, northeast of Montreal. The inquest into her death exposed in grim detail the racist and neglectful hospital treatment, and the insecurity of her fellow Atikamekw and other Indigenous people when facing the medical system. Ms. Echaquan's complaints of pain had been dismissed, greeted with racist comments, misdiagnosed as withdrawal from painkillers, and then further misdiagnosed as a psychotic episode. The inquest heard that Echaquan had died of excess fluid in the lungs, likely caused by heart failure.
- Since the World Trade Centre attacks on September 11, 2001, the rise of Islamophobia has led to increasingly negative portrayals of Muslims in the media. Racial profiling and other types of discrimination ascribing the behaviour of individuals to a group has the impact of damaging everyone in that group. Increasingly, the rights of Muslim individuals to abide by their religious beliefs are being attacked.
- A Rise of Hate: White supremacy and far-right extremist groups are on the rise in Canada and directly threaten the safety of minority communities, including the Muslim community. Since the 2017 attack on the Quebec City mosque, anti-Muslim hate crimes have been on the rise and online hate is creating an environment of fear and division. (National Council of Muslim Canadians <https://mk0nccmorganizadbkcm.kinstacdn.com/wpcontent/uploads/2019/09/NCCM-2019-Federal-Elections-Guide>).
- Canadian health-care stakeholders have identified racism as a public health crisis and emphasized its profound effects on racialized groups. Systemic racism in health care exists because it has been normalized, ignored or denied with the burden placed on racialized groups to prove that discrimination has occurred.

As we strive towards equality and the formation and maintenance of a just society, discrimination against people belonging to distinct groups is an ongoing challenge. Our evolving human rights laws reflect our dedication to achieving this goal.

Human Rights Laws

International

“...recognition of the inherent dignity and of the equal and inalienable rights of all members of freedom, justice and peace in the world...”

~ *United Nations Universal Declaration of Human Rights (preamble)* ~

Universal Declaration of Human Rights

In 1948, the General Assembly of the United Nations unanimously adopted the *Universal Declaration of Human Rights*. It outlines the personal, civil, political, economic, social and cultural rights of all people.

The declaration establishes that all people are born free, equal in dignity and rights. Everyone is entitled to the rights and freedoms outlined regardless of distinctions of any kind, such as race, colour, sex, language, religion, political opinion, national or social origin, birth or other status.

The declaration protects such rights as:

- The right to work under just and favorable conditions, to protection against unemployment, to equal pay for equal work, and to form and join trade unions.
- The right to freedom of thought, conscience and religion, including religious practice, worship and observance.
- The right to equal access to public services.

Federal

The Canadian Charter of Rights and Freedoms

“The genuine pursuit of equality is a litmus test that gauges our success as a liberal democracy. Canada has affirmed its commitment to this pursuit by the inclusion of Section 15 of the Canadian Charter of Rights and Freedoms.”

~ *Judge Rosalie Silberman Abella* ~

The *Charter* forms part of the constitution of Canada and all federal and provincial laws must comply with its human rights guarantees. It is Canada’s most important law because it can render invalid or inoperative any laws, provincial or federal, that are inconsistent with its provisions.

Section 15 of the *Canadian Charter of Rights and Freedoms* guarantees that every person is equal under and before the law without discrimination on the grounds of race, national or ethnic origin, colour, religion, sex, age, mental or physical disability or other analogous grounds, such as sexual orientation. It recognizes that some groups in society are disadvantaged, and programs designed to remedy disadvantage are necessary and legal. Employment equity programs are consistent with the *Charter*.

Section 15 prohibits individual acts of discrimination against protected groups and systemic discrimination, which includes patterns of behaviour, policies or practices that are part of the social or administrative structures of an organization or government policy, and which create or perpetuate a position of relative disadvantage for groups identified under the *Charter*.

The *Canadian Human Rights Act*

“Every individual should have an equal opportunity with other individuals to make for himself or herself the life that he or she is able and wishes to have, consistent with their duties and obligations as a member of society.”

~ Section 2 of the Code ~

The *Canadian Human Rights Act (CHRA)* applies to federally regulated industries and government bodies, including federal departments, agencies and crown corporations, Canada Post, chartered banks, national airlines, interprovincial communications, telephone and transportation companies and other federally regulated industries, such as mining.

The grounds for discrimination covered by the *CHRA* include race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or pardoned conviction.

The social areas covered under the *CHRA* include employment, employee organizations, provision of goods and services, residential accommodation, discriminatory notices, harassment, and equal wages.

Provincial

The *Ontario Human Rights Code*

“Courage, partnership and innovation must prevail for us to reach our destination on the plateau of equality for all.”

~ Catherine Frazee, Former Chief Commissioner ~

The public policy of Ontario is to recognize the dignity and worth of all, to provide equal rights without discrimination, and to create a climate of understanding and mutual respect so that everyone feels a part of the community and can contribute to the development and well-being of the province.

The *Human Rights Code* (the *Code*) is Ontario's counterpart to the *Canadian Human Rights Act*. Both statutes are “quasi constitutional” legislation, meaning they supersede any other statute enacted by the legislature or Parliament. All Ontario laws must comply with the *Code*. The *Code* applies to most health-care facilities in Ontario.

The purpose of human rights legislation is not to find fault, but to eliminate discrimination and provide redress. It is meant to be preventative and remedial, rather than punitive. Human Rights legislation, such as the *Code* and the *CHRA*, exist to eliminate discrimination based on specific grounds (such as race, religion or sex) in a number of social areas (such as employment or contracts). Their purpose is to remedy and prevent discrimination and not necessarily to punish and find fault.

A remedy to a human rights application might include restoring the person to a position the individual would have held had the *Code* not been violated. It may consist of compensation for loss of earnings or job opportunities, or damages for mental anguish suffered as a result of the violation, as well as systemic remedies such as ordering diversity training and the development of policies and procedures.

The first comprehensive human rights law in Ontario was enacted in 1962. The *Human Rights Code* has been amended several times since then to meet the needs of the people of Ontario in the creation of a just society.

The *Ontario Human Rights Code* provides protection against discrimination by individuals in the private sector and by governments within the designated social areas as set out on the first chart in the next section. In this, the *Code* differs from Section 15 of the *Charter* (equality rights), which only regulates government action.

The Ontario Human Rights System is made up of three separate agencies:

- The Ontario Human Rights Commission works to promote, protect and advance human rights through research, education, targeted legal action and policy development.
- The Human Rights Legal Support Centre provides free legal help to people who have experienced discrimination under the *Code*.
- The Human Rights Tribunal is where human rights applications are filed and decided.

Prohibited Social Areas of Discrimination

The *Code* prohibits actions that discriminate against people based on a protected ground in the following protected *social* areas.

Services, Goods and Facilities 1	<p>These include government, public sector, the broader public sector, private sector, non-profit and community organizations that offer any type of service. Examples of the types of organizations deemed to provide services within this definition are hospitals, schools, stores, hotels, government offices, community and other organizations that are not established to meet cultural or other needs of a specific group otherwise prohibited by the <i>Code</i>. In other words, if any type of service is provided, discrimination is prohibited unless otherwise stated. If a patient/client believes they have been discriminated against by an ONA member, they could file a complaint under this section.</p>
Employment	<p>Employment does not simply cover getting a job. It refers to all aspects of an employment process, such as job advertisements, job applications, interviews, promotion, developmental opportunities, performance appraisals, termination and working conditions. It covers all employees, including unionized employees covered by a collective agreement. The <i>Code</i> states that every person has a right to equal treatment with respect to employment without discrimination or harassment on the basis of any of the 17 grounds of discrimination. The right to “equal treatment with respect to employment” covers every aspect of the workplace environment and employment relationship, including job applications, recruitment training, transfers, promotions, discipline, performance evaluations, dismissal and layoffs. Labour arbitrators have jurisdiction to interpret and apply the <i>Code</i>.</p>
Accommodation	<p>Accommodation refers to housing. It is illegal to discriminate against people based on their membership in a group protected under the <i>Code</i> in any matter related to obtaining, maintaining, and keeping a place to reside, except where a bathroom or kitchen is shared with the owner of the place of residence.</p>
Contracts	<p>Contracts are legal arrangements entered into by two or more parties. It is illegal to deny or qualify a contract on the basis of a person’s or persons’ membership in a group protected by the <i>Code</i>.</p>
Vocational Associations (Unions)	<p>A union cannot treat a member differently because that member belongs to a group protected under the <i>Code</i>.</p>

Not all unfair treatment and harassment is covered by the *Code*. It must be based on at least one *Code* ground and take place within one of the designated social areas to be protected.

The following chart is a list of prohibited grounds identified in the Ontario Human Rights Code. You will find that the majority of ONA collective agreements prohibit discrimination on broader grounds.

For example, Article 3.03 of the Hospital Central agreement states that "...there will be no discrimination...on the basis of race, creed, colour, national origin, sex, sexual orientation, marital status, family status, age, disability, religious affiliation or any other factor which is not pertinent to the employment relationship."

