

Safe Workplaces For All

Addressing Sexual
Harassment
in Canadian
Mining



MINING INDUSTRY
HUMAN RESOURCES COUNCIL
CONSEIL DES RESSOURCES HUMAINES
DE L'INDUSTRIE MINIERE

mihr.ca



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Please scan to share your feedback regarding this report.



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Together, we are building sector capacity to support mineral exploration and mining companies to expand their knowledge of, and response to, workplace sexual harassment and violence.

Executive Summary

Sexual and gender-based violence (SGBV)^a is a global problem. Sexual harassment and violence are elements of SGBV, that affect workplaces and society significantly. The mining sector is no stranger to these issues and faces many challenges when addressing them. For instance, owing to various factors, the sector continues to be recognized as an industry dominated by people who identify as men, despite efforts to diversify its workforce.

At the same time, mining plays a significant role in the Canadian economy. It directly employs over 377,000 workers in mineral extraction, smelting, fabrication and manufacturing, and directly and indirectly contributed \$107 billion, or roughly 5%, to Canada's total nominal gross domestic product (GDP) in 2020.¹ The sector is well-positioned to continue contributing to the economy and society. A notable opportunity to enhance its contribution includes sustained acknowledgement and focus on the damaging social problem of sexual harassment and violence in its workplaces and within its culture. Through its actions the sector can also play its part by leading positive change with respect to the global issue of SGBV.

Educational awareness and information-sharing are foundational to addressing workplace sexual harassment and violence. Statistics Canada reports that almost one third of women (32%) and over a quarter of men (26%) have not received any information from their employer about how to report workplace sexual harassment and sexual assault.² Public Legal Education and Information (PLEI) materials help bridge this gap. PLEI are communication tools providing clear, consistent definitions and examples of harassing behaviours as well as clarifying roles, responsibilities, reporting and resolution mechanisms. Because PLEI use plain, accessible language, aligned with legislation and organizational policies and procedures, they hold the potential to serve as a tool for sustained change and impact.

This research report informs the Mining Industry Human Resources Council's (MiHR) development of effective PLEI resources for use by mining employers, unions and employees. It aims to increase sector awareness of corporate and organizational obligations, risks and opportunities related to addressing workplace sexual harassment and violence – and is written with a view to contributing to sustained dialogue around sexual harassment and violence in the sector and society.

The following analysis, conducted in consultation with legal experts, is based on secondary research examining legislation, relevant government reports and reviews, corporate policies and procedures from mining, forestry and oil and gas as well as PLEI documents. The lens of intersectionality and trauma-informed principles were applied throughout the research process. Gender^b and related concepts such as gender inequalities, gendered power disparities, gender norms and stereotypes were also integral to the analysis. These are important dynamics to acknowledge if workplace sexual harassment and violence are to be addressed for everyone in the masculinised mining workplace^c, whether they identify as gendered, cisgendered, genderfluid, men, non-binary, other, transgendered, two-spirited or women.³

^a Any act that is perpetrated against a person's will and is based on gender norms and unequal power relationships. It includes physical, emotional, or psychological and sexual violence, and denial of resources or access to services. Violence includes threats of violence and coercion. SGBV inflicts harm across the spectrum of gender (UN Refugee Agency, n.d.).

^b Different from the sex one is assigned at birth, gender is non-binary and exists on a broad spectrum, including man, woman, transgender, non-binary and gender neutral. Gender is the social construction of concepts such as masculinity and femininity in a specific culture in time. It involves gender assignment, gender roles, gender attribution and gender identity (QMUNITY, 2018).

^c For a full discussion of mining work and masculinity, see *Gender Diversity and Work Conditions in Mining* (Abrahamsson, L., et al., 2014). See also RioTinto's *Everyday Respect Report* for discussion of the effects of hyper-masculine norms and culture in the workplace (RioTinto, 2022).

Legislated obligations and guidance with respect to workplace sexual harassment and violence are woven into laws supporting occupational health and safety, human, labour and employment rights, federal jurisdictions, criminal protections and civil action. In Canada, sexual harassment is recognized as a form of discrimination on the bases of sex, gender, gender identity, gender expression and sexual orientation. While there may be variation across jurisdictions, in the workplace it is generally understood as:

Unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment.^d

Addressing sexual harassment is crucial because it can so easily poison the work environment.^d This is particularly significant given the comprehensive definition of workplace in legislation and the complexity of the mining workplace, including multiple and decentralised sites, extended work hours, the importance of individual and collective safety, remote, often fly-in-fly-out (FIFO) operations that include residential arrangements and common areas, as well as varied transportation requirements. Regardless, employers are obligated to provide a workplace environment free from harassment and violence in general, and sexual harassment and violence, in particular.

An analysis of 44 relevant corporate policies, procedures^e and codes of conduct within the sector indicated general alignment with human rights and occupational health and safety (OH&S) legislation concerning harassment, violence and discrimination in the workplace. Most of the policies reviewed included definitions of harassment, focusing on compliance requirements for a safe and healthy work environment and the duty to report unlawful or unsafe misconduct. PLEI can complement policy frameworks by helping to make important information about workplace harassment and violence clearer and more accessible.

The research also highlights the various risks associated with workplace sexual harassment as they relate to the parties directly and indirectly involved in an allegation as well as for management, the Board of Directors and the organization as a whole. Risks include personal and legal challenges, financial costs, disruption, degradation, poisoning of workplace culture, human resource challenges and reputational damage. While PLEI will not fully address the many risks related to workplace sexual harassment and violence, they may help mitigate risks associated with allegations of workplace harassment, complaints and investigations processes and restoration of an inclusive, welcoming workplace culture by supporting a risk management approach that is both preventative and responsive.

Despite being a complex and predominantly gendered issue, opportunities to address and prevent workplace sexual harassment in mining are evolving and intensifying. These include strategies indicated in the government of Canada's Canadian Minerals and Metals Plan, efforts to address the issue through the work of sector groups and organizations such as the Canadian Institute of Mining, Metallurgy and Petroleum (CIM), the Mining Association of Canada (MAC), the Prospectors & Developers Association of Canada (PDAC) and many more. Additional opportunities exist through investor encouragement, the principles of corporate social responsibility (CSR) and tools such as environmental, social and governance (ESG) indicators.

^d A workplace may become poisoned where discrimination or harassment is a part of a person's workplace, developing into a term or condition of employment (Vanderputten v. Seydaco Packaging Corp., 2012; Bastarache, M., 2020).

