

About Workplace Harassment and Violence

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The law on workplace harassment arises from both statute and common law. The *Ontario Human Rights Code* (the “Code”) prohibits harassment in the workplace based on the 16 prohibited grounds (e.g., sex, race, creed, sexual orientation, etc.). However, the *Code* does not apply if the harassment is not related to one of those prohibited grounds (e.g., non-discriminatory workplace bullying). Although some employers have created policies dealing with psychological/personal harassment and bullying, until Bill 168 was introduced in June 2010, there was no legislation in Ontario which required them to do so. The amendments to the *Occupational Health and Safety Act* (the “OHS”) through Bill 168 mean that both types of harassment are now covered under the law. The amendments to the *OHS* under Bill 132, which took effect on September 8, 2016, further strengthen these laws. These amendments impose significant obligations on virtually all Ontario employers in respect of workplace violence, domestic violence and workplace harassment, including workplace sexual harassment.

Harassment includes both:

1. *discriminatory harassment*: harassment that is based on one of the enumerated grounds set out in the *Code*; and
2. *workplace harassment*: all other forms of harassment (captured under the *OHS* and sometimes known as personal harassment, psychological harassment, or bullying and, also includes workplace sexual harassment).
 - a. In addition to being prohibited under the *Code*, *workplace sexual harassment* is also prohibited by the *OHS* and is defined in the *OHS* as:
 - i. Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or
 - ii. Making 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 the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.¹

¹ Bill 132, *An Act to amend various statutes with respect to sexual violence, sexual harassment, domestic violence and related matters*, S.O. 2016 C.2 at Schedule 4, s. 1(2).

Types of Discriminatory Harassment

Sexual Harassment

Twenty-eight percent of Canadian workers have been sexually harassed.² Women are sexually harassed more than men – 43% of women versus 12% of men.³ The Ontario Human Rights Commission's former *Policy on Sexual Harassment and Inappropriate Gender-Related Comments and Conduct* provides the following guidance on sexual harassment in the workplace:

Sexual harassment and inappropriate gender-related comments and conduct are complex issues which often involve one person's attempt to assert power over another. Sexual harassment and unequal treatment based on gender typically, but not exclusively, involve the exercise of power and authority over women, resulting in the reinforcement of a woman's subordinate status in relation to men.

This power relationship can be particularly evident in employment situations. However, women tend to be more vulnerable to harassment by men because, relative to men, more women hold lower-paying, lower-authority and lower-status positions in the workplace. At the same time, even women in positions of authority are not free from sexual harassment or inappropriate gender-related behaviour.

Regardless of her position, this type of behaviour can diminish a woman's status and image in the eyes of other employees. *Inappropriate gender-related comments or conduct can also endanger the continued employment of the harassed individual by negatively affecting her or his work performance, undermining her or his sense of personal dignity or in some cases causing physical and emotional illness. (Emphasis added)*

The following are examples of sexual harassment:

- sexual advances or demands that the recipient does not welcome or want
- threats, punishment or denial of a benefit for refusing a sexual advance
- offering a benefit in exchange for a sexual favour
- leering (persistent sexual staring)

² Angus Reid Survey, 2015.

³ Ibid.

- displaying sexually offensive material such as posters, pictures, calendars, cartoons, screen savers, pornographic or erotic websites or other electronic material
- distributing sexually explicit e-mail messages or attachments such as pictures or video files
- sexually suggestive or obscene comments or gestures
- unwelcome remarks, jokes, innuendoes, propositions or taunting about a person's body, clothing or sex
- comments that are denigrating to a woman related to sex or gender
- rumours or gossip about an employee's dating or sex life or sexual activities
- persistent, unwanted attention after a consensual relationship ends
- physical contact of a sexual nature, such as touching or caressing; and
- sexual assault.

Harassment Based on Pregnancy

Examples of harassment based on pregnancy include:

- being overly critical of a pregnant woman's work
- docking a pregnant woman's time for using the washroom more frequently
- making a pregnant woman the subject of inappropriate comments or jokes
- terminating her with or without notice, because of her pregnancy
- subjecting her to unwanted transfers
- denying sick leave benefits; and
- refusing to cooperatively engage in a process to find appropriate arrangements to permit a woman to continue breastfeeding her child.⁴

Harassment Based on Race, Colour, Ethnic Origin and Religion

Examples of harassment based on race, colour, ethnic origin and religion include:

- racial epithets, slurs or jokes
- being subjected to racial name calling or nicknames
- cartoons or graffiti that are derogatory based on race or religion
- comments ridiculing individuals because of race-related characteristics, language/accents, religious dress, etc.

