

**SAFER  
PLACES**

Positive conversations  
that create safer workplaces

# A Consultation Report

On Addressing Sexual Harassment in New Brunswick Workplaces

March, 2020

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**Appendices:** please note: the appendices to this report are not attached for privacy reasons. They contain the names and contact information of the invitees, attendees and others who participated in the consultation.

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# A. Introduction

In Canada, everyone has the right to a safe workplace that provides fair treatment for all - it's the law. Unfortunately, sexual harassment occurs far too often, and it impacts the health, safety and well-being of those involved. It can even undermine their ability to do their jobs to the best of their ability. Creating and maintaining "Safer Places" for all individuals in the workplace is a priority of the Government of Canada and the focus of our five-year public education project to address sexual harassment in New Brunswick workplaces.

The Project is a collaboration of the Public Legal Education and Information Service of New Brunswick (PLEIS-NB) and the New Brunswick Human Rights Commission (NBHRC). It is funded by the Department of Justice Canada.

The Project partners have a long history of promoting access to justice and human rights for everyone. Public Legal Education Information Service of New Brunswick (PLEIS-NB), which is taking a lead role in the Project, is a non-profit charitable organization whose mandate over the past thirty years has been to facilitate access to the justice system by developing plain-language educational resources and services about the law.

They are working closely with the New Brunswick Human Rights Commission (NBHRC) which was established in 1967 by the Human Rights Act.

The Commission provides citizens with an effective way to address complaints of discrimination, educates the public about this process and, importantly, maintains ongoing awareness of the effects of inequality and the fundamental nature of diversity and inclusivity.

Research findings show that women are most likely to experience sexual harassment, while other vulnerable populations such as the LGBTQ2S community are also at risk of being harassed in the workplace and elsewhere. Some individuals are doubly disadvantaged. For example, when victimization is based on gender identity or gender expression, it often overlaps with other forms of marginalization based on race, disability, age, social condition, nationality, immigration status, ethnicity, place of origin, and so on. This Project recognizes the importance of identifying such intersectionality and addressing harassment in a holistic, collaborative and trauma-informed fashion.

The first phase of this Project has been to conduct public consultations to better understand the barriers that vulnerable groups experience when confronted with workplace sexual harassment.

To that end, we engaged consultants to help us gain valuable insights from members of the LGBTQ2S+ community and others such as employers, employees, academics, unions, researchers, and community groups.

We have listened to their voices and are pleased to share the Consultation Report. Those who participated in the consultations helped us to identify overlooked forms of harassment that may be experienced by marginalized individuals. They pointed to the barriers created by current definitions of harassment and remedies that tend to be grounded exclusively in normative heterosexual terms and definitions. Although the Project focuses on addressing sexual harassment experienced by members of the LGBTQ2S+ population, the feedback and recommendations have informed the development of resources that will be valuable for all employers and employees, as well as legal professionals.

Respectfully Submitted.

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## B. Project Objectives

The objectives of The Project are to generally, and specifically with respect to members of the LGBTQ2S+ Community:

- 1** Increase knowledge and competency among the legal community, employers and individuals to address and prevent sexual harassment in the workplace, particularly members of the LGBTQ2S+ Community. This will include creating specialized training workshops for legal professionals and employers, as well as a transferrable set of metrics with which to measure a workplace's reporting procedures against.
- 2** Address barriers for members of the LGBTQ2S+ Community when seeking legal information and advice regarding workplace sexual harassment by creating, printing and disseminating educational materials. This will include identifying related sexual violence issues that may impact on the experience of sexual harassment among vulnerable populations.
- 3** Create multiple points of access for individuals to obtain legal information and/or summary advice regarding sexual harassment. This will include exploring ways to refer and connect individuals to trained professionals who can offer specialized advice.

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## C. Project Outline

The 5-year Project will be carried out in 4 phases:



This report focuses on Phase 1.

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## D. Consultation Process

The purpose of the public consultation process was to gather insight and information from the Community of Practice with respect to the issue of sexual harassment in the workplace generally, and specifically, against members of the LGBTQ2S+ Community.