^e The policies reviewed included respectful workplace policies and anti-harassment policies.

Twenty-five PLEI content, design and dissemination recommendations are included in this report. These materials can help employers, employees and unions transform cultures of silence related to workplace harassment and violence into cultures of positive reporting that apply intersectional, trauma-informed approaches.

Along with this report, MiHR created an infographic providing sector employers with information about legislation relevant to workplace sexual harassment and violence. Next steps in MiHR's Safe Workplaces for All project include creating and disseminating PLEI materials that respond to the recommendations resulting from this research. Resources will also be dedicated to supporting a mechanism(s) that helps to sustain sector-wide dialogue on this important issue. These activities are intended to support mining employers, employees and unions in their efforts to prevent and respond to sexual harassment and violence.

Introduction

Mining plays a significant role in the Canadian economy.⁵ In 2020, it directly and indirectly contributed \$107 billion— or approximately 5% - to Canada's nominal GDP⁶ and directly employed over 208,680 workers in mining exploration, ore extraction and milling, mining support services and primary metal manufacturing.⁷ To meet its workforce needs, better reflect the communities it serves, enhance creativity as well as its capacity to innovate and respond to investor and societal demands, the sector has worked to diversify its talent pipeline to include women, Indigenous peoples, members of racialized groups, persons with disabilities and youth, while at the same time advancing the principles of equity, valuing diversity and inclusion.

Despite these efforts, the sector continues to be recognized as relatively homogeneous, made up largely of people who identify as men. Many factors may contribute to this, including historical precedence, poor perceptions of the industry, the remote FIFO nature of many occupations, and lack of awareness of mining career opportunities and enrollment among diverse student communities in fields that lead to work in mining – such as engineering and the trades. Addressing systemic workplace barriers to inclusion such as sexual harassment and violence can support efforts to diversify the mining workforce.

Sexual harassment and violence occur in both the workplace and in society more broadly. In a 2020 Statistics Canada study, 25% of women, as well as 25% of Indigenous women, and 17% of men and 20% of Indigenous men, reported having experienced inappropriate sexualized behaviours^f in the workplace during the previous year.⁸ One in 10 women (10%) and almost half (47%) of LGBTQ2S+ workers personally experienced workplace discrimination based on gender, gender identity or sexual orientation in 2019, compared to one in 20 men (4%) and over one fifth (22%) of non-LGBTQ2S+ workers.⁹ Workplace experiences of inappropriate sexualized behaviour were most common for those working in occupations where men have historically outnumbered women. Forty-seven percent of women and 19% of men working in trades, transportation, equipment operation and related occupations said they experienced inappropriate sexualised behaviour in the year leading up to the pandemic¹⁰, highlighting the prevalence of these behaviours towards women in comparison to men in occupations historically held by men. Almost a third of women surveyed in 2016 indicated that they experienced harassment, bullying or violence in their mining sector workplace over the last five years.¹¹ This is consistent with research completed in 2021 where 37% of women in the global mining industry reported experiencing sexual harassment in their workplaces.¹² These studies affirm the occurrence of workplace sexual harassment and violence in workplaces generally, including within the mining sector.¹³

^f In terms of the study, inappropriate sexualized behaviours included inappropriate verbal or non-verbal communication, sexually explicit materials and unwanted physical contact or suggested sexual relations.

All workplaces must comply with anti-harassment and discrimination laws. Many employers have related policies and procedures in place, yet almost one third of women (32%) and over a quarter of men (26%) indicated they had not received any information from their employer on how to report sexual harassment and sexual assault.¹⁴ PLEI materials can help bridge this gap. They provide timely, relevant information, reach diverse audiences, create shared awareness and understanding, facilitate dialogue and sustain attention to this important issue.

Purpose of the Research

This research informs MiHR's development of effective PLEI materials for use by mining employers, unions and employees. It aims to increase awareness and understanding of related obligations, risks and opportunities for companies and organizations in the sector by discussing relevant legislative, policy and procedural frameworks – and is written with a view to contributing to sustained dialogue around sexual harassment and violence in the sector and society.

Research Methodology and Limitations

This project included an examination of federal, provincial and intergovernmental legislation; relevant government commissions, taskforces, inquiries, investigations and mechanisms; corporate policies and procedures used in mining, oil and gas and forestry; and PLEI documents. Content and thematic analyses were conducted with a view to developing effective PLEI, taking obligations, opportunities and risks into account as well as applying intersectional analysis and trauma-informed principles. PLEI were analyzed in terms of language, format, accessibility, legislative/policy alignment and audience appropriateness.

Research articles, government documents and PLEI were accessed through publicly available websites, legal and academic databases. Corporate documents were accessed by and large via online searches of public websites using the key terms 'harassment', 'sexual harassment' and 'discrimination'. A few documents included in the sample were provided by organizational representatives on the project steering committee. Twenty government and research reports, 44 documents associated with 34 mining companies and 13 relevant documents for 11 large forestry and oil and gas companies were analyzed. Corporate mining codes of conduct, policy and procedure documents came from five small, eight medium and 21 large companies,^g including the 10 largest Canadian-owned mining companies by revenue, whereas related documents from the comparison sectors were those of large companies. The mining companies reflect operations across base, precious and non-metals in addition to uranium, iron ore and oil sands. The table below provides additional information about the policy documents reviewed. Finally, over 70 PLEI resources created by various organizations for diverse audiences were reviewed.

	Mining Companies (n=34)	Comparison Sectors (forestry, oil & gas) (n=11)
Code of Conduct	12	6
Code of Business Conduct	15	4
Code of Ethics	5	0
Commitment Statements	3	0
Respectful Workplace Policy	3	1
Harassment/Violence Policy/Procedure	6	2

^g Small companies have 1-99 employees, medium companies 100 to 499 employees and large companies employ 500 or more people.

The lens of intersectionality and trauma-informed principles were applied to the research. Intersectionality considers identity actors such as race, class, gender, (dis)ability and how they interact to shape the lived experiences of individuals and groups in society, particularly with respect to experiences of inequity, marginalisation, discrimination or harassment.

For example, research has shown that “(s)exual harassment for women of colour is influenced by power dynamics across intersecting identities such as race, ethnicity, and gender.”¹⁵ Considering intersectionality is helpful because it is challenging to distinguish among intersecting identities to determine on which basis harassment may have occurred or how it affects people based on the dynamics of multiple identity factors.

