

Doing Our Duty

Preventing Sexual Harassment In The Workplace



Human Resources
Professionals
Association

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In The Workplace

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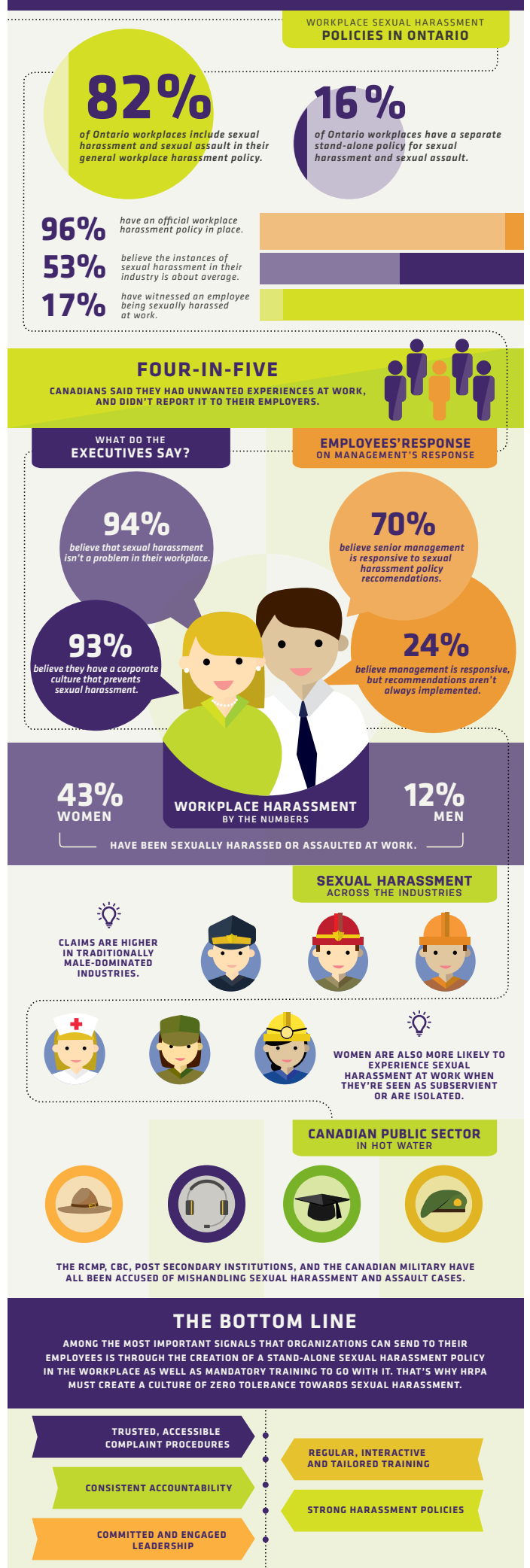
01

Introduction

THE #METOO AND #TIMESUP MOVEMENTS HAVE PUT AN INTENSE SPOTLIGHT ON THE ISSUE OF SEXUAL HARASSMENT IN RECENT MONTHS. NEWS STORIES FROM THE POLITICAL, MEDIA, ENTERTAINMENT, AND BUSINESS SECTORS HAVE EXPOSED THE DARK REALITY THAT SEXUAL HARASSMENT IN THE WORKPLACE IS AN EPIDEMIC THAT HAS BEEN ALLOWED TO PERSIST. GIVEN THESE RECENT TRENDS, BY THE END OF 2018, IT IS LIKELY THAT EVERY INDUSTRY WILL BE IMPACTED BY THE #METOO MOVEMENT. AS A RESULT, ORGANIZATIONS ARE NOW UNDER IMMENSE PRESSURE TO LOOK AT THEIR OWN POLICIES AND PROCEDURES AND TAKE A ZERO-TOLERANCE APPROACH TO THIS BEHAVIOUR. THIS, HOWEVER, IS NOT AS EASY AS IT SOUNDS, GIVEN THERE ARE SO MANY DIFFERENT DEFINITIONS OF SEXUAL HARASSMENT AROUND THE WORLD.

To properly adjust to the shifting culture, employers must first understand how Canadian law defines sexual harassment and ensure this is the definition they adhere to. It is also important – though difficult in this time of change – to keep attuned to cultural norms as well. Behaviour does not have to meet the legal definition of sexual harassment to be seen as unacceptable by the public, and public attitudes about what behaviour is unacceptable are shifting more quickly than the law can keep up with. With that knowledge in hand, the next step is to evaluate how prevalent this issue is in the workplace, and what steps can be taken to address it.

Using a literature review and the findings of a survey of 996 HRPAs members conducted online from February 18-28, 2018, this paper examines what the Canadian definition of sexual harassment is, and what the legal duties of employers are to help prevent sexual harassment and address complaints. It then explores how prevalent sexual harassment is in the workplace, if public institutions are doing enough, and makes a series of recommendations on what steps organizations and the government can do to combat sexual harassment in the workplace.



