

# The plague that haunts us still

Sexual harassment complaints are on the rise despite years of corporate and legal prohibitions, WALLACE IMMEN writes

By WALLACE IMMEN

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Incredible as it may seem, sexual harassment still occurs frequently in Canadian workplaces -- despite years of effort to eliminate it.

In fact, the number of complaints filed with the Canadian Human Rights Commission and its counterparts in several provinces is increasing. That is in spite of prohibitions in human-rights codes and policies in many workplaces that specify unwanted sexual contact, innuendo or comments will not be tolerated.

Experts say the laws and awareness are actually having an impact on reducing incidents, particularly in large organizations. But, as recent high-profile allegations illustrate, sexual harassment remains a threat wherever people come in close contact.

This summer has seen allegations made by four female RCMP officers that they were sexually assaulted by a man on the force. Allegations have also been made by hospital workers in Toronto and the colleague of a popular Montreal radio announcer.

And a new study in Ontario makes clear that policies alone are not enough if they are not enforced as zealously and acted on as quickly as other occupational health and safety issues.

"The more research I do, the less surprised I am that women are still having problems with harassment in the workplace," says Sandra Welsh, co-author of the Workplace Harassment and Violence Report, organized by the Centre for Research on Violence Against Women and Children at the University of Western Ontario.

Most often, workplace harassment occurs in a situation of unequal power, with the harasser being a man in a position of authority over the victim, who fears reprisals or loss of a job if she doesn't comply, explains Ms. Welsh, an associate professor of sociology at the University of Toronto.

The victim in almost all cases is a woman, Ms. Welsh adds. Only 2 per cent of sexual harassment cases filed with the Ontario Human Rights commission involve harassment of men.

And the study, to be released by the end of this month, discovered that many women hesitate to seek help because the procedures used in Canada for reporting harassment and getting it investigated are daunting and emotionally draining. Among the findings:

Almost everyone who complained of sexual harassment lost their job or had to quit to get out of the uncomfortable situation.

Most got unsatisfactory outcomes from internal harassment mediation through unions or human resources departments.

Complainants experience a legal quagmire of processes that are difficult to understand. Those

who get a lawyer often find that they cannot afford the fees to see the case through.

Most experienced a deterioration of relationships with spouses, children and friends.

After the experience, many felt they had lost self-confidence in their ability to perform well on a job.

Many ended up turning to alcohol or drugs to try to cope with the problems caused by the investigation and their loss of income.

The study found entry-level employees, minorities and immigrants are particularly at risk because they are unfamiliar with their rights in the workplace and may feel hesitant about raising an issue that may cost them their jobs.

While the study included only women in Ontario, a comparison of the cases with files gathered by human-rights groups in other provinces makes the authors confident the results represent the experiences of most victims of harassment in Canada, says Ms. Welsh.

She adds that an increase in formal complaints may actually be a sign of progress, indicating policies and awareness are making women more confident about taking action to stop their harassment.

"Sometimes a good policy will encourage people to report, so an increase in reports can be interpreted as things getting worse when in reality things are getting better," Ms. Welsh says.

However, the problem remains severe in small and medium-sized organizations. Because they still do not have harassment policies, complaints processes or a designated person to turn to, people don't feel comfortable about making an issue public, says Neena Gupta, a lawyer with Goodman and Carr LLP in Toronto. "It is not surprising that the instances hitting the press lately have been in large institutions which have policies against harassment that give a person some level of protection," and confidence that a complaint can lead to a change, she notes.

She believes a majority of victims of sexual harassment in smaller workplaces "simply choose to either grin and bear it or have to leave to get out the situation."

Nicole Curling knows the reality all too well.

Her harassment claim against her employer in a small Toronto tea company took more than six years to conclude.

In 1993, she had been hired as an executive assistant to the owner of the company. She says her boss made continuing demands that they have a sexual relationship. To get out of the situation she finally had to hand in her resignation and in 1994 she launched a complaint with the Ontario Human Rights Commission.

"I never expected the process would take so long and be so gruelling," says Ms. Curling, now 39, who believes there is little commitment by authorities to investigate claims quickly and not enough "legal teeth" in enforcement to deter potential harassers.

"It wasn't a very positive experience," she says. "It was long and emotional and very, very stressful and it ended up costing me a lot of money."

And worst of all, "in the end I really didn't feel vindicated," says Ms. Curling, who found another job, as an administrative assistant in Ontario's Ministry of Citizenship and immigration.

A board of inquiry eventually awarded Ms. Curling a \$50,000 settlement, the largest ever for a harassment case in Canada, but she says she could not collect it because the man who was ordered to pay it died in the meantime.

It is cases like this that make it vital that the existing system be changed, says Barb MacQuarrie, co-ordinator of the workplace harassment study at the Centre for Research on Violence against Women and Children in London, Ont.

Ms. MacQuarrie says she hopes the report will stimulate reforms in the harassment complaint process and speed investigation processes in Ontario as well as other jurisdictions.

Ontario Labour Minister Chris Bentley says the government "has been trying to get a handle on the issue" and he believes the recommendations in the report will prove useful in a review planned this fall of the processes used by Ontario's Human Rights Commission.

Saskatchewan and British Columbia have already made reforms that officials say are reducing the number of harassment incidents that become long-standing claims.

Saskatchewan's Public Service Commission has a "heightened sensitivity to harassment," after a review last year of its complaint investigation process, which had been in place since the early 1990s and which saw investigations stretch on to an average of 12 months, says Don Zerr, the commission's director of labour relations.

