





Corporate Human Resources Procedure		Content Updated: 2016-03-29 Date of Last Review: 2020-12-01
Supports Policies: HR-62-13 and HR-61-13		Supersedes: Resolving Harassment & Discrimination Issues Procedure (Approved by CMT: April 7, 2005)
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Procedure for Resolving Harassment & Discrimination Issues

PURPOSE	This Procedure outlines steps to be taken to address issues of harassment and/or discrimination by employees of the City of Hamilton. They are in accordance with the <i>Harassment and Discrimination Prevention Policy</i> and the <i>Personal (Workplace) Harassment Prevention Policy</i> . Please refer to these policies for further information.
SCOPE	This Procedure applies to all Employees of the City of Hamilton, including but not limited to regular, temporary, probationary and contract Employees, and to consultants, volunteers, students and interns. This Procedure also applies to elected officials.
ROLES & RESPONSIBILITIES Employee	<p>Any Employee who has a complaint alleging violation of either the <i>Harassment and Discrimination Prevention Policy</i> or the <i>Personal (Workplace) Harassment Prevention Policy</i> is encouraged to attempt the following before a formal complaint is filed;</p> <ul style="list-style-type: none"> ○ if possible, make your disapproval known to the person who is causing the offence and ○ ask that all offensive behaviour stop (If an Employee approaches you in this regard it is expected that you will make all reasonable efforts to resolve the matter); and/or ○ discuss concerns with your immediate Supervisor or another member of management; and/or ○ seek advice from a union representative (where applicable); and/or ○ contact the Human Rights Specialist in Human Resources for advice/consultation even if there is no intent to file a complaint. <p>Do not discuss the alleged harassment or discrimination or intent to file a complaint with other co-workers, as this could be a potential breach of the Harassment and Discrimination Prevention Policies.</p> <p>Where possible, Employees who believe that they have been subjected to Harassment or Discrimination should maintain a written record of the nature of the alleged conduct, date(s),</p>

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<p>Human Rights Specialist</p> <p>Manager/Supervisor</p>	<p>time(s), behaviour, impact and list of witness(es). If the Harassment or Discrimination continues, or the Complainant is uncomfortable speaking to the person who is causing offence, or to their own Supervisor or another member of management, the Complainant may bring the matter to the attention of the Human Rights Specialist as a complaint (see Complaint Procedures for next steps).</p> <p>The Human Rights Specialist works in Human Resources and acts as an impartial advisor to any City Employee (including Management representatives). The Human Rights Specialist maintains a fair and unbiased attitude to all complaints, and to all those involved in complaints, at all times. The Human Rights Specialist is responsible for providing education and information concerning all forms of Harassment and Discrimination, initiating efforts to resolve complaints, and investigating complaints.</p> <p>A Manager/Supervisor who receives a complaint must immediately contact the Human Rights Specialist. The Human Rights Specialist may suggest any of the following steps be taken by management:</p> <ul style="list-style-type: none"> ○ take immediate action in the event of a real or potential threat to personal safety; and/or ○ provide a copy of the policies and procedure to the Complainant to ensure awareness of the options under the policies, including protection from reprisal; and/or ○ provide contact information (name, telephone number, office location) of the Human Rights Specialist to the Complainant. 	
COMPLAINT PROCEDURES	<p>The City's complaint procedures are intended to be a timely forum to address harassment and discrimination complaints. Any costs incurred by the parties during an investigation (legal, travel, etc.) are their own responsibility.</p> <p>In certain circumstances, the Human Rights Specialist and the Labour Relations Officer or other appropriate Human Resources staff will work in coordination to resolve a matter.</p>	