The Community of Practice was identified as follows:

- Employer Representatives
- Union Representatives
- Government Agencies
- Canadian Professional Human Resources of New Brunswick
- Members of the LGBTQ2S+ Community
- Academia
- Canadian Centre for Gender and Sexual Equality
- Pride at Work

The consultations consisted of:

- 8 in-person sessions in various geographical locations throughout New Brunswick with a total of 61 participants (Please contact us for information on our recruitment process);
- 6 on-line sessions with a total of 29 participants;
- co-hosting a half-day workshop on Intimate Partner Violence in the lives of LGBTQ2S+ with the Canadian Centre for Gender and Sexual Equality;
- a follow-up electronic survey distributed to 70 in-person and/or on-line consultation session participants, yielding 10 responses (Please note the response rate was too low to be of statistical significance.); and
- an electronic survey designed to capture information from individuals who did not attend either an in-person or on-line consultation session (Again the response rate was very low even though the survey was viewed on Eventbrite 848 times. It yielded only 7 responses.<sup>1</sup>

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## E. Key Themes

### 1. Barriers and Challenges Faced by Targets of Workplace Sexual Harassment

#### (a) Power Dynamics

Participants in nearly all consultation sessions identified power dynamics, especially in small workplaces, as a significant barrier to addressing workplace sexual harassment. Harassers are often in a position of power over the targeted person, leading to fear of security and further victimization. Examples of power included structural/organizational positions of power (i.e. manager/employee, instructor/student, tenured/new employee), but also included historical/societal norms relating to power (i.e. sex, gender expression, race, religion, sexual orientation etc.).

However, caution was expressed with respect to assumptions about power, in that individuals with less power (actual or perceived) also engage in inappropriate conduct, comments and gestures.

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<sup>1</sup> Given the limited number of responses to the electronic surveys to date, statistically significant statistics are not available at this time.

## (b) Discrimination

Discrimination was clearly identified as a barrier for the LGBTQ2S+ Community. A lack of education and understanding, stigma, and intolerance with respect to sex, gender identity, gender expression and sexual orientation leads to assumptions, microaggressions, inappropriate questions, etc..



**People pretend to be curious when it's actually offensive, asking things like, 'what parts do you have?'**

**Are you attracted to men or women?**

Such questions couched in “curiosity” often leave the targeted person feeling awkward, uncomfortable and conflicted in terms of wanting to educate and/or fit in with their colleagues, but at the same time feeling violated.

Individuals seeking access support services want to be treated as a person, not as a “queer” person.



**Being a queer person is a part of me, not all of me.**

## (c) Bias

In several sessions, participants identified actual and/or perceived bias on the part of those responsible for handling internal complaints as a barrier to reporting allegations of harassment as those individuals are often also employed by the organization. The underlying assumption here is that many employers are averse to receiving and responding to workplace harassment complaints, and therefore the neutrality and independence of internal staff is questioned.

## (d) Lack of Confidentiality

Lack of confidentiality in internal complaint processes was identified as a barrier to reporting sexual harassment. Information, including confidential information, spreads quickly, particularly in small workplaces. Several participants identified the need for a “safe place”.

A further barrier identified is the apparent inability to speak to someone in the workplace about sexual harassment concerns in a confidential manner for initial information/advice without triggering a formal complaint process.

Finally, most workplace harassment policies contain confusing confidentiality clauses, leaving targets with the misunderstanding they cannot talk about the harassment with persons of support (i.e., counsellor, friends, partners, etc.) once they have filed a complaint.

## (e) Workplace Culture

Workplace culture was identified as a significant challenge in each consultation session.

Leaders/managers who engage in and/or condone inappropriate workplace behavior send a clear message throughout the organization that the behavior is not taken seriously. Condoning was described as both actively supporting/encouraging inappropriate workplace behavior and, equally as harmful, failing to stop inappropriate behavior.



**‘Oh, that’s just how so-and-so is, they don’t mean anything by it’. Often, these employees are well-liked, so their inappropriate behavior is not taken seriously. Employers have an obligation to address it.**

A culture of tolerance leads to fear and reluctance to complain.

## (f) On-going Working Relationships

In many cases, targets are required to continue to work with their harasser post complaint (including during an intervention and/or investigation and afterward) and that can be intimidating, uncomfortable, marginalizing and lead to a reluctance to complain.

## (g) Onus

Several participants felt the onus is on the targeted person to prove both that the conduct, comment or gesture happened, and that it was inappropriate. Establishing “inappropriateness” often means having to disclose past trauma and triggers, resulting in further victimization.



**Someone could react very negatively to a colleague picking lint off their shirt because they were sexually abused at a child and don’t like to be touched. They shouldn’t have to explain why they don’t like to be touched.**

## (h) Fear

In each consultation, participants identified fear of not being believed or taken seriously as a significant barrier. This is compounded by the overall lack of understanding of the various forms of sexual harassment (including sexualized and/or sexist based comments, questions, remarks etc.).

## (i) The Binary Lens

Workplace policies and education with respect to sexual harassment, if they exist, are often drafted and/or presented in traditional binary terms (i.e., he/she/male/female as opposed to person/people/they/them/target etc.). As a result, LGBTQ2S+ persons often feel excluded. Moreover, this restrictive wording perpetuates incorrect beliefs and assumptions about what sexual harassment is, and who can be the target of such behavior.

In addition, many people do not understand “sexist” and “sexualized” conduct, comments and gestures are forms of sexual harassment. Harassment of this nature is typically left out of the discourse entirely.

## (j) Multi-Generational Workplaces

Generational differences in understanding and/or tolerance was also identified as a challenge. Newer generations were regarded as being generally more accepting of the LGBTQ2S+ Community and aware of what constitutes inappropriate conduct in the workplace.

## (k) Culture

Cultural differences were also identified as a challenge. Not everyone communicates in the same way, and what constitutes offensive or inappropriate behavior is not viewed the same across all cultures.

## (l) Unclear Reporting Processes

In nearly all consultations, reporting processes were identified as a barrier. Participants noted many organizations have confusing policies, or no policies at all. Further to that, many small/medium sized businesses do not have human resource (HR) personnel, which acts as a further barrier to already unclear reporting processes.

## (m) Lack of Services & Accessibility Issues

A lack of victim services, particularly relating to counselling and/or preliminary advice, was identified as a challenge and a barrier.

There are no internal or external “victim services” department or organizations that can help a target navigate through the process of a workplace sexual harassment complaint.

While some employers have Employee Assistance Programs (EAP), a target of workplace sexual harassment may be hesitant to rely on employer provided resources.

Paying out of pocket for such services is not possible for many and many are reluctant to complain in the absence of such support.

Accessibility to existing resources and services was also noted as a challenge, particularly in rural communities where many people struggle with accessing counselling services, internet (to conduct research, gain access to forms etc.) etc..

## (n) Intersectionality

Intersectionality was also clearly identified as a challenge. For LGBTQ2S+ members, workplace sexual harassment is typically not the first or only form of harassment they have faced. As such, many are hesitant to “rock the boat” out of fear of retaliation and/or further marginalization, isolation, discrimination etc.



**I've already gone to the employer about this and this, I don't want to get a reputation and be known as a troublemaker.**

## 2. Concerns about Current Responses to Workplace Sexual Harassment

### (a) Lack of Policies/Immature Policies

As noted above, according to participants, notwithstanding legal requirements many organizations still do not have harassment policies in place.

Where such policies do exist, they are often binary, complicated, and unclear, leading to mismanagement of complaints.

### (b) Lack of Target Autonomy and Poor Communication

As a related matter, several participants expressed concern with respect to a target's lack of control over the complaint process, and the lack of communication they receive once allegations are raised. This can be revictimizing and isolating.



Once you report it, you have no control over what happens.



I told my manager I was being harassed. Then there was a period where post-complaint, they took a couple days or weeks to try to figure out the situation/how serious it was. That time period was awkward, uncomfortable, and stressful. I had no idea if they even told the harasser and I had to work beside that person daily.



Victims receive little feedback, guidance or communication like what is going to happen next? Where do I go for help? Will I have to work with this person as part of a team again?

### (c) On-Going Working Relationships

Some participants raised concern with respect to the on-going working relationship between the harasser and target post-complaint, which can be both intimidating and isolating. However, it was noted separating the parties can have a similar effect.

## 3. Existing Services and Their Effectiveness

The following services were identified by participants as existing in some organizations:

- EAP; and
- HR. However, several HR participants reported fearing for their own job security if they defend and/or advocate for a target of sexual harassment.

Sexual assault centers and victim services associated with policing authorities were also identified as an existing support. However, there did not appear to be a clear understanding of when these kinds of services are accessible, and when they are not.

Participants did not appear to be aware of resources prepared by WorkSafeNB and the Human Rights Commission on the topic.

## 4. Current Protocols Relating to Rights, Complaints Processes, and their Effectiveness

Some participants were aware of recent amendments to General Regulation 91-191 under the Occupational Health and Safety Act which enshrines a respectful work environment free of violence and workplace as necessary components of a safe and healthy workplace. The changes protect New Brunswick's workers from a wider range of hazards and require all provincial workplaces to develop a code of practice to prevent workplace harassment. Every New Brunswick employer must also conduct a risk assessment for violence and, based on certain criteria, may also be required to develop a code of practice to prevent violence at the workplace.

The majority of participants confirmed awareness of the NB Human Rights Act and the ability to file a complaint with the Commission on the basis of workplace sexual harassment, including harassment based on sex, gender identity, gender expression and sexual orientation.

However, the following barriers were noted to filing complaints:

- Power dynamics,
- continued working relationships between the complainant and respondent, and,
- perceived inaccessibility of the Commission.

Most participants also understood some forms of sexual harassment may constitute criminal conduct. However, many appeared to be confused with respect to what conduct falls within the domain of the Criminal Code.

## **(b) Workplace Investigations**

Several HR participants indicated hiring external investigators is considered best practice in the case of a formal workplace harassment complaint. However, external investigators are expensive (up to \$50k); cost is particularly problematic for small/medium sized business.

