



STOP
HARASSMENT
IN THE WORKPLACE





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**INFORMATION
IS CRUCIAL**



Unions and workers' rights organizations have intensified their efforts since the 1990s to denounce harassment in the workplace in all its forms and to demand measures of redress. The case law on sexual harassment and the development of expertise on the subject, especially in regard to dealing with the victim and understanding the devastating effects she or he may suffer, have helped advance the concept of psychological harassment as we understand it today.

Professionals and technicians in health and social services, 85% of whom are women, are liable to experience some form of harassment in the workplace.

Since its inception, the APTS has equipped itself with a policy against harassment and violence in the workplace. The APTS affirms that it will not tolerate any acts of violence or harassment and will intervene accordingly to ensure that its members have a healthy work environment based on egalitarian relationships and mutual respect.

It is up to the employer to take reasonable measures to prevent situations that could result in harassment. When such situations are brought to management's attention, it must take the necessary measures to rectify the situation and put an end to any inappropriate behaviour.

The APTS wants to ensure that the employees it represents are well informed and capable of asserting their rights and obtaining respect, and is committed to defending their rights in the event of harassment in the workplace.



THE APTS **POLICY** AND **INTERVENTION** PROCEDURE



The APTS has an obligation to defend all members of the bargaining units it represents. Its policy¹ and intervention procedure guide the APTS in carrying out its responsibilities and in meeting certain commitments, such as the following:

- to promote a healthy workplace in which the dignity and the physical and psychological integrity of the individuals who work there are respected;
- to prevent harassing behaviour through information-awareness in the workplace;
- to foster support and assistance for victims of harassment by establishing mechanisms for helping them and providing recourse;
- to also preserve the rights of those implicated in allegations of harassment.

¹ *Policy against harassment and violence in the workplace* adopted by the APTS General Council on June 4, 2009.

Definition of **psychological harassment**

Certain provisions of the *Labour Standards Act* are incorporated in all APTS collective agreements, such as the definition of psychological harassment.

"[...] 'PSYCHOLOGICAL HARASSMENT' MEANS ANY VEXATIOUS BEHAVIOUR IN THE FORM OF REPEATED AND HOSTILE OR UNWANTED CONDUCT, VERBAL COMMENTS, ACTIONS OR GESTURES, THAT AFFECTS AN EMPLOYEE'S DIGNITY OR PSYCHOLOGICAL OR PHYSICAL INTEGRITY AND THAT RESULTS IN A HARMFUL WORK ENVIRONMENT FOR THE EMPLOYEE.

A SINGLE SERIOUS INCIDENCE OF SUCH BEHAVIOUR THAT HAS A LASTING HARMFUL EFFECT ON AN EMPLOYEE MAY ALSO CONSTITUTE PSYCHOLOGICAL HARASSMENT."²

This definition has been interpreted by the courts. In order for psychological harassment to be recognized, all five elements of the definition must be in evidence and demonstrated:

- vexatious behaviour;
- repeated behaviour or a single serious incidence of such behaviour;
- hostile or unwanted conduct;
- behaviour that affects an employee's dignity or psychological or physical integrity; and
- behaviour that results in a harmful working environment.

² Text drawn from the *Labour Standards Act*, section 81.18.

Vexatious behaviour

For the person subjected to it, vexatious behaviour is behaviour that is humiliating or abusive, damaging to her or his self-esteem and a cause of torment. It exceeds the bounds of what a reasonable person would consider acceptable in the workplace.

Repeated behaviour

Repeated behaviour can take a variety of forms. It may span a period of time, and while no minimum time requirement is specified, there must be some observable continuity of behaviour. Significant periods without any displays of such behaviour could be an obstacle to obtaining recognition of the existence of harassment. On the other hand, the more serious the behaviour, the less crucial it is that there be repeated expressions of it.

A serious single incidence

By definition, harassment is repetitive in nature – that is, it continues over time. For a serious single incidence to be recognized as psychological harassment, the harmful effects of the behaviour must persist over time. An objective degree of seriousness must be recognized (e.g., physical or sexual assault; public reproach or insults).

Hostile or unwanted conduct

The attacks must not receive the victim's approval or acquiescence. However, passive tolerance does not automatically mean acquiescence. It is not obligatory for the victim to clearly express her or his non-acceptance, but we generally recommend that she or he do so. The more objectively unacceptable the conduct, the less the need for explicit non-acceptance.

Violation of dignity or psychological or physical integrity

The violation must go beyond humiliation or creating a passing sense of uneasiness.

"DIGNITY REFERS TO A PERSON'S WORTH, WHEREAS INTEGRITY IMPLIES PHYSICAL, PSYCHOLOGICAL OR EMOTIONAL BALANCE ."³

Harmful work environment

In principle, once it is established that the conduct is vexatious, repeated, hostile and unwanted, and affects the employee's dignity or integrity, it goes without saying that it consequently creates a harmful work environment.

"WHAT IS MEANT BY HARMFUL IS AN ENVIRONMENT THAT IS DETRIMENTAL, INJURIOUS, POOR OR UNHEALTHY. THE ATMOSPHERE THUS CREATED CAN NOTABLY LEAD TO THE VICTIM'S ISOLATION IN A WORKPLACE WHERE COLLABORATION AND CO-OPERATION NORMALLY UNDERLIE THE WORK."⁴

³ *Collège de Rivière-du-Loup et Syndicat des professeurs du Cégep de Rivière-du-Loup, D.T.E. 2006T-158 (T.A.).*

⁴ POIRIER, G. and R. L. RIVEST, in collaboration with Hélène Fréchette, *Les nouvelles normes de protection en cas de harcèlement psychologique au travail : une approche moderne*, Cowansville, Éditions Yvon Blais, 2004.