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1. Complaint Assessment Phase	<p>Once a complaint has been received, the Human Rights Specialist shall assess the complaint to determine appropriate next steps. This may involve a preliminary fact finding process to ascertain:</p> <ul style="list-style-type: none"> • Type of behaviour complained about and whether it is covered under the Harassment/Discrimination Prevention Policies or Procedure • Severity of the situation • Identification of parties to make initial inquiries with (i.e. Complainant, Respondent, Management, Witnesses) • Whether other initial steps need to be taken (i.e. Police involvement, involvement of Health, Safety and Wellness Specialist, separation of parties to the complaint etc.) • Whether or not there is a need to intervene further on an informal basis or to investigate <p>At any point during the Assessment Phase it may be determined by the Human Rights Specialist that no intervention from Human Resources is required or that an investigation into the matter is not required. The Human Rights Specialist has discretion to decide not to intervene or investigate or may discontinue an intervention or investigation, or may refuse to take action on any complaint in situations where:</p> <ul style="list-style-type: none"> • the complaint is made more than one year after the date of the last incident of harassment or discrimination; • the complaint is determined to be trivial, frivolous, vexatious or made in bad faith; • the actions complained of have also been the subject of criminal charges; • the action(s) complained of do not fall within the definitions of Harassment and Discrimination or Personal (Workplace) Harassment as defined in the Harassment and Discrimination Prevention Policy and the Personal (Workplace) Harassment Prevention Policy; • an adequate remedy already exists; • the issue is most appropriately addressed by another area of the organization; • having regard to all the circumstances, further investigation of the matter is deemed unnecessary 	
2. Complaint Informal Resolution Phase	<p>Where appropriate, the Human Rights Specialist may facilitate an informal resolution of complaints under the Harassment and Discrimination Prevention Policy and the Personal Harassment</p>	

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Prevention Policy. Depending upon the circumstances or the Complainant’s desired outcome, the Human Rights Specialist may pursue informal resolution without receiving a written complaint and/or without informing the Respondent.


For the purposes of the Personal (Workplace) Harassment Prevention Policy and Procedure, fact-finding conducted during the Assessment Phase of these complaints may also satisfy the *Occupational Health and Safety Act* requirement that “an investigation is conducted into incidents and complaints of workplace harassment that is confidential in the circumstances.”

The goal of many Employees who seek assistance is to stop the offending behaviour. Informal resolution facilitated by the Human Rights Specialist can often be effective in addressing unwanted comments or conduct. Each situation is unique and creativity may be necessary in devising options for informal resolution. If the matter is addressed through the informal resolution phase, there will be no formal findings of fact. In most circumstances, informal resolution efforts should be completed within 30 days.

Some examples of informal resolution include:

- Education/Training - for a group of Employees, or one-on-one where appropriate. In some cases, education and training can be conducted without the Respondent being identified;
- Involving Manager/Supervisor - informing a Supervisor of concerns and developing a management plan to ensure a respectful and supportive workplace;
- Changing work responsibilities - to minimize contact between the Complainant and Respondent where operationally feasible;
- Alternative Dispute Resolution – The Human Rights Specialist may determine that some form of Alternative Dispute Resolution (ADR) or Mediation may be tried in order to settle the complaint. Any discussions concerning settlement will take place on a “without prejudice” basis. (This means that the rights of the parties involved will not be lost or waived by entering into talks to resolve the complaint). A settlement may need to be approved by the General Manager(s) of the Department(s) involved, or their

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3. Complaint Investigation Phase	<p>designate. A written record of any settlement agreed to by the parties will be retained by the Human Rights Specialist, and where deemed appropriate by the Human Rights Specialist and by the Supervisor(s) for both parties. ADR can address multiple, complex issues and should generally conclude within 60 days. If the parties are not agreeable to ADR or a settlement is not successful, the Human Rights Specialist may decide to conduct an investigation.</p> <p>If a resolution is not obtained in the Informal Resolution Phase, or if the nature of the complaint warrants, an investigation may begin, as determined by the Human Rights Specialist.</p> <p>The Human Rights Specialist has discretion to require a signed written complaint from the person making the complaint before an investigation may begin. The written complaint should be submitted to the Human Rights Specialist setting out in detail the nature of the complaint, any information in support of the complaint including the specific incidents of Harassment and the names of possible witnesses.</p> <p>The Human Rights Specialist will conduct investigations unless otherwise noted.</p> <p>Investigations may also be undertaken by an external investigator engaged by the City. Any investigation of a complaint made against a member of Council or a Senior Manager will be carried out by an external investigator.</p> <p>A Complainant cannot be compelled to proceed with a complaint. The City of Hamilton may be obligated to proceed with an investigation in the absence of a formal written complaint if the allegation(s) constitute a violation of the <i>Harassment and Discrimination Prevention Policy</i> or <i>Personal (Workplace) Harassment Prevention Policy</i>. In these cases, the City of Hamilton will proceed with either informal resolution or an investigation, with the intent of stopping the alleged behaviour and/or preventing further incidents from occurring if there has been a violation of the policies.</p> <p>Complaints are investigated by interviewing the Complainant(s), the Respondent(s), any witnesses and reviewing any available documentation. An investigation report should normally be</p>	

