



Discrimination & Harassment Policies, Procedures and Guidelines

Date: April 30, 2021

Responsible Executive:
Equity & Inclusion Officer – CUPE Local 3906

SECTION I: INTRODUCTION

PREAMBLE

The Canadian Union of Public Employees (CUPE) National Equity statement is based on solidarity and the principle that all union members are equal and deserve mutual respect at all levels.

CUPE's policies and practices must reflect our commitment to ensuring that all members, staff and elected officers of CUPE Local 3906 have a right to work study and live in an environment that is free of **Discrimination and Harassment**.

The purpose of this policy is to:

- a) articulate CUPE Local 3906's commitment to Discrimination and Harassment prevention and response;
- b) identify services and resources related to **Discrimination and Harassment** that are available to all members, executive and staff of CUPE Local 3906 (the Local); and
- c) explain the complaint and reporting options, support and accommodations that are available to all members of the Local who experience discrimination and/or Harassment.

SCOPE

This Policy prohibits Discrimination and/or Harassment on the grounds articulated in the Ontario Human Rights Code: age; ancestry, colour, race; citizenship; ethnic origin; place of origin; creed; disability; family status; marital status (including single status); gender identity, gender expression; sex (including pregnancy and breastfeeding); and sexual orientation.

This Policy prohibits Harassment which is a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Harassment may include Sexual and/or Gender-Based Harassment, Workplace Sexual Harassment, as well as Harassment on any one or more of the grounds articulated in the Human Rights Code, the CUPE 3906 Harassment Policy (April 2013) and/or the Local's Equity Statement.

Nothing contained in this Policy supersedes the Collective Agreement between CUPE Local 3906 and CUPE Local 1281.

Sexual Violence/Harassment includes:

Any sexual act that targets a person's sexuality, gender expression or gender identity, whether physical or psychological in nature, that is committed, threatened, or attempted against a person without the person's consent.

Sexual violence can result in serious and negative impacts on the survivor's mental, emotional, physical and spiritual health and wellbeing. People who witness it and do not intervene are also negatively

affected. Even the perpetrator does not remain unaffected by their actions and others' reactions to them.

In this guide, "sexual violence" is used as an umbrella term to include examples of **sexual harassment**. Bill 132, *the Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)* define sexual harassment as:

Engaging in a course of vexatious comment or conduct against a union member in a union workspace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought to reasonably 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 a member and the person know or ought reasonably to know that the solicitation or advance is unwelcome.

The spectrum of sexual violence, that includes sexual harassment, can include¹:

Unwelcome sexual remarks and jokes;

- a) Unwanted advances from a person in a position of power;
- b) Unwanted advances from a person;
- c) Spreading sexual rumours;
- d) Public display of sexual photos, drawings, comics, graffiti – including "online" and "social media" formats;
- e) Repeated and unwanted invitations to socialize (in certain cases it doesn't have to be repeated and can be dependent on the nature of the harm and on previous exchanges);
- f) Offering employment or other benefits in exchange for sex or sexual favours
- g) Making threats if sexual advances are refused;
- h) Unwanted touching;
- i) Leering;
- j) Stalking – including "online" and "social media" formats
- k) Sexual assault and rape.

This Policy expressly prohibits any discriminatory or harassing action and/or conduct, verbal or non-verbal, directed at or about one or more individuals or groups that creates a poisoned environment which interferes with academic or work performance, in a manner that exceeds academic freedom.

6. The Policy applies to:

¹ Adapted from the CUPE Ontario's Women's Committee (2021). We Believe you, (p. 8). [WeBelieveYouJan2021.pdf \(cupe.on.ca\)](https://www.cupe.on.ca/WeBelieveYouJan2021.pdf)

- a. **all Members of the Local 3906** including: all members of the Local 3906 union leadership team, staff and coworkers, the general membership and Union administrators and individuals representing CUPE Local 3906; and
- b. **all Local-related activities**, which are activities (authorized and non-authorized where there is a clear nexus to the working or advocating on or off University premises).

7. When allegations of Sexual Harassment are to be processed under McMaster's Sexual violence Policy, there may be circumstances where the allegations in a complaint necessitate following the procedures under both this Policy and the McMaster's Sexual Violence Policy.

8. Where a Complaint is filed that involves behaviour prohibited by this Policy, as well as behaviour more appropriately dealt with under the Sexual Violence Policy, the Complaint may be processed under the Sexual Violence Policy. However, any proceedings related to the Complaint will determine if there has been a violation of the Sexual Violence Policy, in addition to any findings related to this Policy.