02

What is Sexual Harassment?

Sexual harassment
sexual nature
inappropriate
sexual fav

The Canada Labour Code defines sexual harassment as any conduct, comment, gesture, or contact of a sexual nature that is likely to cause offence or humiliation to any employee; or that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

SOURCE: [HTTPS://WWW.CANADA.CA/EN/EMPLOYMENT-SOCIAL-DEVELOPMENT/SERVICES/LABOUR-STANDARDS/REPORTS/SEXUAL-HARASSMENT.HTML](https://www.canada.ca/en/employment-social-development/services/labour-standards/reports/sexual-harassment.html)

UNLIKE SEXUAL ASSAULT, SEXUAL HARASSMENT IS NOT A CRIMINAL OFFENCE IN CANADA, AND SOME COULD ARGUE THAT AS A RESULT, IT HISTORICALLY HAS NOT BEEN TREATED AS SERIOUSLY FROM A LEGAL STANDPOINT. SEXUAL HARASSMENT IS ALSO DIFFICULT TO CLEARLY DEFINE, AND IT HAS NOT RECEIVED THE SPOTLIGHT THAT WORKPLACE BULLYING HAS RECEIVED IN THE PAST FEW YEARS. HOWEVER, THIS HAS DRAMATICALLY CHANGED IN RECENT MONTHS.

Canada's definition of sexual harassment is much more rigorous than those of other jurisdictions. In the United States, there is no statutory law banning sexual harassment. Sexual harassment is governed by the U.S. Equal Employment Opportunity Commission (EEOC), which defines sexual harassment as "Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature ... when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment."¹

Other jurisdictions set an even higher bar for something to be considered "sexual harassment." In France, for example, the penal code says that "no employee can be penalized nor dismissed for having submitted or refusing to submit to acts of harassment of any person whose goal is to obtain favours of a sexual nature for his own benefit or for the benefit of a third party." Not only does this definition of harassment set a higher bar than the Canada Labour Code, but it focuses on ensuring that employees are not punished for being the victims of harassment, rather than focusing on punishing harassers or protecting victims – this is a somewhat retrograde stance by Canadian standards.

SEXUAL HARASSMENT CAN INCLUDE:

- ***Making unnecessary physical contact, including unwanted touching (e.g. demanding hugs or stroking someone's hair)***
- ***Invading personal space***
- ***Using language that puts someone down because of their sex, sexual orientation, gender identity or gender expression***
- ***Using sex-specific derogatory names, homophobic/transphobic epithets, slurs or jokes.***
- ***Leering or inappropriate staring***
- ***Targeting someone for not following sex-role stereotypes (e.g. comments made to a female for being in a position of authority)***
- ***Showing or sending pornography, sexual images, etc. (e.g. pinning up an image of a naked man in the bathroom)***
- ***Making sexual jokes, including forwarding sexual jokes by email***
- ***Rough or vulgar language related to gender aka 'locker-room talk'***
- ***Spreading sexual rumours, "outing" or threatening to "out" someone who is LGBTQ2S (e.g. sending an email to colleagues about an affair between a supervisor and another employee)***
- ***Sexually propositioning a person or bragging about sexual prowess***
- ***Demanding dates or sexual favours***

SOURCE: [HTTPS://WWW.TORONTO.CA/WP-CONTENT/UPLOADS/2017/10/8EAA-WORKPLACE-SEXUAL-HARASSMENT.PDF](https://www.toronto.ca/wp-content/uploads/2017/10/8EAA-WORKPLACE-SEXUAL-HARASSMENT.PDF)

03

What Are the Legal Duties of Employers In Preventing Sexual Harassment and Addressing Complaints?

Sexual Harassment
Complaint Form

First name: _____ Last name: _____
Date of Birth: _____

Phone Number: _____ Job Title: _____
Company name: _____

_____ (on person who commit

_____ the incident and your reaction



IN ONTARIO, ORGANIZATIONS AND INSTITUTIONS HAVE A DUTY TO TAKE STEPS TO PREVENT AND RESPOND TO SEXUAL HARASSMENT. WHAT THIS MEANS IS THAT EMPLOYERS MUST TAKE EVERY REASONABLE PRECAUTION TO ENSURE THAT SEXUAL HARASSMENT DOES NOT HAPPEN, AND MUST INVESTIGATE SEXUAL HARASSMENT COMPLAINTS WHEN THEY ARE MADE AND TAKE STEPS TO ENSURE THAT SEXUAL HARASSMENT DOES NOT CONTINUE.