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completed within 90 days after a written complaint has been filed. The length of an investigation depends on many variables including but not limited to, the number of witnesses, complexity of the investigation, workplace schedules etc. If a report cannot be completed within the established timelines of this procedure, the parties to a complaint will be advised of the delays and any reasons why. It is incumbent on all parties to a complaint to arrange schedules or support persons so as not to delay the process.


In some circumstances, special arrangements may be advisable (where possible) to separate the Complainant and the Respondent in the workplace, temporarily re-locate either party to a complaint, or re-assign alternate duties to either party to a complaint (depending on the circumstances), pending the results of an investigation. The Human Rights Specialist may recommend and facilitate such arrangements.

Alternative Dispute Resolution or mediation is to remain available (subject to mutual consent) to the parties prior to or during an investigation. As above, any settlement discussions will be held 'without prejudice' and separate from the investigation process.

Any Employee (including Manager or Supervisor) interviewed by the Human Rights Specialist is entitled to be accompanied by one other person of their choice, as a support person. The Human Rights Specialist will make every effort to determine the identity of the support person prior to the meeting, to ensure that the presence of that particular support person would not present a conflict of interest in regard to the ongoing investigation. Unionized Employees may be supported by their respective unions. Employees are also encouraged to utilize the City's Employee and Family Assistance Program for additional support or Lifespeak resources available on the City's e-Net.

Respondent(s) to any complaint being investigated are entitled to know the allegations against them and have the opportunity to respond in full. A written notice of the complaint will be provided to the Respondent, with the general allegations. If necessary, statements from the Respondent(s) are disclosed back to the Complainant(s).

Interviews will be arranged and completed with witnesses and any other individuals who may have information pertinent to the

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4. Complaint Investigation Findings Phase

investigation, as deemed necessary by the Human Rights Specialist. In certain circumstances, the Human Rights Specialist may determine that a witness(es) will not be interviewed. At the end of each interview, Complainant(s), Respondent(s) and witness(es) will be asked to review the notes describing the interview and initial them to indicate accuracy. The Human Rights Specialist has the authority to access documents relevant to the complaint.

The Human Rights Specialist will consider all the evidence gathered and decide whether or not there has been a violation of policy using the standard of proof called the “balance of probabilities”.

Once the investigation is complete, the Human Rights Specialist will forward a report of the findings to the Executive Director, Human Resources and the General Manager (or designate) of the affected department along with recommendations for consideration.


The General Manager of the affected department will forward to the Human Rights Specialist, within ten working days after receiving the recommendations, a letter stating the action taken or to be taken in response to the findings of the investigation.


The Complainant(s) and Respondent(s) will be given a written summary of the findings resulting from the investigation. Any Employee who is found to have violated the City's policies prohibiting harassment and discrimination may be disciplined according to the severity of the actions, up to and including termination of employment. Such disciplinary action shall be determined in consultation with Labour Relations, Human Resources.


COMPLAINTS AGAINST ELECTED OFFICIALS


In addition to the steps under “Complaint Procedures” the following applies to complaints from Employees, Consultants, Volunteers, Students and Interns against elected officials of the City of Hamilton:


- The Employee may bring the matter to the attention of the Human Rights Specialist, the General Manager of their department or their Supervisor, Manager or Director. The