⁴ OHRC: *Policy on Discrimination Because of Pregnancy and Breast Feeding*.

- singling out an individual for teasing or jokes related to race, religion, ancestry, place of origin or ethnic origin
- being subjected to inappropriate references to racist organizations such as the Ku Klux Klan
- circulating racially or religious-based offensive jokes, pictures or cartoons by e-mail or having an offensive screensaver
- excessive monitoring of a racialized person's work
- applying higher levels of discipline when racialized employees engage in misconduct; and
- being quick to judge communications from racialized employees as rude or insubordinate.⁵

Harassment Based on Sexual Orientation

Examples of harassment based on sexual orientation include:

- homophobic epithets
- comments ridiculing individuals because of their sexual orientation or same-sex partnership status
- singling out an individual for humiliating or demeaning “teasing” or jokes related to sexual orientation or same-sex partnership status; and
- subjecting someone to ridicule or ostracizing them without explicit reference to their sexual orientation.⁶

Psychological Harassment and Bullying

What is Bullying?

Workplace bullying is a form of abuse that is characterized by the use of power and aggression to control or distress another individual within the context of a work relationship. It is substantially the same as other forms of relationship abuse such as intimate partner abuse, child abuse, sexual and racial harassment, and schoolyard bullying.

Like many domestic violence situations, workplace bullying often contains a component of intermittent reinforcement, meaning that the bully alternates between being kind and helpful and being hostile or destructive. This can be very destabilizing to the target as he or she is unsure how to respond or interpret the bully's behaviour; this enhances the

⁵ OHRC: *Policy and Guidelines on Racism and Racial Discrimination*.

⁶ OHRC: *Policy on discrimination and harassment because of sexual orientation*.

bully's power. In many instances targets believe that the situation is getting better but then it gets worse, throwing them into an ever deepening power imbalance.

Bullying is different from normal workplace conflict in that the conduct is generally more frequent, such as weekly or even daily, and can extend over long periods of time (often more than six months). It also differs from uncivil behaviour, which is rude and annoying, rather than abusive. The following chart illustrates the range of behaviour from uncivil to violent.

The Continuum of Disrespect

The longer bullying goes on, the more entrenched the power differential becomes and the harder it is to stop. Employers have historically told targets to address the problem directly with the bully, but where the power imbalance has tipped, this can be very difficult, if not impossible, to do. In fact, it may cause the bullying to escalate.

Bullying can range from blatant and obvious conduct to behaviour that is quite subtle and covert. One of the challenges with identifying workplace bullying is that employers often want concrete examples or tangible proof of the behaviour but when it comes to the more covert forms of harassment, such examples are hard to come by.

Unfortunately, bullying doesn't translate well onto paper and conduct can seem trivial without the context of tone, body language and frequency. For example, being told that a bully follows the target to the washroom may not seem nearly as significant as it would to the victim who experiences it on a repeated basis. In addition, behaviour that may seem fairly minor at first has a cumulative effect and can, over time, become overwhelming to the victim and more serious in its implications.

Workplace bullying manifests in many different forms. The following contains a non-exhaustive list of some of the types of bullying.

Physical bullying:

- physically abusive or aggressive behaviour such as pushing, hitting, finger pointing (note: some of these behaviours might also be considered workplace violence)
- standing close to the target in an aggressive manner and showing clear signs of hostility
- destroying the victim's property
- symbolic violence: throwing objects like chairs, punching walls or slamming doors
- workplace pranks
- following the target or blocking his or her movement

Non-verbal bullying:

- using disrespectful body language such as sneering, smirking or a cocky smile
- staring or glaring
- turning away from the target before he or she finishes speaking
- crossing arms aggressively
- finger pointing
- slamming a hand down on a table
- making little or no eye contact with the target
- throwing temper tantrums

Verbal bullying:

- verbally abusive behaviour such as screaming or yelling
- insults and name calling
- swearing and using offensive language
- using a disrespectful tone of voice
- mocking or mimicking someone

Psychological bullying:

- humiliating someone in public or private
- spreading rumours and gossip
- intrusions on privacy such as spying, snooping or stalking
- refusing to engage in common pleasantries
- giving someone the “silent treatment”
- “Jekyll and Hyde” behaviour – alternating between friendly or cooperative conduct, and aggressive or hostile behaviour
- sabotaging the target’s work or claiming credit for it
- discounting the target’s thoughts or feelings
- deliberately withholding information that would help the target do his or her job
- repeatedly blaming another person for the bully’s mistakes
- making false allegations in memos or other work-related documents
- gaslighting: denying that things were said or done, with the intent of making the target doubt his or her own memory or perception

Relational bullying:

- character assassination: making disparaging remarks to others about the victim's competence, performance or other behaviour in order to malign his or her reputation and get others on side
- turning others against the target
- excluding or ostracizing the target
- mobbing or aggressive behaviour by a group
- constantly nitpicking and discussing the target's behaviour or mannerisms or how he or she dresses

Cyber bullying:

- sending threatening or offensive e-mails or text messages
- posting rumours or gossip or offensive or derogatory entries in social media such as facebook

Supervisory bullying:

- undermining the target's efforts by setting impossible goals and deadlines
- blocking or impeding the target's efforts at promotions or transfers
- assigning tasks that are at a low level not commensurate with the target's experience or which are unreasonable, or unjustifiably unfavourable (the "dirty jobs")
- having a different standard for the target
- persistent, hypercritical comments and constant scrutiny
- singling someone out for unfavourable treatment or discipline that is not applied to other employees
- deliberately failing to advise someone of a deficiency in his or her work so that he or she repeatedly makes the same mistake and appears incompetent

What is Not Bullying

Harassment will not be found where an employer engages in legitimate management action such as enforcing rules, discipline or performance management. The *OHSA* provides that “*a reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment*”⁷. Similarly, conflict between two people will not necessarily be considered harassment. It falls on a continuum.

About Workplace Bullies

Workplace bullies are often highly skilled socially and can be quite pleasant and charming when it suits them. This makes it hard for the people around them to see the behaviour for what it is. In fact, it is not uncommon for senior management to dismiss an employee's complaint of workplace harassment because the bully does not engage in that type of behaviour with them. In addition, those who are highly skilled socially often plead that they did not intend to offend the target and claim that he or she must have misunderstood the bully's behaviour or simply perceived it wrong.

Bullies frequently display a complete disregard for the target's dignity and rights; dehumanizing them and viewing them as less deserving of respect. Bullies generally know right from wrong but create reasons to distance themselves from the target or to blame the target, such as by arguing that the target is incompetent or weak in some way. This is sometimes referred to as “moral-less engagement”.

When confronted with their behaviour, bullies frequently turn things around and claim that they are the victim and are being bullied by the complainant. Bullies sometimes lack insight into their own behaviour or deliberately remain unconcerned about the impact that their behaviour has on others.

Workplace bullies are often just grown up versions of the schoolyard bully – the core behaviours and use of power and aggression are essentially the same.

The Impact of Workplace Bullying

Historically bullying has been dismissed as a personality conflict, an attitude problem or hypersensitivity on the part of the target. Where it involves a supervisor, it is seen as an aggressive but effective management style. At other times, the socially skilled bully alleges that the target is incompetent or insubordinate and senior management accepts this characterization without question.

The effects of bullying have not always been acknowledged. If an employee repeatedly kicked or hit a co-worker or threatened to physically harm the co-worker, that employee would in all likelihood be disciplined or fired. But non-physical forms of abuse have

