



# PODCAST - The #MeToo Movement: What It Means for Canadian Employers

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Stephanie Weschler, a partner with Stikeman Elliott's employment group, discusses the impact the #MeToo movement has had on workplaces in Canada and key legal considerations for employers. (18 minutes)

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## Transcript

RICHARD: Hello and welcome to Perspectives – a podcast series from Stikeman Elliott where we discuss legal issues that are relevant to Canadian business. Today we're discussing #MeToo with Stephanie Wechsler, a partner in Stikeman Elliott's Employment and Labor group in Montréal.

We thought it would be interesting to discuss the impact the Me Too movement has had on the workplace in Quebec and in Canada. Stephanie, what can you tell us about this?

STEPHANIE: As you can imagine in the world of employment law, sexual harassment cases have always been present, and they've always resulted in a lot of litigation. It's obvious now that the Me Too movement has raised awareness of this issue, but it's also given the courage to certain complainants who maybe didn't have the courage to file complaints in the past, to come forward and make their allegations without any fear of reprisal.

Before this podcast I read some recent statistics which show there have been more complaints filed since the emergence of the Me Too movement. For example in the province of Quebec, we have statutory provisions in our Labour Standards Act whereby employees can file complaints if they feel they've been subjected to harassment in the workplace and this has always included sexual harassment as well. What we're seeing in 2017 is that there were approximately 5,000 complaints filed with the Labour Standards Board alleging workplace harassment.

I also reviewed a recent Canadian survey that tells us more than half of Canadian women say they've been subjected to sexual harassment in the workplace, just under 30 percent of Canadian women say that they've been subjected to non-consensual sexual touching in the workplace, and finally over 60 percent of women say that the Me Too movement has heightened their awareness of how they think of workplace relations and sexual harassment.

There is a correlation between the number of complaints being filed and women's views of harassment in the workplace.

**R: How do you relate these statistics to their impact on employers in Canada in the field of employment law?**

S: First of all, it is now clear to us that employers are aware of the issue, which translates to them communicating with their lawyers. They're calling us to request assistance with updating their policies and with providing training. This is not only so employees are more aware of their rights but also to provide training to managers so that they're better equipped to deal with these situations.

Employers have learned that it's better for them to address these issues early on, rather than letting the situation get worse and having to deal with a much more serious issue down the road. Employers are also much more conscious that they have no choice; they need to act with diligence, which means better training and better preventative tools for their employees, not only to prevent harassment but to put a stop to it when it's happening.

Finally what we've seen in Quebec is more and more complaints to the Labour Standards Board. It's gotten to the point where we don't even have enough government lawyers to address these issues at the board level. There is an increased volume of complaints which is requiring them to engage more and more lawyers to deal with these issues.

**R: From a purely legislative point of view, have there been any developments in the legislative landscape as a result of the MeToo movement?**

S: The province of Quebec has always had specific provisions dealing with psychological harassment in our Labour Standards Act, and this has been in our law since June 2004. In this regard we were the first province in Canada to specifically include provisions of this nature in our provincial legislation. What we're seeing with the emergence of the Me Too movement is the government of Quebec deciding we need to make further amendments to our laws and they're codifying and explicitly including sexual harassment in our legislation now.

What does this mean? The legal definition of psychological harassment which every employer in Quebec is well aware of is now going to explicitly include sexual harassment. It will encompass verbal comments, acts or gestures of a sexual nature, and it's also going to expressly provide that employers have to adopt and make available to their employees prevention mechanisms and complaint processing mechanisms for them to be able to file complaints at least internally in the event that there are some sexual harassment issues happening in the workplace.

The second point that we've seen in the Me Too movement is the fact that complaints are coming forward many years after the issues have arisen. Legislators have thought about the 90-day time frame to file a complaint on the Labour Standards Act, and whether or not it was sufficient. Ultimately it was decided to change this time frame from 90 days to two years following an incident of harassment. This is a significant amendment that provides a lot more time for complainants to actually file their complaints and also obliges employers to properly document and preserve their evidence relating to any situations of harassment because it's unknown whether or not somebody will come forward and file a complaint for this 2-year period.

**R: Was this the first time sexual harassment was specifically mentioned in the law?**

S: In the province of Quebec, the amendment was June 12, 2018. The concept of sexual harassment was not explicitly contained in the law until this amendment and now it is explicitly there with specific mention to sexual harassment, but it's always been implicitly in our law through case law. On the federal level the Canadian Human Rights Act, (which applies to federal undertakings like banks for example), has always explicitly included the concept of sexual harassment in the law, which provides that sexual harassment is deemed to be harassment on a prohibited ground of discrimination.

**R: Besides the fact that employers are concerned about employees filing complaints with various administrative tribunals can you tell us a little bit about what type of exposure employers should be concerned about in sexual harassment cases.**

S: It's a very good question. There are a lot of potential consequences. The first consequence is not strictly a legal one, it's really a reputational damage on the company that these complaints can give rise to, particularly in situations where the company does not act quickly and efficiently. We all know news travels so quickly with social media. It can be very destructive, especially in cases where the employer is not proactive.

From a legal point of view, it is worth discussing what avenues a victim of sexual harassment has in terms of filing complaints.

