Complaint Procedures
(Harassment and Discrimination Prevention and Personal Harassment Prevention Policies)

These procedures outline steps to be taken to address complaints of harassment or discrimination by employees of the City of Hamilton. Please refer to the relevant policies for further information:

- Harassment and Discrimination Prevention Policy
- Personal Harassment Prevention Policy

FIRST STEPS

1. Any employee who has a complaint alleging violation of either the Harassment and Discrimination Prevention Policy or the Personal Harassment Prevention Policy is encouraged to:
   a) If possible, make his/her disapproval known to the person who is causing the offence and ask that all offensive behaviour stop; and/or
   b) Discuss concerns with his/her immediate supervisor or another member of management; and/or
   c) Seek advice from a union representative (where applicable); and/or
   d) Contact the Human Rights Specialist in the Human Resources Department.

Where possible, employees who feel that they have been subjected to harassment or discrimination should maintain a written record of the nature of the alleged harassment, date(s), time(s), behaviour, impact and list of witness(es).

2. If the harassment or discrimination continues, or the complainant is uncomfortable speaking to the person who is causing offence, or to his/her own supervisor or another member of management, the complainant may bring the matter to the attention of the Human Rights Specialist.

The Human Rights Specialist works in the Human Resources Department. S/he acts as an impartial counsellor and advisor to any City employee and will maintain 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 initiating efforts to resolve complaints, investigating complaints and providing education and information concerning all forms of harassment and discrimination.

A management employee who receives a complaint, whether in writing or not, should immediately contact the Human Rights Specialist, preserving anonymity (as far as possible) for the complainant if he/she so requests. The Human Rights Specialist may suggest any of the following steps be taken by management:

a) immediate action in the event of a real or potential threat to personal safety;
b) provide a copy of the policy and procedures to the complainant to ensure awareness of the options under the policy, including protection from reprisal;
c) provide contact information (name, telephone number, office location) of the Human Rights Specialist to the complainant.

COMPLAINT PROCESS

- All information about complaints is confidential. 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 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 dismissal.

- 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 Municipal Freedom of Information and Protection of Privacy Act and may be subject to disclosure under the Act, or to a court of law.
• The Human Rights Specialist may decide not to accept a complaint if the action complained of does not fall within the definitions of harassment and discrimination or personal harassment as defined in the Harassment and Discrimination Prevention Policy and the Personal Harassment Prevention Policy.

• Complaints under the Personal Harassment Prevention Policy are required to proceed successively through informal resolution and/or alternative dispute resolution before a formal investigation is conducted. The Human Rights Specialist may refuse to take action on any personal harassment complaint where the complainant refuses to participate in informal resolution and/or alternative dispute resolution.

• The City's complaint procedures are intended to be a timely forum to address harassment and discrimination complaints when no other avenues of recourse are being actively pursued to resolve the complaint. The Human Rights Specialist may therefore refuse to take action on any complaint where:
  • the complaint is made more than six months 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 constituted a complaint to the Ontario Human Rights Commission;
  • the actions complained of are also the subject of a grievance under the applicable collective agreement;
  • 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 harassment as defined in the Harassment and Discrimination Prevention Policy and the Personal Harassment Prevention Policy
  • the individual making the complaint is not adversely affected;

Any costs incurred by the parties during an investigation (legal, travel, etc.) are their own responsibility.

Informal Resolution

Wherever possible and appropriate, the Human Rights Specialist will attempt to facilitate an informal resolution of complaints under the Harassment and Discrimination Prevention Policy and the Personal Harassment Prevention Policy.

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. Some examples of informal resolution include: education for a group where an individual respondent is not identified; informing a supervisor of concerns; or changing work responsibilities to minimize contact between the complainant and respondent.

Depending upon the complainant’s desired outcome, the Human Rights Specialist may pursue informal resolution without receiving a written complaint and without informing the respondent.

In most circumstances, informal resolution efforts should be complete within 30 days.

Alternative Dispute Resolution

Some form of Alternative Dispute Resolution (ADR) or mediation may be tried in order to settle the complaint. If the parties are not agreeable to ADR or a settlement is not successful, the Human Rights Specialist may decide to conduct an investigation.

A settlement may need to be approved by the General Manager(s) of the Department(s) involved, or his/her 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, by the supervisor(s) for both parties.
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.)

Alternative Dispute Resolution can address multiple complex issues but should generally conclude within 60 days.

Investigations

A signed, written complaint is required to begin an investigation. 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.

In general, the Human Rights Specialist will conduct investigations. Supervisors or managers may conduct an investigation only at the discretion of the Human Rights Specialist.

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.

A complainant cannot be compelled to proceed with a complaint. Under some circumstances, the City of Hamilton may be obligated to proceed with an investigation in the absence of a formal written complaint if the allegation or allegations constitute a serious violation of the Harassment and Discrimination Prevention or Personal Harassment Prevention Policies. 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.

The investigator will notify the General Manager of Human Resources once a written complaint has been received. Complaints are investigated by interviewing the complainant, the respondent, any witnesses and reviewing any available documentation. An investigation report should normally be completed within 60 days after a written complaint has been filed.

In some circumstances, special arrangements may be advisable (where possible) to separate the complainant and the respondent in the workplace, 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 interviewed by the investigator is entitled to be accompanied by one other person of his/her choice.

Respondent(s) to any complaint being investigated are entitled to know the allegations against them and have the opportunity to respond in full. Likewise, statements from the respondent are disclosed back to the complainant.