Applying trauma-informed principles is important when addressing sexual harassment, discrimination and violence. This means:

- Understanding that trauma and violence impact the lives and behaviour of people.
- Aiming to create emotionally and physically safe environments for survivors.
- Providing opportunities for people to make choices, collaborate and connect.
- Integrating strengths-based capacity-building interventions or options to support coping and resilience.¹⁶

By enacting these principles, intersectionality is further supported. These concepts were evident in the studies, reports and recommendations tabled by government, community organizations and the academic sector. Both were applied in our analysis, considering how intersectionality and trauma-informed principles may inform PLEI.

This research does not consider legislative contexts outside of Canada, or the implications of non-Canadian legislation for companies operating in Canada. Aside from identifying the *Criminal Code*, reporting incidents to the police or related criminal investigations are not discussed.

Gender as a Key Consideration

While anyone may be the subject of workplace sexual harassment, research indicates that it is a gendered issue.¹⁷ That is, workplace sexual harassment and violence are rooted in a broader dynamic of SGBV. Both are symptomatic of and reinforced by gender inequalities, power imbalances and gender norms in society and male-dominated (sic) spaces.¹⁸ The underrepresentation of women and gender-diverse individuals is a source of power imbalance and is also an example of how **gender inequalities** manifest within the sector. Although they represent approximately 48% of the Canadian labour force, women only account for 17% of the mining workforce.¹⁹ In addition, no reliable data exists with respect to the representation of gender-diverse individuals in the sector.

Workplaces with significant power disparities are at risk for workplace harassment, especially in situations with **gendered power disparities**. Women make up 16% of mining boards of directors, 14% of executive officers and 6% of supervisors, coordinators and forepersons. Conversely, women are overrepresented in support roles (51%) and human resource and financial occupations (62%).²⁰ This is an example of gendering work, as well as of how intersectional factors can build upon power dynamics and further marginalization.

Gender norms are the socially constructed and reinforced expectations and standards to which women, men and gender-diverse individuals generally conform. They cause individuals to function within the limited range of what is acceptable in a particular context such as a community or work environment. Historically, gender norms have limited men from pursuing careers in nursing and women from pursuing

careers in engineering for women and gender-diverse individuals in traditionally masculinized workplaces or roles, there can be limitations with respect to the level of authority or wage attained.²¹

Maintaining patterns of work and occupation by gender is an example of gender norms in the workplace. Another challenge with gender norms is that they can be fortified by power imbalances and gender inequalities. They are linked to **gender stereotypes**, which can contribute to workplace sexual harassment.

Aside from manifesting harassment, gender stereotypes prevent workers from coming forward to report and address workplace harassment or violence. Cisgender^h and transgenderⁱ women may not report due to fear of being singled out and being further marginalized given their underrepresentation in the sector. They may also be struggling to overcome power imbalances, want to avoid risk of victim blaming, being regarded as “too sensitive” or subject to questioning of their professional capacity or suitability to the work environment.²² Research has shown that women in the sector would often rather leave or change roles than confront or report workplace harassment they have experienced.²³ Cisgender and transgender men may also encounter gender stereotypes that prevent them from addressing workplace sexual harassment or violence such as not breaking codes of friendship etiquette amongst men, going against the mainstream workplace culture of male-centred talk that reinforces gender stereotypes, the fear of stigma of not being manly enough to tolerate the situation, and similarly being seen as “too sensitive.”²⁴ Such dynamics reinforce traditional heterosexual gender norms evident in comments and misconduct that are homophobic.²⁵ Also, gender stereotypes normalize a culture of silence.²⁶

PLEI Recommendations

1. Ensure PLEI materials are accessible by using clear language, limited amounts of text, multiple formats and communicating their availability in multiple places.
2. Develop PLEI materials suitable for diverse audiences by consulting on the use of appropriate images, themes and message framing.
3. Consider making materials available in multiple languages, electronically and in print.
4. Apply intersectional analyses and trauma-informed approaches to PLEI development and dissemination.
5. Define and highlight sexual and gender diversity in the workforce and the effects of gender norms on all workers.

Obligations: The Canadian Legislative Framework

Laws, regulations and principles from Canadian law guide society’s ongoing efforts to address workplace sexual harassment and violence. Both are illegal in Canadian workplaces owing to the meshwork of criminal, employment, labour, OH&S and human rights law in provincial, territorial and federal

^h Persons whose sex assignment at birth corresponds with their current gender (Statistics Canada, 2021a). Further, a person whose gender identity corresponds with what is socially expected based on their sex assigned at birth (Egale, n.d.).

ⁱ Transgender can refer to a range of gender identities and experiences in which an individual’s gender identity does not correspond with what is socially expected based on their sex assigned at birth (Egale, n.d.).

jurisdictions. In addition, legal concepts such as locational jurisdiction, poisoned work environment and vicarious liability^j help with understanding our respective rights and responsibilities under the law.

This section discusses legislative frameworks regarding workplace sexual harassment and violence in Canada to ensure that the PLEI developed is accurate, useful and effective as well as to raise awareness of these obligations generally within the sector.

Obligations under Occupational Health & Safety Law

Provincial, territorial and federal OH&S legislation and related regulations across Canada require that employers provide a safe working environment for all workers.^k OH&S laws also outline the rights and obligations of employers, management, employees and contractors, as well as the role of OH&S committees, in ensuring worker and workplace health and safety. OH&S also extends to third-party contractors and suppliers, and even clients and guests entering the workplace area or interacting with workers. This legislative framework also sets out requirements related to assessing workplace risks, reporting and resolving incidents, including potential liabilities for safety breaches. OH&S and human rights legislation are complementary and aligned with respect to workplace harassment generally and sexual harassment in particular.

Workplace Sexual Harassment in OH&S Legislation

Most OH&S legislation in Canada^l defines harassment, violence or discrimination in the workplace as well as clarifies that reasonable performance management exercised by a supervisor is not harassment. More than half of the 14 jurisdictions specify the protected grounds associated with workplace sexual harassment – sex, gender, gender identity, gender or sexual expression.^m Six OH&S jurisdictions highlight the sexual nature of harassment specifying unwelcome sexual advances and sexual solicitations.ⁿ Although “(t)he legal definition of workplace sexual harassment varies to a small extent between jurisdictions,”²⁷ as with human rights legislation, most OH&S harassment definitions refer to troublesome conduct that ought to be reasonably known to be unwelcome. Ontario, for example, applies the following definitions:^o

^j Vicarious liability imposes liability on an employer for the conduct of an employee or agent. It is designed to ensure that parties undertaking enterprises that harbour risks, take all reasonable measures to reduce the risk (White, M., 2005).

