

DISCRIMINATION AND HARASSMENT IN THE LEGAL EDUCATION SETTING

**An Introductory Session for
First Year Law Students**

Prepared for
Queen's University – Faculty of Law
by the Law Society of Upper Canada

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Ontario Human Rights Code

Services,
Goods,
Facilities

Accommodation
(Housing)

Contracts

Employment

Vocational
Associations

Prohibited Grounds of Discrimination

- Sex
- Sexual orientation
- Gender identity
- Gender expression
- Race
- Ancestry
- Place of origin
- Colour
- Receipt of Public Assistance (housing only)
- Ethnic origin
- Citizenship
- Creed
- Age
- Marital status
- Family status
- Disability
- Record of offences (employment only)

No Reprisals

Every person has a **right to claim and enforce his or her rights** under this Act, to institute and participate in proceedings under this Act and to **refuse to infringe a right of another person** under this Act, **without reprisal or threat of reprisal** for so doing.

Law Students: Rights and Responsibilities

- **Services Goods and Facilities**
 - Rights as a law student
 - Responsibilities as a law student

Law Students: Rights and Responsibilities

The University has a legal obligation to provide a respectful (harassment free and non-discriminatory) work environment to its employees, as well as a respectful (harassment free and non-discriminatory) learning environment to its students.

In order to maintain a respectful working and learning environment, the University is entitled to demand appropriate conduct from its faculty, staff and students, while at the same time respecting academic freedom.

As students, you have the right to equal treatment with respect to educational services, but you also have responsibilities. Students are expected to respect the equal rights of their classmates and of the faculty and staff who work at the University.

Law Students: Rights and Responsibilities

- **services goods and facilities**
 - Rights as a law student
 - Responsibilities as a law student
 - Responsibilities in providing services as a lawyer
- **Employment**
 - Rights as a law student
 - Responsibilities as a co-worker
 - Responsibilities as a lawyer
- **membership in a self-governing profession**

Law Students: Rights and Responsibilities

- **harassment in the workplace**
- **Right to be free from **unwelcome sexual solicitation****
 - * **by a person in a position to confer, grant or deny a benefit; and**
 - * **to be free from reprisal or the threat of reprisal for rejecting a sexual advance.**

Professional Responsibilities

Under the Law Society's *Rules of Professional Conduct* lawyers have a **special responsibility** to respect the requirements of human rights laws in force in Ontario and to honour the obligation not to discriminate based on prohibited grounds.

- * **Rule 6.3.1**

The Rules also specifically prohibit sexual harassment.

- * **Rule 6.3**

Professional Responsibilities

The Law Society's *Rules of Professional Conduct* apply:

- to licensed lawyers as well as candidates registered in the Licensing Process; and
- to interactions with other licensees, as well as professional dealings with the public (e.g. clients, law school staff, etc.).

Good Character Requirement

As part of the Law Society's mandate to protect the public, maintain high ethical standards and promote public confidence in the legal profession, all recipients of a lawyer license are required to be of **“good character”**.

Where concerns are raised about a licensing applicant's character, the Law Society investigates and may conduct a hearing.

Activities during law school may form the basis of a Law Society investigation and may be used as evidence in a character hearing.

Legal Definition of Harassment

“A course of vexatious comment or conduct that is known, or ought reasonably to be known to be unwelcome.”

Scenarios

DISCUSSION OF SCENARIOS 1-3

Principles of Harassment

- Adjudicators assess harassment complaints from the perspective of a reasonable person, apprised of all the relevant contextual facts and circumstances (including the gender, race, sexual orientation, and other personal characteristics of the complainant)
- The complainant need not vocalize their objection, if a reasonable person would have found the conduct or comments to be objectionable.

Principles of Harassment

- Usually a series of repeated conduct or comments is required.
- One incident can constitute harassment if it is sufficiently egregious and results in lasting harm.
- Focus is on the effects of the respondent's actions. Proof of intent to harass or of a malicious motive is not required.
- “Humour” is not an excuse.

Poisoned Work/Learning Environment

The creation of a negative, unpleasant or toxic work/learning environment

- * by comments or conduct
- * that tend to demean a group covered by a prohibited ground,
- * even though not directed at any specific individual(s).

