



Employment Law

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Harassment at Work

As adults, we spend most of our waking hours at work. When the environment is agreeable and supportive, work is a pleasure. On the other hand, if you are tormented by a bullying boss or co-worker, work can be a torturous ordeal. Harassment is one of those concepts that may be hard to precisely define, but you know it when you have it.

Psychological harassment is a pattern of acts or words intended to intimidate, offend, degrade, or humiliate. Harassment and bullying do not end in the playground. It has occurred throughout history in the workplace in many forms. Most of the study and law into workplace harassment has been concerned with sexual harassment. Non-sexual, psychological harassment has received attention only very recently.

A 2003 survey conducted by the Workplace Bullying and Trauma Institute found that in 70% of cases, bullying stopped only when the victim quit or was dismissed. Yet, the bully suffered consequences in only 13% of cases. A recent study by three Ontario unions found that 38% of respondents were subject to personal harassment in the workplace, and 20% said they sought professional help from the bullying.

Harassment has a major social and economic impact because it also injures the employer. Stress-related health and safety issues prompt valuable employees to leave the organization. The Canada Safety Council reports that bullied employees waste between 10 and 52% of their time at work, allocating time to defending themselves, networking for support, and pondering the problem. Employee turnover, stress leaves, and productivity drops are costly. British research has estimates that 40 million working days are lost each year due to workplace bullying. Anti-bullying policies make good business sense even where they are not legally required. How does Canadian law respond to harassment at work?

Discriminatory Harassment

If the harassment amounts to discrimination on one of the prohibited grounds, one may have direct recourse to the applicable provincial or federal Human Rights Commission. Equality legislation protects employees from being singled out (harassed) *because of* their gender, religion, age, race, disability, etc. Complaints about sexual harassment at work, for example, can be made directly to the Human Rights Commission.

The *Charter of Rights* further protects public employees against discriminatory harassment, although one must go to court for a *Charter* remedy.

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Unionized Workplaces

About one in three employees works in a collective labour relations job. The union negotiates a collective agreement with the employer to govern that work relationship. These agreements usually have a “no harassment” clause. Workers who feel bullied by a boss or co-worker may take their “grievance” to the union which decides whether to raise it with management for resolution. The collective agreement is a complete, self-contained code to deal with the harassment, and the problem can be dealt with in any manner acceptable to the parties.

Non-Unionized Workplaces

The other two-thirds of workers without a union are governed by legislation and the common law.

Legislation

There is little Canadian legislation that directly addresses workplace bullying. The first anti-bullying law in North America was introduced in Quebec in 2004. Psychological harassment is defined as “any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures that affect an employee’s dignity or psychological or physical integrity that results in a harmful work environment for the employee.” A single serious incident of such behaviour with a lasting harmful effect on an employee may also constitute illegal harassment.

The Quebec legislation grants every employee the “right to a work environment free from psychological harassment,”

and requires employers to take reasonable action to prevent and stop harassment. Victims may file a complaint with Quebec’s

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within 90 days of the last incident, and obtain an appropriate remedy, including reinstatement, modification to the employee’s disciplinary record, back pay, expenses for psychological support, and punitive and other damages.

The federal *Workplace Psychological Harassment Prevention Act* (Bill C-451) would have amended the *Canada Labour Code* along similar lines. Applicable to federal employees only, the Bill died on the call of the 2004 election. It would have imposed fines of up to \$10,000 for psychological harassment.

Since there is no specific legislation in the other provinces, one might argue that persistent harassment is covered by provincial occupational health and safety legislation. For example, the 2001 amendment to Ontario’s *Occupational Health and Safety Act* added “acts of physical or psychological violence, including bullying, mobbing, teasing, ridicule and any other acts or use of words that can reasonably be interpreted as designed to hurt or isolate a person in the workplace.” The Act requires employers to develop written Codes of Conduct espousing respect and

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dignity, denouncing workplace violence, and establishing strategies and discipline to deal with workplace violence.

The *Occupational Health and Safety Acts* in all provinces continue general requirements for employers to maintain a healthy and safe environment for their employees. Several provinces are purportedly working on legislative changes to address workplace harassment more directly.

Common Law

Without clear legislative protection, many egregiously harassed employees will be left with no choice but to quit their employment. At common law, they may then have a valid claim for damages under constructive dismissal principles, where the harassment rendered their continued employment intolerable. The employee will have to quit reasonably soon after the pattern of harassment has established itself. These wrongful (constructive) dismissal cases are never certain legal victories — they depend upon proof of the facts of harassment in court. Accordingly, before quitting, it is wise for the aggrieved employee to clearly document and communicate the harassment to senior management of the employer and allow adequate time for the problem to be addressed.

After decades of being overlooked, psychological harassment at work in Canada is increasingly being recognized as an insidious form of violence and discrimination that injures both workers and businesses on a massive scale. To date only Quebec has crafted specific legal protection, but there is optimism that other jurisdictions will soon follow suit.

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