^k Some jurisdictions in Canada have dedicated OH&S legislation specific to the sector such as BC, NWT and NU.

^l This includes federal, provincial and territorial jurisdictions.

^m This includes the following jurisdictions: AB, SK, MB, ON, PEI, NU, NWT, YK.

ⁿ The following jurisdictions specified sexual solicitation or sexual advances as part of the definition of harassment: AB, ON, PEI, NU, NWT, Canada.

^o See section 1(1).

“workplace harassment” means,

- (a) engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or*
- (b) workplace sexual harassment.*

“workplace sexual harassment” means,

- (a) 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*
- (b) 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.*

Half of the jurisdictions included clarify that harassment can involve repeated occurrences or a single serious incident.^p Nine jurisdictions specifically acknowledge psychological harm associated with workplace harassment,^q signalling an emerging area worthy of consideration.

Workplace Violence in OH&S Legislation

Eight jurisdictions define workplace violence in their OH&S legislation.^r Alberta’s *Occupational Health and Safety Act* has one of the most comprehensive definitions of workplace violence:

“violence”,

whether at a work site or work-related, means the threatened, attempted or actual conduct of a person that causes or is likely to cause physical or psychological injury or harm, and includes domestic or sexual violence.

Most jurisdictions associate violence with physical injury, whereas Alberta’s definition includes psychological injury or harm. There is also variation across the country regarding workplace violence’s inclusion of domestic violence, family violence, spousal violence, sexual violence or intimate partner violence.^s

Definition of Workplace

OH&S legislation in Canada defines the workplace to include any place or location that an employee is required to engage or attend in connection with any work activities. When considering an employer’s responsibilities with respect to workplace sexual harassment and violence that are unique to the sector, it is helpful to consider the workplace broadly, accounting for both on and off the worksite and work hours including:

- All offices and mining site areas, including the change areas, cafeterias and confined spaces such as elevator enclosures.
- Mining camps, accommodations and social areas, especially in remote FIFO settings.
- Work-related and work-provided transportation and settings, including airplanes, airports and vehicles.

^p This includes the following jurisdictions: AB, SK, MB, NB, PEI, NU, NWT.

^q AB, SK, MB, QC, PEI, NU, NWT, YT, and Canada.

^r AB, SK, ON, QC, NB, NL, YT, and Canada.

^s It’s important to note that there are both similarities and subtle differences depending on what kind of violence is specified within the legislation.

- Work-related events or gatherings, including social events where participation is the norm.
- Online and electronic venues, such as work meetings, emails and phone calls.

PLEI materials should reflect this broad definition of a workplace, including clarifying that employee actions in the surrounding community outside of work hours may still include legislated obligations and protections regarding workplace sexual harassment and violence.

Obligation of Employers and Management

Employers are responsible to provide a workplace free from harassment or violence. If alleged to have occurred, employers must see to the protection of employees, ensuring that any harassment or violence ceases immediately and to investigate the allegation. OH&S legislation is also specific about protecting any employee who submits a complaint against reprisals, whether as the subject of alleged harassment or as a witness.

The following employer obligations are generally indicated within OH&S legislation:

1. Develop and implement plans or programs related to workplace harassment and violence, including policies and procedures, and communicate these to employees.
2. Develop and support an OH&S Committee with joint management/worker engagement.
3. Provide training to all workers, including supervisors and members of the OH&S Committee.
4. Assess and address workplace hazards, including sexual harassment and violence.
5. Collaborate and comply with any government-led workplace safety inspection/investigation.
6. Provide a fair, timely process to investigate incidents,^t including providing clear mechanisms for reporting, resolving complaints and informing parties of investigation results.
7. Follow specific protocols such as alternate/third-party reporting if the alleged harasser is the employee's supervisor, provisions for confidentiality or limited disclosure for corrective action, safety concerns involving potential exposure or threats to violence, other legal requirements.
8. Meet reporting requirements whether to individuals involved, the OH&S Committee, the Board of Directors and/or government agency.

Responsibility for operationalising these requirements is generally delegated by a Board of Directors to the organization's management team, including managers and supervisors, and supported by OH&S Committees. The employer maintains financial obligations for appropriately resourcing OH&S and is responsible to pay any associated fines or penalties. In some jurisdictions, management personnel and employees may also be fined. Nunavut's *Occupational Health and Safety Regulations* offer a comprehensive example of supervisory responsibilities related to the safety and wellbeing of individuals.

It is important to note that several OH&S laws set out non-disclosure requirements, protecting the identities of workers involved. This is critical as barriers to reporting may include shame or fear of reprisal on the part of complainants. Non-disclosure can also support restorative workplace practices, where the alleged harasser can cease the harm and offer meaningful remedial action.

Manitoba's *Workplace Safety and Health Act* demonstrates how trauma-informed considerations can be integrated into legislation.^u It stipulates that reports provided to a committee or representative containing the results of a harassment investigation will not disclose the circumstances relating to the complaint or any information that could identify a worker or other person involved with the matter.

^t In reviewing all the OH&S legislation and regulations across Canada, NL specifically identified that a third-party investigator could be called upon to investigate a workplace harassment case. This points to a best practice, as well as to procedural fairness (Newfoundland & Labrador, 2020).

^u See section 41.2(d).

There are practical tensions, however, regarding the requirement to inform workers about potential risks associated with workplace violence. For example, Ontario's *Occupational Health and Safety Act* states that employers must provide information to a worker, including personal information, related to a workplace violence risk from a person with a history of violent behaviour. The employer must do this if the worker can be expected to encounter that person in the course of their employment, and the risk of workplace violence is likely to expose the worker to physical injury.^v Understanding this tension and the limitations on disclosure are essential PLEI considerations.

Obligation of Employees

Under OH&S legislation everyone has a role to play in creating and maintaining a safe workplace. Workers are obligated to ensure their safety and the safety of others by complying with legislation, including preventing, identifying and addressing hazards. In the case of workplace sexual harassment and violence, this personal responsibility is restricted by the limitations inherent in protecting oneself from harassment or violence instigated by another individual. An intersectional and trauma-informed lens acknowledges the nature of gender dynamics, ensuring that workers who may experience harassment or violence are not blamed.²⁸ Nevertheless, workers are obligated to report any safety issue that they witness or experience and have a duty to engage in related processes, such as an interview or investigation, associated with an incident.