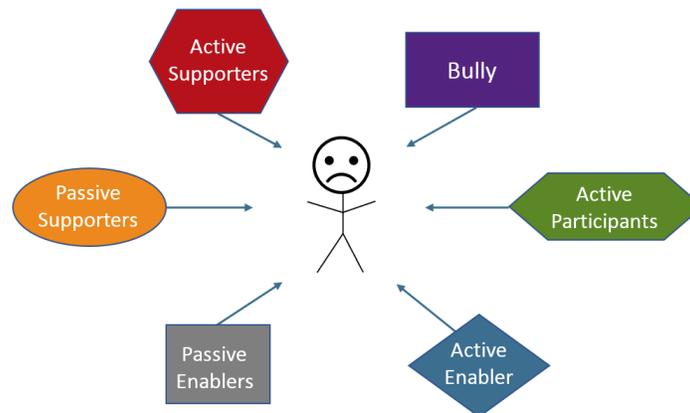
⁷ *Occupational Health and Safety Act*, R.S.O. 1990, c O.1, s. 1(4).

been proven to be as damaging (if not more damaging long-term) to an individual's mental and physical health as physical abuse, slowly eroding the victim's self-confidence and ability to perform effectively.

The Role of Other Parties

While we often think of bullies as acting alone, just as often there are multiple co-workers involved, either as passive participants or as joint perpetrators (mobbing). Unfortunately, bullying is often contagious and may lead to a culture in which many people engage in disrespectful and hostile behaviour, not just with the victim, but with each other as well.

Circle of Participation



Bullies often try to gain allies, and co-workers can, at times, be quite easily persuaded to betray the victim at the bully's behest. This betrayal and resultant ostracism can be very painful and damaging to the target particularly since humans are social by nature. Such treatment will exacerbate the stress already being experienced by the target.

Sometimes co-workers will align themselves with the bully because they perceive that the bully has power, or because they may be afraid that if they do not get on the bully's side, they themselves will become a target. For example, co-workers may begin to engage in disrespectful behaviour towards the target and may spread rumours or repeatedly make comments about the target, such as about his or her competence, clothing or mannerisms.

Other employees seem to tell themselves that the target somehow deserves the treatment because he or she is weak, incompetent or oversensitive, and ultimately abandon the target. This enables them to escape the pain of cognitive dissonance (which refers to the pain of holding conflicting ideas simultaneously) and enables people to feel comfortable with their choice to not see the behaviour for what it is and intervene. Unfortunately, this participation and lack of intervention by others merely supports the bully and makes it easier for him or her to wage their campaign of harassment.

Bullying will only take place if a bully feels he or she has the blessing, support, or at least the implicit permission of superiors and other co-workers to behave in this manner.⁸

Witnesses to harassment often gear their response to that of the manager, and their willingness to speak out is directly related to how the manager responds. Managers who stand by and do nothing are particularly harmful as the target and any witnesses may feel that there is no point in bringing concerns forward and their collective voices and power to end the harassment become muted.

Employees who do stand up for their colleagues make a difference, often stopping the bullying outright. Studies on schoolyard bullying have shown that 57% of the time if another child intervenes to support the victim, the bullying stops within 10 seconds. Given the similarity between schoolyard and workplace bullying, there is no doubt but that the intervention of others can make a difference, even if that intervention only takes the form of providing a supportive "ear" to the victim.

Response of Targets

Harassment that occurs for an extended period of time affects targets' behaviour. For example, they may become hypersensitive or emotional or start acting obsessively with respect to their complaint. This may gradually lead to them being perceived as the authors of their own misfortune. In addition, the more emotional a target is in recounting the harassment, the less likely it is that he or she will be believed.

Lastly, being harassed may cause targets to feel insecure and they may lose their ability to take initiative. They may also make more mistakes, creating a situation that lends credence to a bully's defense that the victim is a "problem" employee.

Factors that Contribute to Harassment

Organizational/Institutional Barriers

There are often barriers within the workplace that can lead to harassment or make it difficult to eliminate. For example:

- A workplace culture that supports aggressive or even hostile behaviour may create a culture of harassment.

⁸ Harvey, M. G., Buckley, M. R., Heames, J. T., Zinko, R., Brouer, R. L., & Ferris, G. R. (2007). A bully as an Archetypal Destructive Leader. *Journal of Leadership & Organizational Studies*, 14(2), 117–129.

