

Human Rights and Equity

A Guide for ONA Members



The Ontario Nurses' Association
www.ona.org

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ONA STATEMENT OF BELIEFS

Diversity and Equity

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, gender identity, sexual orientation, family status, and education.

To achieve its commitment, ONA strives to:

- Promote awareness of the diversity of our membership and the needs of diverse groups.
- Integrate diverse perspectives throughout ONA's education 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

The Ontario Nurses' Association 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 and gender identity), sexual orientation, 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 strives to:

- Provide education 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, *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 will help answer questions that you may already have.

Specifically, it provides:

- Basic information on human rights and employment equity.
- Information on the rights and responsibilities of the Ontario Nurses' Association (ONA) and its members.
- Information on the responsibilities of employers.
- 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 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:
 - Members of Aboriginal Descent.
 - Members with Disabilities.
 - Francophone Members.
 - Lesbian, Gay, Bisexual, Transgender Members (LGBT).
 - Racialized Members.

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

- ONA Staff:
 - Human Rights and Equity Specialist.
 - Provincial Services Team Labour Relations Assistant.
 - One member from the ONA Management Team.

As part of its mandate to promote ONA's development as an 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.

See page 47 of this guide for specific information on how to contact the team.

SECTION 1: HUMAN RIGHTS

THE NEED FOR HUMAN RIGHTS LAWS

“Civilization is to be judged by its treatment of minorities.”

~ Mahatma Gandhi ~

The need for laws to protect human rights grows out of a global history of human wrongs. When a value is placed on the worth of those who do not share our appearance, social practices and beliefs, the stage is set for inequality. Human wrongs can be between individuals, groups within society, and nations.

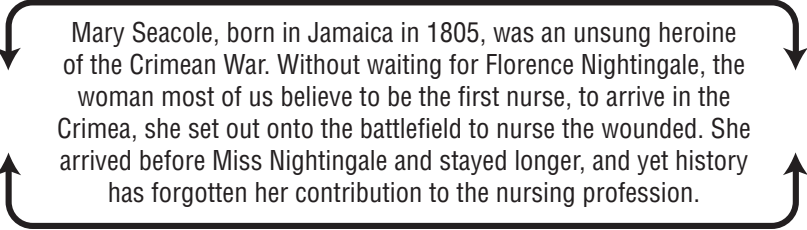
Human rights continues to be a global issue. Legislative and policy responses from the *Universal Declaration of Human Rights*, the *Canadian Charter of Rights and Freedoms* and the *Ontario Human Rights Code* show that a growing commitment to the equitable and humane treatment of all people is a major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

Human rights laws in Canada and Ontario provide protection for members of specific 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.

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:

- In his 1992 report, Stephen Lewis found that racism in Ontario was widespread – enough so to warrant his recommendations, which included the establishment of a Royal Commission to investigate systematic racism in the criminal justice system.
- Persons with disabilities – physical, learning and mental – have been 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 like pay equity legislation.
- Violence against women is a long-standing issue. The prohibition movement in the 1920s was driven largely by women seeking to eliminate alcohol abuse as a factor leading to violence against women and children.
- In 1990, Mohawks protested the annexation of their land for the expansion of a local golf course. This business expansion was seen to be of greater value than Mohawk treaty rights.
- “Gay bashing” – physical attacks on homosexuals because of their sexual orientation – is still a reality. Stories continue to appear in the media about violence against members of the gay/lesbian community.
- Since the World Trade Centre attacks on September 11, 2001, the rise of Islamophobia has led to increasingly more negative portrayals of Muslims in the media. Like racial profiling and other types of discrimination, ascribing the behaviour of individuals to a group damages everyone in that group.

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

...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)

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 favourable 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.

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* regulates interactions between the state (federal, provincial and territorial governments) and individuals. It is, in some respects, Canada’s most important law because it can render invalid or inoperative any laws 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*.

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 his or her duties and obligations as a member of society.”