Some OH&S legislation outlines the obligations of bystanders who witness an incident^w. For example, Newfoundland and Labrador's *Occupational Health and Safety Regulations* offer clear guidance to bystanders in the workplace. In the context of a harassment prevention plan in Section 24.1(2)(c)(ii) – workers have an obligation to “report observations or experiences of bullying and workplace harassment.”²⁹ For workplaces subject to federal legislation, witnesses to an incident can submit a notice of occurrence independent from the complainant and can also report the incident anonymously.

Obligation of Labour Unions

The mining sector includes both unionized and non-unionized workplaces. “Many collective agreements have language that prohibits harassment.”³⁰ Moreover, since the Supreme Court of Canada decision in *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., 2003*, “whether or not (the) collective agreement has an express sexual harassment or sex discrimination clause, all labour and employment legislation... including human rights and occupational health and safety legislation, are read into or integrated into the collective agreement,” except in the province of Quebec.³¹ As such, unionized workers may not bargain out of legislation and workplace harassment and violence can be grieved by unionized employees. This can lead to its own complexities as unions are legally obligated to represent all their members, complainants, witnesses and/or alleged harassers, ensuring a fair process for members.

Human Rights Legislative Framework

Sexual harassment is “prohibited conduct and is illegal under human rights legislation across all jurisdictions in Canada.”³² While the decision in *Bell v. Ladas, 1980* first recognised sexual harassment as sex discrimination in Canada, the leading definition of sexual harassment is attributed to the landmark Supreme Court of Canada decision in *Janzen v. Platy Enterprises Ltd., 1989*:

^v See Section 32.0.5(3).

^w SK, NL, Canada.

“(s)exual harassment is a form of sex discrimination. Sexual harassment in the workplace is unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment.”

Based on this, human rights legislation indicates three primary elements of sexual harassment:

1. Conduct is of a ‘sexual nature’.
2. Conduct is ‘unwelcome’.
3. Conduct produces adverse consequences for the complainant.³³

Sexual harassment as a form of discrimination includes protection in terms of sex, gender, gender identity, gender expression and sexual orientation and is typically prohibited in employment, housing accommodations, goods and services, and facilities. The law makes no distinction if it is perpetrated by a person of the same sex as the subject, the opposite sex or non-binary. Simply put, same-sex sexual harassment is afforded the same treatment as opposite-sex harassment.”³⁴

Sexual harassment encompasses a range of behaviours. It may be verbal, physical, expressed, implied, occur electronically/online or in-person. Legal Line, a Canadian not for profit organization, identifies “at least five types of behaviour considered sexual harassment if they are unwelcome; spoken words or sounds, gestures, showing offensive pictures or objects, physical contact and intimidation.”³⁵

In addition, the “(q)uid pro quo nature of sexual harassment was recognized by Canadian human rights tribunals early in the development of sexual harassment law in Canada.”³⁶ This is manifested “where a supervisor or person in a position of authority makes sexual advances, invitations or demands against a subordinate employee”³⁷ and is reflective of the gendered power disparities discussed earlier. Although more subtle manifestations of workplace sexual harassment occur, a recent study reviewing case law showed the continued privileging of physical misconduct and *quid pro quo* forms of sexual harassment in court decisions and the ongoing challenge of proving more subtle forms of harassment.³⁸

Aside from the different behaviours, workplace sexual harassment/violence may vary in:

- Frequency (e.g., single incident or repeated occurrences).
- Time frame (e.g., in a condensed time span, or over an extended period).
- Direction (e.g., targeted to a specific individual or a poisoned work environment).
- Location (e.g., at work or a work-related venue or event including in-person, online).
- Sexual or sexualized such as sexual innuendos or advances, or not at all (e.g., sexist, homophobic, or based on the complainant’s gender identity^x or gender expression^y).

^x The gender identity of individuals could be the same as the sex assigned at birth (e.g., cisgender), or could be different fully or in part as the sex assigned to them at birth (e.g., transgender) (Statistics Canada, 2021a).

^y Gender expression is how an individual may publicly express their gender identity and can include behaviour, outward appearances, body language, and their chosen name or pronouns (Ontario Human Rights Commission, n.d.b).

Poisoned Work Environment

An important concept emerging from human rights legislation is that of the poisoned work environment. This can be created as one of the effects of workplace sexual harassment or violence.^z A workplace may become poisoned where discrimination or harassment is a part of a person's workplace, developing into a term or condition of employment.³⁹ This amounts to normalising harassing behaviours, such as the display of sexual images or the expression of sexual innuendoes, as part of the workplace culture. An important element of a poisoned work environment is that "(t)here must be evidence that, to the objective reasonable bystander, would support the conclusion that a poisoned workplace environment had been created."⁴⁰

PLEI Recommendations

1. Define sexual harassment as well as sexual and domestic violence, giving clear examples of what they are and are not, clarifying their relationship to discrimination and human rights.
2. Define "workplace" and poisoned work environment and the implications for mining.
3. Create sample policies and procedures that enable organizations to address sexual harassment and violence.
4. Create an infographic of the obligations of employers, employees, unions, contractors.
5. Map out the available supports and response mechanisms for complainants, witnesses and alleged perpetrators of sexual harassment and violence.

Other Legal Considerations & Concepts

Violations Under the *Criminal Code of Canada*

Some occurrences of workplace sexual harassment or violence, such as criminal harassment (section 264), publication of an intimate image without consent (section 162.1), and sexual assault (sections 271, 272, and 273), are chargeable offences under the *Criminal Code*.⁴¹ In these situations, the *Criminal Code* has jurisdiction⁴² and a complainant has the legal right to report the incident to the police. OH&S legislation across Canada includes provisions affirming this. "Where the sexual harassment involves sexual assault, regardless of any other mechanisms used, a survivor or the organization affected (i.e., employer) always has the right to call in the authorities to assist with investigating and redressing the matter."⁴³ Regulatory and civil proceedings may be held in abeyance, subject to jurisdiction and specifics of a case, when a criminal investigation is launched.

Application of the Law

Operators in the mining sector often have a foothold in numerous legal jurisdictions and may face confusion with respect to which laws apply. Legislation applicable to a workplace sexual harassment complaint is subject to the nature and location of the incident. Failing application to the *Criminal Code* and involvement in the nuclear sector,^{aa} sexual harassment and violence incidents are generally accountable to the provincial or territorial legislation in which the alleged incident occurred, even if the company operates in multiple jurisdictions.⁴⁴

There also remains a question as to whether the headquarters of a company can be joined where systemic issues or practices are evident. This might include gaps in aligning policy with legislative requirements, instructions from head office regarding complaint management or where a complaint

^z See for example *Trinh v. CS Wind Canada Inc.*, 2017 HRTO 755.