Prohibited Grounds of Discrimination

Race	Visible characteristics of skin colour, facial features, hair texture, etc. used to place people in categories such as “Black” or “White.”
Ancestry	A person’s family lineage.
Place of Origin	The geographical place of birth.
Colour	The colour of one’s skin.
Ethnic Origin	Characteristics of culture, religion, nationality, etc. shared by a large group of people so as to make them distinct in the combination of the above.
Citizenship	Legal citizenship of any nation.
Creed	Religious doctrine and practices followed.
Sex	The classification of people as 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. Under this ground, the <i>Code</i> prohibits discrimination because a woman is pregnant or may become pregnant.
Sexual Orientation	Sexual orientation is more than a status that an individual possesses. It is an immutable personal characteristic that forms part of an individual’s core identity. Sexual orientation encompasses the range of human sexuality from gay and lesbian to bisexual, pansexual, asexual and heterosexual orientations.
Gender Identity	<p>Is each 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.</p> <p>For most people, their sex and gender identity align. For some, it does not. A person may be born male, but identify as a woman, or born female, but identify as a man. Other people may identify outside the categories of woman/man, or may see their gender identity as fluid and moving between different genders at different times in their life.</p>
Gender Expression	<p>Is how a person publicly presents or expresses 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 people express their gender. Others perceive a person’s gender through these attributes.</p> <p>All people, regardless of their gender identity, have a gender expression and they may express it in any number of ways. For trans people, their chosen name, preferred pronoun and apparel are common ways they express their gender. People who are trans may also take medically supportive steps to align their body with their gender identity.</p>
Age	<p>Persons 18 years or over.</p> <p>Note: While changes to the <i>Code</i> ended mandatory retirement on the basis of age, certain provisions related to age may be exempt under the <i>Employment Standards Act</i>, such as benefits like accidental death and dismemberment, long-term disability and life insurance. Some special programs and benefits, such as seniors’ discounts or youth employment programs, deal with genuine age-related needs. Outside of these types of programs, it may be age discrimination when you are treated unfairly because of your age.</p>
Marital Status	The status of being married, single, widowed, divorced or separated, including the status of living with a person in a conjugal relationship outside marriage.
Family Status	A parent-child relationship.
Record of Offences	Any federal offence for which a pardon has been granted, or any record of provincial offences.

	Employers must look at a person's record of offences and consider whether the offence would have a real effect on the person's ability to do the job, and risk associated with them doing it.
Disability	Any degree of physical disability, infirmity or malformation; any developmental disability, learning disability or dysfunction in understanding or using symbols or spoken language; any mental disorder; anyone who has claimed Workplace Safety and Insurance Board (WSIB).

ONA Collective Agreements

Employees covered by an ONA collective agreement are protected against discrimination and harassment in the workplace in accordance with the provisions in the collective agreement and in the *Human Rights Code*.

In 2003, the Supreme Court of Canada issued a decision known as “*Parry Sound*,” which had the effect of incorporating human rights legislation into every collective agreement between unions and employers. The substantive rights and obligations of the *Code* are incorporated into collective agreements, and violations of the *Code* are violations of the collective agreement. Arbitrators must implement and enforce the substantive rights and obligation of the *Code* as if they were part of the collective agreement.

Pay Equity

Pay structures that compensate members of protected groups less for work of equal value are discriminatory and violate human rights laws. Pay inequality largely impacts women and, in particular, women facing intersecting grounds of inequality. Unequal pay structures may be intentional or may be the product of longstanding systemic bias against women, including undervaluing women’s work, denying women economic opportunities, and exploiting women’s limited options.

Pay equity is not just about paying women less for the same work. It also considers the systemic devaluation of the work traditionally performed by women. Our courts have recognized that “the more women are concentrated in a field of work, the less it pays.”² This undervaluing of women’s work contributes to women’s inequality in society, including the higher representation of women among Canadians living in poverty.

Canada’s Supreme Court described this as “systemic discrimination premised on the historic economic and social devaluation of women’s work compared to men’s work.”³ It stated that pay inequality “denies substantive equality to working women, entrenching and perpetuating their pre-existing disadvantage.”⁴

Pay Equity Act

The *Pay Equity Act* came into force in 1988 and applies to all employers and employees in Ontario, except for those that fall under federal jurisdiction and private employers with fewer than 10 employees and summer students. The purpose of the *Act* is to redress systemic gender discrimination in compensation or pay for employees working in female job classes in Ontario (s. 4(1)). The *Act* sets out the responsibilities and obligations of employers and unions with respect to pay equity, and it requires employers to establish and maintain pay equity (s. 7(1)).

The *Act* provides for three methods of comparison of job values to achieve pay equity.

² *Centrale des syndicats du Québec v Québec (Attorney General)*, 2018 SCC 18 at para 34.

³ *Centrale des syndicats du Québec v Québec (Attorney General)*, 2018 SCC 18 at para 24.

⁴ *Québec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 at para 40.

The first means of establishing pay equity across the same employer is by comparing male job classes to female job classes in the same establishment and is known as the “job-job” method of comparison.

The second method, called “proportional value,” determines the relationship between the value of the work performed and the job rates using a representative group of male job classes from one workplace.

The third method, called the “proxy methodology,” is available only to the public sector and broader public sector, and is used to achieve pay equity in workplaces where little or no men’s work is performed. Under this method, a key female job class in one employer’s workplace (the “seeking employer”) is compared to an analogous female job class in a different employer’s workplace (the “proxy employer”) where pay equity has already been achieved by way of the job-job comparison with a male job class.

ONA recently celebrated a significant win regarding the proxy methodology following a 15-year battle to maintain pay equity for RNs working in female-dominated workplaces. On March 9, 2021, Ontario’s Court of Appeal confirmed that ONA members in the proxy sector are entitled to a pay equity maintenance scheme that provides ongoing access to an external male comparator in the municipal homes for the aged, giving them an ongoing reference point to male work.⁵

Comparing female work to male work is the essence of pay equity and the Court’s majority recognized that such a comparison is foundational to the maintenance of pay equity even in the proxy sector where the workplaces are female dominated.

Not surprisingly, this decision was appealed by the employer group and the Attorney General of Ontario to the Supreme Court of Canada. However, in October of 2021, the Supreme Court ruled in ONA’s favour. ONA is meeting with legal counsel to determine next steps.

Equity, Diversity and Inclusion

Central to the human rights framework is the view that everyone should be given access to the same opportunities. The principle of equity acknowledges, however, that there are historically disadvantaged and underrepresented populations and that fairness regarding these unbalanced conditions is necessary to provide equal opportunities to all groups.

The dialogue around equity, diversity and inclusion is broad and growing.

Equity: This is an approach and a process that acknowledges the existence of systemic inequalities and introduces actions to proactively reduce if not remove, structural and cultural barriers to equal opportunity and inclusion. The principle of equity acknowledges that there are historically underrepresented or marginalized populations, and that fairness is necessary to provide equal opportunities to everyone.

⁵ *Ontario Nurses’ Association v. Participating*, 2021 ONCA 148. See also *Participating Nursing Homes v. Ontario*, 2021 ONCA 149.

Diversity: This refers to the representation of individual and group/social differences. These include but are not limited to race, ethnicity, gender, age, national origin, religion, disability, sexual orientation, socioeconomic status, education, marital status, language, physical appearance, etc. It also involves different ideas, perspectives and values.

Inclusion: This requires active and intentional efforts to create equal opportunity and promote full participation and sense of belonging for staff and membership at all levels of the organization. A climate of inclusion is made possible when tools and support are provided to identify and mitigate bias, including unconscious bias, respect differences, build empathetic relationships, manage conflict and promote allyship.

These terms overlap in that each address specific aspects of fairness and equality. Without equity, however, efforts to promote diversity and inclusion are not sustainable

We all have an active and intentional role to play in creating and maintaining a union environment for ONA membership that embraces our differences and values, includes, supports, and respects all people. We also must also do our part in promoting and advocating for equity, diversity and inclusion in the workplace.

There are many tools and strategies available for employers and unions to work together towards building equity within the workplace. These are the important components:

- Adopt an equity framework to identify the barriers to equity.
- Develop and implement a plan of action to remove barriers and promote equity.
- Provide education and support to reinforce the principles of equity, diversity and inclusion.
- Develop and implement an evaluation plan to monitor results.

Equality Versus Equity

There is a common misconception that equality and equity are interchangeable terms. Equality seeks to give everyone the same opportunities. The principle of equity, however, recognizes that each person has different circumstances and allocates the exact resources and opportunities needed to reach an equal outcome for that person. To treat everyone the same way is to deny the existence of systemic barriers. To take the position, for example that one should be 'colour blind' ignores the reality of racial discrimination.

Equity is concerned with the fair treatment, access, opportunity and advancement for all people, while at the same time striving to identify and eliminate barriers that prevent the full participation of some groups. It addresses the reality that there are historically underserved and underrepresented populations and that fairness regarding these unbalanced conditions is necessary to provide equal opportunities to all groups.

Equality and equity are inherently different but are interconnected. In order to create true equality of opportunity, equity is needed to ensure that everyone has access to the same opportunities. Equity does not undermine equality, but rather provides the means to achieve it.

Health Equity – The Social Determinants of Health

Health equity means that all people can reach their full health potential without disadvantage due to socially determined factors such as ability, age, culture, ethnicity, family status, gender, language, race, religion, sex, social class, or socioeconomic status.

Health inequities are health differences that are:

- Systematic, meaning that health differences are patterned, where health generally improves as socioeconomic status improves;
- Socially produced, and therefore could be avoided by ensuring that all people have the social and economic conditions that are needed for good health and wellbeing; and
- Unfair and/or unjust because opportunities for health and well-being are limited.⁶

ONA strongly supports achieving health equity in our health care system and advocates for the examination of policy issues through a 'social determinants of health' lens. The intersection of race, income, housing and other social determinants of health place Black and Indigenous communities at great risk, as we are seeing through the disproportionate impact of COVID-19 on communities with higher percentages of visible minorities. The Toronto Board of Health has recognized that anti-Black racism is a public health crisis.

