

SUPPORTING SURVIVORS OF SEXUAL HARASSMENT



SEXUAL HARASSMENT IN POST-SECONDARY EDUCATIONAL INSTITUTIONS AND THE WORKPLACE

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Clarifying Terms

- Difference between “sexual harassment” and “sexual assault”
 - Sexual assault means **unwanted** sexual touching where there is:
 - Touching;
 - Of a sexual nature; and
 - An absence of consent
 - Sexual assault is an indictable offence under the *Criminal Code*, and may result in life in prison

What is Sexual Harassment?

Includes a broad range of **unwelcome/discriminatory** behaviour on basis of sex or someone's gender

- Comments
 - "Jokes", threats, discriminatory remarks, comments about someone's appearance
- Behaviour
 - Differential treatment based on gender
- Touching
 - May constitute sexual assault under the *Criminal Code*

What is Sexual Harassment?

In the workplace

- **Unwelcome** conduct of a **sexual nature** that:
 - Negatively affects work environment or
 - Leads to adverse job-related consequences

In educational institutions

- Each post-secondary educational institution has its own policy regarding sexual harassment, with definitions

Is Sexual Harassment a Criminal Offence?

- Not specifically criminalized
- S.264 of the *Criminal Code* ("**Criminal harassment**") prohibits:
 - Repeatedly following someone;
 - Repeatedly communicating with someone;
 - Watching the place where someone works, resides, or happens to be;
and
 - Engaging in threatening conduct against someone

Is Sexual Harassment “Sex Discrimination”?

- Sexual harassment is considered **discrimination** on the basis of sex by s.14 of the *Canadian Human Rights Act*
- It is therefore a **human rights violation** and **prohibited** by the *Canadian Humans Rights Act* and the *BC Human Rights Code*

Common Myths

- Sexual harassment is harmless flirting
- Only women are sexually harassed and only men are sexual harassers
- Harassers hold senior positions to those that they harass
- A person's sexual history or the way that they dress is indicative of consent
- Silence or passivity are signs of consent

Which Laws Protect Employees and Students?

- *Criminal Code*
- *BC Human Rights Code, Canada Human Rights Act*
- *Canada Labour Code*
- *Workers Compensation Act*
- *Sexual Violence and Misconduct Policy Act*

Liability of Employer and Educational Institution

- Employers: legal duty to investigate a complaint as soon as they are aware of the allegation
- Post-secondary institutions: legal duty to have policies in place & report to the governing body
- Flawed investigations/failure to investigate can result in damages awarded against the employer or educational institution

How to Take Action

- Emergencies: 911 or Victim Services (1-800-563-0808)
- Reporting options - to be discussed next

Reporting Options: Internal Complaint Process

- Employers and educational institutions are legally required to have an internal complaint process in place
- Must try to resolve the complaint as soon as possible
- Using an internal complaint process **does not** preclude pursuing other legal recourses

Reporting Options: WorkSafeBC

1. Must report incident/complaint to employer first
2. Call WorkSafeBC's Prevention Information Line if complaint was not resolved
3. Fill out Bullying and Harassment Questionnaire if still not resolved and you have spoken to a prevention officer
4. **May** be entitled to compensation under *Workers Compensation Act*

Reporting Options: BC Human Rights Tribunal

1. Make a complaint within time limit (1 year)
2. Screening
3. Notice
4. Deferral
5. Settlement meeting
6. If case does not settle → Respondent can reply to complaint or apply for dismissal
7. Disclosure exchange
8. Hearing
9. Remedies
10. If not satisfied with outcome → judicial review within 60 days

Reporting Options: The Criminal Process

Assault and harassment are prohibited under the Criminal Code of Canada.

1. Contact local police. They will conduct an investigation.
2. If the facts point to a possible criminal offence, the police may arrest the accused and charge them with a crime.
3. The accused will then be “tried” in court. Judges and/or juries will decide, based on the facts, whether the accused is guilty.

Reporting Options: The Civil Process

An injury is required for you to bring an “action” to court. This could be a physical or psychological injury, or emotional suffering.

The process of suing someone in court doesn't require a lawyer. **However, it can be costly and may take many months or years to complete.**

1. File a Notice of Claim or Petition at a court registry
2. The “defendant” has the option of replying and starting a counterclaim
3. If your claim is successful, a judge will award you “damages”

How are Survivors Discouraged from Reporting?

Statements and beliefs such as:

- They were asking for it
- That's not something they would do
- It's just normal behaviour
- Bad experiences with authorities
- Systemic barriers - discussed on next slide

Barriers for Marginalized Survivors

- May have additional barriers regarding reporting
- May be more likely targets of harassment
- May be less likely to be believed
- May be less likely to report due to lack of faith in police/justice system
- May be less likely to have access to legal resources
- May be less likely to have a support system

Protections & Supports Available to Survivors

Talk to friends and family. There are also a wealth of resources available in Victoria and across the province:

- ✓ Victoria Sexual Assault Centre
- ✓ Men's Therapy Centre
- ✓ University of Victoria Counselling Services
- ✓ University of Victoria Law Centre
- ✓ BC Human Rights Clinic
- ✓ UVic Sexualized Violence Resource Office

How Can Canada Do Better?

- Canada has adequate legislation in place that compensates survivors
- However: what about preventative legal measures?
- Title IX in the United States
 - Prohibits discrimination in federally-funded educational institutions
 - Much broader in scope than the *Sexual Violence and Misconduct Policy Act*