The Occupational Health and Safety Act (the “Act”) requires that all employers in Ontario have a harassment policy and process to investigate complaints, which they must review annually. Employers are also required to develop and maintain a program to implement the policy. The program must include:

- mechanisms for employees to report harassment;
- a procedure for handling incidents and maintaining confidentiality;
- provisions for investigating incidents;
- information about how the results of the investigation will be provided to the alleged target and alleged harasser.

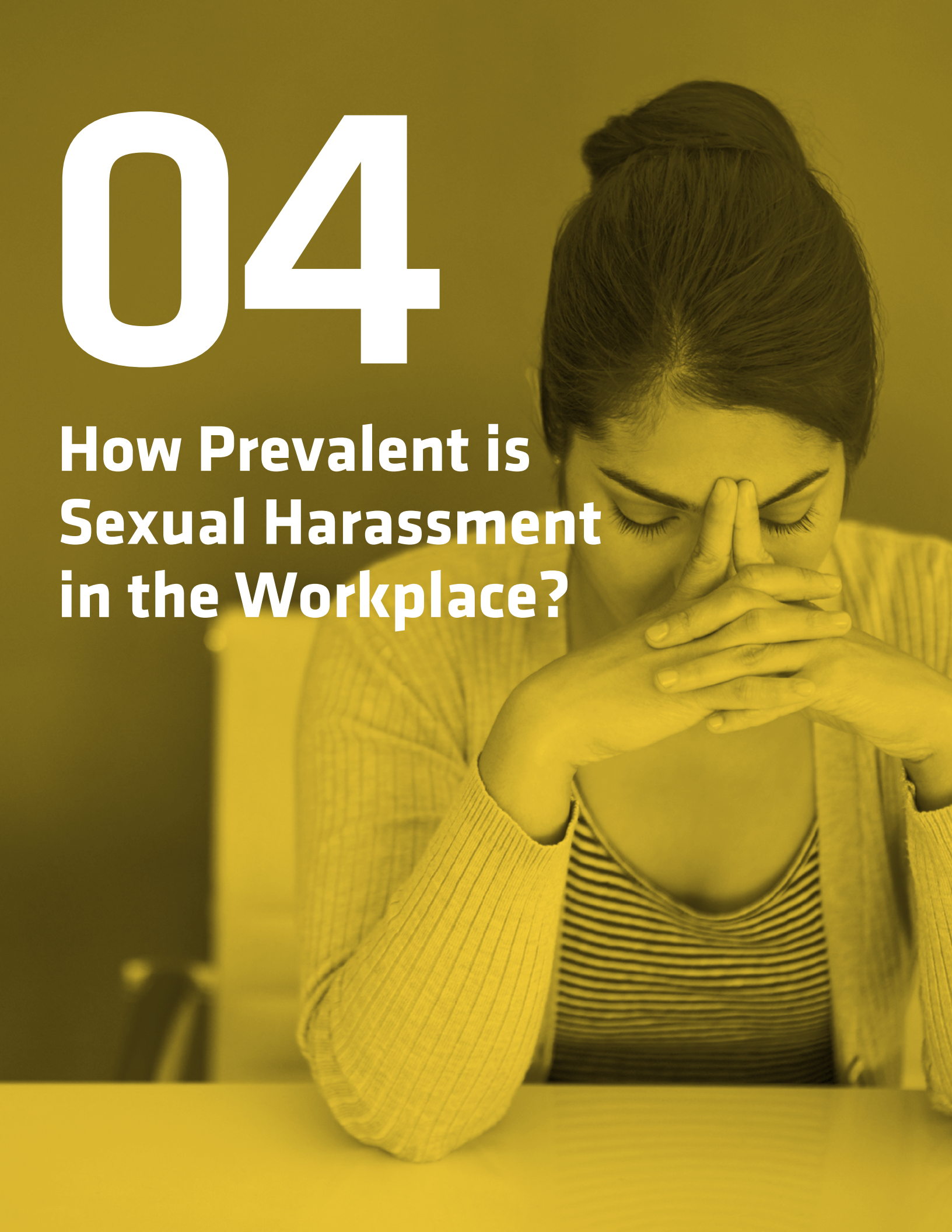
In 2016, the Ontario Government amended the Act and added “sexual harassment” to the definition of ‘workplace harassment’ and made it mandatory for all employer’s harassment policies to include provisions on sexual harassment.² According to the HRPAs survey, 96% of respondents said their organization are in compliance with this law, and have an official workplace harassment policy in place.

Most legislation and thought leadership focuses on how to handle cases of sexual harassment once they occur, but it should be the goal of all employers, employees and stakeholders to prevent sexual harassment from happening in the first place.