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

At the end of each interview, complainants, respondents and witnesses will be asked to review the notes describing the interview and initial them to indicate accuracy.

The investigator has the authority to access documents relevant to the complaint.

The investigator 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”.
The investigator will meet separately with the parties to review findings and allow them a chance to respond before completing the report.

Once the investigation is complete, the investigator will forward a report of the findings to the General Manager of Human Resources, who will make recommendations based on the findings to the General Manager or designate of the affected department.

The General Manager of the affected department should forward to the Human Rights Specialist, within ten working days after receiving the recommendations, a letter stating the action 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 dismissal. Such disciplinary action shall be determined in consultation with the Human Resources Department, Labour and Employee Relations.

**Appeals**

Either the complainant(s) and/or the respondent(s) may appeal the process or the findings of the investigation. An appeal must be made in writing to the Human Rights Specialist within ten days of the date the parties were notified of the findings. The appeal must include a statement of the reasons why the process and/or results of the investigation should be re-examined. The complainant(s) or respondent(s) will be informed that an appeal has been made and will be given an opportunity to reply if it appears that there are grounds to reconsider the process and/or the findings of the investigation. The General Manager of Human Resources will make a final decision on the disposition of the appeal.

**Complaints Against Elected Officials**

The following procedures outline the steps to be taken to address complaints from employees against elected officials of the City of Hamilton, under the Harassment and Discrimination Prevention Policy (includes Sexual Harassment), and the Personal Harassment Prevention Policy.

1. Where possible the employee should maintain and provide a written record of the nature of the alleged harassment, date(s), time(s), behaviour, impact and list of witness(es).

2. The employee may bring the matter to the attention of the Human Rights Specialist, the General Manager of his/her department or his/her supervisor, manager or director. The supervisor, manager or director shall immediately inform the General Manager of the department of the complaint.

3. A signed, written complaint is required to begin an investigation. 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.

4. The General Manager of the employee’s department and the Human Rights Specialist shall consult with the General Manager of Human Resources and the City Manager and they shall jointly provide to the Mayor and to the Audit and Administration Committee a confidential report advising of the complaint.

5. Employees of the City of Hamilton shall not conduct the investigation of any complaint against an elected official.

6. City Council shall retain an external human rights investigator to gather and examine the facts relating to the complaint and to make findings and recommendations.

7. The external investigator shall report his/her findings and recommendations for action to the Mayor, to the Audit and Administration Committee, to the City Manager and to the General Manager of Human Resources.
8. If the findings of the investigation substantiate in whole or in part that the elected official violated any City policy on harassment and discrimination, City Council shall determine an appropriate sanction.

9. Once City Council has determined what action, if any, will be taken against a Council member, the City Manager shall be informed of such action and shall send a letter to the complainant informing him/her of the steps undertaken and City Council’s actions.

**Complaints Against the City Manager**

The following procedures outline the steps to be taken to address complaints from employees against the City Manager, under the Harassment and Discrimination Prevention (includes Sexual Harassment), and Personal Harassment Prevention policies.

1. Where possible the employee should maintain and provide a written record of the nature of the alleged harassment, date(s), time(s), behaviour, impact, etc.

2. The employee may bring the matter to the attention of the Human Rights Specialist, the General Manager of his/her department or his/her supervisor, manager or director. The supervisor, manager or director shall immediately inform his/her General Manager of the complaint.

3. A signed, written complaint is required to begin an investigation. 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.

4. The General Manager of the employee’s department and the Human Rights Specialist shall consult with the General Manager of Human Resources and they shall jointly provide a confidential report advising of the complaint to the Mayor and/or Members of the Corporate Administration Committee.

5. Employees of the City of Hamilton shall not conduct an investigation of any complaint against the City Manager.

6. The Mayor and Members of the Corporate 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.

7. The external investigator shall report his/her findings and recommendations for action to the Mayor and to the Audit and Administration Committee. The Mayor and the Audit and Administration Committee shall provide City Council with a report summarizing the findings and recommendations, for appropriate action.

8. 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.

9. When City Council has determined what action, if any, will be taken against the City Manager, the Mayor shall send a letter to the complainant informing him/her of the steps undertaken and City Council’s action.

**Complaints Against General Managers**

The following procedures outline the steps to be taken to address complaints from employees against General Managers under the Harassment and Discrimination Prevention (includes Sexual Harassment), and Personal Harassment Prevention policies.

1. Where possible the employee should maintain and provide a written record of the nature of the alleged harassment, date(s), time(s), behaviour, impact, etc.
2. The employee may bring the matter to the attention of the Human Rights Specialist, or his or her supervisor, manager or 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.

3. A signed, written complaint is required to begin an investigation. The written complaint should be submitted to the City Manager, 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.

4. 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.

5. The external investigator shall report his/her findings and recommendations for action to the City Manager who will determine the appropriate action.

6. When the City Manager has determined what action, if any, will be taken against the General Manager, the City Manager shall send a letter to the complainant informing him/her of the steps undertaken.

External Investigator

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 Harassment Prevention Policy, the Complaint Procedures relating to those policies and any relevant law. The external investigator may, in his or her discretion, modify the investigation process as appropriate to the circumstances and shall make determinations with regard for the applicable policies, procedures and any relevant law.

Approved by Corporate Management Team of the City of Hamilton, on the 7th day of April, 2005. Last updated on January 3, 2007.