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COMPLAINTS AGAINST CITY MANAGER	<p>Supervisor, Manager or Director shall immediately inform the General Manager of the department of the complaint.</p> <ul style="list-style-type: none"> ⊖ The General Manager of the Employee’s department and the Human Rights Specialist shall consult with the Executive Director, Human Resources and the City Manager. ○ Employees of the City of Hamilton shall not conduct the investigation of any complaint against an elected official. The Executive Director of Human Resources shall refer the matter to the Integrity Commissioner and shall advise the Integrity Commissioner that, where an investigation is to be conducted, Human Resources will retain a third party Human Rights Investigator. The third party Human Rights Investigator will gather and examine the facts relating to the complaint and make the findings and recommendations to the Integrity Commissioner. A matter referred to the Integrity Commissioner pursuant to this Procedure shall be deemed a complaint to the Integrity Commissioner duly filed under the <i>Integrity Commissioner By-law</i>, and the Integrity Commissioner shall report, as appropriate, pursuant to the Integrity Commissioner Bylaw. ○ Where a Human Rights Investigation has been conducted, no further investigation may be conducted by the Integrity Commissioner. ○ Where the Executive Director of Human Resources, in consultation with the Human Rights Specialist, determines that no third party investigation is warranted, the Executive Director of Human Resources shall refer the complaint to the Integrity Commissioner to carry out a similar procedure used by the Human Rights Specialist in Human Resources for Assessment and Informal Resolution (by the Integrity Commissioner), and the Integrity Commissioner shall report, as appropriate, pursuant to the Integrity Commissioner Bylaw. <p>In addition to the steps outlined under “Complaint Procedures”, the following applies to complaints from employees against the City Manager:</p> <ul style="list-style-type: none"> ○ The employee may bring the matter to the attention of the 	

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COMPLAINTS AGAINST GENERAL MANAGERS	<p>Human Rights Specialist, the General Manager of their department or their Supervisor, Manager or Director. The Supervisor, Manager or Director shall immediately inform their General Manager of the complaint.</p> <ul style="list-style-type: none"> ○ The General Manager of the employee's department and the Human Rights Specialist shall consult with the Executive Director, Human Resources and they shall jointly provide a confidential report advising of the complaint to the Mayor and Members of the Audit, Finance and Administration Committee. ○ Employees of the City of Hamilton shall not conduct an investigation of any complaint against the City Manager. ○ The Mayor and Members of the Audit, Finance and Administration Committee shall retain an external human rights investigator to gather and examine the facts relating to the complaint and to make findings and recommendations. ○ The external investigator shall report their findings and recommendations for action to the Mayor and to the Audit, Finance and Administration Committee. The Mayor and the Audit, Finance and Administration Committee shall provide City Council with a report summarizing the findings and recommendations for appropriate action. ○ If the investigation substantiates in whole or in part that the City Manager violated any City policy on harassment and discrimination, City Council shall determine an appropriate sanction. ○ When City Council has determined what action, if any, will be taken against the City Manager, the Mayor shall provide a written summary of the findings resulting from the investigation to the Complainant(s). <p>In addition to the steps outlined under "Complaint Procedures", the following applies to complaints from Employees against a General Manager:</p> <ul style="list-style-type: none"> ○ The Employee may bring the matter to the attention of the Human Rights Specialist, or their Supervisor, Manager or 	

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<p>HARASSMENT ALLEGATIONS INVOLVING MEMBERS OF THE PUBLIC</p> <p>External Investigator</p> <p>Confidentiality</p>	<p>Director, or to the City Manager. If the matter is brought to the attention of the Human Rights Specialist or Supervisor, Manager or Director, it shall immediately be directed to the City Manager.</p> <ul style="list-style-type: none"> ○ Employees of the City of Hamilton shall not conduct an investigation of any complaint against the General Manager. The City Manager will retain an external human rights investigator to gather and examine the facts relating to the complaint and to make findings and recommendations. ○ The external investigator shall report their findings and recommendations for action to the City Manager who will determine the appropriate action. ○ When the City Manager has determined what action, if any, will be taken against the General Manager, the City Manager and Executive Director of Human Resources shall provide a written summary of the findings resulting from the investigation to the Complainant(s). <p>If non-City persons are deemed to have violated the City's Harassment Prevention Policies, all reasonable efforts will be made to stop the Harassment/Discrimination which may involve, banning a person(s) from City facilities, issuing trespass notices, refusal to continue to provide City services, involvement of internal legal services or police involvement.</p> <p>In complaints where an external investigator is retained, the external investigator shall have regard for the City of Hamilton's Harassment and Discrimination Prevention Policy, the Personal (Workplace) Harassment Prevention Policy, the Procedure for Resolving Harassment & Discrimination Issues relating to those policies and any relevant law. The external investigator may modify the investigation process as appropriate to the circumstances, subject to the review of any modifications with the Human Rights Specialist, and shall make determinations with regard to applicable policies, procedures and any relevant law.</p> <p>All information about complaints is confidential. Employees who are involved in any way in complaints or incidents of Harassment</p>	