04

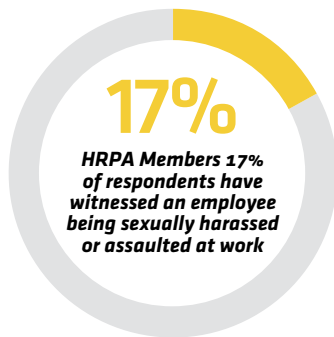
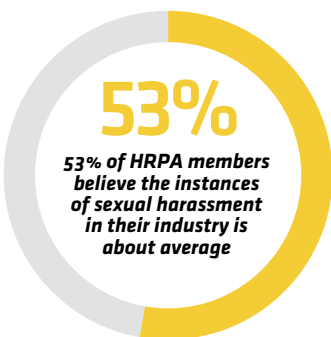
**How Prevalent is
Sexual Harassment
in the Workplace?**



SEXUAL HARASSMENT CAN OCCUR IN ANY WORKPLACE, AND INTERNATIONAL RESEARCH SHOWS THAT IT IS UNFORTUNATELY PREVALENT. RESEARCH ALSO SHOWS THAT WHILE COMPLAINTS IN THE PAST MAY HAVE NOT CAUSED CHANGES IN THE WORKPLACE, THERE IS A GROWING TREND OF COMPLAINTS, AS VICTIMS BEGIN TO FEEL MORE COMFORTABLE COMING FORWARD. WITH THIS INFORMATION IN MIND, THE HRPA EXPLORED WHETHER THESE TRENDS ARE CONSISTENT IN ONTARIO.

In a 2018 survey, over a third of Canadian women surveyed said they had been sexually harassed at work compared with 12% of men.³ Claims are particularly high in traditionally male-dominated industries (such as policing, firefighting, mining, the military, and construction work.) Women are also more likely to experience sexual harassment at work when they are seen as subservient (e.g. health care workers or massage therapists), or are isolated from other co-workers.⁴

This trend can also be found in Ontario. Sadly, 53% of HRPA members believe the instances of sexual harassment in their industry is about average, and 13% believe it is more prevalent. Additionally, according to the HRPA’s member survey, 17% of respondents have witnessed an employee being sexually harassed or assaulted at work. These findings are significantly different from the perception of Canadian executives.



All employers must recognize that, even if they are not personally aware of sexual harassment in their workplace, it is statistically very possible that sexual harassment is occurring, has occurred, or will occur on their watch.



According to research, four-in-five Canadians who said they had unwanted experiences at work did not report the offending behaviour to their employers.

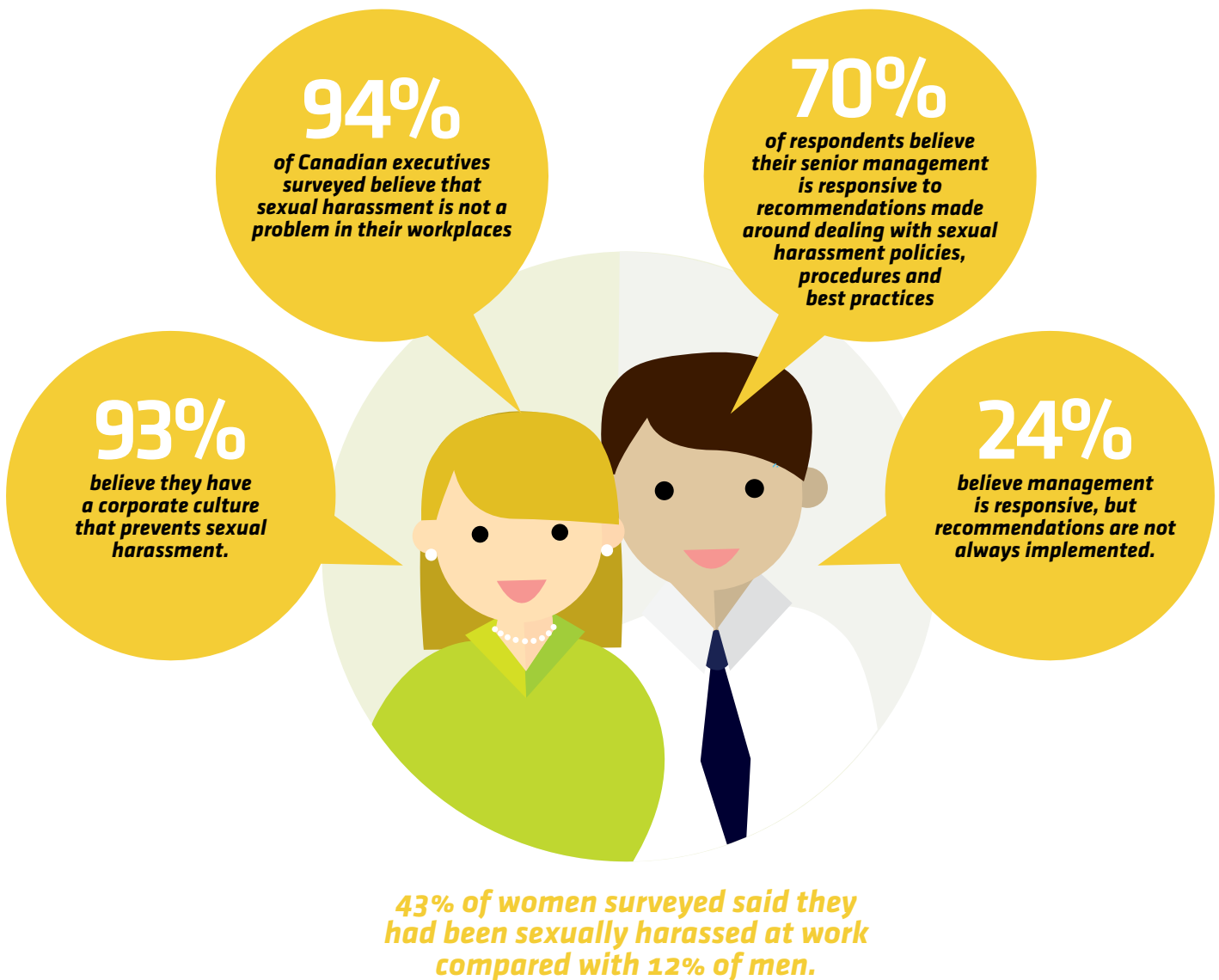
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According to a survey conducted by the Gandalf Group, 94% of Canadian executives surveyed believe that sexual harassment is not a problem in their workplaces, while 93% believe they have a corporate culture that prevents sexual harassment. These numbers are not in keeping with the rates of sexual harassment reported,⁵ which are also lower than the number of instances of harassment that actually occur. According to research, four-in-five Canadians who said they had unwanted experiences at work did not report the offending behaviour to their employers.⁶

