



Ontario Association of Architects

Supporting Safe Work Places: A Guide for Members of the Ontario Association of Architects

1. Purpose

This document is intended to provide guidance to all OAA members as to their legal rights and responsibilities in maintaining and working in a safe workplace, free from workplace harassment and violence.

Architects, Licensed Technologists OAA and Intern Architects as well as all other individuals should be aware of these rights and responsibilities whether they are employers or employees, and whether they are working in their offices, on the job site, within their clients' premises or that of materials, supplies or representatives.

This guide is not legal advice – but is a helpful resource that identifies the legislation relevant to workplace harassment and violence prevention. Links to the legislation and to templates offered by the Ontario Ministry of Labour are set out below.

2. Sexual Harassment as Professional Misconduct

Sexual harassment can be considered professional misconduct under the *Architects Act*, R.S.O. 1990, c. A.26 (“the Act”). If a member sexually harasses a client, an employee, a student, or a fellow member, the member could face disciplinary proceedings under the Act.

(a) Disgraceful, dishonourable or unprofessional conduct

Section 42(54.) of O.Reg. 27 of the Act provides that professional misconduct includes:

“Conduct or an act relevant to the practice of architecture that, having regard to all of the circumstances, would reasonably be regarded by members of the Association as disgraceful, dishonourable or unprofessional.”

Any harassment may correctly be the subject of a Complaint with the OAA. Members are reminded that Section 42 of the Regulations under the *Architects Act* state as follows:

42. For the purpose of the Act,

“professional misconduct” means,

1. Contravention of any provision of the Act, or the regulations.

54. Conduct or an act relevant to the practice of architecture that, having regard to all of the circumstances, would reasonably be regarded by members of the Association as disgraceful, dishonourable or unprofessional.

In other self-regulated professions' disciplinary proceedings, allegations of sexual harassment fall under the "disgraceful, dishonourable or unprofessional" category of professional misconduct. The alleged conduct towards a patient/client (not always proven in the cases cited here) includes: unwanted sexual touching, kissing, sexually suggestive comments, making unwelcome sexual inquiries, and suggesting an exchange of legal services for sexual favours.¹

(b) Guilty of an offence relevant to suitability to practise

Under section 34(2)(a) of the Act, a member can also be found guilty of professional misconduct by the Discipline Committee if the member "has been found guilty of an offence relevant to the person's suitability to practise, upon proof of such conviction." If a member has a criminal conviction of sexual assault for example (which is included in the definition of sexual harassment), a finding of professional misconduct can also be made.

Under section 30 of the Act, if a complaint of sexual harassment was made by a member of the public or a member of the OAA to the Complaints Committee, the Complaints Committee can investigate the conduct, and then refer the matter to the Discipline Committee.

Under section 38 of the Act, the Registrar may also carry out an investigation if there are "reasonable and probable grounds" of professional misconduct.

Following a hearing of a referred complaint, the Discipline Committee could make a finding of professional misconduct under section 34(2)(b) of the Act. It is open to the Discipline Committee to make a finding of professional misconduct if there is sufficient evidence of sexual harassment.

3. Human Rights Code

(a) Right to be free from harassment on all Code grounds

Under section 5(2) the *Human Rights Code*, R.S.O. 1990, c. H.19 (the Code) every employee has a right to be free from harassment in the workplace on the basis of: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

<https://www.ontario.ca/laws/statute/90h19 - BK7>.

(b) Right to be free from sexual harassment and solicitation

Section 7(2) and (3) of the Code provides that every employee has a right to be free from:

- harassment in the workplace because of sex, sexual orientation, gender identity or gender expression;
- sexual solicitation by made by a person "in a position to confer, grant or deny a benefit or advancement ...where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome"; and

¹ *Ontario (College of Pharmacists) v. Abd El Maseh*, 2016 ONCPDC 29 (CanLII), <<http://canlii.ca/t/h03bc>>; *Law Society of Upper Canada v. Neinstein*, 2010 ONCA 193 (CanLII); *Law Society of Upper Canada v. G.N.*, 2003 CanLII 48013 (ON LST), <<http://canlii.ca/t/1hfj>>.

- a reprisal or a threat of reprisal for the rejection of a sexual solicitation made or threatened by a person in a position to confer, grant or deny a benefit or advancement.

The Ontario Human Rights Commission has a “Guide to Your Rights and Responsibilities Under the Human Rights Code.” <http://www.ohrc.on.ca/en/resources/Guides/GuideHRcode2>

(c) Policies

The Ontario Human Rights Commission has “Guidelines on Developing Human Rights Policies and Procedures” <http://www.ohrc.on.ca/en/resources/Policies/gdpp>, which is useful for employers who wish to draft their own anti-harassment and discrimination policies.

However, it should be noted that this document does not integrate the Occupational Health and Safety Act (OHSA) amendments, which have some different requirements for investigating and dealing with complaints of sexual harassment.

(d) Enforcing Rights

In addition, an employee who has a complaint of sexual harassment can make an application (including a claim for monetary damages) to the Human Rights Tribunal of Ontario: <http://www.sjto.gov.on.ca/hrto/>

The Human Rights Legal Support Centre helps people who file applications with the Tribunal. Services (which are free) may include advice, support and legal representation: <http://www.hrlsc.on.ca/en/welcome>

A person who has been harassed in the workplace may also contact the Ministry of Labour to complain that the employer is not complying with OHSA obligations to have a policy and training on workplace harassment. They might also bring a civil claim in court.

