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# **A GUIDE TO THE LAW IN ALBERTA REGARDING**

## **SEXUAL HARASSMENT IN THE WORKPLACE**

**version: 2008**

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**SEXUAL HARASSMENT IN GENERAL**

**1. What is Sexual Harassment?**

It is considered sexual harassment if a behaviour takes place in circumstances in which a reasonable person would anticipate that the complainant would feel offended, humiliated or intimidated. (The range of behaviour includes but is not limited to: Leering, telling smutty jokes, making comments about people's sexual preferences or practices, displaying pictures of naked or semi-naked people.)

The key elements of sexual harassment can include:

- a. behaviour that has a sexual element;
- b. behaviour that is not welcomed by the person at whom it is directed;
- c. behaviour that could reasonably offend, humiliate or intimidate that person.

Sexual harassment is unwelcome sexual advances or suggestions, unwelcome requests for sexual favours, unwelcome conduct of a sexual nature, threats, or acts of revenge after those suggestions are rejected, or any other unwanted sexual attention.

Sexual harassing can be done by anyone (a supervisor, a fellow employee, a customer or anyone else) but it often involves someone with more power trying to force the victim to do something. Sexual harassment in the workplace violates an individual's right to work without worrying about any kind of sexual pressure. Sexual harassment can be verbal or nonverbal conduct, or physical conduct.

Examples of nonverbal conduct include leering, ogling and suggestive gestures. The posting of nude photographs on calendars and showing pornographic magazines at work can also be construed as sexual harassment.

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Examples of verbal conduct includes sexual advances, vulgar or coarse remarks, comments about the complainant's body and clothing together with sexual advances. Sexual innuendo propositions and sexually suggestive comments are also examples.

Examples of physical conduct include giving a massage around neck or shoulders, hugging, kissing, patting or stroking (ex. touching and/or stroking the complainant's hair).

### **2. What Isn't Sexual Harassment?**

Sexual harassment is NOT workplace romance or flirting or anything that both people consent to. Sexual harassment is unwanted and usually involves threats or promises. It often occurs when the person doing the harassing has more power than the complainant.

### **3. Examples of Sexual Harassment**

Sexual harassment can include lots of things. Some of them are:

- a. verbal abuse;
- b. crude or sexist jokes;
- c. unwanted sexual remarks;
- d. teasing, taunting or suggestive words about your clothing, your body, or your sexual past;
- e. showing obscene or pornographic pictures;
- f. unwanted requests or invitations to do sexual acts;
- g. unnecessary physical touching such as patting or pinching;
- h. physical assaults sexual in nature; OR
- i. unwanted sexual intercourse.

Sexual harassment may also be less obvious. Sexual harassment may exist if an individual refuses sexual requests and then is fired, demoted, or has his or her job duties changed.

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### **4. How Common is Sexual Harassment?**

Most of the time, sexual harassment is not reported. There are many reasons for this. Sometimes people are embarrassed or think that sexual matters should be kept quiet. Also, many people are afraid of losing their jobs and often their employers are not helpful when complaints are made. A Canadian Human Rights Commission survey says that about 1.2 million Canadian women and 300,000 men believe they have been sexually harassed.

**Note:** There is no way or characteristic to identify someone who may be guilty of sexual harassment or someone who is being harassed. Anyone can be a guilty of or a victim of sexual harassment, and both men and women can be affected. This can occur between people of the same sex or opposite sex.

### **5. Effects of Sexual Harassment**

Sexual harassment may affect a person's ability to do his or her job, and make their own and others in the workplace uncomfortable. It also may lead to depression, emotional distress, or even physical illness. Also, victims tend to isolate themselves because they are afraid of what will happen because of the sexual harassment.

## **WHAT SHOULD THE VICTIM OF SEXUAL HARASSMENT DO?**

### **1. What Can One Do To Discourage Sexual Harassment?**

There are a few things a person can do to discourage people from harassing them. These ideas may not stop harassment taking place, but may show a person thinking about sexual harassment, that the intended victim will not put up with this kind of treatment.

- a. Act professionally and with authority.
- b. Be polite but not overly friendly.
- c. Do not give details about your personal or social life.
- d. Try not to be alone with the person.

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- e. If you eat a meal together, be sure both parties know it is for business and NOT pleasure.
- f. Do not ask for or accept any personal favours. They may think that you should do him or her a favour in return.
- g. Make sure to keep conversations to work and things related to work.
- h. Inform the person of your discomfort and ask them to stop.

### **2. What Should A Person Do If They Are Sexually Harassed?**

Sometimes, even when you try to show that you will not put up with being harassed, the person will do it anyway. There are some things that you can do if you are being harassed. They may not always work, but they may help.

