

Sexual harassment and human rights



The New Brunswick *Human Rights Act (Act)* prohibits sexual harassment in five areas: employment, housing, services, publicity, and professional, business, or trade associations.

Meaning of sexual harassment

The *Act* says that sexual harassment means to engage in “**vexatious comment or conduct** of a sexual nature that is **known** or **ought reasonably to be known to be unwelcome**.”

What does this mean?



“**vexatious**” means behaviour that is annoying, distressing, or agitating to the victim.

“**comment or conduct**” indicates the two ways sexual harassment behaviour can happen: verbally (through comments or words) and physically (through physical contact, gestures, etc.).

“**known to be unwelcome**” means that the person committing the harassment knows their conduct is wrong or not acceptable to the other person.

“**ought reasonably to be known to be unwelcome**” means that a neutral third person would agree that the conduct is wrong.

Types of sexual harassment

Sexual harassment can take many forms, but courts have identified two main categories:

Quid pro quo



Quid pro quo (“something for something”) sexual harassment happens when a coworker (usually a superior) blackmails a person into giving sexual favours by threatening to withhold employment advantages (like a promotion) or by promising employment rewards.

Example: Nineteen-year-old Laura is hired as a trainee on a part-time basis at a furniture store. Five weeks into her employment, her employer propositions her for sex, promising to reward her with a job promotion. When Laura refuses the proposed *quid pro quo* arrangement, she is fired.

Poisoned work environment



In a poisoned work environment, instead of direct requests for sexual favours, victims are subjected to a pattern of disparaging sexual comments, innuendoes, taunts, and humour in the workplace, which demeans and demoralizes them. A poisoned work environment can be created by one severe incident, or several instances of bad behaviour.

Example: Amari worked as a server in a restaurant, where the cook made sexual comments about her, about women generally, and about other female employees. He commented on Amari’s body type and talked about other women in sexually explicit language. A tribunal held that the cook’s comments created a poisoned work environment for the complainant, making the workplace unwelcome, hostile, and intolerable for her.

Examples of behaviours that constitute sexual harassment

-  Talking about sexual activities or experiences.
-  Sex-specific name-calling, sexist jokes, or making fun of people's body type or gender expression.
-  Sexual jokes and teasing.
-  Offering something in exchange for sex or physical contact.
-  Asking for physical intimacy or sexual contact.
-  Unnecessary contact like kisses, hugs, holding hands, touching, patting, pinching, slapping, etc.
-  Making employees dress in a sexually suggestive or gender-specific way.
-  Sexualized behaviour or rude gestures, directed at an individual or as part of general behaviour.
-  Displaying or sharing (including electronically) pornographic or other sexually offensive materials.
-  Sexual comments (verbal, textual, or online) about a person's looks or body parts, sexuality, or preferences.
-  Invasion of personal space, standing or sitting too close, brushing up or rubbing against a person.
-  Spreading sexual rumours about a person by word of mouth, emails, text messages, or online.
-  Unwelcome invitations or requests for dates.
-  Exhibiting or exposing one's body.
-  Asking an employee for intimate photos.
-  Inappropriate staring.

Unwelcomeness and consent in sexual harassment

To be considered sexual harassment, the alleged comments or conduct must be shown to have been unwelcome by the victim.

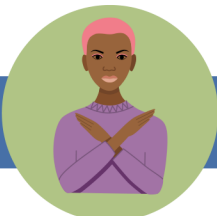
If a person welcomes or reciprocates sexual advances, this may be interpreted as consent. However, if there is a power imbalance between the harasser and the victim (like a supervisor harassing an employee who reports to them), it will be difficult to prove that consent was voluntary, unless there is clear evidence.

The law recognizes that there are different ways in which individuals convey that sexual harassment is unwelcome:

Obvious: Strong refusal, physical (shaking head), verbal or written ("You are making me uncomfortable").

Subtle: Like walking away, not responding to comments or invitations, tensing up the body, or not making eye contact, etc.

Important to know: Sexual harassment isn't always about sex or sexual interest; it can also be about power and gender inequality. Sexual harassment often happens when the harasser is in a position of power (economic, official, or social), and uses that power to control, intimidate, or embarrass the victim.



Remember: SILENCE DOES NOT EQUAL CONSENT.

How to prevent sexual harassment in the workplace

As an employee

All employees share a responsibility for creating and maintaining a respectful workplace. Be sure to review your Respectful Workplace Policies and always report an incident of harassment to your employer as soon as possible.



As an employer

Employers (as well as housing and service providers) have a responsibility to provide environments that are free from all forms of sexual harassment – **verbal, physical, and psychological**.

They must:



Develop, implement, and enforce anti-sexual harassment workplace policies.



Investigate and address allegations of sexual harassment immediately and with due diligence.



Ensure that employees who experience sexual harassment feel safe and are appropriately reintegrated in the workplace after an incident of sexual harassment.

Note: Employers, housing, and service providers are liable under the Act for sexual harassment committed by their employees or representatives if they do not take immediate and adequate steps to prevent those incidents.

Do you have questions? Contact the Commission.

The **New Brunswick Human Rights Commission** is a government agency that ensures the human rights of everyone in New Brunswick are protected under the Act. If you want to learn more about your **rights and responsibilities related to sexual harassment**, contact the Commission. The Commission provides free information about your rights and can provide information on filing a complaint.

You can reach us at:

 (506) 453-2301  hrc.cdp@gnb.ca  www.gnb.ca/hrc-cdp

Learn more about sexual harassment and human rights by consulting our “Guideline on sexual harassment”:

<https://bit.ly/3VRs9ez>