Information about legal resources is available at StepsToJustice.ca. Links of particular relevance and use include Employment and Work and Human Rights (links to be provided)

4. Workplace Harassment (OHSA)

The *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 (OHSA) was amended in 2016 to add obligations on employers to prevent workplace harassment, including workplace sexual harassment.

(a) Definitions

Under section 1 of OHSA, “workplace harassment” means “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

“Workplace sexual harassment” means,

- engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or
- making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

(b) Requirements

All employers (regardless of size) must:

- have a policy and program (including training) in place to address workplace harassment;
- ensure that an investigation is conducted into incidents and complaints of workplace harassment; and
- have procedures to report incidents of workplace harassment if the alleged harasser is the person to report to.

The focus of the OHSA is on the responsibilities of employers in ensuring a workplace free of harassment. The OHSA does not provide a venue for an employee to seek monetary damages.

For more on the OHSA amendments, see Ryley Law's Power Point presentation: ["Legal Developments in Sexual Harassment and Violence in the Workplace"](#) from the OAA's May 2016 Conference (Appendix A).

(c) Policies/Complaints

The Ministry of Labour has templates for policies and programs on their website that can be adapted to a member's workplaces so that members can be compliant with OHSA. See:

- Sample Workplace Harassment Policy (which is really more like a policy statement) <https://www.labour.gov.on.ca/english/hs/pubs/harassment/schedulec.php>
- Sample Workplace Harassment Program (which is more like a policy) <https://www.labour.gov.on.ca/english/hs/pubs/harassment/scheduled.php>

The requirement to have a way for employees to report an incident of workplace harassment if the alleged harasser is the person to report to, presents a real challenge for members. Many architects work in small offices with very few others and therefore it may be difficult to arrange for there to be another individual to report an incident of harassment to.

One option is to have the OAA hear complaints through the existing complaints and discipline process. This however immediately takes the matter out of the hands of the members completely and starts a process that may lead to disciplinary proceedings that are not the resolution either party was seeking. Another option would be to make arrangements with another similarly small

office to act as reciprocal resource for hearing employee complaints. It is recognized however, that this could be a threat to privacy and competitive advantage. In some cases, it may be best to identify a resource outside of the profession.

5. Workplace Violence (OHSA)

(a) Definitions

Under section 1 of OHSA “workplace violence” means:

- the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker;
- an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker;
- a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

(b) Requirements

OHSA also provides that employers must have policies and programs in place to prevent workplace violence. These amendments came into force in 2009.

Under section 32.0.2 (1) the program must:

- include measures and procedures to control the risks identified in the assessment required under subsection 32.0.3 (1) as likely to expose a worker to physical injury;
- include measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur;
- include measures and procedures for workers to report incidents of workplace violence to the employer or supervisor;
- set out how the employer will investigate and deal with incidents or complaints of workplace violence.

The employer must (under 32.0.3 (1)), assess the risks of workplace violence that may arise from the nature of the workplace, the type of work, or the conditions of work.

The following are two useful assessment and policy creation tools offered by the Public Services Health and Safety Association:

- <http://www.pshsa.ca/workplace-violence-risk-assessment-tool-anysector/>
- <http://www.pshsa.ca/wp-content/uploads/2016/05/OHSCO-Toolbox.pdf>

General and specific risks must be assessed, and in the above toolkits, some of the specific risks identified are applicable to architects, including: “Direct Contact with Clients” (p. 25); “Working Alone or in Small Numbers” (p. 40); and “Mobile Workplace” (p. 48).

Other useful resources from the Ministry of Labour include:

- A Guide to the Occupational Health and Safety Act
<http://www.labour.gov.on.ca/english/hs/pubs/ohsa/index.php>
- Workplace Violence and Harassment: Understanding the Law
<http://www.labour.gov.on.ca/english/hs/pubs/wpvh/index.php>
- MOL Factsheet: Protecting Workers From Workplace Violence and Harassment
http://www.labour.gov.on.ca/english/hs/sawo/pubs/fs_workplaceviolence.php
- Violence and Harassment Website
<http://www.labour.gov.on.ca/english/hs/pubs/workplaceviolence.php>

6. Best Practices for Architectural firms in creating safe workplaces and preventing harassment

Architectural practice should make sure that they are meeting their legal responsibilities as outlined in this document. In addition, ensuring that all employees are made aware of this information as well as the resources available to them is an important part of fostering a workplace that is safe and free from harassment of any type.

Making available periodic training and education opportunities for all staff members of the practice, including partners and principals, with respect to the laws as well as the resources available to them is also a good practice.

Architectural practices should also be adhering to the employment standards as set out in the *Employment Standards Act*. Applying those standards to all employees equally is considered a good practice. Refer to the [attached communication](#) to OAA members dated September 2017.

The architectural profession is often driven by hard deadlines and compressed schedules. Practices should make sure that employees are given adequate time for breaks, nourishment as well as rest and sleep. Overtime and long hours worked should be recognized and rewarded accordingly.

Architectural practices and employees can benefit from increased productivity when efforts are made to create a healthy, safe and enjoyable working environment.

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