^{aa} Nuclear operators are subject to the workplace harassment and violence prevention provisions of the *Canadian Labour Code*, the *Canadian Human Rights Act* and any collective agreements in place.

alleges systemic discrimination. The choice of jurisdiction in such a situation is a complex legal question, dependent on the relevant legislation and context for the complaint.

Labour laws and employment laws, including collective agreements, may also invoke legislative jurisdiction to the province or territory where a company's headquarters is located rather than where an incident occurred. Another possibility is that employment contracts are based on the local laws in which the employee resides, involving a different jurisdiction from that of the incident or company's headquarters. Employers are obligated, therefore, to ensure that remedies for workplace harassment incidents such as progressive discipline or termination, align with the appropriate employment law governing its relationship with the employee in question.

Civil Damages and Harassment

While an employer's responsibility for the wrongdoing of its employees in the course of employment is well established in law,^{bb} there is less clarity, however, regarding a civil tort of harassment for which an employer can be liable. On one hand, there is precedent for civil damages against an employer company where the employer/owner had been previously found guilty of a criminal offence of sexual assault. In *C.D. v Mostowy, 2021*, the British Columbia Supreme Court found the employer, All Canadian, "...directly and vicariously liable for the defendant's sexual assault of the plaintiff. The defendant and All Canadian are jointly and severally liable for the sexual assaults" (para 24). On the other hand, the *Ontario Court of Appeal in Merrifield v. Canada (Attorney General) (145 O.R. (3d) 494, 2019)* held that there was no freestanding tort of harassment. More recently, the courts drew a distinction between the 2019 case and that of *Caplan v. Atas (2021, ONSC 670)*, recognizing the tort of online harassment among private individuals. This is an evolving area of law – legal advice should be sought regarding civil matters.

Time Limits & Choice of Mechanism

Two important considerations regarding workplace sexual harassment and/or violence under human rights legislation include reporting time limits and which mechanism to pursue first to address a complaint. People who experience workplace sexual harassment or violence do not always come forward for various reasons, such as shame, denial, minimization of the experience, fear of consequences, past trauma and victimization, lack of information, or disbelief, disassociation, or that at the time of the violence they were drugged, intoxicated, or dissociated.⁴⁵ With the social and psychological challenges associated with reporting, it is conceivable the statutory time limits to file a workplace sexual harassment or violence complaint may hamper complainants. Helpful PLEI will draw this information to the attention of employees and employers.

In some jurisdictions or instances, employees may be required to select or prioritize a particular mechanism for addressing an allegation of workplace sexual harassment or violence – as a criminal, health and safety, human rights complaint or as a civil action⁴⁶. Similarly, "in a unionized environment, complainants may be required to exhaust internal grievance and arbitration procedures prior to invoking a formal human rights complaint procedure."⁴⁷ Awareness of these considerations will enable individuals to prepare complaints in keeping with statutory or other limits.

Codes of Conduct, Commitments & Policies Within the Sector

A brief review of available codes of conduct, including business and ethics codes, commitment statements and/or policy and procedure related to workplace sexual harassment, violence and respectful workplaces was conducted. This included an analysis of documents coming from mining

^{bb} When an employee commits sexual harassment or violence in the course of their employment, the employer can also be liable through the legal principle of vicarious liability.

companies of various sizes as well as of large forestry and oil and gas companies, for the purposes of comparison. Additional information about the range of documents reviewed and how they were located was discussed earlier as part of the methodology. The research analysis considered commonalities, differences and patterns across the documents located to inform policy and procedural effectiveness, and in particular guide the creation of PLEI that support enhanced policy mechanisms. This analysis is not intended as an evaluation of corporate practices.

Codes of conduct communicate company values, ethical principles, legal compliance, rules and regulations, conflicts of interest, confidentiality, and financial or other reporting responsibilities. Most codes of conduct analysed highlighted the creation of a workplace free from discrimination, harassment and violence among their central objectives. While each code of conduct communicates no tolerance for harassment, the majority also prohibit workplace discrimination and violence, with sexual harassment commonly embedded within these concepts. Definitions included in four of the codes of conduct, three respectful workplace policies and eight harassment policies explicitly defined workplace sexual harassment, with some variation in terms of alignment with legislation. For example, some definitions included examples of harassing behaviours that include the use or sharing of sexually inappropriate images, items or materials, quid pro quo dynamics that involve sexual behaviours or favours that can be both sexual and non-sexual in nature, sex discrimination and sexual violence. Significantly, one respectful workplace document flagged the power dynamics associated with sexual harassment, indicating that it “is frequently more about the abuse of power than sex.” This analysis of definitions and examples is significant given that workplace harassment generally and sexual harassment, discrimination and violence in particular can take various forms, be subtle as well as difficult to identify. The PLEI can complement company codes and policies by clarifying definitions and providing a broad range of examples illustrating the evolving nature of sexual harassment and violence.

Most of the policies reviewed communicated everyone’s responsibility to ensure a safe and healthy work environment and the duty to report any unlawful or unsafe misconduct, including workplace harassment and violence. In addition, a selection of the documents reviewed included provisions against reprisal for negative responses to sexual advances or behaviours of a sexual nature as well as against reprisals that an individual may experience for making or participating in a complaints process related to sexual harassment. Lending further credibility to the complaints process, some policy approaches clearly identified the range of possible consequences for making malicious or deliberately false complaints of sexual harassment. This supports earlier discussion about communicating the seriousness of sexual harassment via disclosure of the range of possible penalties for obstructing harassment processes. Along with clarifying provisions safeguarding the confidentiality of complainants and respondents, sometimes qualified with language specifying “to the extent possible” or “subject to the requirements of law”, protections against reprisal support a trauma-informed approach to addressing the issue of workplace sexual harassment and violence. Finally, policy and code of conduct documents also communicated different avenues for reporting harassment and discrimination. This is important given the possible or perceived conflicts that any one colleague, supervisor or office may have with respect to a particular incident(s), dynamic(s) or individual(s). Multiple reporting avenues also enable complainants who may be harassed by an individual in the reporting chain, to address their concerns outside of that chain. PLEI can reinforce these important considerations through both their content and design, contributing to a positive reporting culture.