The number of complaints in the province had spiked up from 36 in 2001 to 49 in 2002, but was down to 30 last year after Saskatchewan instituted a "zero tolerance" approach that requires an investigation to begin within a week of the filing of a claim, Mr. Zerr says.

As a deterrent, the "zero tolerance" policy stipulates that people found guilty of sexual harassment will be penalized.

Because penalties must be determined on a case-by-case basis, they are not spelled out in the policy, but they could include firing, Mr. Zerr says.

Meanwhile, British Columbia streamlined its harassment complaints process last year by eliminating the prolonged investigations that are the first step in the process used by human rights commissions in other provinces.

Instead, it has made a dramatic change and given an independent legal tribunal authority to hear complaints and mediate settlements directly, says Heather MacNaughton, chair of the B.C. Human Rights Tribunal.

While it is too early to say that it has changed the number of claims of sexual harassment in the province, the process is quicker and surveys indicate people believe they will get a better outcome, says Ms. MacNaughton.

Unions are also putting a priority on bargaining for prevention programs and mediation to stop incidents before they become complaints.

The Canadian Auto Workers is demanding provision of a designated, trained advocate on the shop floor in all future contracts, says CAW spokesperson Peggy Nash. The system has already been negotiated at the Big Three auto makers.

An example of the impact the change can have is DaimlerChrysler Canada Inc., whose contract requires a mandatory two-day training workshop for supervisors and managers.

In the three years since the workshops were introduced, the number of complaints filed among the 3,200 employees of the Brampton, Ont., assembly complex dropped from more than 25 a year to about 12, says Elaine White, the women's advocate and employment equity representative at the plant. An internal process has also speeded the investigation and mediation to resolve issues that do become formal complaints, she adds.

"We also realized the workers who are most vulnerable are young women who are temporary," and may not know their rights in the workplace, Ms. White says. New female employees now receive a seminar before they begin work that educates them about their rights and the women's advocacy program which the CAW set up to counsel women who need advice on dealing with harassment incidents.

Canada's banks, which have a large proportion of women on their staffs, have also been at the forefront of training and prevention programs, says Lesya Balych-Cooper, vice-president of employee equity and engagement programs at the Bank of Montreal.

"I think overall in the industry there has been a trend that is something that we can be proud of,"

says Ms. Balych-Cooper. She adds that over the past decade, BMO has developed programs to provide an "equitable and supportive environment for the benefit of all employees" and that has substantially reduced the number of complaints.

"It's pretty definitive in questionnaires employees are overwhelmingly aware of the policies and say that their managers practice the values," she adds.

But like most businesses in Canada, banks do not release their statistics on internal discipline matters because of privacy issues, Ms. Balych-Cooper says.

Being more open about the problem would be a major breakthrough in prevention, Ms. Welsh believes.

As the next step in research, she is hoping to persuade companies to allow researchers to come in and look at their records. Companies are reluctant to open their records to researchers, "because if you find there is a problem, they don't want that made public."

But there has to be more research on what policies really work, Ms. Welsh says. "Prevention of sexual harassment is an area that must be taken as seriously as any other occupational health and safety issue."

### **The numbers are daunting**

The numbers of complaints of sexual harassment in Canadian workplaces are daunting and some experts say they may not tell the whole story.

Statistics compiled by the Centre for Research on Violence against Women and Children in London, Ont., found that many women facing sexual harassment choose not to file complaints.

In 2002, for instance, the Ontario Human Rights Commission received a total of 15,313 calls for information about sexual harassment, and 4,386 of the callers decided to speak about their experience to a representative.

Of those, 416 asked for a document kit to file a claim, but only 268 of them completed the documents to start an official complaint.

The trend in cases has been up in Ontario since 2000, when 213 complaints were received. The number spiked to 292 the following year. Last year, the number was up again, to 294.

In Alberta, the total number of registered complaints slightly declined, from 224 in 2002 to 206 in 2003.

But for the past four years, sexual harassment has consistently represented 45 per cent of all gender-related discrimination claims in the province, "which tells you sexual harassment remains a large problem," comments Marie Riddle, director of the Human Rights and Citizenship Commission of Alberta.

The rise is a concern for the Canadian Human Rights Commission, which receives complaints from employees of federally regulated organizations, says spokesman Jean-Christophe Vlasiu.

In 2000 there were 73 signed complaints about sexual harassment. The number rose to 86 in both 2001 and 2002 and last year there were 107. The number of complaints filed with the commission for all reasons, including discrimination, jumped from 994 in 2002 to 1,320 in 2003, Mr. Vlasiu says.

### **Policy guidelines**

The following policy guidelines for employers are adopted from the recommendations of the Workplace Harassment and Violence Report to be issued this month:

Take complaints seriously and investigate them. Do not ignore the complaint or hope the situation will go away.

Recognize the complaint process can be as hard as the harassment if not handled well.

Have investigation procedures and timelines in your organization's policies and follow them.

Refrain from reprisals. Ensure that sources of support are readily available.

Avoid conflicts of interest by ensuring trainers, mediators and investigators are from outside the company and are neutral.

When constructing a remedy after a finding of harassment:

Involve the complainant in all discussions of options.

Factor in an individual's physical and mental health.

Restore the complainant to the original work duties and responsibilities, if that is her preference.

Respond creatively. Be willing to offer non-monetary as well and monetary compensation.

Remember that co-workers may have also been harmed by the harassment.

Offer an apology.