

**Members' Guide
to Workplace
Human Rights
Concerns and
Complaints**

Introduction

Workers' human rights in the workplace are protected by Ontario's *Human Rights Code*, and other human rights legislation, such as the *Labour Relations Act*, Schedule A of the *Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, and the *Occupational Health and Safety Act*.

OECTA has developed this resource to both assist members in better understanding their rights and responsibilities regarding human rights in the workplace, and to guide members who have concerns that their human rights have been violated in the workplace. This guide includes the following:

- **Discrimination and Harassment in the Workplace** – Ontario's *Human Rights Code*, and *Occupational Health and Safety Act*, as well as workers' legal rights to a workplace free of discrimination and harassment.
- **Workplace Human Rights Concerns or Complaints** – options and processes available to OECTA members should they believe their human rights, as per Ontario's *Human Rights Code*, have been violated in the workplace.
- **Details of the Association's Human Rights Complaint Intake Form**, which offers members an opportunity to identify instance(s) where they believe that their human rights, as recognized in Ontario's *Human Rights Code*, have been violated in the workplace.
- **A sense of what members can expect**, including remedial pathways, when they contact the Association with a human rights concern or complaint.

Please note that if you believe you have been mistreated in the workplace by an administrator, worker, student, parent, or third party, contact your **local unit office** for guidance. Even if your concern is not a human rights violation, you have a right to a safe workplace free from discrimination and/or harassment.

Discrimination in the Workplace – Ontario’s *Human Rights Code*

Right to a Workplace Free of Discrimination

Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status, or disability.

Should you have any questions regarding the impact of denominational rights on the right to a workplace free of discrimination, contact your [local unit office](#).

Right to Membership in the Union without Discrimination

You are entitled to equal treatment within the union: every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association, or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, or disability.

Should you have any questions regarding the impact of denominational rights on the right to membership in a union, contact your [local unit office](#).

Understanding Code-based Discrimination and Harassment in the Workplace

Access information through the following links.

Enumerated Code Grounds	Definition of Discrimination	Definition of Harassment	Definition of Workplace
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If you are assessing the possibility of workplace discrimination, consider the following:

1. Are there attitudes, behaviours, and/or practices in my workplace that have an adverse impact on an individual(s) or groups of individuals based on enumerated *Code* grounds?
2. Have I been mistreated or treated differently than others in the workplace based on enumerated *Code* grounds? Adverse treatment in the workplace may encompass non-school board employees, including students, parents, and third parties.

If the answer is “yes” to either of the above, it is strongly advised that you:

- Contact your [local unit office](#) for guidance prior to bringing potential harassment or discrimination concerns directly to colleagues or administrators. Discussions of this nature are highly sensitive and may have workplace implications; thus, prior consultations with a release officer in your local unit office is advisable. Information will remain confidential to the Association and will not be shared with your school board or other personnel.

- Complete the Association's **Human Rights Complaint Intake Form** independently or with a local release officer. All submissions will remain confidential to the Association and will serve as a starting point for a review of the matter.
- Apprise a medical practitioner of the impact of negative workplace experiences. Oftentimes members share medical or workplace information with their principal or vice-principal as a friend or in confidence. As agents of the school board, principals and vice-principals have a legal obligation to report to the employer. They cannot withhold confidential information from the school board or hold employee information in confidence.

Workplace Human Rights Concerns or Complaints

Overview of the Process of Completing the Human Rights Complaint Intake Form

The Association's **Human Rights Complaint Intake Form** is completed online either by you or a release officer in your local unit office. It is advised that you contact your local unit for assistance in completing the form. When you contact a local unit release officer:

- Know that your concern or complaint is confidential.
- Establish what you need to participate in the process, including accommodation(s) if required. Ask questions and take breaks as needed.
- Request an overview of the **Human Rights Complaint Intake Form** and process.
- Establish whether it will be you or the release officer completing the **Human Rights Complaint Intake Form** online, which includes:
 - The protected ground that best matches the basis of the complaint.
 - The who, what, where, when, and how of incident(s).
 - Steps taken to date.
- Ensure that upon submitting the **Human Rights Complaint Intake Form**, you receive a confirmation email.
- Assemble additional documentation, such as emails, meeting notes, and/or a chronology of events that support your claim. The submission of the intake form is a first step, and following its submission you will explore your complaint in further detail with the Association.

Tips for Members Completing the Human Rights Complaint Intake Form Independently

It can be difficult to assert allegations of this nature. Experiences of discrimination and/or harassment can have an immediate and prolonged impact on emotional, psychological, and physical health. If you elect to complete the Association's **Human Rights Complaint Intake Form** without the assistance of a release officer from your local unit, the following suggestions may be helpful.

- If you anticipate that you might face challenges in completing the form, have a support person or scribe to assist.
- Complete the form with as much detail as possible.
- Review a **PDF version** of the intake form before completing the form online.

- The completion of this form is a starting point. There will be opportunity to share additional details. Jot them down and set them aside for follow-up discussion.
- The form is not lengthy, and it does not time out, so frequent breaks are possible.
- Access available supports and contact the unit office as needed.

Once the **Human Rights Complaint Intake Form** is submitted online, staff in the Bargaining and Contract Services department at Provincial Office, with assistance of legal counsel and in consultation with the local unit, will then consider all relevant information to provide advice about best avenues to pursue.

Overview of Remedial Pathways

Once a human rights complaint has been submitted to the Association through the **Human Rights Complaint Intake Form**, the Association will assess all information to determine next steps. Each situation is considered on a case-by-case basis; thus, remedy is also considered based on the facts of each specific case.

The intent of a remedial process is to restore individuals or groups whose workplace rights have been violated. Remedy is case specific and may focus on stopping the discriminatory behaviours, preventing future discrimination, protecting the dignity of a person or groups of people, and potentially compensating where there are quantifiable damages.

Members may have two legal remedial pathways explained to them by the Association, as per below.

Remedial Pathway One – Grievance/Mediation/Arbitration

Violations of the collective agreement, the *Education Act* and its regulations, the *Occupational Health and Safety Act* and its regulations, and/or other work-related legislation are addressed through the grievance/arbitration process. Through these processes, remedy is sought to restore individuals or groups whose workplace rights have been violated.

When a member alleges a violation, including through the **Human Rights Complaint Intake Form**, the Association explores the direct and circumstantial evidence.

Staff in the Bargaining and Contract Services department at Provincial Office, along with legal counsel, determine if grievances will be filed and if grievances will address a human rights violation(s).

Local unit release officers guide members through the grievance process, including providing updates and supports between steps of the grievance/arbitration process.

At times, the act of filing grievances halts actions, attitudes, or behaviours; for example, upon the filing of a grievance, the employer might cease discriminatory conduct.

Apprise your local release officer or provincial staff officer if the discriminatory actions, behaviours, or attitudes cease at any point in the process, including after the filing of a grievance(s). **It is critical that you keep the Association informed regarding the status of the matter.**

If you bring a concern or complaint forward, and the determination is made that the matter does not violate Ontario's *Human Rights Code* but is a violation of the collective agreement, grievance(s) will be filed accordingly, and you will be guided through the grievance process.

Overview of Remedial Pathway Two – Application to the Human Rights Tribunal of Ontario

If it is determined that a human rights violation exists because of the actions or inactions of the employer, a Bargaining Contract Services department Staff Officer at Provincial Office will file a grievance alleging a human rights violation, if no such grievance has been filed to-date. The Association may also make a determination that it will make an application to the Human Rights Tribunal of Ontario (HRTO).

Members may file an application with the HRTO independent of OECTA and at the member's own cost.

- If a grievance has been filed for the same matter for which you are submitting an application to the HRTO, you should advise the Association of the application.
- Where there is no grievance also being filed, it would be helpful for you to apprise the Association of any independent action you may be taking.
- You are encouraged to review the [HRTO application process](#), including the [Applicant's Guide](#).
- Be mindful that your HRTO application must be filed within one year of the occurrence. Where an application is beyond a year, applicants will be expected to provide a rationale to the HRTO. The HRTO has the authority to deny the application.

Workplace Human Rights Complaints About Another OECTA Member

Where there is an allegation of harassment or discrimination between members, both the complainant and the respondent have rights afforded to them by the employer and the Association.

The school board is responsible for:

- Ensuring that workplaces are free of discrimination and harassment.
- Having a workplace violence and harassment policy, and associated program, that enables workers to report concerns of harassment and discrimination directly to the employer.
- Investigating such concerns.

School boards are expected to address and prevent work related risks from parents, students, workers, and other individuals encountered in the course of work.

The Association has a duty to fairly represent all members in matters arising under the collective agreement.

Initial Discussions with the Local Unit: The Complainant

If you believe another OECTA member has infringed upon your human rights, it is advised that you contact your **local unit office** for assistance. What follows are possible items for your discussion(s) with your local unit officers.

- The components and purpose of the Association's **Human Rights Complaint Intake Form**.
- Clarification of how you will be represented in this matter and the Association's duty of fair representation.
- The school board's workplace violence and harassment policy and reporting mechanism as an option. Should you elect this option, keep the Association apprised of the process and outcome as staff in the Bargaining Contract Services department at Provincial Office, with legal counsel and the local unit, will review the school board's process and outcome in dealing with this matter, and determine if grievances are warranted.
- Informal resolution as an option.
 - > If you choose to address a concern directly with a colleague, consider contacting your local unit office first for guidance.
 - > If you are advised by the school board that you are required to interact with the person you believe has discriminated against or harassed you, and if you believe that this interaction will be traumatizing or even extremely uncomfortable, let the employer know that you are willing to participate but are first seeking advice from your Association.

In consultation with the Association, there will be a determination of next steps. If you need time to consider options, let the Association know so that timelines can be considered.

Initial Discussions with the Local Unit: The Respondent

If another OECTA member has alleged that you have infringed upon their human rights, it is advised that you contact your **local unit office**. What follows are possible items for your discussions with your local unit officers.

- Options for resolving the matter.
- Member-to-member resolution. Members (claimants) may elect to address concerns directly with their colleague (respondent) and may contact the local unit for guidance.
- If the school board's workplace violence and harassment policy and reporting mechanism is selected as an option, the board's process will be reviewed. Should the process result in a grievance(s) being filed by the Association, such grievances are filed against the employer.
- If informal resolution is selected, review the process as it pertains to your school board. If you are advised by the school board that you are required to interact with the person you believe has discriminated against or harassed you, and if you believe that this interaction will be traumatizing or even extremely uncomfortable, let the employer know that you are willing to participate but are first seeking advice from your Association.
- Clarification of how you will be represented in this matter, and an explanation of the Association's duty of fair representation.

Duty of Fair Representation

Duty of fair representation means the Association has a duty to represent all members in a manner that is not arbitrary, discriminatory, or in bad faith, as required by Section 74 of the *Labour Relations Act*.

“Arbitrary” means conduct which is capricious, implausible, or unreasonable in the circumstances. This is often demonstrated by a failure by the union to properly direct its mind to a situation, or to conduct a proper and meaningful investigation when one appears to be called for.

“Discriminatory” means distinguishing between or treating employees differently without good reason.

“Bad faith” is conduct motivated by hostility, malice, ill-will, or dishonesty.

If you are concerned about how the Association is representing you with respect to the collective agreement, contact your local unit president. If you have further questions or concerns, contact the Bargaining Contract Services department Staff Officer at Provincial Office. If your concerns remain, contact the Association’s General Secretary.

If you believe the Association has acted in a manner that is arbitrary, discriminatory, or in bad faith, you have a right to file an unfair labour practice complaint pursuant to Section 74 of the *Labour Relations Act*, alleging the Association’s failure to represent you. Filing an unfair labour practice complaint with the Ontario Labour Relations Board (OLRB) is legal proceeding. The OLRB will provide information on its process.