The 2020 Chief Public Health Officer of Canada's Report stresses that while the pandemic has affected all of us the health impacts have been much worse for seniors, essential workers many of which are racialized, people living with disabilities and women. It reviews the inequities affecting these groups prior to the emergence of COVID-19 and how these inequities were exacerbated by the pandemic itself. The Report recognizes Canada's history of systemic racism and colonization and the role of social determinants of health in existing health inequalities among Canadians.

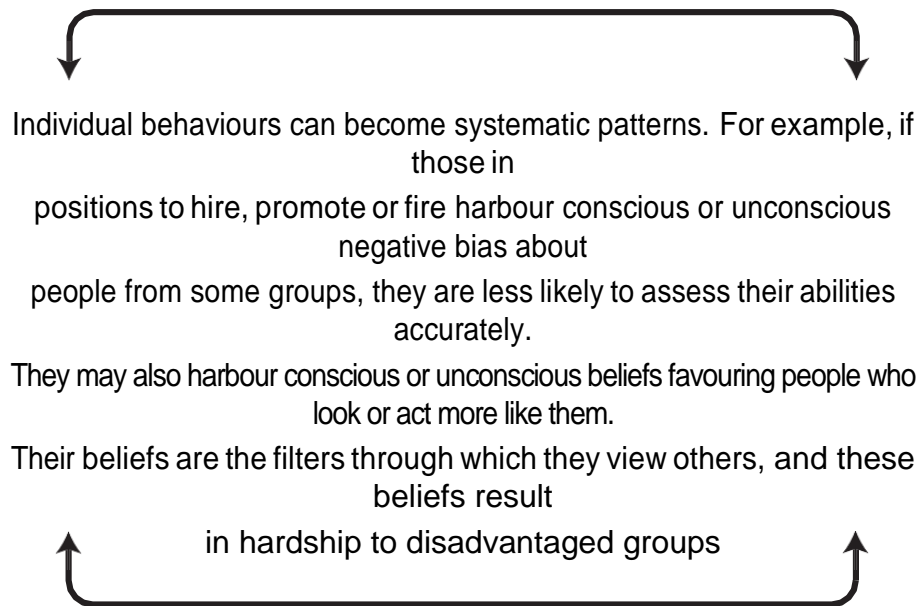
⁶ Health Equity Guideline, 2018 Ministry of Health and Long Term Care.

SECTION 2: DISCRIMINATION AND HARASSMENT

Discrimination

There is no definition of discrimination under the *Code*. In human rights case law, discrimination on the basis of any of the prohibited grounds is understood to be an act or practice that, intentionally or unintentionally, has the effect of imposing burdens, obligations or disadvantages on an individual or group or that withholds or limits access to opportunities, benefits and advantages available to others.

People are not born discriminating. The attitudes and beliefs that lead to it are learned. Discrimination can be unlearned. Simply put, these learned beliefs determine, in part, how people treat others from different groups.



Discrimination in the context of human rights means adverse treatment based on a personal characteristic of a group that has or is facing unjust prejudice or stereotyping. To establish discrimination under the *Code*, an employee must demonstrate the following three elements:

- They have a particular characteristic protected by the *Code* (a *Code* ground, e.g. disability).
- They have experienced adverse treatment or a negative impact within a social area such as employment (e.g. in losing a job posting or being denied educational opportunities).
- The protected characteristic was a factor in the adverse treatment or impact.

Once these three elements are established, an initial or “prima facie” case has been made out. In some cases, negative treatment based on a *Code* ground can be justified by a legitimate reason, such as it being undue hardship to accommodate a disability. An employer can defend their policy or practice if it is a legitimate operational requirement

that cannot be amended to accommodate the employee's needs (known as a *bona fide* occupational requirement).

Intent to discriminate is not a requirement of the legal test and the *Code* ground need not be the only cause of the adverse treatment. Additionally, in some cases only a combination of *Code* grounds draws out the discrimination. For example, a business may hire women or Indigenous men, but still legally discriminate against Indigenous women.

Types of Discrimination

Discrimination may occur in different ways.

Direct Discrimination

Most people are familiar with this type of discrimination. "Direct" discrimination happens when a person(s) discriminates against others because of their membership in a group protected under the *Code*. For example:

A nursing home supervisor feels that it is best not to hire "non-White" nurses. They believe that many of the residents in the institution are set in their beliefs and prejudices and don't want to be cared for by a racially diverse nursing group.

As the nursing home is a private institution, the supervisor is concerned about business. They believe that too many complaints from residents and their families will hurt the home's reputation and business.

Rather than dealing with this possibility, they have decided not to hire "non-White" nurses to provide patient care.

This supervisor is discriminating *directly*. As an individual in a position to employ people based on their nursing qualifications and skills, they have added another, unwritten job requirement. This is discrimination in employment based on race.

Adverse Effect Discrimination

Adverse effect discrimination occurs when a rule or requirement of a job that may appear neutral has an adverse effect when applied to a particular class of individuals. So, for example, mandatory height and weight requirements have been found to be discriminatory because they would exclude certain races or women, who could otherwise do the job. Similarly, workplaces with strict uniform guidelines may have an adverse impact on individuals and groups whose religion requires them to wear certain items, such as a turban, hijab or kippa. The employer is expected to accommodate the individual(s) in the group unless it can be shown that the needs of the individual(s) cannot be accommodated without undue hardship.

Systemic Discrimination

Systemic discrimination, on the other hand, is much more insidious. It is when attitudes towards or perceived characteristics of a particular group lead to discrimination. Historical examples of this are:

- The routine exclusion of women from the building trades because it was assumed that they could not handle the physical requirements of the job.
- The systemic relegation of women to low-paying menial jobs because of the perception that they were only going to quit to have children anyway.

As described in the pay equity section on page 12, the undervaluing of women's work is an example of systemic discrimination.

In the hospital sector, if racialized nurses have, in some cases, been disproportionately placed in long-term care units where the patient care is routinely more physically demanding, or if in an institution where a significant number of the nurses were racialized, but all management was White, we would have to consider systemic racial discrimination.

In the early 1990s, a group of racialized minority nurses at a large urban hospital were unjustly disciplined and some were fired. They – and ONA – believed they were disciplined because of systemic racism targeting Black women. Some of the alleged practices that led to the human rights complaints and grievances included:

- Conducting one reference check for White nurses and three for Black nurses.
- Streaming racialized nurses into areas of practice that offered little opportunity for advancement or professional development (chronic care versus acute care) and involved heavy workloads that often led to injury.
- Requiring Black nurses to provide doctors' notes on return from sick leave when others were not required to do so.
- Including personal and irrelevant information about family, place of origin and English proficiency in job applications and personnel files about Black nurses.
- Requesting that other nurses report information about Black nurses that could later be used against the Black nurses.
- Censuring Black nurses for speaking Creole amongst themselves, while other nurses who spoke their first language amongst themselves were not.
- Refusing to support Black nurses when they were racially harassed and abused by patients and their families.

ONA, the hospital and the Ontario Human Rights Commission reached a settlement, which included the following terms:

- The hospital would pay compensation to the nurses.
- The hospital would use a mechanism to address systemic discrimination.
- The hospital would set up a human rights committee.
- The hospital would educate all managers and staff on issues dealing with discrimination and racism.

Intersecting Grounds of Discrimination

Many people experience inequality on multiple grounds. It is crucial to be aware that often people's experiences are the product of many forms of discrimination. For example, racialized women face particular barriers to equality arising from both sexism and racism. By focusing on only one axis of discrimination, one may conclude that a workplace that provides opportunities to both Black men and White women is compliant with human rights legislation, and entirely miss the intersecting inequalities faced by Black women. As the Human Rights Tribunal of Ontario stated, "reliance on a single axis where multiple grounds of discrimination are found tends to minimize or even obliterate the impact of racial discrimination on women of colour who have been discriminated against on other grounds."⁵

As discussed in the Pay Equity section on page 12, the gender wage gap continues to pose a barrier to women's equality in Ontario. Based on the 2016 Census data on women's average annual earnings, Canadian women earn approximately 68 cents for every dollar earned by working men (a 32 per cent gender pay gap).⁷ The gap substantially increases when gender-based discrimination intersects with other forms of discrimination, including those forms often experienced by racialized women, Indigenous women, immigrant and migrant women, women with disabilities, elderly women, and LGBTQI2S women.

In Canada, the pay gap is approximately 56 per cent for women with disabilities, 55 per cent for immigrant women, 45 per cent for Indigenous women, and 40 per cent for racialized women.⁸ This data shows us that there is not one gender pay gap per se, but multiple pay gaps depending on the perspective you take. It is critical to view pay equity through an intersectional lens to gain a fulsome understanding of the extent of the pay gap and the way in which gender inequality intersects with other forms of inequality to create greater economic burdens for some women compared to others, and, in turn, to create appropriate solutions to close the gaps.

⁷ "Equal Pay Day is Coming!" Equal Pay Coalition, April 9, 2019, available online at <http://equalpaycoalition.org/wp-content/uploads/2019/03/OFL-Equal-Pay-Day-March-21-2019.pdf>.

⁸ *Ibid.* In Ontario, the overall pay gap is 29.3 per cent. For Indigenous women, the pay gap is 43 per cent; for racialized women, it is 38 per cent; and for immigrant women, it is 34 per cent (Equal Pay Coalition).

Harassment

Harassment means “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.” Threats, assault and sexual assault are forms of harassment and may further constitute criminal offences under the *Canadian Criminal Code*.

Harassment is one type of discrimination addressed by the *Code*. Though harassment can take many forms, the *Code* specifically prohibits harassment related to the grounds defined in the chart on page 11.

In most cases, harassment refers to a pattern of objectionable behaviour involving a series of incidents that may be similar or different in nature. In some cases, a single incident of vexatious behaviour may occur that is serious enough to amount to harassment.

Harassment may also include conduct or comments that are not directed at an individual, but which create a work environment that is intimidating, demeaning or hostile, for example, a nursing unit where derogatory comments are repeatedly made about Indigenous people.

Intention is not a necessary element of harassment. Even if a person is unaware that their behaviour is not welcome, the behaviour may constitute harassment if it can be said that a *reasonable person* in the same situation would have known that the behaviour was not welcome. In such a case, the person “ought reasonably to have known” that their behaviour was unwelcome.

Harassing behaviour does not have to include explicit reference to a prohibited ground. For example, singling someone out for harassment because of their race, ethnic origin or sexual orientation is unlawful, even if no reference is made to these factors.

It is important to note that an individual does not have to object to unwelcome behaviour for there to be a finding of harassment in violation of the *Code*. An individual who is a target of harassment may be in a vulnerable situation and concerned about the consequences of speaking out.

Harassment may be directed at a specific individual or at groups protected by the *Human Rights Code*. For example, if a coworker makes negative comments about lesbians and gays and you are a lesbian, you are being harassed. Even if the person thinks such comments are acceptable, it is reasonable to expect that they should know better. Such comments, whether made directly or in the presence of someone belonging to a protected group, “poison” the work environment.

A poisoned environment is created when discriminatory or harassing behaviours cause significant tension and disruption for the targeted individual or for others in a work environment. A poisoned environment can be a source of emotional and/or psychological stress and can adversely affect an individual’s ability to participate in union business or activities.

If you make comments or take actions that you know are unwelcome, you are harassing someone. If, for some reason, you think these comments or actions are harmless, it can be found that you should have known better, and that you were indeed guilty of harassment. The *Code* applies in situations where harassment takes place because of the target person's membership in a group defined as a prohibited ground under the *Code*. It does not apply to other forms of harassment.

Sexual Harassment

Sexual harassment in the workplace is specifically forbidden by the *Code*. Its most common form is the behaviour of men towards women; however, it can also occur between men, between women, or in the behaviour of women towards men. Sexual harassment may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the victims of the harassment.

Sexual harassment is a violation of the *Human Rights Code* because of its impact on the equality and dignity of the victim. Sexual harassment can negate the victim's worth and reduce their work value to a sexual object. It can make victims, most commonly women, feel unsafe at work. It can interfere with the target's workplace advancement and thereby perpetuate women's systemic inequality. Sexual harassment is an equality rights issue that must be taken seriously to advance meaningful equality rights.

The Supreme Court of Canada has stated:

When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.⁹

Some examples of persistent or repeated behaviour that is sexual harassment include:

- Sexual jokes causing embarrassment or offence.
- Leering, staring or making sexual gestures.
- Unwanted physical contact.
- Sexually degrading or obscene comments or displayed material.
- Sending sexual and/or offensive emails/texts/phone messages.
- Sexually degrading words to describe a person.
- Inquiries or comments about a person's sex life or sexual preferences.
- Unwelcome remarks about a person's clothing or physical appearance.
- Unwelcome sexual advances or propositions.
- An implied or expressed promise of a reward, benefit or advancement in return for sexual favours, or reprisal if such favours are not given.
- Unwanted contact or attention after the end of a consensual relationship.

⁹ *Janzen v Platy Enterprises Ltd*, [1989] 1 SCR 1252 at 1284.

- Verbal abuse or threats.
- Assault, including sexual assault.

Some examples of behaviour that may not be considered sexual harassment include:

- An occasional compliment or remark.
- Personality differences between people.
- Good natured jokes and jesting where both parties find the conduct acceptable.
- Romance and flirtation when both parties enter into a voluntary relationship.

Sometimes people may be confused about what kind of conduct is “reasonably known to be unwelcome.” The Human Rights Tribunal has clarified that the respondent cannot rely on gender stereotypes to justify their belief that the conduct was welcome, for example, claiming they believe that women say no when they really mean yes, or that women play “hard to get.”¹⁰

Protest or objection to the harassing conduct is not necessary to find sexual harassment. Many targets of harassment may feel afraid to speak out over fear of losing their job. In determining whether the sexual conduct was unwelcome, tribunals also consider the role of power imbalances. The greater the power imbalance, the greater the onus on the individual with the power advantage to ensure their actions are not unwelcome.

Touching another person in a sexual way without consent constitutes a sexual assault under the *Criminal Code*. In criminal law, it is illegal to touch another person sexually without receiving affirmative and voluntary consent at the time the touching occurs. Further, every sexual act requires new consent in law, in affirmation of the rights of every person to change their mind about their sexual partners and determine who touches their body, and how.

Personal Harassment

Personal harassment is harassment that is not based on any of the prohibited grounds in the *Human Rights Code*. It is any unwarranted conduct that is directed at and offensive to an individual or that has the effect of creating an intimidating, humiliating, threatening or hostile union environment.

The following types of behaviour, where repeated or occurring as part of a pattern of behaviour, could be considered personal harassment:

- Making derogatory comments, remarks or jokes.
- Derogatory name-calling.
- Ridiculing, taunting, belittling or humiliating another person.
- Displays of offensive or derogatory material (i.e. cartoons, pictures, computer screens).

¹⁰ *de los Santos Sands v. Moneta Marketing Solutions Inc.*, 2016 HRTO 271 at para 34.

- Use of profane, abusive or threatening language.
- Yelling, shouting or other physically intimidating behaviour.
- Withholding needed information, advice or resources.
- Isolating, excluding and/or subjecting another person to silent treatment.
- Damage to or interference with personal property.
- Verbal or physical assault.

Bullying

Bullying is a form of harassment. It is persistent and repeated behaviour that is offensive, insulting, intimidating, humiliating or abusive towards a person or group. Bullying is usually intentional in nature and an attempt to exert power or control over the target.

In the area of workplace bullying, the law is in a developmental phase. The rights and obligations of employees and employers will become more certain as more grievances are decided by arbitrators. Unionized employees may have protections rooted in occupational health and safety provisions and management rights provisions in a collective agreement. It is ONA's position that employers have a duty to ensure the psychological safety of workers, and must exercise managerial authority in a non-abusive, non-harassing manner. Employers must provide immediate, appropriate intervention to stop any workplace bullying.

For more information about bullying, visit the Human Rights and Equity section of ONA's website at www.ona.org/hre and review Frequently Asked Questions about bullying in the workplace.

Workplace Harassment

The *Occupational Health and Safety Act (OHSA)* defines workplace harassment as "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." This is a broad definition, which can be interpreted to cover harassment based on the prohibited grounds in the *Human Rights Code*, personal harassment and bullying.

Under the *OHSA*, employers must develop policies with respect to workplace harassment and programs to implement the policies. The programs must include information regarding how to report incidents of workplace harassment to the employer or the supervisor and how the employer will investigate and handle reports of harassment. Employers must provide information and instruction to workers on the contents of the workplace harassment policy and the program.

Some employers may have separate policies dealing with harassment prohibited by the *Human Rights Code* and workplace harassment. In some cases, it may be appropriate for ONA members to file complaints under both policies.

Your Rights

- You have the right to work in an environment that is free from harassment because of any of the prohibited grounds in the *Code*.
- You have the right to work in an environment that is free from personal harassment contrary to your collective agreement.
- You have the right to expect your employer to take your concerns seriously.

What to do if you Feel you are Being Harassed

See the Resources listed at Section 4 of this Guide.

1. Trust your instincts.

If something makes you uncomfortable, there is a reason. Every comment or gesture may not turn into harassment, and you may want to see if it happens again.

2. Seek support from someone you trust.

You don't need to deal with harassment alone. ONA is here to assist you. There are persons within your Bargaining Unit who will offer support. Contact your Bargaining Unit Human Rights and Equity Representative or Bargaining Unit President. The provincial Human Rights and Equity Team is also available for support (for contact information, see Section 4: Resources).

3. Learn as much as you can. Know your options.

Know your workplace policies and who you can contact for information. The Bargaining Unit Human Rights and Equity Representative or Bargaining Unit President may assist you in finding the necessary information. The ONA Human Rights and Equity Team will also act as a resource. The ONA website (www.ona.org) contains links to other human rights and equity organizations that may prove valuable. There is also a list of resources contained in the back of this guide. Your employer may have a committee that can offer confidential support, such as an Employee Assistance Program. The more you know, the better you will be able to deal with your harasser, your employer and others you may need to approach.

4. Keep a record or journal of your experiences and what you have done to try to stop the harassment.

It is wise to use a bound book that cannot have pages added or deleted. Include:

- Dates, times, details and gestures of your experience(s).
- Names and telephone numbers of persons who heard or saw the incident and whom you would be willing to have act as witnesses.
- Your emotional and physical reactions at the time of the incident and afterwards.
- Dated entries of each step you took to stop the harassment.
- Detailed documents to show if there is a pattern of harassment. This will help you remember specific incidents.

