

# Why is sexual harassment not going away?

*Recent revelations highlight important role of HR, managers*

BY MARCEL VANDER WIER

**REVERBERATIONS** from the fall of Hollywood mogul Harvey Weinstein on charges of sexual harassment continue to be felt across the continent, with headlines and allegations piling up by the day.

The subsequent social media hashtag of #metoo saw many victims sharing their personal stories of sexual abuse. If employers aren't yet taking notice, they should be, according to experts.

For one, the Canadian government has moved to update its sexual harassment legislation, attempting to give federally regulated organizations clearer courses of action to deal with allegations. Consultations completed by the federal government found that incidents continue to go under-reported, while reported claims are often handled inappropriately.

And with the media spotlight trained squarely on sexual harassment, victims are becoming more willing to come forward with claims, said Andrew Monkhouse, employment lawyer at Monkhouse Law in Toronto.

"It's really taken the lid off of a lot of complaints that would normally otherwise not have been raised because people felt that it might damage their career or hurt their situation," he said.

"Increased knowledge has led to an increased number of complaints about sexual harassment, specifically in the workplace... The right things are happening in terms of people coming out and speaking out about how they've been treated."

"There is a wider recognition that things such as verbal comments, inappropriate jokes that make people feel uncomfortable, that these sorts of things can lead to a sexualized or poisoned work environment," said Monkhouse.

"Now would certainly be a good

time to be able to review those policies for any company, given the headlines and the attention this has received recently."

## Struggle continues

Despite all that's been done to reduce incidents of sexual harassment in the workplace, it continues to rear its ugly head, said Suzanne Hiron, senior communications advisor at the Canadian Human Rights Commission in Ottawa.

Unwelcome behaviours can be physical (for example, touching or embraces), verbal (demeaning sexualized language, sexually explicit jokes), non-verbal (unwelcome staring, sexual gestures), written (offensive messages) or graphic (sexual posters), she said.

Employers are responsible for providing a workplace free of sexual harassment, but often employees remain afraid to speak up and complain.

"They're afraid of retaliation," said Hiron. "They're afraid of what could happen to them. Will they be believed?"

It is well-established that women are more likely to be victims of sexual harassment than men, as are members of the LGBTQ community, she said.

But although sex is more prevalent in society than ever before, men need to realize it is still unwelcome in the workplace, said Stephen Hammond, a workplace behaviour expert in Victoria.

"Guys are still being driven by their libido; a lot of them don't think that what they're doing is sexual harassment," he said. "(But) even if you see it everywhere, there's got to be a dividing line."

A blurring between the roles of friend and professional continues to occur, and can often lead to sexual harassment claims, according to

Erin Brandt, associate at Kent Employment Law in Vancouver.

"At the most innocent level, sometimes it's inadvertent, that somebody was perceived to be a harasser may think that they're being friendly, and that their comments or their actions may be perceived by those around them to be sexual or unwanted in nature," she said. "There's a line between discomfort and sexual harassment, and it is difficult to figure out where that line is. But, ultimately, even if conduct is not sexual harassment, it may still be inappropriate and unwanted."

Built-in power differences continue to exist at workplaces and some people will always abuse that, said Monkhouse.

"It will take a lot of time to eradicate."

## HR's responsibilities

Policy, training, understanding, leadership and corporate culture are each extremely important in the work to eradicate this type of abuse, said Kathryn Coll, managing partner at HR Atlantic in Charlottetown.

"Anybody can slap in place a policy... but it's not going to mean that anything is going to change," she said. "This issue is tied really closely to the values of an organization and workplace. Is it OK that these things go on, or is it not?"

"If you're a diligent employer out there these days, you know that you have to have that policy in place, but that doesn't mean your organizational culture aligns with it. I think that's the most important piece."

Leadership has to demonstrate an unwillingness to tolerate sexual harassment, then support that stance through actions and behaviours, said Coll.

"When you have that, I think that then incidents of harassment — whether they're sexual or other-

wise — will start to diminish within organizations."

In Ontario, companies are required by law to have anti-sexual harassment policies in place, said Monkhouse.

"It's very important to have an active working policy for sexual harassment and also general harassment in the workplace that explains in clear terms how complaints are to be done, what will happen afterwards, and allows for an impartial investigator to be appointed," he said.

Many Canadians work for smaller businesses, making it very important to name the person to whom issues should be reported, as well as a backup person in cases where the primary contact could struggle to be impartial, said Monkhouse.

Companies with HR departments likely have anti-sexual harassment policies in place, said Brandt.

The trickier part is always implementation, which makes situational training and proactive dialogue important as well. Management needs to be aware of what behaviour they should model in order to foster appropriate workplace culture, she said.

"It's context-dependent and I think each workplace needs to look at 'What is our culture? Who is the lowest common denominator here, and how can we avoid making someone uncomfortable, even it that makes our workplace a little bit more stiff?'"

"In a lot of companies, you'll see these problems in the absence of HR managers," said Brandt. "I don't think it's solely on the shoulders of HR managers to fix this problem... It's about education and shifting our culture."

Ultimately, responsibility falls on management as a whole, not just the HR department, said Hammond.

And while training helps to rein-

force policy, it still comes down to taking action.

“What an organization has to do is actually follow through with doing the right stuff,” he said. “The moment you hear someone making an inappropriate comment, you shut that down... You do not worry about the feelings of that other person.”

“People can be told all kinds of stuff, but they won’t do it unless they feel the organization has got their back... If you have an organization in which people are willing to speak up and be listened to, then you’re way ahead of the crowd,” said Hammond.

“The difficulty is that still not enough people are willing to speak up. That’s tough, because that means you’re speaking up against the boss, or against some policies or the culture.”

### **Handling of claims**

When faced with a workplace complaint of sexual harassment, HR needs to take it seriously and quickly determine whether or not the investigation can be handled internally, said Coll.

“That can be about how serious it is, who is the complaint filed against, and can HR truly be neutral in the investigation?” she said. “Does HR have the training to conduct the investigation?”

“That’s the challenge that HR faces. Are they appropriately trained to conduct this kind of investigation, and do they understand evidence and credibility, assessment of credibility and so forth? (Some departments) don’t have appropriately trained staff to be dealing with this new world.”

Impartiality, sensitivity, and the

ability to distinguish between which situations need external investigation are all key attributes for today’s HR practitioner, said Monkhouse.

Conducting internal investigations can be as simple as asking questions, meeting with the parties involved, and taking copious notes, he said.

“If done correctly — if you take sufficient notes and ask the right questions that are thoughtful, and you put together a report afterwards — very frequently that investigation can be sufficient for minor complaints.”

And claims of this nature should always be submitted in writing, said Brandt.

“You should make sure to document everything,” she said. “Encourage the complainant to put their complaint in writing, so

you know the parameters of your investigation.”

Additionally, more training is always helpful — for all parties involved, said Monkhouse.

“Even if you find that there isn’t merit to the complaint, there still isn’t a real downside to having that person undergo training,” he said. “Having additional training really protects you and fixes potential future situations.”

As for the ultimate ruling on specific claims, it’s often up to the human resources practitioner to reach an appropriate conclusion — ranging somewhere between warning and termination — following the investigation.

“It is up to them to make a judgment call, and it is a difficult call to make,” said Monkhouse. “That’s a bit of the key part to being in HR.”