Two additional elements critical for addressing workplace sexual harassment and violence in mining relate to the application of the codes and policies themselves. This is important when considering people and workplace environments. First, most policies reviewed clarified the range of internal and external stakeholders to whom they applied, such as directors, employees, contractors, representatives,

consultants and officers, including individuals subject to permanent, temporary, contract or secondment arrangements. Some of the documents reviewed were explicit in stating that the expectations relate to third party contractors, suppliers and agents and that they reflect on and have implications for a company's relationships with external stakeholders. Second, what constitutes a workplace was not standardly or explicitly stated in many of the policies and procedures examined. This is important owing to the earlier discussion of defining the workplace and the potential for sexual harassment and violence to poison the work environment. One corporate example defined the workplace as, "any place where employees are engaged in activities related to [company] work including, but not limited to, sites, offices, [company] vehicles, third-party facilities and off-site locations where employees meet for business or [company] social functions." Another company clarified that harassment or violence that occurs outside of the workplace or regular business hours may still be in violation of the policy, should they have repercussions in the workplace. Other examples highlighted that the work environment also includes the virtual world of email, text, social media or circulating or displaying offensive materials in electronic form.

Comparable Sectors: Forestry & Oil and Gas

Each of the 11 companies reviewed has a code of conduct or standards which are comprehensive. Similar to the minerals and metals sector, they deal with a broad range of topics including conflict of interest, bribery, corruption, ethics, integrity, gifts, political activities, workplace health and safety, unlawful competition, environmental practices, equal employment opportunity practices, alcohol and drug policies and a stated prohibition against any form of discrimination, bullying and harassment, generally without specifying sexual harassment.

More specifically, the codes of conduct reviewed also prohibited harassment based on age, sex, race, colour, religion, creed, national origin, citizenship, language, marital status, family status, pregnancy and childbirth, sexual orientation, disability/handicap (sic), political belief, or any other protected grounds against discrimination in employment under human rights code.

Emphasis on respectful workplace practices in oil and gas as well as forestry companies aligned with legislation, identifying workplace harassment and discrimination generally as well as specifying discrimination based on gender expression or gender identity, gender, sexual orientation and sex.

It is important to note that intersectional considerations, and trauma-informed approaches are currently limited across all the policies and procedures reviewed. There is some recognition of gender diversity, psychological harm as a result of sexual harassment, as well as the ability to report through a trusted colleague (e.g., allyship). Considering prior victimization as a risk factor to re-victimization, particularly for members with one or more marginalized identities (such as Indigenous women), is an area that can be further strengthened through PLEI content and design, alongside dialogue and learning.

Risks Associated with Workplace Sexual Harassment and Violence

Associated risks were examined in addition to analyzing relevant obligations regarding workplace sexual harassment and violence. These can negatively impact physical and psychological safety and well-being, workplace culture, financial outcomes and reputational standing, as well as harbour the potential of loss, injury or damage to individuals, organizations and to the sector more generally. As with most risks, the key to mitigating risks associated with workplace sexual harassment and violence involves acknowledging and seeking to understand the problem so its impact on different actors within the workplace and communities may be eradicated.

Risks to Subjects of Harassment

OH&S legislation recognizes workplace sexual harassment and violence as a physical, and increasingly a psychological, hazard to workers who experience it directly as well as indirectly in poisoned work environments. Research has shown that individuals who encounter this in the workplace experience various adverse health effects, including depression, burnout and post-traumatic stress disorder (PTSD).⁴⁸ Harassment also heightens the likelihood of workplace accidents and injuries owing to feeling preoccupied, unsafe or anxious. It can also lead to isolation, alienation and/or disengagement from the workplace, absenteeism or presenteeism, and leaves from work which can affect financial well-being, overall mental health, performance, professional development and career opportunities.

Fears of being excluded, singled out, isolated or reprisal are a barrier to reporting sexual harassment and violence. Complainants face the risk of emotional, mental, relational and physical strain when addressing and resolving a sexual harassment issue.⁴⁹ For example, research has established the risk associated with drawing public attention to a complainant's private life whether through an internal or external reporting and investigation process, a grievance, a criminal, civil or human rights proceeding resulting in a public record.⁵⁰ The many challenges and the stigma associated with sex and gender-based violence generally, such as victim-blaming, re-traumatization through the process itself or the perceived impunity for SGBV, contribute to complainants' hesitancy to come forward.⁵¹

Workers who are not the direct targets of harassment but who witness it are also at risk. There is growing recognition that bystanders experience stress and other adverse outcomes such as reduced health and satisfaction, team conflict, occupational stress and job withdrawal.⁵² Some bystanders who may fear supporting the complainant at the risk of being targeted themselves, may choose to join in and participate in the harassing behaviour,⁵³ some may launch a complaint themselves or be (re)traumatized by the behaviour they witness. OH&S legislation stipulates that every worker is responsible for keeping the workplace safe and healthy for all present in the work environment and has an obligation to engage in any workplace safety inspection or investigation. Bystanders are still faced with ethical issues when determining whether to intervene. PLEI that identifies worker rights and responsibilities can help alleviate worker concerns, contributing to a positive reporting culture that deters workplace harassment and violence.

Risks for Alleged Harassers

There is general acceptance that workplace sexual harassment and violence are workplace hazards and that employers must "take every precaution reasonable in the circumstances"^{cc} to ensure the safety and health of all workers. An alleged harasser must participate in the procedures established to resolve the allegations. As indicated earlier, this may include a formal internal investigation, grievance, a mediated resolution or an external process involving a formal legal mechanism such as a human rights complaint, civil proceedings or criminal prosecution.⁵⁴

In resolving the concern or complaint, the employer has a duty to allow the alleged harasser to share their perspective and account of an incident(s) or exchange(s). This process can pose psychological, reputational and occupational stress to the harasser, resulting in anxiety, disengagement and absenteeism compromising overall mental health.