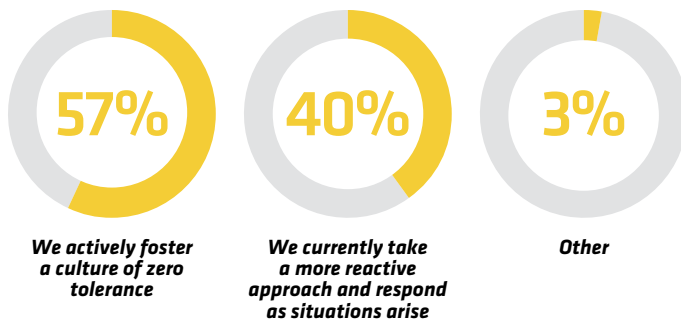
In recent years, Canadian workplace harassment investigators and employment lawyers have reported seeing a marked spike in cases they have been consulted on.⁷ To attempt to quantify this claim, the HRPAs asked its members if they had noticed an uptick in sexual harassment claims since the issue has become more prominent in society over the last year. According to this research the vast majority of survey respondents (81%) have not witnessed an uptick in sexual harassment claims, however, 19% have noticed some.



While not a dramatic shift, almost a 20% increase is still significant.

Given the increased number of complaints, the HRPAs investigated what happens after complaints. According to some studies in other jurisdictions, about 80% of women who report sexual harassment find that nothing changes in their workplaces as a result of their reports.⁸ The positive news is that according to HRPAs members, 70% of respondents believe their senior management is responsive to recommendations made around dealing with sexual harassment policies, procedures and best practices, yet 24% believe management is responsive, but recommendations are not always implemented.

WOULD YOU SAY YOUR WORKPLACE ACTIVELY FOSTERS A CULTURE OF NOT TOLERATING SEXUAL HARASSMENT, OR IS MORE REACTIVE IN RESPONDING TO SITUATIONS AS THEY ARISE?



05

**What Steps Can
Organizations Take to
Combat Sexual Harassment
in the Workplace?**

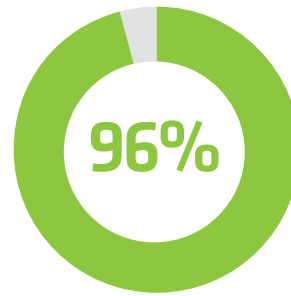




OMBATTING SEXUAL HARASSMENT IN THE WORKPLACE BEGINS WITH CREATING A PROPER WORKPLACE CULTURE. THE FIRST THING ORGANIZATIONS SHOULD DO TO COMBAT SEXUAL HARASSMENT IN THE WORKPLACE IS TO ADOPT A STAND-ALONE SEXUAL HARASSMENT AND ASSAULT POLICY OR REVISE THE CURRENT POLICY TO ENSURE IT IS STRONG. THIS POLICY SHOULD BE SEPARATE FROM THE GENERAL WORKPLACE EMPLOYEE CONDUCT/HARASSMENT POLICY BECAUSE SEXUAL ASSAULT AND SEXUAL HARASSMENT ARE EGREGIOUS FORMS OF ABUSE WHICH REQUIRE SPECIALIZED AND HIGHLY SENSITIVE HANDLING. THIS POLICY SHOULD:

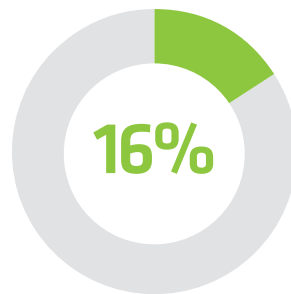
- be given to all employees on their first day of work and should also be easily accessible on your organization’s website;
- clearly define what behaviour constitutes sexual assault and harassment;
- clearly outline how to make a complaint, who to make a complaint to, what rights the complainant and the accused have in the investigation process, what the investigation process entails, the process for making findings of fact and collecting evidence, how the final determination is made, who makes it and what the possible penalties are.
- ensure that the complaint investigation process is completely transparent and procedurally fair. In practice, this means that the complainant must be kept informed of how her/his complaint is being managed in every step of the process and what the outcome is.
- conduct training sessions for employees on the content of the policy, what to do if they are being harassed and how to be an effective bystander.
- train supervisors and managers on how to prevent sexual harassment in the workplace and how to foster an open, respectful work environment.

According to a survey of HRPAs members, 96% of those surveyed have an official workplace harassment policy in place, but only 16% of those surveyed in Ontario have a separate stand-alone policy for sexual harassment and sexual assault.



of surveyed workplaces in Ontario include sexual harassment and sexual assault in their general workplace harassment policy.

SOURCE: HRPAs MEMBER SURVEY



of surveyed Ontario workplaces have a separate stand-alone policy for sexual harassment and sexual assault.

Additionally, organizations must create a culture of zero tolerance towards sexual harassment. This is a significant step, which not all organizations have taken. According to the HRPAs member survey, 57% of members believe they actively foster a culture of zero tolerance, while 40% believe their organizations take a more reactive approach and respond to situations as they arise. A zero-tolerance policy can be established through training, monitoring, and the proper handling of complaints.

Organizations should provide ongoing training to human resource personnel on how to deal with sensitive sexual harassment and assault complaints, conduct witness interviews, gather evidence and adhere to principles of procedural fairness. They should also offer employees sexual harassment training and education.

With proper training in place, employers should monitor their workplace for concerning behavior, take all complaints seriously, and treat them all equally. The policy and investigation process should always be followed uniformly no matter what the complaint is, who the complainant is, or who the subject is. Additionally, all complaints should be treated with the utmost confidentiality to ensure there is no reprisal behaviour following a complaint.

Other steps that HRP member employers have taken include implementing bystander training in addition to sexual harassment training/education, having a dedicated staff member in place available to speak to confidentially for anyone experiencing sexual harassment in the workplace and options for addressing it, providing safe walks programs to employee cars or bus stops, third party whistleblower platforms to make it easier for employees to report confidentially, and implementing a marketing campaign around sexual harassment in the workplace and how to address it.

As pointed out by an HRP member, it is important that organizations *“enforce policies, not just have words. Words are meaningless without action, so fostering a truly positive environment that enforces the procedures that are written.”*⁹

Additionally, The U.S. Equal Employment Opportunity Commission (EEOC) has some recommendations on what organizations can do to foster a culture free of sexual

harassment. Though the EEOC is an American organization, its best practices on how to prevent sexual harassment are certainly appropriate in the Canadian context as well, and they apply equally well in all settings, from private corporations to public institutions. Its best practises include:

1. committed and engaged leadership;
2. consistent accountability;
3. strong harassment policies;
4. trusted, accessible complaint procedures; and
5. regular, interactive and tailored training.¹⁰

Recommendation 1: All organizations should adopt a stand-alone sexual harassment and assault policy or revisit their current policy to ensure it is adequate.

Recommendation 2: All organizations should take steps to ensure all employees are aware of sexual harassment and assault policies.

Recommendation 3: All organizations should have a policy drafted and implemented by someone who holds a professional human resources designation (CHRP, CHRL, CHRE).

Recommendation 4: Organization leadership should empower HR staff to implement, train and enforce sexual harassment polices within their organization.

THE BOTTOM LINE

Among the most important signals that organizations can send to their employees is through the creation of a stand-alone sexual harassment policy in the workplace as well as mandatory training to go with it. That's why HRP must create a culture of zero tolerance towards sexual harassment.