Definition of **sexual harassment**

This form of harassment gained earlier recognition than other forms such as psychological harassment. There has been major progress in this area in the past fifteen years. What was unnamed, trivialized and very difficult to have recognized by the courts is now recognized.

The APTS policy also includes this definition.

“SEXUAL HARASSMENT IS A SPECIFIC FORM OF PSYCHOLOGICAL HARASSMENT CONSISTING IN UNWANTED CONDUCT IN THE FORM OF VERBAL COMMENTS, ACTIONS OR GESTURES THAT HAVE A SEXUAL CONNOTATION AND AFFECT THE DIGNITY AND PHYSICAL OR PSYCHOLOGICAL INTEGRITY OF THE PERSON OR RESULT IN UNFAVOURABLE WORKING CONDITIONS OR DISMISSAL FOR THE PERSON. A SINGLE SERIOUS ACT MAY BE CONSIDERED SEXUAL HARASSMENT.”



Remedial procedures directed at the **employer**

Several types of procedures are aimed at forcing the employer to take action and protect the victims of harassment:

- filing a complaint with the employer's internal complaints committee:
 - this should not affect the victim's right to take other remedial action
 - the union has to conduct its own investigation
- filing union grievances, individual grievances, or group grievances
- filing an incident/accident report.

Ensuring that the employer's obligations are fulfilled in practice

The national provisions of the collective agreement promote joint work by the employer and the union to develop a policy to avert or put a stop to all situations of harassment⁵.

The employer has to abide by the law and the collective agreement when exercising management rights. Management has a legal obligation to provide a healthy and safe work environment that is free from any form of harassment.

When faced with a situation of harassment, the employer thus has a duty to:

- take action (diligent steps, investigations and decisions);
- rectify the situation through disciplinary, administrative or other measures;
- prevent the situation from recurring (obligation to prevent all forms of harassment).

⁵ Clause 6.05 of the APTS national provisions

The employer is responsible for combating all forms of harassment perpetrated by those representing management (managerial staff, heads of departments or services), physicians, service users, employees or suppliers.

To denounce behaviour that could be considered as harassment, a complaint can be filed. A grievance can be used to force an employer to take action to ensure a healthy work environment.

Time limit for filing a complaint or grievance

This time limit is indicated in clause 11.02 of the APTS national provisions.

“IN THE CASE OF A COMPLAINT FOR PSYCHOLOGICAL HARASSMENT, THE TIME LIMIT IS NINETY (90) DAYS FROM THE LAST MANIFESTATION OF THE HARASSMENT.”

The last manifestation of harassment also serves to establish the time frame for handling the complaint, under most employers' policies. Any earlier manifestation of harassment can be considered by the employer under the institution's internal policy, or by an arbitrator as part of an arbitration hearing. Subsequent facts are also admissible if the situation persists after the grievance is filed.

These types of grievance hearings are very painful for the victims, as well as for witnesses. The point is not necessarily to obtain an arbitration decision, but to put pressure on the employer to take reasonable measures to make the work environment healthier.

Limits^{of} the legal approach

Except in very serious cases, priority should be given to informal steps before any formal procedures are taken, while keeping an eye on the time limits for taking remedial action. At this stage, it isn't necessary to demonstrate the existence of harassment as defined by law, in order to get the people concerned to collaborate.

Informal steps can involve different ways and means. The objective is to put a stop to vexatious expressions of harassment and to involve as few people as possible, as this makes it easier to get the implicated party to collaborate in the process.

This is how the union can help the alleged victim to undertake a process of conciliation or mediation, if there is any hope of reaching a settlement. The idea of bringing in an outside resource person may also be envisaged.

All too often, these kinds of situations degenerate into open conflict because communication wasn't re-established at the right moment. The situation then crystallizes and the individuals involved have time to convince themselves that their perceptions are accurate. In addition, the implicated party has to know that his or her behaviour is deemed to be inappropriate by the person making the complaint.

Those who feel that they are victims of harassment have to denounce the situation promptly by contacting the local executive and/or the union counsellor for her or his institution.

IT OFTEN HAPPENS THAT SITUATIONS OF HARASSMENT ARE NOT DENOUNCED UNTIL THEY REACH AN ADVANCED STAGE, AFTER MONTHS OR EVEN YEARS OF TENSION AND INAPPROPRIATE BEHAVIOUR.

IN SUCH A CONTEXT, IT IS IMPOSSIBLE TO RESTORE A HEALTHY WORK CLIMATE, AS THE WOUNDS ARE TOO EXTENSIVE AND DEEP FOR TRUST TO BE RE-ESTABLISHED. THE POSSIBILITIES FOR INTERVENING – AND DOING SO SUCCESSFULLY – ARE CONSIDERABLY REDUCED.

THE APTS INTENDS TO BE PROACTIVE IN PREVENTING HARASSMENT IN THE WORKPLACE. IT WANTS TO ENSURE THAT THE OBJECTIVE OF IMPROVING THE WORK CLIMATE IN PUBLIC HEALTH AND SOCIAL SERVICES FACILITIES IS SHARED BY EMPLOYERS. WE WILL ALL BENEFIT FROM WORKING IN A HARASSMENT-FREE ENVIRONMENT THAT IS CHARACTERIZED BY MUTUAL RESPECT.

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