~ Section 2 of the Code ~

The *Canadian Human Rights Act* covers human rights issues outside of provincial domain. These areas include 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 *Act* include race, national or ethnic origin, colour, religion, age, sex, marital status, family status, pardoned conviction, physical or mental disability, and sexual orientation.

The areas covered under the *Act* include employment, employee organizations, provision of goods and services, reasonable accommodation, discriminatory notices, hate messages and harassment.

The *Canadian Human Rights Act* supports efforts to create an equitable society by making provisions for special programs, such as employment equity, to end historical disadvantages and prevent them from happening again.

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 intent of the *Human Rights Code* is to contribute to freedom, justice and peace for the human family in accordance with the *Universal Declaration of Human Rights*.

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. 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.

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. In this application, it differs from Section 15 of the *Charter* (equality rights), which only regulates interactions between the state and individuals.

Areas Covered under the *Ontario Human Rights Code*

The *Code* identifies five areas in which it is illegal to discriminate. These are:

1. *Services, goods and facilities.*

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 *Code*. In other words, if any type of service is provided, discrimination is prohibited unless otherwise stated.

If a patient/client believes she or he has been discriminated against by an ONA member, she or he could file a complaint under this section.

2. *Employment.*

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. **Labour arbitrators have jurisdiction to interpret and apply the *Code*.**

3. *Accommodation.*

Accommodation refers to housing. It is illegal to discriminate against people based on their membership in a group protected under the *Code* 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.

4. *Contracts.*

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 *Code*.

5. *Vocational Associations (Unions).*

A union cannot treat a member differently because that member belongs to a group protected under the *Code*.

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 *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.

At that time, the vast majority of ONA collective agreements already contained anti-discrimination and anti-harassment provisions. Now, every collective agreement provides employees with the protections in the *Code*.

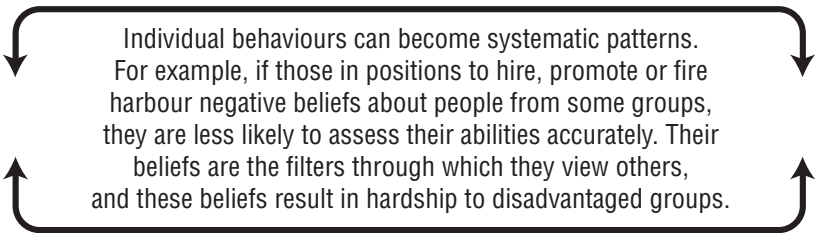
ONA deals with alleged violations of the *Code* through the grievance procedure under the collective agreement.

DISCRIMINATION, HARASSMENT AND BACKLASH

Discrimination

Discrimination is an action forbidden by law. It imposes special burdens, obligations or disadvantages on members of protected groups. Discrimination is also any action that withholds or limits access to opportunities, benefits and advantages available to other members of society.

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.



