


Corporate Human Resources Procedure	 Hamilton	Content Updated: 2023-05-19 Date of Last Review: 2020-12-01
Supports Policies: HR-61-13		Supersedes: Resolving Harassment & Discrimination Issues Procedure (Approved by CMT: April 7, 2005)
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<i>Procedure for Resolving Harassment & Discrimination Issues</i>	
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> . Please refer to this policy for definitions and further information.
SCOPE	This procedure applies to all City of Hamilton employees, including but not limited to regular, temporary, contract and probationary employees, and to contractors, consultants, volunteers, students, interns, as well as applicants for employment. This procedure also applies to members of Volunteer Advisory Committees, Agencies, and Boards, Elected Officials, volunteers and service users. This Procedure will also apply should a citizen file a complaint of Harassment and Discrimination against an Employee under the City's Harassment and Discrimination Prevention Policy

ROLES & RESPONSIBILITIES	
Employee	Any Employee who has a complaint alleging a violation of the Harassment and Discrimination Prevention Policy is encouraged to attempt the following before a formal complaint is filed: <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: <ul style="list-style-type: none"> ○ make all reasonable efforts to resolve the matter; and/or, ○ discuss concerns with your immediate Supervisor or another member of management; and/or

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<p>Human Rights & Workplace Harassment Investigator</p>	<ul style="list-style-type: none"> ○ seek advice from a union representative (where applicable); and/or ○ contact the Human Rights & Workplace Harassment Investigator in Human Resources for advice/consultation even if there is no intent to file a complaint. <p>Do not discuss the alleged Harassment and/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 Policy.</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), time(s), behaviour, impact and list of witnesses.</p> <p>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 & Workplace Harassment Investigator as a complaint (see Complaint Procedures for next steps).</p> <p>The Human Rights & Workplace Harassment Investigator works in Human Resources and acts as an impartial advisor to any City Employee (including Management representatives). The Human Rights & Workplace Harassment Investigator maintains a fair and unbiased attitude to all complaints, and to all those involved in complaints, at all times. The Human Rights & Workplace Harassment Investigator is responsible for providing education and information concerning all forms of Harassment and Discrimination,</p>
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<p>Manager/Supervisor</p>	<p>initiating efforts to resolve complaints, and investigating complaints.</p> <p>A Manager/Supervisor who receives a complaint must immediately contact the Human Rights & Workplace Harassment Investigator. The Human Rights & Workplace Harassment Investigator 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 policy 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 & Workplace Harassment Investigator to the Complainant.
<p>COMPLAINT PROCEDURES</p> <p>1. Complaint Assessment Phase</p>	<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>Citizens who have a complaint of Harassment or Discrimination against a City Employee may elect to utilize the City of Hamilton's internal Harassment and Discrimination Prevention Policy and Procedure as a method to resolve their concern.</p> <p>In certain circumstances, the Human Rights & Workplace Harassment Investigator and the Labour Relations Officer or other appropriate Human Resources staff will work in coordination to resolve a matter.</p> <p>Once a complaint has been received, the Human Rights & Workplace Harassment Investigator shall</p>

