

Procedures for resolving complaints

A. Description and rationale

The objective of a complaint resolution mechanism is to ensure that human rights issues are brought to the attention of the organization and are appropriately dealt with. A complaint resolution procedure should set out a clear, fair and effective mechanism for receiving and resolving complaints of discrimination and harassment

B. Considerations

Designing and implementing complaint mechanisms can affect an organization's liability for discrimination and harassment.

At minimum:

- Complaints must be taken seriously
- They must be acted upon promptly when received
- Appropriate resources must be applied to resolve complaints
- A viable complaint mechanism must be in place and have been communicated throughout the organization
- The complaint procedure must ensure a healthy work environment is created and maintained for the complainant
- Decisions and actions taken by the organization must be communicated to the parties.

These objectives may be met in a variety of ways. Some organizations will adopt very formal mechanisms; others may opt for a simpler approach. There is no one perfect complaint mechanism – each organization must tailor its own approach, taking into account factors such as its mandate, size, resources and culture.

C. Elements

Note: *The sample wording provided in the sections below relates to employment, but can be modified to address housing or services. The sample wording is provided **only** as an example. There is no single best policy or procedure. You will **always** need to review policies and procedures to make sure they comply with current human rights law and policy and are appropriate for your organization.*



1. Access to information and advice

People who believe they may have witnessed or been subjected to discrimination or harassment, as well as people who are the subject of a complaint of discrimination or harassment, may benefit from having access to expert advice and information about the policy and procedures, as well as on harassment and discrimination in general. Ideally, the advisor will be a neutral expert in the areas of harassment and discrimination, who can explain the various options for dealing with human rights issues. This advisor should be separate from the person designated to receive and investigate complaints, and should not act as an advocate, either for the organization or for the person seeking advice. It is important that the advisor not be liable to pressure from the organization to divert or suppress complaints.

The advisor must make sure that all information is kept in the strictest of confidence, unless required to disclose the information under a legal obligation.

The procedure may describe how advisors will be selected, and specify that advisors will receive appropriate education and institutional support.

XYZ Organization will appoint a neutral and expert Human Rights Advisor, who will provide information about human rights and this policy and procedure to any person who is concerned about possible harassment or discrimination within the organization. The Advisor will not act as an advocate for any person and will not provide legal advice, and will maintain the confidentiality of communications with him or her, unless required to disclose information under a legal obligation.

2. Access to Code mechanisms

It is important to make it clear to employees that having an internal complaint resolution procedure in place does not in any way stop a person from seeking redress under the mechanism set out in the *Human Rights Code*, if she or he wants to. Tell people about the time limits for seeking redress under the *Code*. Employees may also have rights under collective agreements that will give them other choices for dealing with a problem.

The provisions of this policy and procedure in no way affect the right of any person to exercise his or her rights under the Ontario *Human Rights Code*, within the time limits specified by that legislation.

3. Making a complaint

Some complaint mechanisms permit complaints from any person who believes he or she has witnessed harassment or discrimination. Other mechanisms restrict complaints to people who believe they have been subjected to harassment or discrimination.

Complaint procedures may differentiate between “formal” and “informal” processes. Informal processes seek to resolve human rights issues without investigating or assessing the merits of the allegations (for example, by facilitating communication between the people involved). This type of informal process is generally not appropriate where there are serious or systemic allegations. If an informal process is used, it must still be clear that the complaint will be taken seriously and addressed by the people who are responsible.

The procedure should set out forms and processes for making a complaint. However, organizations should address complaints whether or not they are in the requested format.



Since there may be power imbalances at play, or the potential complainant may fear reprisal, or there may be safety issues, do not require complainants to address the matter directly with the potential respondent before using the complaint mechanism.

In some cases, you may have to take temporary steps while the investigation or dispute resolution is proceeding, to safeguard the environment of the complainant. For example, it may be necessary to limit contacts between the respondent and the complainant. Make sure that the steps taken do not penalize the complainant for making the complaint. Treat any concerns about the complainant's safety with the utmost seriousness.

Complainants are encouraged to explain to the person who is harassing or discriminating against them that the conduct is unwelcome, but are not obliged to do so. Indeed, each case is different. If addressing the person responsible could lead to an escalation of the harassment or discrimination, or to safety risks, complainants should not be expected to have to directly interact with that person. If a complainant feels they can safely make it known to the person responsible that the behaviour is unwelcome, of course this may resolve the matter, or may help them later if they make a complaint. However, the complainant should never feel obliged to address their harasser against their better judgement.

If the situation cannot be resolved by speaking to the person responsible, a complaint may be made by speaking to either: (1) the manager, or (2) the Manager of Human Resources.

Where possible, the complaint should be made in writing, including details of:

- What happened – a description of the events or situation
- When it happened – dates and times of the events or incidents
- Where it happened
- Who saw it happen – the names of any witnesses, if any.
- The person receiving the complaint will notify the person(s) complained against (the respondent(s)) of the complaint and provide the respondent(s) with a copy of the written complaint.