TRUSTED, ACCESSIBLE COMPLAINT PROCEDURES

CONSISTENT ACCOUNTABILITY

COMMITTED AND ENGAGED LEADERSHIP

REGULAR, INTERACTIVE AND TAILORED TRAINING

STRONG HARASSMENT POLICIES

06

**Are Public Institutions
Doing Enough?**



IN THE PAST SEVERAL YEARS, MAJOR CANADIAN PUBLIC INSTITUTIONS HAVE BEEN ROCKED BY SEXUAL HARASSMENT AND ABUSE SCANDALS, MANY OF WHICH ARE STILL ONGOING AND WE ARE YET TO SEE THE OUTCOME OF. SOME EXAMPLES INCLUDE:



The Royal Canadian Mounted Police is facing sexual harassment claims from approximately 1,100 women.¹¹



The Canadian Military has seen multiple lawsuits launched by veteran women against the Canadian military for failing to protect them from sexual abuse and discrimination.¹²



The Canadian Broadcasting Corporation has received a great deal of criticism for allegations that it failed to protect its workers from inappropriate behaviour by Jian Ghomeshi in the workplace.¹³



Post-Secondary Institutions have been under intense scrutiny for several years over their dismal sexual assault/ harassment policies and lack of response to assault and harassment complaints by students.¹⁴

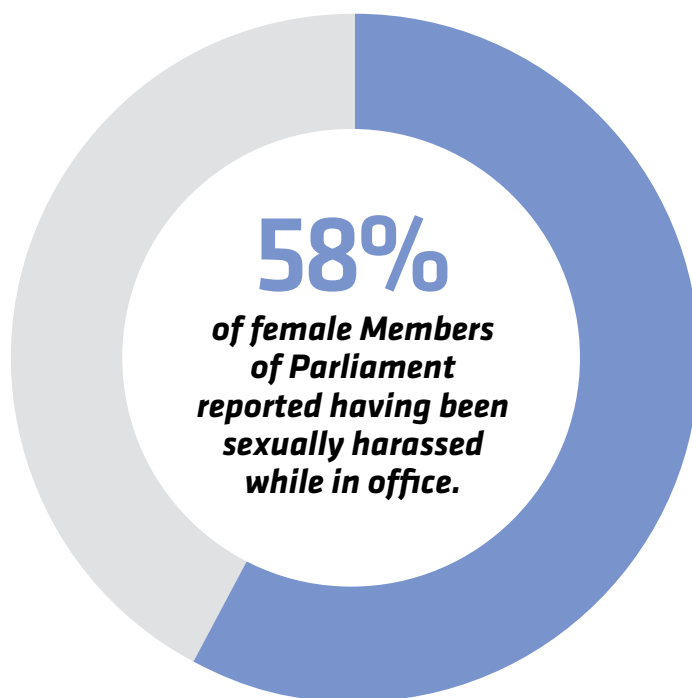
“The legislation will address the kinds of bullying and harassment that we know doesn’t necessarily happen in a 9-to-5 regime in the office. Oftentimes, harassment and bullying take place in other spaces and we want to make sure that people are protected in the workplace.”

PATTY HAJDU, FEDERAL MINISTER OF EMPLOYMENT, WORKFORCE DEVELOPMENT, AND LABOUR

*SOURCE: [HTTP://WWW.BENEFITSCANADA.COM/BENEFITS/OTHER/MEDICAL-QUESTIONS-REGULATORY-ISSUES-CREATE-CONFUSING-LANDSCAPE-FOR-MEDICAL-POT-COVERAGE-85555](http://www.benefitscanada.com/benefits/other/medical-questions-regulatory-issues-create-confusing-landscape-for-medical-pot-coverage-85555)

Also, recent allegations have hit all major political parties in Canada and have resulted in the firing or resignation of high-profile politicians. These scandals provide an example of how many varied behaviours can be considered sexual harassment:

- Former Progressive Conservative Party of Ontario leader Patrick Brown resigned his position in January 2018 after being accused of inappropriate sexual behaviour by two women.¹⁵
- Former Progressive Conservative Party of Ontario President Rick Dykstra resigned his position several days later after allegations that he sexually assaulted a young staffer during his time as a Member of Parliament.¹⁶
- Former federal Liberal cabinet minister Kent Hehr resigned from the cabinet due to allegations from an Alberta public servant that he had previously called her “yummy.”¹⁷
- Former Progressive Conservative Party of Nova Scotia leader Jamie Baillie resigned his position due to an unspecified violation of the House of Assembly’s workplace harassment policy.¹⁸
- NDP MP Erin Weir was suspended from caucus duties (though not removed from caucus) amid unspecified harassment allegations.¹⁹
- Former federal Liberal cabinet minister Hunter Tootoo resigned from the cabinet and the Liberal caucus after a “consensual but inappropriate” relationship with a staff member.²⁰
- Liberal MP Darshan Kang resigned from the Liberal caucus after two staff members alleged sexual harassment ranging from commenting on their appearances to grabbing their breasts.²¹



In addition, a 2017 Canadian Press survey, nearly 58% of female Members of Parliament reported having been sexually harassed while in office.²³

As this wide array of examples demonstrates, sexual harassment can manifest in many different ways and bear many different consequences.