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	<p>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 and Discrimination Prevention Policy ○ 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. involvement of Health, Safety and Wellness Specialist, separation of parties to the complaint notification to Police, etc.) ○ Whether or not there is a need to intervene further or to investigate <p>At any point during the Assessment Phase, it may be determined by the Human Rights & Workplace Harassment Investigator that no intervention from Human Resources is required or that an investigation into the matter is not required. The Human Rights & Workplace Harassment Investigator 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 reported have also been the subject of criminal charges; ○ the action(s) reported do not fall within the definitions of Harassment and Discrimination as outlined in the Harassment and Discrimination Prevention Policy;
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<p>2. Complaint Resolution Phase</p>	<ul style="list-style-type: none"> ○ an adequate remedy already exists; ○ the issue is most appropriately addressed by another Department within the City, such as the Integrity Commissioner, Health, Safety & Wellness and/or Labour Relations. ○ having regard to all the circumstances, further investigation of the matter is deemed unnecessary <p>Where appropriate, the Human Rights & Workplace Harassment Investigator may facilitate a resolution of complaints under the Harassment and Discrimination Prevention Policy.</p> <p>Depending upon the circumstances or the Complainant's desired outcome, the Human Rights & Workplace Harassment Investigator may pursue resolution without receiving a written complaint and/or without informing the Respondent.</p> <p>For the purposes of the Harassment and Discrimination Prevention Policy and Procedure, fact-finding conducted during the Assessment Phase of these complaints may also satisfy the <i>Occupational Health and Safety Act</i> requirement that "an investigation is conducted into incidents and complaints of workplace harassment that is confidential in the circumstances."</p> <p>The goal of many Employees who seek assistance is to stop the offending behaviour. Informal resolution facilitated by the Human Rights & Workplace Harassment Investigator can often be effective in addressing unwanted comments or conduct. In most circumstances, resolution efforts should be completed within 30 days.</p> <p>Some examples of resolution include:</p> <ul style="list-style-type: none"> ○ <u>Education/Training</u> - for a group of
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<p>3. Complaint Investigation Phase</p>	<p>Employees, or one-on-one where appropriate. In some cases, education and training can be conducted without the Respondent being identified;</p> <ul style="list-style-type: none"> ○ <u>Involving Manager/Supervisor</u> - informing a Supervisor of concerns and developing a management plan to ensure a respectful and supportive workplace; ○ <u>Changing Work Responsibilities</u> - to minimize contact between the Complainant and Respondent where operationally feasible; <p>If a resolution is not appropriately achieved in the Complaint Resolution Phase, or if the nature of the complaint warrants, an investigation may begin, as determined by the Human Rights & Workplace Harassment Investigator.</p> <p>The Human Rights & Workplace Harassment Investigator 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 & Workplace Harassment Investigator setting out in detail the nature of the complaint, any information in support of the complaint including the specific incidents of Harassment and/or Discrimination and the names of possible witnesses.</p> <p>The Human Rights & Workplace Harassment Investigator 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 an Elected Official or a Senior Manager will be carried</p>
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	<p>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>. In these cases, the City of Hamilton will proceed with either 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 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.</p> <p>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 & Workplace Harassment Investigator may recommend and facilitate such arrangements.</p> <p>Any Employee (including Manager or Supervisor)</p>
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<p>4. Complaint Investigation</p>	<p>interviewed by the Human Rights & Workplace Harassment Investigator is entitled to be accompanied by one other person of their choice, as a support person. The Human Rights & Workplace Harassment Investigator 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.</p> <p>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.</p> <p>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).</p> <p>Interviews will be arranged and completed with witnesses and any other individuals who may have information pertinent to the investigation, as deemed necessary by the Human Rights & Workplace Harassment Investigator. In certain circumstances, the Human Rights & Workplace Harassment Investigator may determine that a witness(es) will not be interviewed.</p> <p>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 & Workplace Harassment Investigator has the</p>
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	<ul style="list-style-type: none"> ○ The General Manager of the Employee’s department and the Human Rights & Workplace Harassment Investigator 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, 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 By-law. ○ Where a Workplace Investigation has been conducted, no further investigation may be conducted by the Integrity Commissioner. ○ Where the Executive Director, Human Resources, in consultation with the Human Rights & Workplace Harassment Investigator, determines that no third party investigation is warranted, the Executive Director, Human Resources shall refer the complaint to the Integrity Commissioner to carry out a similar procedure used by the Human Rights & Workplace Harassment Investigator in Human Resources for Assessment and
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<p>COMPLAINTS AGAINST CITY MANAGER</p>	<p>Resolution (by the Integrity Commissioner), and the Integrity Commissioner shall report, as appropriate, pursuant to the Integrity Commissioner By-law.</p> <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 Human Rights & Workplace Harassment Investigator, 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. ○ The General Manager of the Employee’s department and the Human Rights & Workplace Harassment Investigator 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
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<p>COMPLAINTS AGAINST GENERAL MANAGERS</p>	<p>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.</p> <ul style="list-style-type: none"> ○ If the investigation substantiates in whole or in part that the City Manager violated any City policy related to 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 & Workplace Harassment Investigator, or their Supervisor, Manager or Director, or to the City Manager. If the matter is brought to the attention of the Human Rights & Workplace Harassment Investigator or Supervisor, Manager or Director, it shall immediately be directed to the City Manager. ○ Employees of the City of Hamilton shall not conduct an investigation of any complaint against a 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
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<p>HARASSMENT ALLEGATIONS INVOLVING MEMBERS OF THE PUBLIC</p> <p>External Investigator</p> <p>Confidentiality</p>	<p>determine the appropriate action.</p> <ul style="list-style-type: none"> ○ When the City Manager has determined what action, if any, will be taken against the General Manager, the City Manager and Executive Director, Human Resources shall provide a written summary of the findings resulting from the investigation to the Complainant(s) and Respondent(s). <p>If members of the public in any capacity are deemed to have violated the City's Harassment and Discrimination Prevention Policies, the City of Hamilton will take all reasonable efforts to stop the reported behaviour, which may involve issuing a letter clarifying expectations of behaviour, cease and desist notification, banning a person(s) from City facilities, issuing No Trespass notices, refusal to continue to provide City services, and 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 Procedure for Resolving Harassment & Discrimination Issues relating to this policy 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 & Workplace Harassment Investigator, and shall make determinations with regard to applicable policies, procedures and any relevant law.</p> <p>Employees who are involved in any way in complaints or incidents of Harassment 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</p>
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<p>Requests for Review</p>	<p>City’s Harassment and Discrimination Prevention Policy. 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 & Workplace Harassment Investigator 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 other applicable 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 & Workplace Harassment Investigator 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 & Workplace Harassment Investigator 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, or their designate, shall deny the</p>
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	<p>request. 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. The Executive Director, Human Resources, or their designate, will make a final decision on the final disposition of the review.</p>
COMPLIANCE	<p>Any Employee who is found to have violated this Procedure or its associated Policy may be disciplined according to the severity of the actions, up to and including termination of employment</p>
RELATED DOCUMENTS	<p>The following related documents are referenced in this Procedure:</p> <ul style="list-style-type: none"> • <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</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	<p>2016-03-29 to reflect changes in Bill 132 and OHS 2018-07-06 to clarify language 2023-05-19 to reflect consolidated policies</p>
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, HRLT, Legal Services, and SLT were consulted in the revisions made to this Procedure. Approved by Council of the City of Hamilton 2014-02-12 This Policy was updated to be consistent with Bill 132 and changes to the OHS coming into effect on September 8, 2016.</p>

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	<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 Human Resources Leadership Team 2023-05-29 Corporate Policy Review Group 2023-06-05 Senior Leadership Team 2023-07-20 Legal Services Team 2023-08-16</p> <p>Contact: For more information on this Procedure contact a Human Rights & Workplace Harassment Investigator in Human Resources, City Manager's Office.</p>
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