If necessary, the complainant or the respondent will be placed on a paid leave of absence, moved to a different location within the organization, or provided with alternative reporting relationships. The decision will be made on a case-by-case basis, and will reflect the principle that the complainant will not be penalized for making the complaint.

4. Reprisal

Persons who make a complaint, as well as anyone else who is involved, should not face negative consequences for taking part in the complaint process. In other words, they should be free from "reprisal."

Protection under the *Code* from reprisal covers:

1. Complainants
2. Witnesses
3. Advisors
4. Representatives of complainants and witnesses
5. Investigators
6. Decision makers/management.

A person who believes that he or she has been subjected to reprisal should be able to file a complaint under the procedure.



Every person has a right to claim and enforce their right to a workplace free of harassment and discrimination. No person shall be negatively treated for bringing forward a complaint, providing information related to a complaint, or helping to resolve a complaint. It is a violation of XYZ Organization policy to discipline or punish a person because he or she has brought forward a complaint, provided information related to a complaint, or otherwise been involved in the complaint resolution process. Reprisal may be the subject of a complaint under this procedure, and persons engaging in reprisal are subject to disciplinary measures, up to and including termination of employment.

5. Dispute resolution

When developing complaint procedures, it is a good idea to use Alternative Dispute Resolution (ADR) as part of a "best practices" approach.

ADR can provide a means of resolving a situation at any stage during the complaint process. ADR can be a simple, informal procedure using a peer review panel or other trained internal employee. However, the sensitivity of human rights complaints from both an employer/organizational and employee perspective, coupled with the need for strict confidentiality, suggest that a more formalized type of ADR might be more appropriate.

A mediator is a neutral third party who acts as a facilitator to help the parties reach a negotiated settlement that both parties agree to. ADR can take the form of internal or external mediation, depending on whether persons with the needed skills, expertise and neutrality are available within the organization.

It is generally good practice for mediation to be separate from the investigation process. Parties may find it easier to speak freely and reach agreement if information from the mediation process is kept separate from any investigation process.

It is important to recognize that ADR will not be appropriate in all cases – for example, in situations where there are significant power imbalances. The OHRC recommends that ADR be offered as a voluntary option.

Where appropriate, the person receiving the complaint will offer the parties an opportunity to mediate the complaint. No person will be required to undertake mediation. Mediation will be conducted by a neutral and expert third-party mediator. Mediation may take place at any stage during the complaint process.

6. Appointing an investigator

The organization must take steps to investigate the circumstances of a complaint. The person selected to do the investigation should be independent and objective. Wherever possible, the investigator should not be in a position of direct authority over any of the people involved in a complaint, but should report to someone with the authority to make decisions and have them enforced.

An investigation may be conducted by a member of the organization, or by someone external. An investigation should not be carried out by anyone who is seen as taking sides with either party. For example, it is not very likely that a lawyer who often represents management in labour disputes will be seen as "objective" by non-management employees. Similarly, a human resources manager who is normally involved in discipline and termination decisions may not be seen as independent. Also, the investigator should not be someone in a position to have any power or influence over the career progress of either of the parties.



Persons conducting investigations must be knowledgeable about:

1. Human rights issues and principles in general
2. The requirements of the *Code*
3. The organization's anti-harassment/anti-discrimination policy and complaints procedure
4. Methods for conducting investigations.

Similar considerations apply to any person whose role is to mediate or conciliate a complaint.

Where mediation is not appropriate or is not successful, the person receiving the complaint will refer the complaint to an expert external investigator.

7. Representation

The people involved in an internal complaint resolution process should be allowed to have someone represent them if they wish, whether during mediation or investigation. Representatives may include union stewards or a colleague.

Complainants and respondents are entitled to seek representation of their choice, including legal counsel, during the complaints process, at their own expense.

8. Documentation

For everyone involved in the process, it is important to make and keep written notes about the events leading to the complaint. These details should include:

1. What happened – a description of the events or situation
2. When it happened – dates and times of the events or incidents
3. Where it happened
4. Who saw it happen – the names of any witnesses, if any.

As well, gather any other documents or materials that may have something to do with the complaint, such as letters, notes, offensive pictures, *etc.* Note that allegations of systemic discrimination may require organizations to gather a broad range of documents (for example, you may need to gather and maintain demographic information related to the organization).

Documentation related to the investigation should be collected and preserved. This includes witness interviews, notes of meetings, evidence gathered, any investigation report, and documentation on the outcome of the investigation. Safeguard these documents at least until the conclusion of any human rights proceedings or of limitation periods related to human rights proceedings.

Every person who believes he or she has experienced harassment or discrimination, as well as every person who has been notified of a complaint against them, is advised to create and keep written notes about the events at issue, and to maintain any relevant written documentation.