- A note on each page that says, “prepared for my Counsel” (*ONA Policy 14.10 – Union Representation in Critical Incident Meetings/ Communications*).

5. Keep anything the harasser gives you.

Letters, memos, gifts or messages you have received on your voicemail.

6. Keep a record of your job performance.

Copies of performance appraisals and/or notes of praise regarding your work.

7. Speak or write to the harasser about their behaviour and explain that you find it offensive.

Take someone with you when you speak to them or deliver a written message. The harasser will not be able to claim they were unaware that the behaviour was offensive to you. Stay calm and give the harasser an opportunity to change their behaviour. This step may result in cessation of the behaviour.

8. Contact your Bargaining Unit Human Rights and Equity Representative or Bargaining Unit President to assist you in making a complaint under your employer’s workplace policy and/or to file a grievance.

Next Steps

Making a Complaint under Your Employer's Discrimination Policy: What's Involved

Most employers have policies prohibiting discrimination and harassment in the workplace. Most also have a complaints procedure.

It is the employer's responsibility to provide and maintain a workplace free of discrimination and harassment and to ensure that all employees are aware that such behaviour is unacceptable. If an incident occurs, it is the employer's duty to take steps to deal with it and prevent a reoccurrence.

ONA encourages any member who has a complaint of workplace harassment or discrimination to follow the complaints process set out in their employer's harassment and discrimination policies and procedures.

Members may request the assistance and support of an ONA representative in dealing with harassment and discrimination issues in their workplace. For example, if you wish to remain anonymous, you may ask an ONA representative to obtain a copy of the policy for you. ONA representatives can also assist members with the complaint or reporting processes in the employer's policy. In addition, the union can determine whether a grievance should be filed under the collective agreement (see *Filing a Grievance: What's Involved* on page 23).

In cases where an employer has no policy or procedures regarding discrimination or harassment in the workplace, the union will determine whether a grievance should be filed under the collective agreement.

Members may also request the assistance and support of an ONA representative when they are identified as a "Respondent" in a complaint under the employer's policy. The union will provide separate representatives for the "Complainant" and the "Respondent."

All employers are responsible for dealing effectively, quickly and fairly with situations involving claims of harassment or discrimination. Employers must respond to internal discrimination/ harassment complaints by:

- Having a complaint mechanism in place.
- Taking the matter seriously once the internal complaint is received and acting promptly.
- Providing the complainant with a healthy work environment.

The employer's policy should describe:

- The purpose of the policy and to whom the policy applies.
- Definition section, which includes a description of harassment and discrimination in the workplace.
- How to make a complaint and the timelines that apply.

- The process and timelines with respect to the investigation and/or mediation.
- Confidentiality requirements.
- Communicating to the complainant and respondent its actions in response to the complaint.
- The rights of the complainant and respondent and how they will be protected.
- The interim measures available, i.e. separating the parties until the investigation is over.
- What consequences and/or penalties may be imposed if there is a finding of harassment and/or discrimination.

You have many avenues of support within your Bargaining Unit. Talk to your Bargaining Unit Human Rights and Equity Representative, Bargaining Unit President or someone on the Grievance Committee. These representatives will seek advice and support from the Labour Relations Officers and other ONA staff members, as necessary.

Filing a Grievance: What's Involved

If you feel you have been discriminated against or harassed, ONA may file a grievance on your behalf. In the interim, where reasonable, ONA may request that you not be required to work with the alleged harasser until the grievance is resolved.

Pursuing a grievance can be a time-consuming and lengthy process. You must be diligent in sticking to the strict grievance procedure time limits. It is important to speak to an ONA representative immediately, even if you have doubts about taking formal action. ONA will support you and make sure you know all your options.

In very limited circumstances, ONA may advise you to file a grievance and an application (complaint) with the Ontario Human Rights Tribunal. Generally, ONA does not assist members with the Tribunal's application process or provide representation. For more information, please ask your ONA representative to provide you with a copy of ONA's policy regarding human rights complaints.

If your complaint of harassment or discrimination is against another ONA member, ONA will provide representation by separate ONA representatives. Keep in mind that while you have the right to file a grievance, the harasser has the right to be defended by ONA in the event of excessive discipline or unjust discharge, for example. Where grievances are filed, separate ONA representatives will handle the grievances.

Steps in filing a grievance include:

- Speaking to your Local ONA representative.
- Following the steps set out for grievances in your collective agreement.

Filing an Application at the Ontario Human Rights Tribunal: What's Involved

ONA members who are waiting for their first collective agreement to be negotiated or awarded by an arbitrator do not have access to a grievance procedure. As a result, these members cannot file grievances concerning discrimination or harassment in the workplace. They can, however, enforce their rights under the *Human Rights Code* by filing an application with the Ontario Human Rights Tribunal. In accordance with its policy, ONA will consider assisting such members with their applications. Members should contact their Bargaining Unit President as soon as possible for advice.

ONA members who are covered by a collective agreement can enforce their rights through the grievance procedure under the collective agreement. They can also file an application with the Ontario Human Rights Tribunal. The Tribunal may dismiss an application (in whole or in part) if it finds that another tribunal, such as an arbitration board or an arbitrator, has appropriately dealt with the substance of the human rights claim.

As noted earlier, in most cases ONA does not assist members with the Tribunal's application process or provide representation.

For information on filing an application with the Ontario Human Rights Tribunal, please visit the Tribunal's website at <http://www.sjto.gov.on.ca/hrto/>.

Reprisals

If you have filed an application with the Ontario Human Rights Tribunal, are involved as a witness to a complaint, or have refused to discriminate against someone, the *Code* states that there can be no retaliation against you.

If you feel that you are experiencing retaliation, contact your Bargaining Unit's Human Rights and Equity Representative or Bargaining Unit President for support and guidance on next steps.

A Human Rights Complaint against an ONA Representative or ONA Staff Member

If you have a human rights complaint against an ONA representative, including a member of your Local executive, or a member of ONA staff, refer to ONA Policy 16.28 – *Discrimination and Harassment during Union Business or Activities*.

Speak to your Local representative or Labour Relations Officer if you need further advice.

“At ONA, human rights and equity is a core value that instills the work we do on behalf of our members and for all. ONA advocates and promotes understanding, acceptance and action to address inequity, both in the workplace and in society.”

~ Vicki McKenna, ONA President ~

SECTION 3: HUMAN RIGHTS AND EQUITY TERMS

Ableism: Attitudes in society that devalue and limit the potential of persons with disabilities. People with disabilities are assumed to be less worthy of respect and consideration, less able to contribute and take part, and of less value than other people. Ableism can be conscious or unconscious and is embedded in institutions, systems or the broader culture of a society.

Accommodation (in employment): Accommodation in employment means altering job duties to eliminate barriers to full participation at work and it is a requirement under the *Code*. Accommodation must be provided unless it causes undue hardship for the employer (see “Undue Hardship” in this section). For example, an employee with a back injury is entitled to be accommodated through means such as the adjustment of their work responsibilities (e.g., lifting patients) if such does not cause undue hardship to their employer. Another example would involve accommodating the religious observances of an employee in scheduling, again, short of undue hardship. Arbitrators assess whether there is undue hardship on an employer on a case-by-case basis.

Age: Age means 18 years or more. Mandatory retirement at age 65 is no longer permitted under Ontario laws.

Allegation: Allegation is a statement or claim that is unproven. For example, when you file a human rights complaint, the discrimination that you report will be described as an allegation until an investigation has been conducted and a decision made about whether discrimination has taken place.

Announced Intention to Discriminate: The *Code* prohibits the publication or public display of any material or symbol that shows an intention to discriminate. It also prohibits the same for the purpose of inciting others to discriminate. For example, posting material on a staff bulletin board expressing and intending to create negative sentiments about lesbians and gays would be discriminatory (see “Discrimination” in this section).

Barriers Elimination: This is the elimination of unfair policies, procedures or practices of operating that prevent designated group members from achieving the same outcomes as others. Examples include barrier-free advertising and recruiting, interviewing and selecting that ensure job qualifications and requirements, job descriptions and tests, etc. are free of racial, gender or disability biases.

Bias: A predisposition, prejudice or generalization about a group of persons based on personal characteristics or stereotypes.

Bona Fide Occupational Requirement (BFOR) or Bona Fide Occupational Qualification (BFOQ): An employer may require employees to meet a standard or possess a qualification that may discriminate against members of one of the protected groups under human rights legislation. For this to be lawful, the employer must establish that the standard or qualification is a bona fide requirement or qualification.

For a standard or qualification to be a BFOR, the employer must have adopted the standard for a purpose rationally connected to the performance of the job. It must have been adopted in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related purpose. The standard must be reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees without imposing undue hardship on the employer. The employer must demonstrate that it cannot accommodate individual employees without undue hardship.

Bullying: Bullying is characterized as persistent behaviour that is offensive, insulting, intimidating, humiliating or abusive towards an employee or group of employees. Workplace bullying is an attempt to exert power or control over the target and is usually intentional in nature.

Workplace bullying tactics include repeated incidents of unwarranted criticism, trivial fault finding, exclusion, isolation, being singled out and treated differently, excessive monitoring, verbal putdowns and insults. Employees can experience bullying by other health-care professionals, such as supervisors, managers, coworkers or physicians, as well as by patients or patients' families.