CUPE LOCAL 3906'S COMMITMENT

1. To secure the best possible pay, benefits, working conditions job security, pensions and retiree benefits for its members;
2. Provide an opportunity for its members to influence and shape their future through free democratic trade unionism;
3. Encourage the settlement by negotiation and mediation of all the disputes between the members and their employers;
4. Eliminate harassment and discrimination of any sort or on any basis; for the equality of treatment regardless of class, race, colour, nationality, age, sex/gender, language, sexual orientation, place of origin, ancestry, religious beliefs, or mental and physical disability; and the active opposition of discrimination or same wherever it occurs or appears;
5. Establish strong working relationships with the public we serve and the communities in which we work and live; and
6. Support CUPE in reaching all of the objectives set out in Article II of the CUPE national constitution;
7. To work towards the elimination of all user-fees on post-secondary education in Canada including tuition fees and towards the development of a free, open, accessible and accountable post-secondary education system.
8. To improve the quality, and social responsibility of post-secondary education in Canada, and in our workplace by participating, and intervening in the determination of teaching methods, curriculum, and course content as well as the way in which the university is governed;
9. To work in cooperation with grassroots organizations, indigenous peoples, democratic trade-unions, and in solidarity with oppressed peoples everywhere².

² CUPE 3906 BY-LAWS, 2019, p. 5

POLICY REVIEW

The policy will be reviewed annually for compliance with the Occupational Health and Safety Act.

SECTION II: OPTIONS

OPTIONS

Members who believe there has been a violation of the Policy have a number of options available to them: **CUPE National Trial Process, Dispute Resolution, and Reporting** (under CUPE Local 3906 Policy and includes filing a complaint, and/or voluntary Resolution, making a **Criminal Report** or **Other External Options**).

Members who have experienced unwelcome comment or conduct by another person are encouraged, although not obliged, to make it known to the other person that their behaviour is unwelcome. In situations where it is believed that addressing the other person could lead to an escalation of the comment or conduct, or to safety risks, this approach is not recommended. If the problem is not resolved, or if the union Member feels they cannot speak directly to the other person, they should notify an elected union official within CUPE of the matter.

CUPE National Trial Process

The member who has been harmed may choose to contact CUPE National to make a Complaint pursuant to CUPE National's code of conduct (for CUPE National events) and CUPE Ontario's Code of Conduct (for CUPE Ontario events)

CUPE Trial procedure³ offers members in good standing an internal process to have complaints related to union activities against other members dealt with in a fair and impartial manner.

- a) Harassment or discrimination based on a prohibited ground under f.1(m) is an offence under the Constitution.
- b) Members who have a complaint alleging a violation of f.1(m) may opt to use an alternative process adopted by the National Executive Board. In the alternative process a Mediator/Adjudicator is appointed to conduct fact finding and mediation in a trauma informed manner.

In the case when the incident did not happen at work or the person harmed would like to choose an alternative to the CUPE's trial process, the person harmed may:

DISPUTE RESOLUTION

³ Appendix f of the CUPE Constitution: [constitution national 2019 en fn15.pdf](#)

Individuals may inform/seek assistance from their Supervisor (or person who has formal oversight of their area), the Local's President, the Local's Equity Officer or someone on the executive specifically assigned to deal with discrimination and harassment, to help address the situation.

Options for dispute resolution may include some fact-finding discussion, clarification of the issues, facilitated conversations, coaching, reconciliation, union work space restoration, settlement conferences, restoration processes, and mediation.

REPORTING

A Report occurs when an individual determines that they wish to pursue an official Complaint through one or more of the following avenues: a Complaint to the Local under this Policy, Voluntary Resolution under this Policy, a Criminal Report through the justice system, or other reporting options external to this Policy.

Reporting options are not mutually exclusive.

Individuals who file a Report may ultimately be required to attend/participate in a hearing, either internal to CUPE, or external through arbitration, or criminal court, etc.

Members may choose to contact access any one of these options to make a complaint pursuant to the policy and/or CUPE National's code of conduct.

Complaint

A Complaint is made when an individual submits a written statement of complaint to an Intake Office (the local equity officer), making an allegation of Discrimination and/or Harassment because they wish to initiate a formal CUPE Local 3906 process, which may require an investigation into the allegations and finding of facts.

Voluntary Resolution

In certain circumstances, a Complainant and Respondent may be interested in attempting a resolution of a Complaint at any time before the completion of an Investigation.