9. Confidentiality and privacy

It may be very difficult to bring forward a complaint of harassment or discrimination. Protecting confidentiality and privacy is important, both to the person bringing forward the complaint, and the person(s) the complaint is made against.

Only share information about the complaint with people who need to know about it. For example, the person the complaint is against will need to know about the particulars of the complaint to respond to it. Witnesses will need some information about the incidents they are said to have been involved in or allegations they have knowledge of.

Investigators, mediators, advisors and any other persons involved with the complaints process should protect confidentiality and privacy, and maintain the security of all documents related to complaints, including contents of meetings, interviews and investigation reports.

Advisors, investigators, mediators and persons receiving complaints will, to the extent possible, protect the confidentiality and privacy of persons involved in a complaint, subject to the requirements of a fair investigation and resolution process.

All documents related to a complaint, including the written complaint, witness statements, investigation notes and reports, and documents related to the complaint, will be securely maintained by the Human Resources Department, separate from personnel files.

10. Investigation processes

The investigation of the complainant must be impartial, timely, fair, and address all relevant issues.

The investigator should thoroughly interview both the complainant and the person(s) alleged to have engaged in harassment or discrimination against the complainant. The respondents should be given the opportunity to respond to each of the specific allegations raised by the complainant. The investigator should also interview any relevant witnesses identified by either the complainant or the respondent(s), and gather any relevant documents. Proper notes should be taken during interviews.

The investigator should prepare a report summarizing the allegations, the steps taken during the investigation, and the evidence gathered. The report may make findings of fact and recommendations for further action, or these functions may be assigned elsewhere.

In most cases, investigations should start immediately after an investigator is chosen, and finish within a fixed time frame (for example, 90 days).

The investigator is responsible for ensuring a thorough, fair and impartial investigation of the allegations in the complaint. The investigator will interview the complainant, the respondent(s), and relevant witnesses suggested by the complainant or respondent(s), as well as gather documents relevant to the matters in the complaint.

All staff of the organization are required to cooperate with the investigator.

The investigator will, wherever possible, complete the investigation within 90 days of receiving the assignment.

At the conclusion of the investigation, the investigator will prepare a written report summarizing the allegations and the investigation results, and will forward the report to the Human Resources Manager.



11. Potential outcomes

Based on the findings of the investigation and human rights law and policy, a decision must be made about whether the complaint is well-founded. If the complaint is well-founded, the organization must take steps to address the human rights violations and prevent future occurrences.

Human rights laws are preventive and remedial rather than punitive, and this should be reflected in the outcomes of substantiated complaints.

Where harassment or discrimination is found to have occurred, make sure that steps are taken to ensure that the complainant is, to the extent possible, “made whole” and the effects of the discrimination remedied.

Persons who violate the anti-discrimination/anti-harassment policy may face a range of consequences, including an apology, education, counselling, reprimands, suspension, transfer or termination of employment, depending on the nature and severity of the behaviour.

As well, consider whether the complaint (whether it is determined to be founded or unfounded) reveals any broader issues that the organization should address. The investigation may, for example, point to specific barriers in the workplace, a perception of systemic discrimination, or a need for further training on particular human rights issues. If so, take steps to remedy the problem.

Complainants should not be automatically penalized where a complaint is determined to be unfounded, as this may deter people from making valid complaints. There may be very rare cases, however, where there is objective evidence to show that the complaint was maliciously filed, with deliberate intent to injure or mislead. Only where the evidence of malice in bringing a complaint is compelling and undeniable should disciplinary measures of any sort apply to complainants.

Based on the findings in the investigator’s report, the Human Resources Manager will decide whether the policy has been violated.

If the policy has been violated, the Human Resources Manager will determine the appropriate consequences for the person(s) who violated the policy. These may include:

- An apology
- Counselling
- Education and training
- Verbal or written reprimand
- Suspension with pay
- Suspension without pay
- Transfer
- Termination of employment.

In determining the appropriate consequences, the Human Resources Manager will take into account the nature of the violation of the policy, its severity, and whether the individual has previously violated the policy.

Where a violation of the policy is found, the Human Resource Manager will also take any steps necessary to repair the effects of the discrimination or harassment on the complainant, and to prevent any further recurrences of harassment or discrimination within the organization.

The Human Resources Manager will be responsible for monitoring the outcome of the complaint.



12. Communication

The complainant and the respondent(s) must be apprised of the outcome of the investigation, and in particular, whether the policy was found to have been violated, and any actions that will be taken as a result.

The complainant and the respondent(s) will each be provided with a copy of the investigator's report, and with the Human Resources Manager's decision regarding outcomes.

Where a complainant is dissatisfied with the outcome of the complaint, he or she will be reminded of his or her rights under the Ontario *Human Rights Code*.

Source: [Guidelines on developing human rights policies and procedures](#)



**Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne**