

Sexual Violence And Harassment Act In Force In Ontario

October 24, 2016

The Ontario Government introduced the Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment, 2016) (Bill 132 for short) on October 27, 2015. On March 8, 2016, Bill 132 received Royal Assent in Ontario. Bill 132 amends a number of existing statutes, including the Limitations Act, 2012, the Ministry of Training, Colleges and Universities Act and the Occupational Health and Safety Act (the "OHS").

Bill 132 takes a comprehensive approach to sexual violence and harassment in Ontario society. It builds on the harassment and bullying reforms introduced in 2009 under the OHS. It seeks to address sexual violence and harassment in college, university and private college settings, requiring these institutions to implement sexual violence policies. It eliminates the statutory limitation period for civil sexual assault claims. The preamble to Bill 132 announces:

The Government will not tolerate sexual violence, sexual harassment or domestic violence. Protecting all Ontarians from their devastating impact is a top Government priority and is essential for the achievement of a fair and equitable society.

All Ontarians would benefit from living without the threat and experience of sexual violence, sexual harassment, domestic violence and other forms of abuse, and all Ontarians have a role to play in stopping them.

To achieve this laudable intention, the Government requires employers, such as school boards and independent schools, to do their part in the workplace. For employers, the most significant amendments are those to the OHS. The significant changes include:

- The existing definition of workplace harassment, established under Bill 168, is expanded to include the new workplace sexual harassment definition.
- The new workplace sexual harassment definition is:
 - 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

- making a 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.
- Employers will have an obligation to advise employees who allege workplace harassment by a supervisor of the measures and procedures that they can follow.
- Procedures will have to be put in place to maintain the confidentiality of information obtained about an incident or complaint of workplace harassment, unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law.
- Policies will need to be updated to set out how an employee who has allegedly experienced workplace harassment and the alleged harasser, if he or she is an employee, will be informed of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation.
- The general obligation to protect employees from workplace harassment has been strengthened. In addition to the above, employers must ensure that an investigation is conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances.
- Finally, Ministry of Labour inspectors are given enhanced powers. An inspector may order an employer to cause an investigation into workplace harassment to be conducted, at the expense of the employer, by an impartial person possessing such knowledge, experience or qualifications as are specified by the inspector and to obtain, at the expense of the employer, a written report by that person.

These changes came into force on September 8, 2016. As of September 8, 2016, employers, such as school boards and independent schools, were required to amend their existing workplace violence and harassment policies and procedures to reflect the above changes. Those policies and procedures must now be reviewed on an annual basis after September 8, 2016.

The OHS Act is also amended to provide employers with a quasi-defence to claims of workplace harassment. The OHS Act expressly provides that a reasonable action taken by an employer or supervisor relating to the management and direction of employees or the workplace is not workplace harassment. Consequently, claims that a manager is harassing an employee because of a negative performance review, for example, will not constitute workplace harassment, although employers presumably will have to investigate those complaints to make this determination.

In 2015, the Human Rights Tribunal of Ontario ordered the employer of two women who had been abused, harassed and sexually assaulted by the owner and principal of the employer to pay them \$150,000 and \$100,000 respectively for injuries to their dignity, feelings and self-respect. The women, temporary foreign workers from Mexico with little or no command of English or their legal rights, were forced to engage in numerous unwanted sexual acts, all the while being threatened with deportation if they did not comply. The case shows that sexual harassment and sexual violence continues to occur in workplaces in Ontario. Bill 132 should go some distance to stopping this type of conduct once and for all.

By

Robert Weir

Expertise

[Education](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.