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Requests for Review	<p>or Discrimination must not disclose to anyone in the workplace the details of the complaint or incident, except as required by this procedure and the City’s policies on Harassment and Discrimination. Confidentiality extends to all records relating to complaints, including but not limited to, records of meetings, interviews and investigation results. Breaches of confidentiality may be subject to appropriate disciplinary action up to and including termination of employment.</p> <p>The Human Rights Specialist will retain documentation related to complaints in a secure file for seven years from the date of the complaint. All records are subject to the provisions of the <i>Municipal Freedom of Information and Protection of Privacy Act</i> and may be subject to disclosure under the Act, or to a court of law.</p> <p>Either the Complainant(s) and/or the Respondent(s) may make a Request for Review of the findings of the investigation if they have new and relevant information that was not previously available or have substantive reasons why the findings were not reasonable. The intent to file a Request for Review must be made known to the Human Rights Specialist in writing within ten calendar days of the date the parties were notified of the findings. Thereafter, there will be a discussion between the person(s) making the Request for Review, and the Human Rights Specialist as to when the request must be submitted (never to exceed more than 20 calendar days from the date of this discussion). The Request for Review must include a statement of the reasons why the findings of the investigation were not reasonable and should be re-considered. If the Request for Review does not include new and relevant information that was not previously available or does not provide substantive reasons why the investigation findings were not reasonable, the Executive Director, Human Resources shall deny the request.</p> <p>If it appears that there are substantive grounds to reconsider the findings of the investigation, Complainant(s) or Respondent(s) will be informed that a Request for Review has been made and will be given an opportunity to reply.</p> <p>The Executive Director, Human Resources will make a final decision on the final disposition of the review.</p>	

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COMPLIANCE	Any Employee who is found to have violated this Procedure or any of its associated Policies may be disciplined according to the severity of the actions, up to and including termination of employment.	
RELATED DOCUMENTS	The following related documents are referenced in this Procedure: <ul style="list-style-type: none"> • <i>Personal Harassment Prevention Policy</i> • <i>Harassment and Discrimination Prevention Policy</i> • <i>Violence in the Workplace Prevention Policy</i> • <i>Integrity Commissioner By-law</i> • <i>Occupational Health and Safety Act (OHSA)</i> • <i>Municipal Freedom of Information and Protection of Privacy Act</i> • <i>Ontario Human Rights Code</i> • <i>Protocol for Gender Identity and Gender Expression; Transgender and Gender Non-Conforming Persons</i> 	
CONTENT UPDATED	2016-03-29 to reflect changes in Bill 132 and OHSA 2018-07-06 to clarify language	
HISTORY	<p>This Procedure replaces the Procedure approved by Corporate Management Team of the City of Hamilton on April 7, 2005. Procedure was last updated June 21, 2013.</p> <p>The Corporate Policy Review Group, Legal Services, and an Employment Lawyer specializing in Human Rights, were consulted in the revisions made to this Procedure.</p> <p>Approved by Council of the City of Hamilton 2014-02-12</p> <p>This Policy was updated to be consistent with Bill 132 and changes to the OHSA coming into effect on September 8, 2016.</p> <p>Review History: Senior Management Team 2016-03-31 Corporate Policy Review Group 2017-06-01 Corporate Policy Review Group 2018-07-06 Corporate Policy Review Group 2019-06-28 Human Resources 2020-12-01</p> <p>Contact: For more information on this Procedure contact a Human Rights Specialist in Human Resources, City Manager's</p>	

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