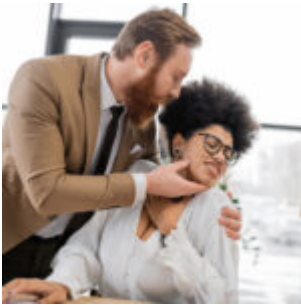


Workplace Harassment – 2023 Year in Review



FEDERAL

LAWS & ANNOUNCEMENTS

Jan 30: Canada officially ratified International Labour Organization [Convention 190](#), the first-ever global treaty pledging to end violence and harassment in the workplace. The treaty includes recommended practices for both governments and employers.

Action Point: Use the extensive resources on the OHSI [Workplace Violence Compliance Center](#) to protect your workers from violence and harassment.

CASES

Workplace Violence: OK to Terminate Worker for Pushing, Threatening Security Guard

A worker violated company policy by accidentally bringing her daughter's cell phone to the workplace. But the reason she got fired was how she reacted after the device was spotted on the x-ray scanner at the facility entrance by deliberately pushing the guard who asked her to empty her bag and then violently swinging her open knapsack scattering its contents across the floor. The federal arbitrator ruled that the company had just cause to terminate the worker for violating not only the cell phone but also the respectful workplace policy [[Teamsters, Local 938 v Purolator Inc.](#), 2022 CanLII 112111 (CA LA),

November 15, 2022].

Action Point: Use the extensive resources on the OHSI [Workplace Violence Compliance Center](#) to protect your workers from violence and harassment

Workplace Harassment: Court Refuses to Put Harassment Grievance on Hold

There was no question that an Air Canada employee was sexually harassed by a pilot during an overnight layover in Tel Aviv. The question is whether the airline did enough to protect the victim against future contact with the pilot. Meanwhile, the victim, who had to go on medical leave after the incident, filed a workers comp claim with the Québec CNESST in connection with the incident. Since both proceedings involved the same issues, Air Canada asked the federal court to delay the victim's harassment grievance until CNESST weighed in. The court refused, finding that deferring to CNESST would just further delay the process, which had already dragged on for over 2 years, and victim's ongoing attempts to return to work [[CUPE, Air Canada Component v Air Canada](#), 2023 CanLII 44161 (CA LA), May 24, 2023].

Action Point: Use the extensive resources on the OHSI [Workplace Violence Compliance Center](#) to protect your workers from violence and harassment

BRITISH COLUMBIA

LAWS & ANNOUNCEMENTS

Mar 9: First Reading for [Private Member Bill M-215](#), which would impose new restrictions on the use of non-disclosure agreement to settle claims of discrimination and harassment. Several provinces have adopted similar legislation.

Action Point: Implement a [workplace violence and harassment compliance game plan](#) at your site.

CASES

Workplace Harassment: Top Court Refuses to Hammer WCB for Mishandling Harassment Case

A court overturned the WCB Appeal Board's decision to dismiss the complaint of a guest service agent who claimed her employer tolerated the harassment, bullying and "mobbing" or false complaints she suffered at the hands of her coworkers. Unsatisfied with the victory and vindication, the agent asked the court to issue an order admonishing the Board for not properly handling her complaint. The court refused and the agent took her case to the province's highest court. **Result:** The BC Court of Appeal tossed the appeal, noting that courts have wide discretion to decide whether to issue "declaratory relief" and supporting the lower court's determination that issuing such an order would have served little useful purpose in this case [[*Pereira v. British Columbia \(Workers' Compensation Board\)*](#), 2023 BCCA 195 (CanLII), May 2, 2023].

Action Point: Implement a [workplace violence and harassment compliance game plan](#)

Mental Stress: Inappropriate Sexual Touching Incidents Didn't Cause Nurse's Anxiety

A male resident in a mental health facility grabbed the buttocks of a female aide; later he grabbed her breasts. The aide decided not to report the inappropriate touching incidents because she knew the resident had cognitive and mental health issues. But later, she filed a workers comp claim for the recurrent depression and anxiety she suffered as a result of these and other incidents. The Board ruled that the incidents weren't traumatic events and rejected the claim. The BC court rejected the aide's appeal. While the resident's "reprehensible" conduct might have been enough to cause another worker to suffer anxiety and depression, the evidence suggested that it wasn't a significant stressor to the aide in this case given that she initially "brushed off" the incidents and excused the resident's behaviour as being the product of

his mental illness [[De Jesus v British Columbia \(Workers' Compensation Appeal Tribunal\)](#)], 2023 BCSC 1320 (CanLII), July 31, 2023].