- a. **DO NOT FEEL GUILTY.** Sometimes those harassing others will try to blame the victim. For example, they may say that you wear provocative or sexy clothing. But remember, you are the victim and this is wrong.
- b. Don't just accept the harassment and not do anything. If you do this, it might look like you didn't really mind and/or that you agreed to the conduct. The most important response if you are sexually harassed is to take action. Document and report the activity. Notify the person and tell them why it made you feel uncomfortable.
- c. Take action right away and be direct about it. Make sure the person knows that you do not like what they did and will not let them treat you that way. Sometimes all you have to do is give a friendly, but clear and firm answer. You will probably have to keep working with the person, so try to be professional. Make sure you reject the harassment firmly and clearly so the person cannot possibly misunderstand what you mean. You should also warn them that you will tell someone in authority if there are any more incidents.
- d. If the person does not stop, write a letter to the person or have a lawyer write one for you. It should say that if they do not stop you will take legal action and report the person

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- to your employer. Keep a copy of any letters you send. Make sure that everything you say in your letter is true, and that you stick to the facts.
- e. If the person still does not stop, report it to senior management or to your personnel department. Write a follow-up memo and keep a copy for yourself. Be prepared! The person may try to blame you.
  - f. If you are in a union, tell your union representative what happened. Remember that if both parties are members of the union, the union may not want to take sides (but you should still report the incident).
  - g. If there is any kind of affirmative action or equal opportunity program where you work, talk this department about what happened.
  - h. You also may want to talk to other people in your workplace to see if they have been harassed as well. If they know what happened to you they will be more alert if it happens again. There is strength in numbers.
  - i. If none of these things work, you can look into taking legal action. You can bring charges under civil or criminal law, depending on what happened. These options are talked about later in this pamphlet.
  - j. If you are fired or if you are treated badly at work, call the Human Rights Commission in your province and think about filing a complaint. This is talked about later in this pamphlet.

## **LEGAL REMEDIES**

### **1. Human Rights Legislation**

Human rights legislation includes federal and provincial laws. The Canadian Human Rights Act protects Canadians from sexual discrimination by any person or organization acting for the federal government. This means that anyone working for a department, business or agency that is controlled by the federal government is protected by this Act. This includes employees who are involved

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in transportation or trade and commerce which goes across the border of one province into another such as airline and flight industries, telecommunications and broadcasting, marine transportation, and employees of the federal government.

Provincial human rights laws protect Canadians who are under the authority of a provincial government (which is most people). Each Act is different and deals with harassment in its own way.

Normally, after a complaint is made an inquiry officer from the Human Rights Commission will investigate. The officer will talk to any witnesses and see if they would be willing to testify for the victim. Then the officer will talk to the victim, the employer, and any supervisors and co-workers.

If the officer thinks that there is evidence showing that the complaint is significant, the officer will try to help the victim and employer (or person accused of committing the harassment) to settle the problem. Of course, if either deny that the harassing took place, there probably won't be a settlement. The Commission has to decide how strong of a case they can make. If the only evidence is the word of the victim, usually the case will be closed. If there are witnesses or other victims who will testify, the Commission will have a better case. If the Commission can't get what it thinks is a good settlement, it may take the case before a Board of Inquiry.

At a Board of Inquiry, a neutral person hears the evidence and arguments from both sides. The Commission may pay for a lawyer to help the victim, and the accused or the employer is also able to obtain a lawyer. All of the witnesses give evidence under oath and are questioned by the lawyers for both sides, just like in a court. When the Board makes a decision, both sides must obey it, just like a court decision. The Board can:

- a. Dismiss the complaint;

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- b. Award the victim money for loss of income or for expenses caused by the harassment;
- c. Force the employer to rehire the victim, or do anything else the Board thinks is appropriate. The victim can appeal the decision of the Board to the Courts in most provinces. All Board of Inquiry hearings are open to the public, and the media may cover them as well.

### i. Advantages of Human Rights Legislation

- (1) Protects you from losing money or income because of discrimination. Also protects your emotional well-being while on the job.
- (2) Stops your employer from getting back at you after you make a complaint.
- (3) Allows people who could not afford to go to court and get a lawyer to be protected because the Human Rights Commission can conduct the case for them.
- (4) The Board of Inquiry can award a wider range of damages and remedies than a judge in a civil suit could.

### ii. Disadvantages of Human Rights Legislation

- (1) You will lose control of your case because the Commission will decide which cases should go to a Board of Inquiry. Sometimes the Commission will agree on a settlement that the victim does not like.
- (2) Most human rights laws in Canada do not mention sexual harassment specifically.
- (3) It can take a very long time and be very complicated when the Commission takes over a case.

## **2. Canadian Human Rights Commission**

The Canadian Human Rights Act protects employees under the authority of the federal government (in the businesses listed

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above). The Canadian Human Rights Commission is in charge of the Act and enforces it.