Training opportunities with respect to conducting internal investigations was welcomed.

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<sup>2</sup>With respect to resources, WorkSafeNB has developed a Guidelines to Developing Workplace Violence & Harassment Codes of Practice and Sample Templates. These templates are readily available for employers to adopt. In addition, the NB Human Rights Commission has also developed a Guideline on Sexual Harassment.

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# F. Recommendations

## 1. Education and Training

### (a) Sexual Harassment Training for Managers & Employees

According to participants, emphasis should be placed on the “gray” and more subtle forms of sexual harassment.



**It’s more about subtle acts, rather than blatant acts. It makes targets wonder am I overthinking that?**

Particular emphasis should also be placed on the sexualized and sexist behavior. For example, questions couched in curiosity about a person’s sexual partners, genitalia etc., purposeful misuse of pronouns; not just the more overt/binary examples of sexual harassment like cat calls, physical touching, sexual jokes etc.

Mandatory ongoing training is considered crucial because it demonstrates the employer is taking the issue seriously. Employees should be compensated for training sessions.



**Just as a driving course makes you a better driver and helps you get your driver’s license, mandatory workplace sexual harassment training should be provided, rather than simply having people sign a document.**

### (b) Sensitivity & Awareness Training for Managers & Employees

Emphasis should be placed on changes in cultural and societal norms. For example, calling a person “sweetheart” is no longer considered acceptable workplace conduct. All too often, however, these kinds of remarks are dismissed as:



**Oh, that’s just so-and-so.**

Emphasis should be on the “impact” of a person’s conduct, comment or gesture, as opposed to “intent”.

Education is also needed with respect to the different types of identities in order to increase sensitivity and understanding.



**We need to find a way to have this conversation. What does it mean to be transgender, gay, bisexual? We need to be educating on identities and what types of questions are okay and not okay, what you should say and what you shouldn’t say.**

### **(c) Bystander Training for Managers & Employees**

Widespread bystander training in the workplace is an important way to influence attitudinal change.

### **(d) Trauma-Informed Training for those Responsible for Creating/Enforcing Workplace Policies**

Currently, there is a general lack of appreciation/understanding of how trauma (including past experiences with sexual harassment or violence), and resulting triggers and sensitivities, impact reaction, cognition, memory etc.

### **(e) Leadership Training**

Employers need guidance on their roles and responsibilities.

Leaders also need to understand the legal, and cultural, importance of modelling appropriate behavior and addressing inappropriate workplace conduct in a timely manner.

### **(f) Investigation Training**

As noted above, training with respect to conducting internal workplace investigations is welcomed by HR and employer participants.



**Big companies have big resources. A lot of small companies don’t know how to handle a complaint. They don’t know how, or even when, to do an investigation.**

## 2. Other Recommendation

### (a) Creation of an Internal and/or External Support Person/Advocate for Targets

According to participants, many targets of harassment do not fully understand their rights or the complaint process. Having an internal or external support person who can answer questions, ensure a fair process and act as a representative and a person of support would be beneficial.

### (b) Template Workplace Harassment Policy

Participants indicated a template harassment policy for employers would be helpful.

Participants also recommended the template should be adaptable to suit various types of workplaces and should:

- be aimed at both preventing and addressing workplace harassment;
- contain clear informal resolution options;
- give the target as much control over the process as possible;
- contain examples of inappropriate conduct;
- clearly outline the complaint process;
- be inclusive; and
- clearly explain who the policy applies to (i.e., staff, volunteers, customers etc.).

### (c) Template Communication Protocol and Flow Chart for Complaints

Several HR and employer participants suggested a template communication protocol would be beneficial to guide them when receiving and responding to workplace complaints.

A template flow chart with respect to the steps to be followed upon receipt of a complaint would be helpful.

### (d) On-Going Training and Regular Workplace Reminders/Discussions on Sexual Harassment

There was consensus among participants with respect to the need for on-going training and visual reminders in the workplace, including posters, pamphlets etc. Additionally, "Awareness Days" (perhaps during "Respectful Workplace Week" each September) was suggested as an effective way to encourage regular discussion in the workplace around issues such as harassment, mental/physical disability etc..

### **(e) Employee on-Boarding**

As part of the on-boarding process, the harassment policies and behavioral expectations should be reviewed with all new employees.

### **(f) Support for Small/Medium Size Employers**

Several employer and HR participants highlighted the need for additional support/resources for small and medium size businesses who lack the capacity to independently develop and enforce workplace harassment policies, conduct training sessions etc..

### **(g) Resource Map**

The creation of a public resource document that outlines what resources are available and where individuals can obtain additional information/support was consistently recommended.

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## G. Next Steps

The insights, information and recommendations gathered during the public consultations and outlined in this Report will help to inform development of the learning products in Phase 2 of the Project.

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