MANITOBA

LAWS & ANNOUNCEMENT

Apr 18: [Private Member Bill 215](#) establishing new legal limits on the use of non-disclosure agreements to settle claims of harassment and discrimination has made it past Second Reading.

Nov 3: The Manitoba Assembly defeated [Private Member Bill 225](#) that would have banned the use of non-disclosure agreements for settling harassment and discrimination claims.

Action Point: Use the extensive resources on the OHSI [Workplace Violence Compliance Center](#) to protect your workers from violence and harassment.

NEW BRUNSWICK

LAWS & ANNOUNCEMENTS

Feb 8: New Brunswick launched a new Workplace Sexual Harassment Lawyer Referral Program providing workers who believe they've suffered workplace harassment a free 2-hour consultation with an experienced lawyer to discuss their case.

Action Point: Use the extensive resources on the OHSI [Workplace Violence Compliance Center](#) to protect your workers from violence and harassment.

CASES

Workplace Harassment: Does Workers Comp Bar Employees' Sexual Abuse Class Action?

Employees filed a class action lawsuit against the City of St. John for the workplace sexual abuse they allegedly suffered at the hands of a now retired police officer. The court ruled that the City was vicariously liable for the sexual abuse that

the officer committed while he was employed at the Works Dept. but not during his tenure in the police department since he wasn't a City employee at that time. The City appealed, claiming that the suits violated the workers comp bar against employees' suing for employment injuries. The New Brunswick Court of Appeal found that the City had a valid point and sent the case back to the lower court to determine if the workers comp bar applied in this situation [[Hayes v. The City of Saint John](#), 2023 NBCA 66 (CanLII), August 4, 2024].

Action Point: Implement a [workplace violence and harassment compliance game plan](#) at your site

NEWFOUNDLAND & LABRADOR

LAWS & ANNOUNCEMENTS

Apr 5: As of today, 97% of municipalities (262 in total) in Newfoundland and Labrador have established a code of conduct banning bullying and harassment in the workplace. The government says it's expecting to reach 100% compliance very soon.

Action Point: Implement a [workplace violence and harassment compliance game plan](#) at your site.

CASES

Workplace Harassment: Court Finds Proof Beyond Reasonable Doubt in He Said/She Said Case

A Quality Assurance worker at a seafood processing plant filed criminal charges against a co-worker for touching her right buttock as she was bending over to reach for a sample. As she straightened up, the co-worker allegedly put his arm around her waist, pulled him toward her and uttered "Wouldn't you like it if I touched your ass?" The co-worker denied any touching but admitted to making the comment. In this he said/she said case, the Newfoundland judge found the accuser's account far more credible than the accused's denial, which was riddled with holes, contradictions and general denigration.

The gap in believability was so significant that the court concluded that there was proof beyond a reasonable doubt and remanded the co-worker into custody for sentencing [[R v Hillier, Steven](#), 2023 CanLII 33056 (NL PC), April 25, 2023].

Action Point: Use the extensive resources on the [OHSI Workplace Violence Compliance Center](#) to protect your workers from violence and harassment

NOVA SCOTIA

LAWS & ANNOUNCEMENTS

Mar 28: Newly tabled [Private Member Bill 278](#) would ban Assembly members and political party professionals who've been accused of sexual assault or harassment from entering into nondisclosure agreements in resolving the case.

Action Point: Use the extensive resources on the [OHSI Workplace Violence Compliance Center](#) to protect your workers from violence and harassment.

Nov 3: If you want to file a work-related discrimination complaint but belong to a labour union, take your case to the labour board and not to us. That's the message of a new Nova Scotia Human Rights Commission bulletin, citing a 2021 Supreme Court of Canada case called *Northern Regional Health Authority v. Horrocks* ruling that human rights complaints by union members should be litigated under the labour grievance rather than the human rights complaint process. While *Horrocks* deals specifically with Manitoba laws, the Commission notes that the same principles apply in all parts of Canada.

Action Point: Use the extensive resources on the [OHSI Workplace Violence Compliance Center](#) to protect your workers from violence and harassment.

CASES

Workplace Harassment: Court Refuses to Dismiss Constructive Dismissal Harassment Claim

While workplace harassment constructive dismissal suits are common, it's big news when they make it all the way to the highest court of a province. And that's what happened in a case brought by a morning talk show co-host against the radio station that hired her in 2017. The station denied the allegations of allowing a toxic work environment and claimed that the case was barred by the 2-year statute of limitations. The Nova Scotia Court of Appeal disagreed, ruling that the constructive dismissal claim was more about breach of contract than harassment. And because contract claims are subject to a longer statute of limitations, the case was still timely [[HFX Broadcasting Inc. v. Cochrane](#), 2022 NSCA 67 (CanLII), November 3, 2022].

Action Point: Implement a [workplace violence and harassment compliance game plan](#) at your site

Workplace Harassment: High Court Uphold Sexual Assault Conviction of Workplace Groper

The Nova Scotia Court of Appeal upheld the conviction of a worker for sexually assaulting a female co-worker. During the 6 months that the two worked together at "The Best Little Oarhouse in Nova Scotia," the worker intentionally brushed his hand across the victim's buttocks "on multiple occasions." He also intentionally elbowed her breast twice, an unwelcome gesture that he accompanied with an equally obnoxious remark such as "better call the labour board." The high court decided that the conviction and sentence of 4 months of conditional imprisonment, followed by 6 months' probation were valid and denied the worker's appeal [[R. v. Carson](#), 2023 NSCA 6 (CanLII), January 30, 2023].

Action Point: Use the extensive resources on the OHSI [Workplace Violence Compliance Center](#) to protect your workers from violence and harassment

Return to Work: Failing to Accommodate Injured Worker Costs Employer \$48,000

ONTARIO

LAWS & ANNOUNCEMENTS

Jun 6: Newly tabled [Bill 124](#) would ban the use of non-disclosure agreements as part of a settlement of a workplace discrimination, harassment, sexual harassment or sexual assault claim subject to limited exceptions. The ban would also apply to non-disparagement agreements that purport to prevent victims from talking about such actions.

CASES

Workers Comp: Mental Stress Suffered as a Result of Demotion Is Not Work Related

A food services worker sought medical help for psychological stress shortly after being demoted from “cook” to “cook’s helper.” The worker claimed he was the victim of workplace harassment and discrimination, citing an incident where a co-worker allegedly pointed a knife at him and another in which somebody at work supposedly grabbed him by the jacket. The WCB denied his claim for psychological injury benefits, saying that whatever mental stress he suffered was as a result of his demotion rather than harassment. After losing his WSIAT appeal, the worker took his claim to court—but to no avail. The Ontario Divisional Court found the WSIAT ruling reasonable and refused to reverse it [[Mihindukulasuriya v WSIAT and Aramark Food Services](#), 2023 ONSC 3461 (CanLII), June 8, 2023].

Action Point: Find out about [workers comp coverage](#) of PTSD and mental stress

QUÉBEC

LAWS & ANNOUNCEMENTS

May 5: The government-appointed Expert Committee published its nearly 350-page final [report](#) on preventing violence and harassment in the workplace. The Québec MOL will now read

through the recommendations and decide on a strategy.

Action Point: Implement a [workplace violence and harassment compliance game plan](#) at your site.

Aug 15: Québec employers can now go to CNESST to [get](#) free information, sources and tools for promoting psychologically healthy and safe workplaces provided by 18 newly hired full-time psychological health counselors who will also offer support to victims of workplace harassment and assault.

Sep 11: CNESST announced that the Mauricie and Nord-du-Québec regions have implemented most of the measures to support victims of workplace sexual harassment and sexual assault recommended by an expert committee report published on May 5.

Action Point: Use the extensive resources on the OHSI [Workplace Violence Compliance Center](#) to protect your workers from violence and harassment.