Definition of Discrimination

Differential treatment,

- whether **intentional or not**,
- based on **one or more prohibited grounds**,
- which has the **effect** of imposing burdens, obligations, or disadvantages on an individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to others

Duty to Accommodate

“Employers designing workplace standards owe an obligation to be aware of both the differences between individuals, and differences that characterize groups of individuals. They **must build conceptions of equality into workplace standards**. By enacting human rights statutes and providing that they are applicable to the workplace, the legislatures have determined that the standards governing the performance of work should be **designed to reflect all members of society, in so far as this is reasonably possible.**”

- *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3 at para. 68

Duty to Accommodate

**Duty to accommodate
to the point of
undue hardship**

Scenarios

DISCUSSION OF SCENARIOS 4-5

Principles of Discrimination

- Adverse effects may result in discrimination, even if they are unintended and/or indirect.
- Liability for discrimination can be found even if the prohibited ground it is only one element of a decision, policy or practice.
- Not all distinctions are discriminatory. Discrimination will be found where a decision, policy or practice perpetuates historical prejudice, reinforces harmful stereotypes, or constitutes an affront to human dignity.

Duty to Accommodate

- An employer's or a service provider's duty to accommodate applies to all of the prohibited grounds of discrimination enumerated in the Human Rights *Code*.
- Failure to accommodate *Code*-related needs constitutes a form of discrimination, unless the employer or service provider can show that accommodation cannot be achieved without incurring undue hardship.

Who to Talk to at Queen's University?

Regarding accommodation requests:

- **Helen Connop**, Manager of Education and Equity Services for the Faculty of Law.

Tel: 613-533-6000 ext. 78147

Email: helen.connop@queensu.ca

Who to Talk to at Queen's University?

Regarding reports of discrimination or harassment:

- **Associate Dean Academic Cherie Metcalf**

Tel: 613-533-6000 ext. 74267

Email: metcalfc@queensu.ca

- **Helen Connop**, Manager of Education and Equity Services for the Faculty of Law.

Tel: 613-533-6000 ext. 78147

Email: helen.connop@queensu.ca

- **Queen's University Human Rights Office:**

Tel: 613-533-6886

Email: hrights@queensu.ca

Who to Talk to at Queen's University

- Queen's University Sexual Violence and Prevention and Response Coordinator

Barb Lotan

email: bjl7@queensu.ca

phone: 613-533-6330

Office: B502 Mackintosh-Corry Hall

Who to Talk to at Queen's University

Public Service Alliance of Canada Local 901

- Union of Teaching Assistants, Teaching Fellows, Research Assistants & Postdoctoral Scholars at Queen's University

website: <http://psac901.org/>

Peer Support

LSS Equity & Diversity Committee

The Equity & Diversity Committee works with the faculty and student Equity & Diversity Commissioners to educate law students on equity and diversity issues.

Peer Support

- **LSS Equity & Diversity Committee**

Co-commissioners:

Kelly Lee: kelly.lee@queensu.ca

Nathan Holman: nathan.holman@queensu.ca

The 2017-2018 Equity & Diversity Committee

Hisham Imtiaz

Liam McMunagle

Ilona Andersen

Giancarlo Mignardi

Richard Glennie

Rae Daddon

Andrew MacDonald

Jing Bo Yu

Taylor Burnie

Malvin Seto

Dawit Debssou

Udani Perera

Peer Support

www.justbalance.ca

Community on campus

- ALSA - Aboriginal Law Students Alliance
- Christian Legal Fellowship
- Disability and Mental Health (DAMH) Law Club
- Feminist Law Students' Association
- Jewish Law Students Association (JLSA)
- OUTLaw
- Parents at Law School
- Society of Asians in Law
- South Asian Law Students Association (SALSA)
- Women & Law Association

Discrimination and Harassment Counsel

If you have **experienced or witnessed**

- discrimination or harassment
- by a licensee (lawyer or paralegal) or
- by a candidate in the licensing process,

you can contact the **Law Society's Discrimination and Harassment Counsel** (DHC) for confidential and free information about your options and avenues of recourse.

Discrimination and Harassment Counsel

The DHC may be able to assist you in reaching a resolution of your concerns through non-adversarial conflict resolution means, such as mediation and conciliation.

DHC website: www.dhcounsel.on.ca

DHC email address: assistance@dhcounsel.on.ca

Toll free telephone: 1-877-790-2200

The DHC does not provide legal advice or representation.

Legal Advice

If you require legal advice regarding your rights and possible human rights claims that you may have, you can obtain a free consultation from the **Human Rights Legal Support Centre**:

Website: www.hrlsc.on.ca

Toll free telephone: 1-866-625-5179

Formal Avenues of Recourse

- Filing a complaint under the **Queen's University Harassment/Discrimination Complaint Policy and Procedure** (<http://www.queensu.ca/secretariat/policies/senateandtrustees/harassment.html>)
- Filing an Application with the **Human Rights Tribunal of Ontario** (<http://www.hrto.ca>)
- Filing a professional misconduct complaint with the **Law Society** (if your complaint is against a lawyer, paralegal, or candidate in the licensing process) (www.lsuc.on.ca).