Prohibited Grounds of Discrimination

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

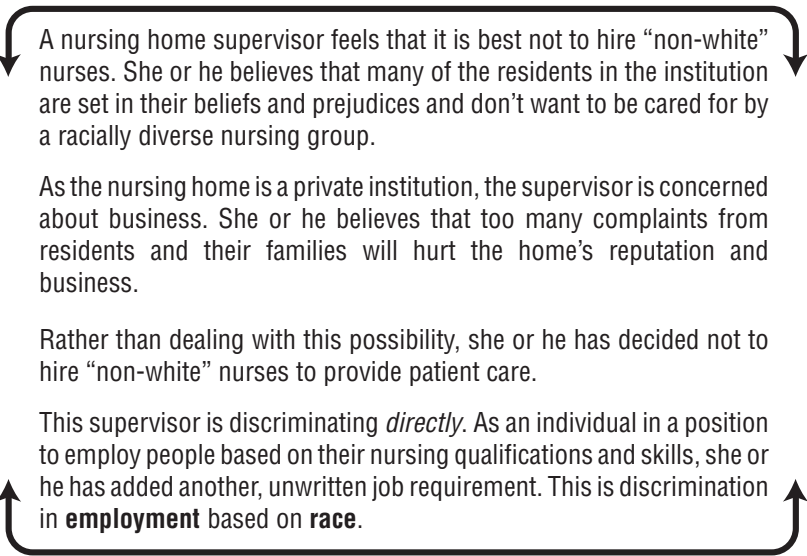
Race	Visible characteristics of skin colour, facial features, hair texture, etc., used to place people in categories such as “black” or “white.”
Ancestry	A person’s family lineage.
Place of Origin	The geographical place of birth.
Colour	The colour of one’s skin.
Ethnic Origin	Characteristics of culture, 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 biological classification of people as male or female. Sex is usually assigned by a doctor at birth and is based on a visual assessment of external anatomy. 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 and heterosexual orientations.
Gender Identity	Each person’s deeply-felt internal and individual experience of gender. A person’s gender identity may or may not correspond with her or his birth sex and with social norms of “female” and “male.” It includes an individual’s personal sense of her or his body (which may involve, if freely chosen, modifying body appearance or function by medical, surgical or other means) and other expressions of gender, such as dress, speech and mannerisms.
Gender Expression	The external attributes, behaviour, appearance, dress, etc. by which a person expresses her or himself and through which others perceive that person’s gender.
Age	Persons 18 years or over. 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.
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.
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).

Types of Discrimination

The most common types of discrimination are direct, systemic and discrimination because of association.

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*.



A nursing home supervisor feels that it is best not to hire “non-white” nurses. She or he believes 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. She or he believes that too many complaints from residents and their families will hurt the home’s reputation and business.

Rather than dealing with this possibility, she or he has 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, she or he has added another, unwritten job requirement. This is discrimination in **employment** based on **race**.

Adverse Effect Discrimination


Adverse effect discrimination is when a rule or requirement of a job, which on its face is neutral yet has the effect of discriminating against a particular class of individual. 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.

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. A good example of this was the routine exclusion of women from the building trades because it was assumed that they could not handle the physical requirements of the job. Another historical example was 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.

In the hospital sector, if nurses of colour 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 nurses of colour but all management was white, we would have to consider systemic racial discrimination.

The arbitration case *Clarke Institute of Psychiatry and ONA (Knopf)* addressed systemic racism where nurses from countries with largely white populations had their credentials accepted without question, while nurses who trained in countries where the majority population was non-white were required to provide all kinds of documentation. As a result of the arbitration award, the collective agreement was amended in the next round of bargaining.



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 nurses of colour 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.

A settlement agreement was reached among the nurses, ONA, the hospital and the Ontario Human Rights Commission. As part of the settlement, the parties agreed to the following:

- 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.

Discrimination Because of Association

It is against the law to discriminate against a person because she or he socializes with, supports or is otherwise associated with members of any group identified under the *Code* to which she or he does not belong.

There are two Aboriginal nurses who are part of your team. Recently, other staff have been giving them a hard time. They are not included in team decision-making. When they give their input, it is disregarded.

Lately, the situation has escalated. In their last performance reviews, both Aboriginal nurses were criticized for not having adequate “interpersonal skills.” Their attempts to address their exclusion from the team have resulted in a mounting conflict between them and other nurses.

You are close to one of the two and are aware of her perspective on the situation. You believe that what is happening is wrong, that they are being discriminated against and singled out for differential treatment.

In your next team meeting, you raise the issue. Now you find yourself being excluded in much the same way as your friend and colleague. At your next performance review, your “interpersonal skills” are called into question.

The Aboriginal nurses are being discriminated against on the grounds of **race, colour and ancestry in employment**. You are being discriminated against because of your support of them. This is **discrimination** because of **association**.

HARASSMENT

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 15.

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*.

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 Aboriginal people.

Intention is not a necessary element of harassment. Even if a person is unaware that her or his 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 her or his 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 her or his 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 co-worker 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 she or he 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.

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

Some examples of behaviour that is not 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.

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).
- 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 and review "Frequently Asked Questions about Bullying in the Workplace."