The terms bullying and psychological harassment/abuse/violence are often used interchangeably. Horizontal or lateral violence refers to bullying that is directed at coworkers who are at the same level within an organization's hierarchy.

The law in the area of workplace bullying is in a developmental phase and the rights and obligations of employees and employers will become more certain as arbitrators decide more grievances. Unionized employees may have protections rooted in occupational health and safety provisions and management rights provisions in a collective agreement. It is ONA's position that employers have a duty to ensure the psychological safety of workers and must exercise managerial authority in a non-abusive, non-harassing manner. Employers must provide immediate, appropriate intervention to stop any bullying.

Canadian Human Rights Commission: The Canadian Human Rights Commission protects the rights of everyone in dealings with federal departments, agencies or crown corporations, Canada Post, chartered banks, national airlines, inter-provincial communications, telephone companies, transportation companies, and federally regulated industries, such as mining operations.

Complainant: A complainant is a person who brings forward a complaint under an employer's workplace policy. When you file an application with the Ontario Human Rights Tribunal, you are identified as the "applicant."

Compliance: This is an action in accordance with the law. For example, if you participate in, or maintain a workplace free of discrimination, you are in compliance with the *Code*. If you are ordered to take some action to remedy a situation of discrimination by the Tribunal and undertake to do so, you are also in compliance with the law as outlined in the *Code*.

Contracts: It is illegal for the terms of any contract, including collective agreements, to discriminate against a person on all grounds under the *Code*, except for receipt of social assistance and record of offences, if they are legally competent.

Disability: Disability is one of the prohibited grounds under the *Code*. It refers to any person who has or has had or is believed to have had any degree of physical disability or disfigurement, learning disability or any dysfunction in the ability to understand or use symbols or speech, mental impairment, mental disorder or injury or disability for which benefits were claimed or received under the *Workplace Safety and Insurance Act*. For example, discrimination on the ground of disability would have taken place if a nurse with a back injury was not accommodated short of undue hardship (see “Accommodation,” “Undue Hardship” in this section).

Discrimination Terms

Grounds of Discrimination: The *Code* prohibits discrimination *and* harassment on any of the following grounds: race, ancestry, place of origin (i.e. where you were born), colour, ethnic origin, citizenship, creed (religion), sex, sexual orientation, gender identity and gender expression, age, marital status, family status, record of offences and disability.

Discrimination: This is defined as treating people unfairly based on their membership in one of the groups identified as a prohibited ground under the *Code*. In general, discrimination is an act or practice that, intentionally or unintentionally, has the effect of imposing burdens, obligations or disadvantages on an individual or group not imposed on others, or that withholds or limits access to opportunities, benefits and advantages available to others.

Direct Discrimination: This describes an act, behavior or practice of treating a person unequally. An example is a manager who refuses to hire Somali nurses.

Adverse Effect Discrimination: Adverse effect discrimination occurs when a rule or requirement of a job that may appear neutral has an adverse effect when applied to a particular class of individuals. So, for example, workplaces with strict uniform guidelines may have an adverse impact on individuals and groups whose religion requires them to wear certain items, such as a turban, hijab or kippa. The employer is expected to accommodate the individual(s) in the group unless it can be shown that the needs of individual(s) cannot be accommodated without undue hardship.

Systemic Discrimination: Systemic discrimination, on the other hand, is much more insidious. These are patterns of behaviour, policies or practices that are part of the social or administrative structures of an organization, and which create or perpetuate a position of relative disadvantage for groups identified under the *Human Rights Code*.

Systemic barrier: a barrier embedded in the social or administrative structures of an organization, including the physical accessibility of an organization, organizational policies, practices and decision-making processes, or the culture of an organization. These may appear neutral on the surface but exclude members of groups protected by the *Human Rights Code*.

Employment Barriers: Employment barriers are any policies, procedures, practices or conditions that result in disadvantage to any of the designated groups. Barriers may be found in recruiting, interviewing, hiring, promoting, etc.

Equal Treatment: Equal treatment does not necessarily mean identical treatment. It means treatment that results in the same outcome for everyone. The term “equity” is often used instead of equal treatment to refer to treatment that results in equal outcomes. For example, a nurse who is a single mother may not be able to work nights because of her marital and family status. Rather than the nurse being denied or losing a position because of this, the employer would be required to accommodate her unless undue hardship could be proved.

Equity, Diversity, Inclusion

Equity: fairness, impartiality, even-handedness. A distinct process of recognizing differences within groups of individuals and using this understanding to achieve substantive equality in all aspects of a person’s life.

Equitable: just or characterized by fairness or equity. Equitable treatment can at times differ from same treatment.

Diversity: This refers to the presence of a wide range of human qualities and attributes within an individual, group or organization. Diversity includes such factors as age, sex, race, ethnicity, physical and intellectual ability, religion, sexual orientation, educational background and expertise.

Inclusion: appreciating and using our unique differences – strengths, talents, weaknesses and frailties – in a way that shows respect for the individual and ultimately creates a dynamic multi-dimensional organization.

Inclusive design: Taking into account differences among individuals and groups when designing something, to avoid creating barriers. Inclusive design can apply to systems, facilities, programs, policies, services, education, etc.

Historical disadvantage: disadvantage resulting from historic patterns of institutionalized and other forms of systemic discrimination, sometimes legalized social, political, cultural, ethnic, religious and economic discrimination, as well as discrimination in employment. This also includes under-representation experienced by disadvantaged groups such as women, Aboriginal peoples, persons with disabilities, LGBT persons and racialized people.

Essential Duties: These are requirements that are essential to perform a job. For example, if a nurse applies for a position in an emergency department of a hospital, it may not be essential for them to be able to use a photocopier.

Family Status: Family status means being in a parent-child relationship. It includes an employee’s obligations arising from a parent and child relationship (e.g. child care), from a child and parent relationship (e.g. elder care) and from a parent and child-type relationship that involves care, responsibility and commitment (e.g. care for an ill or elderly relative). Where a work requirement conflicts with a substantial parental obligation, an

employee may be entitled to accommodation if there are no reasonable alternatives or options for resolving the conflict.

Gender Terms

Gender Identity: Each 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.

For most people, their sex and gender identity align. For some, it does not. A person may be born male, but identify as a woman, or born female, but identify as a man. Other people may identify outside the categories of woman/man or may see their gender identity as fluid and moving between different genders at different times in their life.

Gender Expression: How a person publicly presents or expresses 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 people express their gender. Others perceive a person's gender through these attributes.

All people, regardless of their gender identity, have a gender expression and they may express it in any number of ways. For trans people, their chosen name, preferred pronoun and apparel are common ways they express their gender. People who are trans may also take medically supportive steps to align their body with their gender identity.

Trans or Transgender: An umbrella term that describes people with diverse gender identities and gender expressions that do not conform to stereotypical ideas about what it means to be a girl/woman or boy/man in society. "Trans" can mean transcending beyond, existing between, or crossing over the gender spectrum. It includes but is not limited to people who identify as transgender, transsexual, cross dressers or gender non-conforming (gender variant or gender queer).

"Trans" includes people whose gender identity is different from the gender associated with their birth-assigned sex. Trans people may or may not undergo medically supportive treatments, such as hormone therapy and a range of surgical procedures, to align their bodies with their internally felt gender identity.

People who have transitioned from one gender to another may simply identify as female or male. Others may also identify as trans, as a trans woman or a trans man. Some people may identify as trans and not use the labels "female" or "male." Others may identify as existing between male and female or in different ways beyond the binary of male/female.

Trans people may identify their gender in many ways. There is no single or universal experience of what it means to be trans. As a result, different trans people face distinct forms of discrimination in society, and this may relate to whether they identify as male, female, a person with a trans history, a person in the process of transitioning, a trans man, trans woman, transsexual, or gender non-conforming.

Gender Non-conforming/Gender Variant/Gender Queer: This refers to individuals who do not follow gender stereotypes based on the sex they were assigned at birth. They may

identify and express themselves as “feminine men” or “masculine women” or as androgynous, outside of the categories “boy/man” and “girl/woman.” People who are gender non-conforming may or may not identify as trans.

Trans Man and Trans Woman: A person whose sex assigned at birth is “female” and identifies as a man may also identify as a trans man (female-to-male (FTM)). A person whose sex assigned at birth is “male” and identifies as a woman may also identify as a trans woman (male-to-female (MTF)).

Transsexual: A person whose gender identity differs from their sex assigned at birth. They may or may not undergo medically supportive treatments to align their bodies with their gender identity, such as hormone therapy, sex reassignment surgery or other procedures. They may also undertake other changes to align their external attributes and appearance with their gender identity.

Transitioning: Refers to a host of activities that some trans people may pursue to affirm their gender identity. This may include changes to their name, sex designation, dress, the use of specific pronouns, and possibly medically supportive treatments such as hormone therapy, sex-reassignment surgery or other procedures. There is no checklist or average time for a transition process, and no universal goal or endpoint. Each person decides what meets their needs.

Two-Spirit: According to ancient teachings, “two-spirited” people were considered gifted among all beings because they carried two spirits: that of male and female. It is told that women engaged in tribal warfare and married other women as there were men who married other men. These individuals were looked upon as a third gender in many cases, and in almost all cultures they were honoured and revered. Today, the term refers to Aboriginal People who are gay, lesbian, bisexual, transgendered, other gendered, third/fourth gendered individuals that walk carefully between the worlds and between the genders.