The federal government and provincial governments have recently taken legislative action to combat the widespread issues of sexual harassment and assault. Bill C-65 is currently before the Parliament of Canada, and will expand the definition of workplace violence and the responsibilities of employers in federally regulated workplaces (about 8% of the Canadian work force).²⁴ This Bill does not however cover uniformed members of the Canadian forces which is concerning given the multiple lawsuits and allegations against the Canadian military for failing to protect female officers from sexual assault and gender-based discrimination.

In 2016, the Ontario Government passed *Bill 132, Sexual Violence and Harassment Action Plan Act*, which made it mandatory for all post-secondary institutions to adopt a stand-alone sexual harassment and assault policy. This Bill also amended *the Occupational Health and Safety Act* to make it mandatory for employers to have sexual harassment policies, as previously discussed.²⁵ Some HRPAs members say that is not enough and call on the government to provide free online training for employers and employees to increase public awareness of what behaviour is acceptable.²⁶ This is particularly important for non-profits and smaller organizations who may not have the budget to implement new employee training programs. Others suggest that the government consider a public education campaign to further increase public awareness of what constitutes sexual harassment in the workplace and what the rights of workers are under the updated legislation.²⁷

Ontario's Premier, Cabinet Ministers and all government MPPs are required to undertake training to raise awareness and prevent workplace sexual violence and harassment, and all ministers' offices and Premier's Office staff have received training on workplace discrimination, harassment and violence prevention.

The Ontario Public Service has developed a *Sexual Harassment Prevention Action Plan* which includes reviewing policies to further address sexual harassment in the workplace; services and supports for employees, including those to ensure they feel safe to raise concerns or report issues; and a campaign designed to increase awareness, strengthen accountability and drive behavioural change in the workplace.

Despite governments instituting new legislation and policies in the public sector, it is imperative that more be done to foster a culture of zero-tolerance for sexual harassment. This must include ongoing training, education and ensuring those handling complaints and implementing policies hold professional human resources designations (ie. CHRP, CHRL, CHRE)

Recommendation 5: All public institutions and political parties should ensure human resources staff hold professional human resources designations (CHRP, CHRL, CHRE).

Recommendation 6: All public institutions should have in place a stand-alone policy on sexual assault and harassment.

Recommendation 7: Bill C-65 should include protecting uniformed members of the Canadian Forces.

Recommendation 8: The Ontario Ministry of Labour should provide free online training to employers and employees to educate further on preventing sexual harassment in the workplace.

07

Conclusion



THE #METOO AND #TIMESUP MOVEMENT HAVE SHED IMPORTANT LIGHT ON THE ISSUE OF SEXUAL HARASSMENT IN THE WORKPLACE AND GOVERNMENT LEGISLATION (LIKE BILL C-65 AND BILL 132) HAVE MANDATED IMPORTANT CHANGES IN WORKPLACES TO ADDRESS SEXUAL HARASSMENT. MORE, HOWEVER, CAN AND SHOULD BE DONE BY EMPLOYERS TO PROTECT THEIR EMPLOYEES AND FOSTER A CULTURE OF ZERO-TOLERANCE WITHIN THEIR WORKPLACE. AMONG THE MOST IMPORTANT SIGNALS THAT ORGANIZATIONS CAN SEND TO THEIR EMPLOYEES IS THROUGH THE CREATION OF A STAND-ALONE SEXUAL HARASSMENT POLICY IN THE WORKPLACE AS WELL AS MANDATORY TRAINING TO GO WITH IT. TO PREVENT HARASSMENT, ALL EMPLOYEES MUST FIRST UNDERSTAND WHAT IT IS AND WHAT BEHAVIOURS ARE UNACCEPTABLE.

High-profile sexual harassment allegations can result in negative media coverage and long-standing reputational damage, which in turn impacts recruitment and retention of talented employees, and leads to negative customer or client sentiment. Organizations owe it to their employees, their customers and clients to ensure that measures beyond the minimal legislative requirements are being taken.

RECOMMENDATIONS RECAP

01

All organizations should adopt a stand-alone sexual harassment and assault policy or revisit their current policy to ensure it is adequate.

02

All organizations should take steps to ensure all employees are aware of sexual harassment and assault policies.

03

All organizations should have a policy drafted and implemented by someone who holds a professional human resources designation (CHRP, CHRL, CHRE).

04

Organization leadership should empower HR staff to implement, train and enforce sexual harassment policies within their organization.

05

All public institutions and political parties should ensure human resources staff hold professional human resources designations (CHRP, CHRL, CHRE).

06

All public institutions should have in place a stand-alone policy on sexual assault and harassment.

07

Bill C-65 should include protecting uniformed members of the Canadian Forces.

08

The Ontario Ministry of Labour should provide free online training to employers and employees to educate further on preventing sexual harassment in the workplace.

08

Endnotes

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