Workplace Harassment

Workplace harassment is a term found in *the Occupational Health and Safety Act (OHSa)* as result of the Bill 168 amendments effective in June 2010. The *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.
- You have the right to ask your employer, ONA, or an outside agency, such as the Ontario Human Rights Tribunal, to take action against harassment.

What to Do if You Feel You are Being Harassed

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 3: *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 her or his behaviour and explain that you find it offensive.*

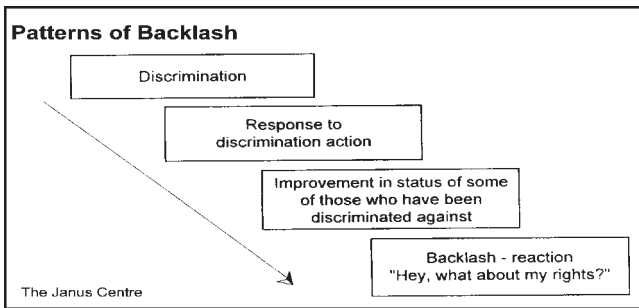
- Take someone with you when you speak to her or him or deliver a written message. The harasser will not be able to claim that she or he was unaware that the behaviour was offensive to you. Stay calm and give the harasser an opportunity to change her or his behaviour. This step may result in cessation 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.

Look to ONA for help in following formal processes.

BACKLASH

Backlash is defined as a hostile reaction to an earlier action or series of actions that were not originally seen as a serious threat to the status of those in power.



How to Deal with Backlash

Step 1: Be informed.

1. Obtain the information you need to address backlash.
2. Communicate.

Step 2: Be connected.

1. Link up with others who support equity to resist backlash and find support.

Step 3: Become an expert.

1. Learn about equity issues so that you can act against backlash.
2. Expand your experience in working on equity issues.

Step 4: Influence the decision-making process.

1. Make decisions that counteract backlash.
2. Influence those who make decisions by providing information, learning and your expertise.

Step 5: Identify resources to counteract backlash.

1. Be creative.

Step 6: Be accountable.

1. Everyone is responsible for resisting the backlash.

The following chart demonstrates strategies and actions for dealing with backlash.

Strategies and actions for dealing with backlash

Name the resistance and resist	<ul style="list-style-type: none">✓ Be informed.✓ Do the research.✓ Use the resource library.✓ Communicate with people.✓ Use the media to communicate the message.✓ Get beyond the blame and learn to challenge the oppression.✓ Talk about things that can make a difference.
Support the messenger	<ul style="list-style-type: none">✓ Create support groups and safe places.✓ Create links and networks with others who support equity.✓ Support those who feel discredited, frightened or threatened.
Reframe and use the language	<ul style="list-style-type: none">✓ Anticipate the backlash and plan for it.✓ Take back the language – find a new way to describe.✓ Challenge the perception of “reverse discrimination.”
Be active	<ul style="list-style-type: none">✓ Make an explicit commitment to do it.✓ Identify resources – be creative.✓ Develop your expertise – expand your learning about equality.
Contribute to Change	<ul style="list-style-type: none">✓ Act when people want to listen.✓ Keep the dialogue going with decision makers.✓ Make sure your decision-making takes account of equality.
Reposition and get included	<ul style="list-style-type: none">✓ Integrate equity into the way you do business.

Backlash information from the *Janus Centre*
Based on the video, “*Backlash to Change*,”
Ken Murch Productions

HOW TO FILE A FORMAL COMPLAINT

Making a Complaint Under Your Employer’s Workplace 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 her or his 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*).

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.”

The employer’s policy should tell you:

- To whom the policy applies.
- What is considered harassment in your workplace.
- The time limits on complaints.
- How to make a complaint.
- Who will investigate and how the investigation will work.
- Who will know about the complaint.
- Confidentiality requirements.
- What your rights are and how they will be protected.

- What interim measures are available, i.e. separating the parties until the investigation is over.
- If you will be informed about what is happening.
- Whether you can withdraw your complaint.
- The alleged harasser's rights.
- What penalties may be imposed if there is a finding of harassment.
- How long it will take to investigate and resolve your complaint.
- Whether mediation services are offered.