The following conditions must be present before considering if Voluntary Resolution is a viable option:

- a) the Local is able to meet its responsibilities pursuant to the Occupational Health & Safety Act; and
- b) the Complainant and the Respondent both agree to:
 - i. attempt to reach a resolution in good faith;
 - ii. the methods to be used to seek resolution; and
 - iii. the terms of what would constitute resolution.

1. A meeting between the complainant and the Respondent will not be a requirement for Voluntary Resolution.
2. A voluntary Resolution may be facilitated by the Equity Officer or Executive assigned to deal with discrimination and Harassment in the Local workspace involving CUPE 3906 members and the methods may include fact-finding, discussion, clarifications of the issues, facilitated conversations, mediation, coaching, voluntary no contact agreements, reconciliation, restoration processes, union workspace restoration processes.

CRIMINAL REPORT

A Criminal Report is made when an individual files a report of an incident with a police service or with Security Services. Filing a Criminal Report with Security Services will result in a report to Hamilton Police Service.

OTHER EXTERNAL OPTIONS

Individuals may exercise other University options external to this Policy (e.g. the grievance provisions of applicable collective agreements, or other options external to the University (e.g. through civil litigation or Ontario Human Rights Code provisions).

SECTION III: CONFIDENTIALITY

CONFIDENTIALITY (LIMITATIONS)

The Local recognizes the importance of confidentiality both for individuals coming forward to seek **Dispute Resolution**, or to Report an experience of **Discrimination and/or Harassment**, and for individuals who are the subject of a Complaint. The Local will take steps to protect the confidentiality of both parties to the extent permitted by its legal obligations outlined below.

1. The Local 3906 executive and its agents will protect personal information and handle records in accordance with the Freedom of Information and Protection of Privacy Act and the Personal Health Information Protection Act, where applicable in the circumstances, with the provisions of applicable collective agreements and, in the case of health care providers, in keeping with any professional obligations.
2. When making a Report to any executive member individuals shall receive clear and transparent information about the level of, and limits to, confidentiality that apply.
3. Individuals may speak in confidence to an Intake Coordinator, subject to the provisions of this section and the limitations below. The Local will share identifying information only in circumstances where it is necessary in order to administer this Policy, to address safety concerns, or to satisfy a legal reporting requirement. In such circumstances, the minimum amount of information needed to allow such concerns to be addressed, or to meet such requirements, will be disclosed. Such circumstances include those where:
 - a) an individual is at risk of harm to self;

- b) an individual is at risk of harming others;
 - c) there are reasonable grounds to be concerned about risk of future violence or the safety of the Local and/or broader community;
 - d) disclosure is required by law, for instance, suspected abuse of someone under the age of 16, reports of intimate partner/domestic violence or to comply with the Occupational Health and Safety Act, the Workplace Safety and Insurance Act, or with human rights legislation; and/or
 - e) to comply with the reporting requirements of regulatory bodies and/or professional licensing bodies.
4. Where there are reasonable grounds to be concerned about risk of future violence or the safety of the broader community or the public, or where the Local is otherwise obligated to do so, the Local may report the incident to Hamilton Police Services. In these situations:
- a) the relevant Decision-Maker will be responsible for making the decision to disclose information to Hamilton Police Services;
 - b) the name of the Respondent, if known, will be shared; and
 - c) the name of the Complainant will not be shared without their consent, unless doing so would address a reporting obligation or mitigate a safety risk.
5. As part of the Local's internal responsibility to maintain an environment free from Discrimination and Harassment, information shall be shared on a need-to-know basis.
6. The importance of preserving the confidentiality of Complaints and any related proceedings will be explained to all parties as a necessary measure to protect the integrity of the proceedings.

Section IV: PROCEDURAL GUIDELINES

In keeping with CUPE Local 3906's – By-Laws, the Equity Officer will address equity issues and issues of discrimination in our workplace, our union and beyond by:

Facilitating a voluntary Resolution process to deal with discrimination and Harassment in the Local and between CUPE 3906 members through, the investigation of complaints in the Local workspace using methods such as:

- i. intake of complaints
- ii. formal discussion
- iii. fact-finding,
- iv. clarifications of the issues,
- v. facilitated conversations,
- vi. decision to investigate/confirm that the complaint fits within the policy
- vii. mediation,
- viii. coaching,
- ix. voluntary no contact agreements,
- x. reconciliation,
- xi. restoration processes, and/or;

- xii. Union workspace restoration processes.
- xiii. Report preparation, and
- xiv. Recommendations to CUPE Local 3906 executive

SECTION VI: INTAKE & INVESTIGATIONS

Issues of Equity, discrimination and harassment as defined by the LOCAL'S equity statement, this Policy, CUPE'S National constitution and CUPE Ontario's Women's committee will be investigated using the following procedure:

1. Individuals may choose to speak with the Equity Officer and or the Local's President to see if the matter can be dealt with informally.