- a. The Act protects people from harassment which happens while one is doing something which is part of their job, even if it does not happen at the workplace or in normal working hours.
- b. Harassment can be verbal or physical (words or actions), is deliberate and unwanted.
- c. It can be a one-time thing or a series of incidents.
- d. If something is harassment, it must be deliberate and unwanted and:
  - i. be seen by the average person as something that is not part of the job; OR
  - ii. make a difference to a decision which is part of the job; OR
  - iii. interfere with the ability to do your job, or block you from getting something; OR
  - iv. humiliate, embarrass, or insult you; or make you afraid or uncomfortable.
- e. An employer may be held responsible if an employee harasses someone while doing his or her job if they do not take the proper precautions.
- f. BUT, if the employer did not consent to the harassing and tried to stop it from happening and, after it did happen, did everything he or she could do to fix the problem, then the employer will not be held responsible.
- g. An act will only be seen as harassment if the reasonable person would consider it harassment, meaning they would know that the act or words of the accused were unwanted by the complainant.
- h. For each case, all of the circumstances must be looked at carefully and without any bias or decisions being made beforehand.

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### **3. Alberta Human Rights Commission**

An employee in any industry which is not regulated by the federal government comes under the protection of provincial laws. In Alberta the law is called the Human Rights, Citizenship and Multiculturalism Act. Its policies are:

- a. Sexual harassment is a violation of the Act because it is discrimination on the basis of gender.
- b. Unwanted sexual requests or suggestions, or any other unwanted sexual actions or words, are harassment when:
  - i. it is said or hinted that if you do not go along with what is happening that you may lose your job, privileges, services or location; OR
  - ii. the employee refuses OR accepts the offer and this visibly affects his or her job, services or location.
- c. To decide if harassment has occurred, the Commission should look at all the circumstances including the type of sexual advances, the place they happened and the time that they occurred. Each case will be decided independently, based on the facts of that case alone.
- d. If you think you have been harassed, it is up to you to make it clear to the harasser or to someone in authority how you feel about it. However, the Commission may still accept your complaint even if you do not do this.
- e. The Act is violated if a supervisor or someone who has authority over the employee makes sexual demands of them and says or hints that the employee's job, status in the company, evaluation, promotion or any other part of his or her career depends on how he or she reacts to the request or demand.
- f. An employer can be held responsible for harassment in the workplace, BUT can avoid this if the employer makes sure that he or she takes action to fix the problem as soon as possible.
- g. A landlord, or anyone who sells services, is responsible for harassment by his or her agents or servants while service is being given unless they take steps to fix it.

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- h. Early prevention is the best way to stop harassment. An employer, landlord, or someone who sells services should do everything he or she can to stop harassment before it starts. For example, the employer can talk to employees about harassing behaviour, and make sure it is known that they are not allowed to harass others and if they do so, they will be punished.

### **4. Canada Labour Code**

In 1983-84, the federal government added to the Canada Labour Code Division XV.1 (s. 247.1) dealing with sexual harassment.

Sexual harassment means any conduct, gesture or contact of a sexual nature:

- a. That is likely to cause offence or humiliation to any employee; OR
- b. That might, on reasonable grounds, be perceived by that employee as placing a condition of sexual nature on employment or on any opportunity for training or promotion;

The code states that:

- a. Every employee has a right to work without being sexually harassed;
- b. All employers must make a reasonable effort to protect employees from sexual harassment; AND
- c. Employers must make a policy on harassment and make it well-known to all employees.

R.S.C. 1985, c.9 (1st Supp.), Division XV.1 sets out how sexual harassment will be investigated and enforced.

### **5. Unions**

The union has a duty under common law (meaning the decisions made by judges), the Canada Labour Code, the Alberta Labour Relations Code, and the Alberta Public Service Employee Relations Act to act for its members in a fair way. Generally the union must file a grievance (a formal complaint against an

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employer) and take it to arbitration. However, sometimes the union can refuse to take this action on a grievance. The union will look at many things when deciding whether or not to file a grievance. One of the most important things is whether or not the collective agreement has any clauses dealing with sexual harassment. Some agreements have a “no discrimination” clause. The union must, at the very least, investigate when a victim says that he or she has been sexually harassed.

### **6. Criminal Law**

Most of the time sexual harassment is best dealt with by the civil law (see below). However, the harassment can sometimes be dealt with by the Criminal Code if the harassment is criminal in nature. These 2 sections of the Criminal Code may be used if they apply:

- a. Section 265: Assault
  - i. protects from interference with another person without consent;
  - ii. charges can be laid for criminal sexual harassment offences. These are things like violence, touching or the threat to touch.
- b. Section 271: Sexual Assault – intentional touching of another in a sexual way without your consent.