Cisgender: Identifying with or expressing a gender identity that matches the sex assigned at birth.

Questioning: exploring one’s own sexual and/or gender identity, looking at such things as upbringing, expectations from others (family, friends, church, employers, etc.) and inner motivation.

(LGBTQI2S).¹¹ Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Two-Spirit Members.

Queer: formerly derogatory slang term used to identify LGBT people. Some members of the LGBT community have embraced and reinvented this term as a positive and proud political identifier when speaking among and about themselves.

¹¹ Acronym used by Egale Canada as of 2019 based on a national survey they conducted. See <https://egale.ca/about/>. Note that these acronyms evolve over time and some terms can be used interchangeably. For example, “Q” can be interpreted to mean queer or questioning. “T” can be interpreted as transgender or transitioning.

Pride: (when used in reference to the LGBT community): not being ashamed of oneself and/or showing your pride to others by “coming out,” marching in the Pride parade, etc., being honest and comfortable about who you are.

Glass Ceiling: Issues of equality in employment involve more than gaining access to an organization. “Glass ceiling” refers to barriers to advancement within an organization that result in a pooling of designated group members at the lower levels and little or no representation at the senior levels.

Harassment: Harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. The legitimate exercise of authority by a manager does not constitute harassment.

Under the *Code*, the course of comment or conduct must be related to a prohibited ground, such as race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability. Personal harassment (or non-*Code* harassment) is harassment that is unrelated to any of the grounds in the *Code*.

Generally, harassment is a pattern of behaviour involving a number of incidents occurring over a period of time. A single incident may constitute harassment in some cases depending on its severity and impact.

Harassment (Personal): Personal harassment is not based on any of the prohibited grounds in the *Human Rights Code*. It is any unwarranted conduct that is directed at and offensive to an individual, or that has the effect of creating an intimidating, humiliating, threatening or hostile union environment. You can deal with personal harassment under your collective agreement.

Homophobia: Homophobia is the fear, dislike, hatred, aversion, intolerance and ignorance of homosexuals and homosexuality. These feelings and beliefs result in acts of discrimination, harassment and often violence against gay, lesbian, bisexual or transgender people.

Human Rights Commission (Ontario): The Ontario Human Rights Commission is the organization responsible for enforcing the *Ontario Human Rights Code*. Some other responsibilities of the commission include: promoting understanding and acceptance of and compliance with the *Code*; developing public information and education programs; conducting and supporting research designed to eliminate discrimination; inquiring into incidents and/or conditions leading to conflict based on grounds covered under the *Code* and taking action to eliminate the source of conflict; and assisting organizations to resolve conflicts based on discrimination.

The Commission focuses on pro-active efforts to ensure human rights compliance and to eliminate discriminatory practices, including the power to initiate complaints and to participate in Tribunal hearings on issues of public interest.

The Commission's functions include the following:

- To forward the fundamental policy of the *Code* that “the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law.”
- To develop and conduct public information and education programs to promote awareness, understanding of and compliance with the *Code*, and to prevent and eliminate discriminatory practices.
- To undertake research into discriminatory practices and make recommendations to prevent and eliminate such practices.
- To examine and revise any statute, regulation, or program or policy made under statute for compliance with human rights and make recommendations in respect of any inconsistency with the *Code*.
- To initiate reviews and conduct inquiries and make recommendations regarding incidents or conditions in a community, institution, industry or sector of the economy and encourage and coordinate plans, programs and activities to reduce such incidents.
- To make policies to provide guidance on the *Code's* application.
- To report to the public on the state of human rights in Ontario.

Human Rights Tribunal

When a settlement of a complaint cannot be reached through other means, and evidence warrants it, the Ontario Human Rights Commission can decide to refer the complaint to the Tribunal to examine and make a decision on a complaint.

The minister responsible for the commission appoints members to the Tribunal. On hearing the evidence of a complaint, the Tribunal can order the respondent(s) to do anything it feels necessary to comply with the *Code* regarding the specific complaint and with respect to future practices. The Tribunal can order restitution and, in addition to this, up to \$10,000 where the violation of the *Code* has been engaged in “willfully or recklessly.” The award is made for mental anguish suffered by the complainant.

The Tribunal has the power to develop its own rules of practice and procedure. In disposing of applications, it can employ a range of adjudicative and alternative dispute resolution techniques that are to be set out in its rules, selecting the method that offers the best opportunity for a fair, just and expeditious resolution of the merits of the application.

Terms Related to Indigenous Peoples

Indigenous: Generally used in the international context, refers to peoples who are original to a particular land or territory. This term is very similar to “Aboriginal” and has a positive connotation.

Aboriginal Peoples: A collective name for the original people of North America and their descendants. The Canadian Constitution (the *Constitution Act, 1982*) recognizes three groups of Aboriginal Peoples – First Nations, Métis and Inuit – as separate peoples with unique heritages, languages, cultural practices and spiritual beliefs.

First Nation(s)/First Nations People: This term became common use in the 1970s to replace the word “Indian.” Although the term First Nation is widely used, no legal definition exists. The term has also been adopted to replace the word “band” in the naming of communities. Many people today prefer to be called “First Nations” or “First Nations People” instead of “Indians.” Generally, “First Nations People” is used to describe both Status and Non-Status Indians. The term is rarely used as a synonym for “Aboriginal Peoples” because it usually does not include Inuit or Métis People.

Indian: This term is used to identify people the Government of Canada recognizes as having Indian status – people who have an identifiable band, who live or were born on a reserve, and/or who are recognized under a complex set of rules under the *Indian Act (1985)*. The term does not include Inuit or Métis Peoples. There are three categories of Indians in Canada: Status Indians, Non-Status Indians, and Treaty Indians.

Indian Act: Canadian legislation first passed in 1876 and amended several times since, most recently in 1985. It sets out certain federal government obligations and regulates the management of reserve lands, Indian monies and other resources.

Indian Status: A person’s legal status as an “Indian” as defined by the *Indian Act* (see Indian in “First Nation(s)/First Nations People” definition above).

Inuit: The Aboriginal Peoples of Arctic Canada who live primarily in Nunavut, the Northwest Territories and northern parts of Labrador and Québec. The word Inuit means “people” in the Inuit language – Inuktitut. The singular of Inuit is Inuk. Their traditional languages, customs and cultures are distinctly different from those of the First Nations and Métis.

Métis: French term meaning “mixed blood.” The Canadian Constitution recognizes Métis people as one of the three Aboriginal Peoples. The term is used broadly to describe people with mixed First Nations and European ancestry who identify themselves as Métis, distinct from First Nations people, Inuit or non-Aboriginal People.

Reconciliation: This refers to establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal Peoples in this country. For that to happen, there has to be awareness of the past, an acknowledgement of the harm that has been inflicted, atonement for the causes, and action to change behaviour.

Colonialism: A policy or set of policies and practices where a political power from one territory exerts control in a different territory.

Intersectionality

The recognition that people have complex identities that do not fit neatly into individual “axis” of inequality. Rather, many people experience multiple forms of discrimination on the basis of intersecting markers of inequality, such as race, gender, disability or sexuality. Intersectionality recognizes that these different markers of inequality will shape people’s experiences in unique ways and require responses that are attentive to the individual’s particular experience of inequality and marginalization.

Job Accommodation Measure

This takes into account individual needs and differences, and permanently changes employment policies, procedures and practices that relate, for example, to religion, sex or physical disability. Examples include making a workplace physically accessible, revising parental leave policies, or revising policies around scheduling or leave for religious observances.

Marital Status

Marital status refers to the conditions of being married, single, widowed, divorced or separated, and living with a person of the opposite sex or the same-sex in a conjugal relationship outside of marriage. For example, an organization that prides itself on being “family-orientated” and does not hire single people on this basis, is in violation of the *Code* on the ground of marital status.

Occupational Group

Statistics Canada has defined and coded in great detail different occupational categories to assist employers in ensuring that designated groups are represented across all types of work and in all geographical locations.

Pay Equity

The principle of equal pay for work of equal value. For example, the requirement to pay males and females within the same organization the same salary for work that is judged to be of equal value.

Poisoned Work Environment

A poisoned work environment is one in which some form of discrimination takes place that effectively poisons the space for those who are targets of discrimination and others within the workplace. Discrimination has a direct impact on those targeted, altering the conditions of the dignity at work they have a right to expect. It has additional impact on those not targeted because it creates tension in the workplace and may be offensive to others.

Positive Measure

A specific measure or program designed to help members of designated groups only is referred to as a positive measure. Examples include group-specific mentoring programs, targeted outreach, etc.

Power

Access to privileges such as information/knowledge, connections, experience and expertise, resources and decision-making that enhance a person’s chances of getting what they need to live a comfortable, safe, productive and profitable life.

Pregnancy

It is illegal to discriminate against a woman because she is or may become pregnant. For example, a pregnant woman applying for a job cannot be turned down for the sole reason that she is pregnant, unless the organization can show “undue hardship.”

Prejudice

Negative prejudgment or preconceived feelings or notions about another person or group of persons based on perceived characteristics. Prejudice means to pre-judge. Prejudices

against people belonging to groups protected under the *Code* are often based on stereotypes of members of those groups that lead to assumptions of what they are and are not capable of, limiting the extent to which they are given access to full participation in society and all it has to offer.