The Equity Officer is responsible for:

1. Ensuring that the Complainants are aware of the options available to them in seeking a response;
2. Assisting complainants in understanding what may be involved in, and what may result from each of the options available for resolution; and
3. Assisting a Complainant who wishes to move forward with the formal Complaint process which includes a formal letter describing: what happened; who was involved in the incident; when and where the incident occurred; who (if anyone) saw or heard the incident, or saw or heard something of relevance prior to or after the alleged incident(s) of Discrimination and/or Harassment.
4. The equity officer will review and assess the Complaint on an immediate and priority basis in order to, as appropriate:
 - a) Confirm that it fits within the scope of the Policy;
 - b) Consider requirements pursuant to the Occupational Health and Safety Act
 - c) Conduct a triage of violence risk, and may consult with outside sources where applicable
 - d) Consider whether the matter may be resolved through Dispute Resolution and whether the parties are interested in voluntary resolution, and whether it is feasible/appropriate in the circumstances;
 - e) Determine if an investigation is required, and, if so, set parameters accordingly, in consultation with the Local's President and or V/P where applicable (including, for example if outside sources will be involved; timelines, mandate and scope for the investigation;
 - f) Convene the Response Team, as needed, to provide consultation;
 - g) Consider and coordinate appropriate representatives of relevant services or department in order to appropriately respond to the matter.

5. At any time during proceedings under this Policy, the Response Team, when convened, may determine it is necessary to disclose identities on a need-to-know basis in order to administer the Policy.

Decisions to Not Investigate

In some circumstances a decision may be made to not investigate. The decision will be communicated in writing, with reasons, to the Complainant by the relevant Decision-Maker. The Complainant will be informed of their right to make a written request for review of the decision to the President to whom the Decision-Maker reports.

INTERIM MEASURES AND ONGOING SUPPORT OF ALL PARTIES

1. At any stage in the proceedings under this Policy it may be necessary to take Interim Measures in order to safeguard the environment of CUPE Members who are involved or may be affected.
2. If the Equity Officer determines it is necessary to take Interim Measures to safeguard the environment of CUPE members who are involved or may be affected the Equity Officer shall call a Special meeting of the Local's Executive to inform them of the matter and make said recommendations for the implementation of Interim Measures to safeguard the environment of those involved in the matter.
3. Interim Measures shall not be construed as evidence of a violation of this Policy, or as an affirmation of non-violation of this Policy.
4. The authority to approve Interim Measures will rest with a majority decision of the Executive during the special meeting.
5. Interim measures may include, but are not limited to, the rearrangement of responsibilities, an administrative leave of absence, adjustments in Union activities (e.g. attendance at union sponsored events or events where those involved can reasonably be expected to come in contact with each other).
6. Should an Investigation extend beyond six months, there will be a full review by the Response Team in consultation with the Executive to assess progress, considering fairness to all parties, thoroughness, timeliness, and confidentiality, and to consider any necessary next steps.

INVESTIGATION PROCEDURES

1. Respondents have the right to know the case against them, and to produce any relevant documentation, evidence, or other information, and identify witnesses to the Investigator in response to any allegations.
2. The Investigator will impartially collect evidence and interview those witnesses they deem relevant in relation to the Complaint. The Investigator may request that the appropriate authority at CUPE's National level to adjust the scope and the manner in which the investigation will be conducted in order to ensure a thorough and fair investigation process.

3. All Members involved and or identified in the complaint are expected to meet with the Investigator if requested to do so and to participate in good faith.
4. Complainants and Respondents have the option of being accompanied by a Support Person or Advisor.
5. All those who meet with an Investigator are required to keep confidential the Investigation and any information shared, to ensure the integrity of the proceedings. Failure to do so could be considered a breach of privacy.
6. An individual, who was not previously identified as a Respondent but who; during the course of an Investigation, is identified as a potential Respondent (by the Investigator and with the approval of the President) will be notified and given an opportunity to meet with the Investigator and to respond to any allegations.
7. If during the course of the Investigation the Investigator believes the Complaint is frivolous (it does not have any serious purpose or value; is of little or no weight, worth, or importance), or is vexatious (instituted without sufficient grounds and only to cause annoyance) the Investigator shall refer the matter back to the Response Team to determine the next steps.