If the harassment goes to a criminal trial, you will be a witness for the Crown Prosecutor. The Crown will have to prove that the accused is guilty beyond a reasonable doubt before the judge will convict the accused.

If the judge convicts the accused, there will be some punishment such as a fine or possibly a jail sentence. The victim will not receive financial benefits from the courts but may make an application to the Victims of Crime Financial Benefits Plan. The fund will only pay compensation if the assault has resulted in injury or death.

## **7. Civil Law**

Victims of sexual harassment have a difficult problem with legal solutions. If you bring a civil action against your employer or the accused, they may try to penalize you by giving you poor work ratings or less attractive job assignments. You may also experience resentment and/or anger from other employees.

Victims often do not want to start civil actions because they can take a long time and a lawyer must be hired. Delays can take years and the cost of a lawyer can be far more than any damages (money) awarded to the victim if he or she wins.

If you have been sexually harassed you may be able to sue for assault or intentional infliction of mental suffering depending on the circumstances.

**Assault** - means doing anything which makes the victim reasonably afraid that he or she is about to be physically injured in some way.

For harassment, assault involves some forcing of unwanted sexual attention.

**Intentional Infliction of Mental Suffering** - means that the defendant has done an act, which is clearly meant to cause a reaction in the victim, and the reaction IS caused. The victim must show that the defendant's actions have caused visible physical symptoms such as migraine headaches, ulcers or other known illnesses.

The victim in a civil suit must prove, on a balance of probabilities, that the harassment happened. This means that the victim must show that it is more likely that the harassment took place than that it did not. In other words, the judge must think that it is at least 51% likely that the victim is right.

To start a civil action, the victim should hire a lawyer, especially if the damages he or she wants are large. It is not a good idea to represent yourself if the amount of money you want is too large for Civil Provincial Court (\$25000 as of 2008). If the victim wins, he or she may be compensated for any losses caused by the harassment, including lost wages, medical expenses, counselling expenses, and/or pain and suffering.

**Wrongful Dismissal** - Another cause of action which you might bring, if it fits your particular circumstances, is wrongful dismissal. Victims of harassment may argue wrongful dismissal if they have lost their jobs unfairly.

Wrongful dismissal is part of contract law. This approach may be successful if the victim was forced to put up with sexual harassment as part of the job. If the victim did not accept the harassment and was fired or quit as a result, the victim may claim damages (money) for breach of the employment contract (agreement).

The judge will decide what the damages should be, this may be based on the length of employment, the classification of the job and the period of unemployment.

## **SUGGESTIONS FOR THE EMPLOYER**

Employers should know what could happen if sexual harassment takes place in the working environment. Employers can be held responsible for sexual harassment that happens on the job if the employer does not deal effectively with sexual harassment. Also, employers should remember that a workplace in which sexual harassment is allowed or ignored is usually not a productive workplace, and employees tend to be unhappy. It is a good management practice to have a strong policy against sexual harassment.



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The following is a list of some preventive measures an employer should consider taking:

- a. Post a statement or policy which states that sexual harassment is unacceptable in the workplace. Make sure that all employees are aware of the policy.
- b. Post Human Rights legislation and information in busy areas.
- c. Talk about sexual harassment at seminars and workshops for managers and supervisors to inform them of the seriousness of the issue.
- d. Ensure that employees are aware of the policy by talking about it. Let them know how complaints can be made.
- e. Consider assigning one management representative who understands and is sensitive towards sexual harassment to be the person who employees should talk to if they have a problem. This person must be someone who understands the importance of keeping the name of the victim quiet.
- f. Set up a way to investigate complaints so that cases can be dealt with fairly and impartially. Discipline measures should be set up and known.
- g. In a union setting, look into getting cooperation from union representatives in dealing with sexual harassment cases and explore the possibility of holding labour-management meetings.

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### **REFERRAL NUMBERS & ADDRESSES**

#### **Alberta Human Rights Commission**

1600 Standard Life Centre  
10405 Jasper Ave.  
Edmonton, Alberta  
Telephone ..... [780] 427-7661

#### **Labour Canada**

302 Energy Square  
10109-106 St.  
Edmonton, Alberta  
Telephone ..... [780] 495-2993 or  
..... 1-800-559-7789 (toll free)

#### **Canadian Human Rights Commission Alberta/N.W.T. Regional Office**

10010-106 St.  
Suite 308  
Edmonton, AB T5J 3L2  
Telephone ..... [780] 495-4040

#### **Lawyer Referral Service**

Telephone ..... 1-800-661-1095 (toll free)

#### **Victims of Crime Financial Benefits Plan**

Telephone ..... [780] 427-7247

#### **Student Legal Services (www.slsedmonton.com)**

Criminal ..... [780] 425-3356  
Civil ..... [780] 492-8244