

BE CODE SMART

The best way to protect yourself from discrimination and from complaints is to know and respect **The Saskatchewan Human Rights Code.**



SASKATCHEWAN
HUMAN RIGHTS
COMMISSION

Sexual Harassment and Human Rights

The Saskatchewan Human Rights Commission receives and investigates complaints of discrimination. It is not a prosecutorial process. The Commission conducts a neutral investigation and, when appropriate, refers the matter for hearing at the Court of Queen's Bench.

The Commission also engages in Systemic Advocacy when groups of people in Saskatchewan are facing a similar issue that falls under *The Saskatchewan Human Rights Code*.

When might a human rights complaint arise in the context of sexual harassment?

The Saskatchewan Human Rights Code protects the right to equality without discrimination based on the protected grounds. Sex is a protected ground.

The *Code* does not apply to all relationships or activities. It does, however, prohibit discrimination within the following areas, and would apply to sexual harassment that occurs in the context of those activities:

- Professional trades and associations
- Trade unions
- Education
- Contracts
- Employment & occupations
- Rental housing
- Public services
- Purchase of property
- Publications

How does the Saskatchewan Human Rights Commission define sexual harassment?

Sexual harassment is a form of discrimination that takes the form of unwelcome sexual conduct that interferes with rights guaranteed by the *Code*.

Sexual harassment may be verbal, physical or visual. It may be one incident or a series of incidents. It is always unsolicited and unwelcome behaviour, and can take many forms, including but not limited to:

- sexual remarks
- “jokes” with sexual overtones
- a sexual advance or invitation
- displaying offensive images or photographs
- threats
- leering
- physical contact like touching, patting, pinching, or brushing against
- sexual and physical assault

Sexual harassment is an expression of power. It may be accompanied by threats, promises or abuse. The harasser is usually someone in authority using power to intimidate. Most sexual harassment occurs in the workplace. The employee often hesitates to complain for fear of reprisal or economic consequences.

The *Code* does not rule out office romance, flirtation, or good-natured jesting that is accepted by both parties. Sexual harassment refers only to unwelcome behaviour which the harasser knew, or should have known, would be unwanted.

Interpreting Sexual Harassment

Each person and gender may perceive sexual harassment differently. Because of the difference in interpretation, and the fact that sexual harassment affects genders differently, it is important to interpret sexual harassment as any behavior the person experiencing it perceives as offensive.



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Effect of Sexual Harassment in the Workplace

Many survivors of sexual harassment feel humiliated, ashamed, degraded, embarrassed, and angry. Sexual harassment can impair job performance, decrease job satisfaction, and cause headaches, nervousness, insomnia and anxiety attacks.

When employees have to spend time and energy dealing with sexual harassment it takes time and energy away from the job. Sexual harassment often leads to absenteeism and high staff turnover.

How can employers prevent sexual harassment in the workplace?

It's up to the employer to provide a discrimination free workplace. Whether they are aware of sexual harassment or not, employers may be held responsible for the actions of management and supervisory personnel, and for harassment by non-supervisory personnel, except in certain circumstances

For example, if an employee harasses another employee, and the employer knows about it but doesn't intervene, the employer may also be at fault.

Tools to build a discrimination-free workplace:

- establishing a code of conduct
- establishing an anti-harassment policy
- making sure all employees know the policy by posting it, putting it in memo form, or in the company newsletter
- setting up a confidential complaint process for employees experiencing sexual harassment
- letting employees know that penalties will follow sexual harassment, including written or verbal reprimands, suspension, and termination
- establishing a monitoring system.

What can someone experiencing sexual harassment in the workplace do?

- Tell the harasser to stop. Make it clear that the behaviour is unwelcome and must stop immediately. It can be verbal, written, or both.
- Tell the harasser's supervisor. Employers have a responsibility to protect employees from sexual harassment. Insist they take action.
- Tell the union. If there is union, tell the steward, file a grievance, and ask for an anti-sexual harassment clause in the collective agreement.
- Talk about it with others. It helps to talk to a trusted friend or co-worker. There may be others that have experienced something similar.
- Write it down. Note each action or remark, and the date, time, place and names of witnesses.
- Contact the Saskatchewan Human Rights Commission. Any form of retaliation due to filing a complaint is prohibited by the *Code*.

How is a human rights complaint initiated with the Saskatchewan Human Rights Commission?

Typically, a complaint is initiated by filing an intake questionnaire which can be found online. A complainant may also contact our office by mail, telephone, or email and explain the situation to an intake consultant to begin the intake process.

What is the limitation period?

Section 27(5) of the *Code* requires a complaint to be filed within ONE YEAR of the events giving rise to the complaint. This may be extended at the discretion of the Chief Commissioner pursuant to section 27(6).

What to expect from the process

INTAKE

After filing an intake questionnaire, the assessment typically takes 4-6 weeks. The complainant may be requested to provide further information or documents required to assess the complaint.

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The Intake Consultant will assess the complaint to determine:

- If there are reasonable grounds to proceed (a prima facie case);
• If the Commission has jurisdiction over the circumstances;
• If the complaint has been filed within the limitation period.

If the complaint is accepted, the complainant will be asked to sign a formal Complaint Form summarizing the complaint. The Complaint Form is served on the Respondent, and they are required to respond. Pre-complaint resolution (informal settlement) may also take place at this stage, if appropriate.

MEDIATION

Before a complaint is investigated, early mediation takes place with the assistance of a neutral mediator either in person or via telephone. Mediation may take up to 90 days. The discussions are not shared with the investigator.

INVESTIGATION

Complaints that are not resolved through mediation are investigated. The investigator requests and reviews relevant documents, speaks to witnesses, and writes a report summarizing the evidence for the parties' review. The parties have the opportunity to respond to the investigation report before the report is presented to the Chief Commissioner. Investigation is ideally completed within six months.

REVIEW BY CHIEF COMMISSIONER

The Chief Commissioner reviews the evidence and meets with the investigator and members of the legal team to make a decision regarding next steps.

The Chief Commissioner may:

- Refer the matter to hearing at the Court of Queen's Bench;
• Request further investigation take place; or
• Dismiss the complaint.

DIRECTED MEDIATION

In most cases, before a hearing takes place, the parties will be directed to engage in one further attempt at mediation, called Directed Mediation.

- In Directed Mediation, the respondent is asked to provide their final offer of resolution. If the offer made is reasonable in the determination of the Commission, and it is not accepted by the Complainant, the Chief Commissioner may dismiss the complaint.

HEARING AT THE COURT OF QUEEN'S BENCH

If the matter is not resolved through Directed Mediation, the Commission applies for a hearing at the Court of Queen's Bench. The hearing is conducted by the Commission's lawyer.

Approximately 1-2% of all complaints proceed to hearing.

What remedies might be available?

The Court is authorized to award a wide range of remedies including:

- Financial compensation
Damage to dignity under 40 of the Code (to a maximum of \$20,000)
Lost wages
• Reinstatement
• Mandatory education, training, adoption of policies or programs

Parties may agree to other terms if the matter is settled voluntarily, for example a letter of apology, letter of reference, or joint press release.

Does the process require legal representation?

The complainant does not require legal representation prior to the hearing stage.

The hearing is conducted by the Commission's lawyer. The Complainant is not required to have their own legal representation, but may choose to.

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