SECTION VII: FINDINGS AND RECOMMENDATIONS

1. Upon completion of the fact finding process the Equity Officer will prepare a report of findings and then strike and Chair an Equity case consultation team (ECCT) consisting of a minimum of 3 individuals.
2. It is recommended that individuals who have received TRAUMA informed AOP AND sexual violence response training be asked to join the ECCT.
3. The ECCT will consider the findings contained in the report to see if there is a violation of the Policy.
4. If the ECCT finds that the investigation findings presented are in violation of the Policy, the Equity Officer will call a special meeting of the Executives to review the findings and make suggestions and recommendations to determine appropriate remedies to ensure that outcomes are consistently applied, and are appropriate to relevant legislation, CUPE standards, and collective agreements.
5. The right to resolve a Complaint is voluntary and can occur at any time Before the end of an Investigation.

NOTIFICATION OF OUTCOME

Respondent

Respondents will receive a written decision from the Equity Officer, that will include:

1. The decision with respect to a **Finding** or **No Finding** of a Violation the Policy;
2. Reasons for the decision;
3. A summary outlining the findings

4. If the outcome is no finding of violation of the Policy, the matter will be closed;
5. If the outcome is a finding of violation of the Policy, the Respondent will be informed of the Process by which sanction(s) and/or remedies will be recommended or requested as per CUPE National By-Laws.
6. Where relevant, confirmation of any Interim Measures that will remain in place until sanctions are imposed.

Complainant

1. If the matter has been referred to CUPE National the Complainant will be informed of the referral.
2. The Complainant will be informed of the findings and reasons that are directly related to their complaint.
3. In all cases, information about any sanctions/remedies that have direct relevance to the complainant will be provided to them.

Affected parties

1. Other affected parties will be informed about the findings and/or any sanctions/remedies that have a direct impact on them.

SYSTEMIC AND PREVENTATIVE INTERVENTIONS

1. Investigations may reveal broader systemic issues to be addressed as a future preventative measure, regardless of whether there has been a finding of Discrimination and/or Harassment. In such instances, appropriate intervention measures such as education and training may be recommended by the Equity officer and or Equity Case consultation Team.

SECTION VII: SANCTIONS AND REMEDIES

SANCTIONS

1. Sanctions shall be proportional to the severity of the offence, considering any aggravating, mitigating and/or contextual factors. Previous findings of a violation fo this Policy or a related violation will be taken into account when sanctions are determined.
2. Sanctions may include, but are not limited to:
 - a) Written reprimand;
 - b) Recommendation for removal of the Executive if applicable

REMEDIES

Remedies may include but are not limited to:

1. Mandated training or coaching

DATA GATHERING & RECORD KEEPING

1. All notes, materials, investigation reports, and recommendations pertaining to Complaints will be kept by the Local 3906 staff and made available to the current Local Equity Officer for seven years. These records may be retained longer, subject to the discretion of the appropriate decision maker.

APPENDIX A: RELATED POLICES AND LEGISLATION

CUPE NATIONAL CONSITUTION

[Constitution National 2019 EN FNL4.indd \(cupe.ca\)](#)

CUPE ONTARIO SEXUAL VIOLENCE GUIDEBOOK:

[WeBelieveYouJan2021.pdf \(cupe.on.ca\)](#)

CUPE ONTARIO EQUITY STATEMENT:

[Microsoft Word - Equality Statement Revised 2016 Eng & FR.doc \(cupe.on.ca\)](#)

CUPE 3906 EQUITY STATEMENT AND LAND ACKNOWLEDGEMENT

[Equity Statement and Land Acknowledgement | CUPE 3906](#)

CUPE 3906 BY-LAWS

[CUPE-3906-Bylaws-ratified-by-membership-DECEMBER-2020.pdf \(cupe3906.org\)](#)

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT:

[Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31 \(ontario.ca\)](#)

ONTARIO HUMAN RIGHTS CODE:

[Human Rights Code, R.S.O. 1990, c. H.19 \(ontario.ca\)](#)

ONTARIO OCCUPATIONAL HEALTH & SAFETY ACT:

[Occupational Health and Safety Act, R.S.O. 1990, c. O.1 \(ontario.ca\)](#)

PERSONAL INFORMATION PROTECTION ACT:

[Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A \(ontario.ca\)](#)