If this information is not contained within the policy, it is wise to seek it out before deciding to go forward with your complaint.

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 a 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

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 www.hrto.ca/NEW/home.asp.

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.

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's policy regarding discrimination and harassment during union business or activities.**

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

It remains very rare to find a racialized nurse in the middle or senior level of management, even in hospitals where 30 to 40 per cent of the staff nurses may be racialized group members.”

~ Ina Caissey, former president, ONA ~

SECTION 2: HUMAN RIGHTS and EQUITY TERMS

Accommodation (in employment)

Accommodation in employment is a requirement under the *Code*. It states that employers must accommodate members of groups against whom discrimination is prohibited. Accommodation must be made unless it causes undue hardship for the employer (see “Undue Hardship”). For example, an employee with a back injury is entitled to be accommodated through means such as the adjustment of her or his work responsibilities (e.g. lifting patients) if such does not cause undue hardship to her or his 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”).

Backlash

Backlash is a hostile reaction to an earlier action or series of actions that were not originally seen as a serious threat to the status of those in power.

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, requirements, job descriptions and tests, etc. are free of racial, gender or disability biases.

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*.

Constructive (Systemic) Discrimination

This is defined as the use or application of a neutral requirement that has a negative impact on a group protected under the *Code*. For example, if "years of experience following registration" is a requirement mandated by policy for certain positions, it may systematically exclude qualified nurses from other countries who were registered outside of Canada and have experience in other countries that is not acknowledged here (see "Discrimination").

Contracts

It is illegal 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.

Direct Discrimination

This describes an act, behaviour or practice of treating a person unequally. An example is a manager who refuses to hire Somali nurses (see "Discrimination").

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").

Discrimination

Discrimination 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.

Discrimination Because of Association

This is discrimination against a person because of her or his association with a person or persons belonging to a group identified as a prohibited ground under the *Code*. For example, if you are heterosexual and were denied a promotion because of your association with lesbians, this would be discrimination because of association.

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.

Employment Equity

Employment equity is a planned program designed to counter the effects of systemic discrimination in employment against members of disadvantaged groups. It was once legislatively mandated in Ontario, but the *Employment Equity Act* was repealed in 1995. Unions are committed to advancing the principles of employment equity and negotiating voluntary programs with employers.

Employment Equity Act, 1993

Bill 79 is Ontario's Employment Equity law, which came into effect on September 1, 1994. It was repealed in December 1995.

Employment Systems Review (ESR)

Under the federal *Employment Equity Act* of 1986, an Employment Systems Review is a process that is undertaken to identify systemic barriers to full participation in the employment process by designated groups.

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 (see "Accommodation," "Undue Hardship").

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 her 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 Identity

Gender identity refers to each person's deeply-felt internal and individual experience of gender. A person's gender identity may or may not correspond with her or his birth sex and with social norms of "female" and "male." It includes an individual's personal sense of her or his body (which may involve, if freely chosen, modifying body appearance or function by medical, surgical or other means) and other expressions of gender, such as dress, speech and mannerisms.

Gender Expression

Gender expression refers to the external attributes, behaviour, appearance, dress, etc., by which a person expresses her or himself and through which others perceive that person's gender. Gender identity and gender expression are linked. They can be seen along a continuum in relation to each other and to the ground of sex, which is also a *Code*-protected ground. *Code* protections for the grounds of gender identity and gender expression apply to people who may identify as, or are perceived to be, trans, transgender, transsexual, intersex, cross-dressers, two-spirit and others. Gender expression may sometimes also link with the ground of sex or sexual orientation depending on the circumstances.

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.

Goals and Timetables

There are two kinds of goals. **Qualitative goals** are programs that facilitate and/or support achieving equity in the workplace. **Quantitative goals** are

numerical targets that employers strive to achieve at a pace that considers such things as turnover, attrition, and the demographic composition of the host community.

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.