First we have our Labour Standards Act, where there are complaints available to employees who believe that they were victims of harassment. Employees can file a complaint with our board in the province of Quebec. This leads to investigations, there could be a hearing if it goes ultimately to the final stages and the labor tribunal has very broad powers to award different things: lost wages, damages, reimbursement of any treatments that result from the harassment, and really any other remedy that the tribunal deems appropriate in the specific case.

So that's a Labour Standards Act complaint. There is also a possibility for someone to file a complaint under the Human Rights Act alleging that he or she was subject to discrimination. In this case the complaint results in investigation by the Human Rights Commission and it can lead to very similar consequences as at the Labour Standards Board: damages, reinstatement, reimbursement of lost wages, as well as orders to review policies and make specific amendments internally.

Another risk is a civil claim against an employer, which is the traditional action in damages that goes to our common law courts. Finally employees can go forward with the Workers Compensation Board and file a claim demonstrating that the conduct which occurred in the workplace resulted in a physical or psychological illness directly related to the alleged harassment.

All this to say as you can see there are both legal and non-legal consequences that employers need to be aware of and it is very important for employers to be proactive in applying their best practices in the business.

**R: Good advice, employers have to stay in front of this. So what are the best practices that you would recommend to employers?**

S: The first best practice is to take all their existing manuals, any codes of conduct, or any other employer documents that they have in the workplace and they need to review them. They need to make sure that there's explicit mention of psychological harassment and sexual harassment in their policies and they need to update them to ensure that the most recent legislative changes are included in their policies.

In addition, employers need to ensure their policies are comprehensive. They have to have specific mention of sexual harassment, but they also need to ensure their policies include detailed processes for employees to file internal complaints, whether they are informal or formal complaints alleging sexual harassment. It is very important for employers to understand they must have robust and comprehensive internal policies and that they must be able to resolve situations internally before they become litigious. It

is in their best interest to deal with issues internally rather than going to the board and having the potential consequences that I talked about previously. That's the first best practice.

The second best practice is again connected to reviewing internal policies. This one relates to proper training for employees, not only for employees at all different levels but also their managers, those who come into contact with the employees and the ones that are going to see situations occur. This can be situations where the situations are visible to managers, and it can also be situations where the employees are alleging harassment in their regard. The first-line managers need to be trained and able to recognize and deal with situations properly and efficiently. They need to be alert as to who is the right person to go to in order to ensure that the intervention is being handled in a timely manner.

The last best practice that I will mention is that what employers are often seeing, unfortunately, is situations of chronic behavior which can be inappropriate. There could be situations where employers can resort to very targeted coaching and training for specific employees. Now the benefit of targeted training or coaching is that not only are they addressing a concern and potentially remedying a situation which is occurring at that time, but they are also showing that they are taking the preventative measures needed to minimize their liability in the court system. It's a preventative tool and it is also a tool which shows that they are putting a stop to any sort of harassment happening in the workplace.

One last thing I will mention is that, not in every case, but in certain cases companies are also using external, independent investigators to look into these matters. Depending on the gravity and the type of situation and the players involved, sometimes it is better having somebody external come in and do it as an independent investigator rather than having the HR, or the manager, or employees internally doing it.

**R:Have there been any recent cases in the province of Quebec that you believe are relevant to the Me Too movement?**

S: For sure, so as I said there's been many cases at the Labour Standards Board as well as at the Human Rights Commission as it relates specifically to sexual harassment. Whether it's under our Labour Standards Act or under the Charter, with the Me Too movement clearly employees are feeling more at ease to come forward, they are filing formal complaints in situations where in the past maybe they would not have felt as comfortable doing so.

Specifically what we are seeing is that they are coming forward when employers are not acting in a timely manner and not addressing their employees' concerns to the extent that they would like them to be addressed. As a first example the Superior Court recently authorized a class-action lawsuit against the Just for Laughs founder Gilbert Rozon.

This was about 20 women who are calling themselves "Les Courageuses", saying they were sexually assaulted and harassed by Rozon. The Superior Court judge acknowledged class-action lawsuits have proven to be an effective tool in these cases and that in certain situations where plaintiffs may have not have been authorized to come forward and file these complaints, now with this law they're able to, and the victims are not being deprived of this right. It will be interesting to see how this case evolves with time.

Another recent case that was rendered in Quebec involved a person who alleged she was forced to resign from her employment because of the sexual harassment that she was being subjected to by her supervisor. In this case it was the owner of the business. The tribunal accepted the complainant's version of the events and found that the sexual harassment did in fact occur and the employer was shown to have not taken the necessary measures to prevent the harassment. The employer was ultimately held liable to pay \$10,000 to the individual.

We see it's critical for employers to put the proper training in place, to ensure that the harassment is prevented, and also that they put a stop to it as it is happening.

**R:Any last comments that you'd like to make on the subject?**

S:I can't emphasize enough that employers need to take a proactive approach in dealing with these issues. They can't shy away from them; they need to make sure they have preventive mechanisms in place and mechanisms for employees to come forward and deal with them internally, because dealing with them internally is much better for an employer from a liability standpoint than allowing them to go to the courts and all the consequences that we talked about before. Employers need to address them quickly and efficiently as they arise and ensure that they put a stop to them.

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