- Even though the organization may have policies in place regarding respect in the workplace, it may fail to enforce them or monitor staff behaviour. This leads perpetrators to perceive that there are no consequences for harassment and that they can act with impunity.
- Times of upheaval or organizational change that has not been managed effectively can create a breeding ground for harassment.
- Working conditions such as high stress, time pressure, role ambiguity, noise and over-crowding.
- A “chain of command” culture in which senior management is reluctant to interfere with the decisions of lower level managers and supervisors or where individuals feel that they cannot “go above their manager’s head” to take their concerns to anyone other than their supervisor or manager.
- An overall reluctance to implement and enforce proper discipline for any workplace infraction.

Impact of Management Styles

There are two types of management styles that directly contribute to bullying. Not surprisingly, one is an autocratic, dictatorial style. However, the opposite approach, a laissez-faire style, can also contribute to harassment as it can leave employees without direction or firm rules as to what is and is not acceptable.

In addition, many managers are so adverse to conflict (preferring to avoid even providing constructively critical performance reviews) that they fail to intervene and stop the problem. They may also be unaware of the many forms of harassment and be less likely to intervene in what they perceive as insignificant behaviour or a simple personality conflict.

Bullying is a collective problem that often involves multiple perpetrators, supervisory inaction or even participation, and a workplace culture that is closed or hostile making it nearly impossible for a target to put an end to it on his or her own.

Workplace Violence

The Link between Harassment and Violence

Bullying can, and does, lead to violence.

In April 1999, Pierre Lebrun, an employee of OC Transpo in Ottawa, went on a shooting spree that resulted in five deaths, including his own by suicide. Lebrun had been subjected to incessant bullying and ridicule by his colleagues for his speech impediment and facial tic. After a fight with a colleague, Pierre was fired and then later reinstated on the condition that he participate in anger management training.

At the coroner's inquest the jury made 77 recommendations about preventing and responding to workplace violence. One recommendation was that federal and provincial legislation be implemented to combat violence from co-workers, including physical and psychological violence.

The jury paid particular attention to psychological violence, which it defined as "bullying, mobbing, teasing, ridicule or any other act or words that could psychologically hurt or isolate a person in the workplace". They expressed the need for greater recognition of the effect of verbal abuse on targets. They also stressed that the issue should be viewed from a preventative standpoint and not just seen as a criminal activity that is dealt with after the fact.

Another motivation behind the introduction of amendments to health and safety legislation is the tragic story of Lori Dupont. Ms. Dupont was a 36-year old nurse employed at a hospital in Windsor, Ontario. Having moved to Windsor with her daughter after a difficult break-up, she became romantically involved with an anaesthesiologist at the hospital, Dr. Marc Daniel. Not long after the relationship became serious, Ms. Dupont started to observe unusual behaviour by Dr. Daniel and made it known that she was intending to end the relationship. In response, Dr. Daniel attempted suicide. Although the relationship ended, Dr. Daniel's behaviour continued to be aberrant and included placing repeated phone calls to Ms. Dupont, following her around the hospital, threatening her, leaving a compromising photograph on her car and attempting to blackmail her family.

Ms. Dupont requested that the hospital, her employer, assist her. Although they assigned security escorts and attempted to facilitate her obtaining a restraining order, they denied her requests for a transfer. The hospital was also independently aware of Dr. Daniel's unusual conduct and that he was under the care of other physicians, and had his hospital privileges revoked for a period of time.

Unfortunately, women in abusive relationships are at greatest risk when the relationship ends and Lori Dupont's situation was no exception. Nothing further was done by the hospital to prevent what ultimately occurred, and Dr. Daniel murdered Ms. Dupont as she went about her duties at the hospital on November 12, 2005, before committing suicide.



The jury at the resulting inquest made 26 recommendations, including the recommendation that the *OHSA* be reviewed to examine whether domestic violence, abuse and harassment should be incorporated within the jurisdiction of the Ministry of Labour when those issues arise at the workplace. The jury also recommended that all employers be required to implement a policy to address domestic violence.

Ultimately, these situations resulted in the implementation of Bill 168 in June 2010 bring changes to the *OHSA* to address workplace harassment, violence and domestic violence.

Conclusions

Bullying and harassment are forms of workplace abuse that can have a significant impact on victims. Addressing conflict before it escalates and educating staff on respect in the workplace are important measures for preventing harassment. When it does arise, investigating quickly and taking strong measures will further reinforce your commitment to workplace respect and prevent further instances of harassment.