Privilege

Unearned power, benefits, advantages, access and/or opportunities that exist for members of the dominant group(s) in society. Can also refer to the relative privilege of one group compared to another. **White Privilege** refers to the inherent advantages possessed by a White person on the basis of their race in a society characterized by racial inequality and social injustice.

Terms Related to Race

Race: There is no such thing as race – instead, it is a “social construct.” This means that society forms ideas of race based on geographic, historical, political, economic, social and cultural factors, as well as physical traits, even though none of these can legitimately be used to classify groups of people. See Racialization.

Race is a social term used to define people based on their skin colour, facial features, hair texture, etc. Race does not reflect biological differences among people who look different. In this sense, race, as it is commonly understood, is a social invention or illusion.

Race-neutral Language: The language we use reflects and reinforces cultural values. Canada has a history of anti-Black racism where Black people, blackness and things black have been devalued and dehumanized. These value judgments are reinforced when the word black is used to describe things that are negative, depressing, evil or bad. When we use race-neutral language, we actively avoid using terms such as a black mood, blackball, blackmail, black magic, black market, black sheep, a dark/black day, a black heart, a black hole, blacklisted, etc.

Racial Harassment: It is unlawful to harass an employee because of their race. This prohibition applies to employers, agents of employers (e.g. managers, supervisors), other employees and patients.

Racialized Person: In its *Policy and Guidelines on Racism and Racial Discrimination*, the Ontario Human Rights Commission explains that the term “racialized person” or “racialized group” is preferred over “visible minority,” “racial minority,” “person of colour” or “non-White” because it expresses the concept of race as a social construct rather than a biological fact, and it does not treat “White” as the norm.

Racialization: The process by which societies construct races as real, different and unequal in ways that matter and affect economic, political and social life. Historically, race was defined as a natural or biological division of the human species based on physical distinctions, including skin colour and other features. Today, biological notions of race have been discredited and it is now recognized that race is a socially constructed way of judging, categorizing and creating differences among people with the effect of marginalizing certain societal groups. The process of social construction of race is called racialization

Racial profiling: any action that relies on stereotypes about race, colour, ethnicity, ancestry, religion or place of origin, or a combination of these, rather than on a reasonable suspicion to single out a person for greater scrutiny or different treatment.

Multiracial: a person whose heritage includes members of multiple racial groups.

BIPOC: Black, Indigenous, People of Colour.

Racism: A belief that one group is superior or inferior to others. Racism can be openly displayed in racial jokes, slurs or hate crimes. It can also be more deeply rooted in attitudes, values and stereotypical beliefs. In some cases, people don't even realize they have these beliefs. Instead, they are assumptions that have evolved over time and have become part of systems and institutions.

Racism refers to attitudes, practices and other factors that disadvantage people because of their race, colour or ethnicity. Racism can be directed against any race, colour or ethnicity. Some examples of racism are obvious, such as graffiti, intimidation or physical violence. Racial and ethnic slurs and "jokes" are other examples. Unfortunately, they are often ignored because people do not know how to deal with them. Other forms of racism are not obvious, such as discrimination in hiring, or policies that disadvantage members of certain races, whether intentionally or not. Individual racism takes the form of individual attitudes, beliefs, values and behaviours. Racial prejudice, bigotry and belittling are examples of racist attitudes. Examples of racist beliefs are racial stereotypes, the belief that some races are better than others and even the belief that people can be classified according to race in the first place.

Racial profiling: any action that relies on stereotypes about race, colour, ethnicity, ancestry, religion or place of origin, or a combination of these, rather than on a reasonable suspicion to single out a person for greater scrutiny or different treatment.

Record of Offences

It is illegal to discriminate against or harass a person in employment if they have a provincial record, or if they have received pardon for a federal offence.

Reprisal

It is illegal to threaten a person with punishment or any other act for filing a complaint under the *Code*.

Respondent

A respondent is a person, group or institution against whom a complaint is being made.

Services

Services refers to consumer (e.g., restaurants, stores, hotels), institutional (e.g. health care, education, government), social (e.g. social assistance, childcare), and economic (e.g. grants, loans) services. The definition also includes goods and facilities. Services do not include a levy, fee, tax or periodic payment imposed by law.

Terms Related to Sex

Sex: The classification of people as male, female or intersex. Sex is usually based on an assessment of a person's reproductive system and other physical characteristics. For example, the *Code* prohibits discrimination because a woman is pregnant or may become pregnant.

Intersex: A term used to describe a person born with reproductive systems, chromosomes and/or hormones that are not easily characterized as male or female. Intersex characteristics occur in one out of every 1,500 births. Typically, intersex people are assigned one sex, male or female, at birth. Some intersex people identify with their assigned sex, while others do not. Some choose to identify as intersex. Intersex people do not typically identify as transgender or transsexual.

Sexual orientation is more than a status that an individual possesses; it is an immutable personal characteristic that forms part of an individual's core identity. Sexual orientation encompasses the range of human sexuality from gay and lesbian to bisexual and heterosexual orientations.

Sexism: Discrimination based on sex, including individual's conscious or unconscious bias and prejudice against or paternalism towards women, and systemic factors that perpetuate women's inequality.

#MeToo: A global movement of women and survivors of sexual misconduct speaking out about sexual violence and working to change the culture to promote women's equality, ensure that men and women understand and comply with consent, and hold sexual abusers accountable for their wrongdoing.

Misogyny: The expression of anger towards, hatred of, or violence against women.

Patriarchy: A system of society or government in which men hold the power and women are largely excluded from it.

Sexual Harassment: Sexual harassment is discrimination based on sex. Under the *Ontario Human Rights Code*, sexual harassment is "engaging in a course of vexatious comment or conduct that is known or ought to be known to be unwelcome."

It is illegal to harass a person because of their sex in employment. This prohibition applies to employers, agents of employers (e.g. managers, supervisors), other employees and patients. Sexual harassment may include any unwelcome verbal or physical advance or sexually explicit statement, such as jokes, displays of pornographic material, pinching, brushing against, touching, patting, or leering that makes a person feel humiliated, intimidated or uncomfortable.

Supportive Measure: A supportive measure is a specific program to help anyone in a workplace, although it primarily helps designated group members. Examples include mentoring programs, development opportunities, day care, flex time, flex place, etc.

Undue Hardship: Undue hardship is the measure that is used to assess whether an employer is required to accommodate an employee. Undue hardship would be incurred

by an employer if the required accommodation of an employee threatened the organization's financial ability to continue to perform its business or posed an unreasonable safety threat to others. Outside sources of funding for accommodation must be explored by the organization's ability to continue.

Arbitrators assess whether there is undue hardship on an employer on a case-by-case basis with consideration of the following non-exhaustive factors:

- Financial cost.
- Health and safety.
- Disruption of the collective agreement.
- Legitimate operational requirements of a workplace.
- Interchangeability and size of an employer's operation.

Vocational Associations (Union): This refers to trade unions, trade or occupational associations, or self-governing professions.

Workplace: Workplace is often defined as any location in which activities related to the mandate of the organization are performed. It is not confined to the physical space in which work typically takes place. Some harassment policies extend the definition of workplace to social gatherings of employees (such as office parties).

SECTION 4: RESOURCES

The resources below can be found on ONA's website at www.ona.org/guides:

- *Occupational Health and Safety: A Guide for ONA Members.*
- *Workplace Violence and Harassment: A Guide for ONA Members.*

The resources below can be found on the ONA website, executive section. Log in and visit the "Policies, Guides and Guidelines" tab to access them:

- *Accommodation and Return to Work: A Guide for ONA Leaders.*
- *Attendance Management Programs.*

Human Rights and Equity Team

By Email

Email addresses for networking with Equity Group members:

- Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Two-Spirit (LGBTQI2S) Member: HREGroup-LGBTQI2S@ONA.ORG
- Member with Disabilities: HREGROUP-Disabilities@ona.org
- Indigenous Member: HREGROUP-Indigenous@ona.org
- Francophone Member: HREGROUP-Francophone@ona.org
- Racialized Member: HREGROUP-Racialized@ona.org

By Telephone

Call 416-964-8833 (in Toronto) or toll-free 1-800-387-5580, ext. 7768 or press 0 and ask for Human Rights and Equity. Please leave a confidential voicemail and you will be responded to promptly.

By Fax

Fax 416-964-3705, Attn: Human Rights and Equity Team.

For further information on ONA's Human Rights and Equity Team, visit the Human Rights and Equity section of the ONA website at www.ona.org/hre.

Anti-Racism Advisory Team

By Email: anti-racismadvisoryteam@ona.org

By Telephone

Call 416-964-8833 (in Toronto) or toll-free 1-800-387-5580, ext. 7768 or press 0 and ask for the Anti-Racism Advisory Team. Please leave a confidential voicemail and you will be responded to promptly.

By Fax

Fax 416-964-3705, Attn: Anti-Racism Advisory Team.

For further information on ONA's Anti-Racism Advisory Team, visit the Human Rights and Equity section of the ONA website at www.ona.org/hre.

ONA provides many education opportunities for members and union leaders to enhance their understanding of human rights issues in relation to their workplaces. Information about workshops and other education materials can be found on ONA's website at www.ona.org.

Helpful information is also available on the Human Rights Commission website at <http://www.ohrc.on.ca/en>.

A limited number of ONA bursaries are available for those looking for external education support. For further information and application instructions, please refer to the *ONA Policy Manual* (available on ONA's website) for the *ONA Bursaries Policy*.

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Kingston Office

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