Harassment Because of Sex

The right to equal treatment without discrimination or harassment because of sex extends to all persons. The Human Rights Commission has taken the policy position that this protection extends to persons whose gender identity diverges from their birth-assigned identity. There are, arguably, few groups in our society today who are as disadvantaged and disenfranchised as transgenderists and transsexuals. Fear and hatred of transgenderists and transsexuals combined with hostility toward their very existence are fundamental human rights issues.

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.

Heterosexism is the promotion of superiority of heterosexuality, the assumption that everyone is heterosexual, and the belief that heterosexuality is the only right, correct, normal and moral expression of sexuality.

Human Rights Commission (Ontario)

The Ontario Human Rights Commission is the organization responsible for enforcing the *Ontario Human Rights Code*. It is currently made up of 10 commissioners, one of whom is appointed by the Lieutenant Governor as the Chair, and one as the Vice-Chair. 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.

With the implementation of Bill 107 in 2008, the Commission no longer receives, investigates, mediates or settles individual human rights complaints. The Commission's new mandate 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 “wilfully or recklessly.” The award is made for mental anguish suffered by the complainant (see “Restitution”).

With the implementation of Bill 107 in 2008, claimants must now file human rights applications (complaints) directly with the Tribunal. 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.

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 in 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.

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.

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

Prejudice means to pre-judge. Prejudices against people belonging to groups protected under the *Code* are often based on stereotypes (see “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.

Quotas

Unlike goals and timetables, quotas are inflexible, fixed numbers that employers must achieve by an externally imposed deadline.

Race

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. Differences in human appearance originate from physical adaptation to climate for survival over thousands of years. 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, black listed, etc.

Racial Harassment

It is unlawful to harass an employee because of her or his 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.

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 difference among people with the effect of marginalizing certain societal groups. The process of social construction of race is called racialization.

Racism

Racism means 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.

Violence, name-calling and discrimination in hiring are examples of racist behaviour. Everyday racism is found in behaviours of managers and co-workers towards nurses of colour. Treatment may include a few words exchanged, silences, gestures, glances, tone of voice, rumours, coincidences, inclusions and exclusions. Institutional or systemic racism takes the form of the practices, customs, rules and standards of organizations that unnecessarily disadvantage people because of their race, colour or ethnicity. They do not always involve differences in treatment. Educational requirements that are not related to actual job duties are an example. For more information, please contact ONA’s mailroom and request a copy of ONA’s 2003 report/executive summary on “Racism in Nursing.”

Record of Offences

It is illegal to discriminate against or harass a person in employment if she or he has a provincial record, or if she or he has 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, child-care), 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.

Sex

The biological classification of people as male or female. Sex is usually assigned by a doctor at birth and is based on a visual assessment of external anatomy. The *Code* prohibits discrimination because a woman is pregnant or may become pregnant.

Sexual Harassment

It is illegal to harass a person because of her or his 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.

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 and heterosexual orientations.

Small Employer

Under the now repealed *Employment Equity Act*, 1993, private sector organizations with 50-99 employees were considered to be small employers. The requirements for small employers were different than those for medium (100-499 employees) and large (500+ employees) employers.

Special Programs

These are programs allowed by the *Ontario Human Rights Code* "designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity" (Section 14(1)).

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 six non-exhaustive factors:

- Financial cost.
- Impact on a collective agreement.
- Problems of employee morale.
- Interchangeability of the work force and facilities.
- Size of the employer's operations.
- Safety.

A seventh factor, *the legitimate operational requirements of a workplace*, now appears to be emerging.

Vocational Associations (Union)

This refers to trade unions, trade or occupational associations, or self-governing professions.

Workforce

Workforce refers to the people (defined by Statistics Canada as those between the ages of 15 and 65) who are employed by an organization at any given point in time. This includes full-time, part-time, permanent and contract staff.

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 3: RESOURCES

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.

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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Website: www.ona.org

Ontario Human Rights Tribunal

Human Rights Tribunal of Ontario
655 Bay Street, 14th floor
Toronto, ON M7A 2A3

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