If the harassment/violence is founded, the harasser is subject to remedial measures. Progressive discipline is key along with the principle of proportionality, in alignment with applicable employment legislation and/or collective agreements. Job penalties can include reprimands, warnings, compulsory training and/or counselling,⁵⁵ transfer, reassignment, suspension or demotion.⁵⁶ That is, the "employer

^{cc} See section 25.2(h).

can apply discipline up to and including termination of the perpetrator's employment without notice or payment in lieu of notice."⁵⁷ A record of the complaint and the outcome of an investigation is shared with the parties directly involved, in keeping with non-disclosure protections outlined in OH&S legislation. Where workplace harassment or violence is criminal in nature, a perpetrator can face a criminal record, incarceration, probation, community service and/or fines associated with the criminal offence.⁵⁸

Risks to the Employer and Management

As part of the "directing mind" of an organization, employers and management are expected to proactively provide a safe and healthy workplace free of all discrimination. This includes a workplace without sexual harassment or violence. Risk increases when the employer and its senior management:

- Do not comply with legislated requirements, whether directly or indirectly, intentionally or unintentionally, including ensuring that any harassment ceases without delay.
- Constructively discriminate employees.^{dd}
- Authorize, condone, adopt or ratify behaviour contrary to the principles of human rights and OH&S legislation.⁵⁹

For example, if management at any level did not take steps to remedy a situation, both the organization and/or members of the management team could be held legally responsible, including fined in keeping with jurisdictional provisions. There is also a risk if investigations are not fairly or impartially conducted. For example:

There have been plenty of cases where organizations' managers or human resources department, instead of impartially and fairly investigating a complaint with due process have focused their investigative efforts and responses to complaints on trying to reduce organizational exposure to liability. ...Some employers have focused on building a case against the survivor or creating a defense... It must be noted that such actions in the "right" circumstances could: (i) be interpreted as retaliatory conduct against an employee for exercising his or her (or their) legal entitlements; and (ii) therefore result in greater organizational exposure, statutorily and/or civilly, rather than less.⁶⁰

Risks to an Organization

The issue of sexual harassment and violence harbours risk for organizations. Failing to address the issue augments risk as does addressing it poorly. For example, failing to comply with legislated requirements, to respond to complaints or to address patterns evident in several complaints may suggest operating in bad faith.

Mishandling an allegation of harassment, an expressed concern regarding workplace violence, an investigative process, or a finding of harassment can affect the workplace culture in particular and business operations in general. The risks associated with workplace sexual harassment and violence can negatively impact an organization's legal standing, investor relations and finances, internal and external reputation, workplace environment and human resource functions including employee recruitment and retention.

An organization's approach to workplace sexual harassment and violence is subject to legal requirements. Organizations are subject to inspection and investigation under OH&S legislation,

^{dd} Via a rule or practice that unintentionally singles out a group or individual from an underrepresented group and results in unequal treatment.

grievance and labour processes under labour law, public complaint and litigation risk via human rights and civil proceedings and criminal penalties where applicable to specific incidents. The employer or its agents (e.g., management) is responsible to engage in proceedings such as investigations and/or as witness, respondent or appellant. Given that employees – whether a complainant, alleged harasser or witness, are able to “sue under the common law for wrongful dismissal of their employment, fundamental breaches of their employment contract, mental suffering or distress, loss of reputation or any other independent tort recognized in law that is the result of sexually harassing behaviour”⁶¹ employers must be attentive to their preventative measures, policies, procedures as well as their immediate and ongoing responses to sexual harassment and violence and any related findings.

Under the Canada-United States-Mexico Agreement (CUSMA), employers in the mining sector are subject to CUSMA’s Rapid-Response Mechanism between Canada and Mexico and related legal risks. CUSMA recognizes the goal of eliminating discrimination in employment and occupation. There are two different enforcement provisions that are relevant to harassment and violence in the workplace. First, the labour rapid response mechanism can be invoked if the employer’s conduct relates to freedom of association or collective bargaining. For example, a refusal to bargain anti-discrimination provisions could give rise to a labour rapid response complaint. In addition, there is a specific anti-discrimination provision which requires each Party to implement policies that it considers appropriate to protect against gender-based discrimination including sexual harassment in the workplace. The general complaint mechanism could be used to launch a complaint alleging breach of this provision.

Risks related to inappropriate or ineffective sexual harassment and violence prevention, procedures or resolutions often play out in the workplace environment. Employers can face increased risk of employee injury, errors, accidents and even death, elevated occupational stress and anxiety, low workplace morale and employee disengagement, which can negatively impact productivity amongst workers and compromise trust relationships amongst employees and management. Tensions such as these can fracture the work environment and increase risks of further harassment.⁶² The prevalence of workplace sexual harassment and violence combined with the effectiveness of an organization’s procedures shape workplace culture. For example, if the workplace environment is poisoned, mandatory training is required – along with other remedies for the entire unit or entire workforce to address the scope and nature of the issue. Unattended incidents of workplace sexual harassment and violence signal what is acceptable, including whether the work environment will bolster a culture of silence and ultimately be poisoned or if it will support a positive reporting environment.

As workplace culture is affected by sexual harassment and violence, so too is an organization’s human resources’ function. Absenteeism, elevated sick leave and additional resources related to long-term disability, recruitment, retention and training⁶³ will tax a human resources unit as will the particular challenge associated with meeting diverse hiring targets. Human resources personnel must also be both available and capable of supporting trauma-informed harassment and violence procedures if the various risks associated with lengthy, ineffective processes are to be avoided.

The financial costs of workplace sexual harassment and violence are well documented. These can be indirect, such as costs associated with employee disengagement, or more direct, including costs associated with third-party investigators, lawyers and legal teams, labour relations costs or other monetary compensation such as special damages, job loss, damages for loss of dignity and humiliation, and punitive damages⁶⁴ as well as remedial costs for items such as training ordered as a result of a formal human rights complaint.

The link between financial and other risk factors clearly exists but is not easily calculated or tracked, in particular when considering the reputational risks inherent in workplace sexual harassment and violence. This can involve the risk of both social media and traditional media exposure. Reputational damage can result if employees, clients, customers and investors develop and share negative perceptions about an organization and its brand. As investor and consumer consciousness increases, frameworks for Responsible Business Conduct (RBC) and ESG considerations enhance accountability around workplace sexual harassment and violence, posing reputational risks for organizations that are not proactive or diligent with respect to harassment and violence in the workplace.⁶⁵

PLEI Recommendations

1. Develop materials that outline effective steps in the complaints process – from receiving information to resolving complaints about sexual harassment and violence, including what to expect at each stage.
2. Provide employers with learning resources to ensure fair, impartial complaints processes, confidentiality and data management.
3. Highlight the range of supports available for all parties to a complaint or incident as well as the range of possible remedies.
4. Create safety planning resources and templates to address risks regarding domestic or intimate partner violence in the workplace.
5. Provide resources to employers highlighting obligations and risks.

Opportunities to Address Workplace Harassment and Violence

In addition to obligations and risks related to workplace sexual harassment and violence in mining, there are many opportunities to prevent and address their incidence. One approach involves correcting gender power imbalances and biases by diversifying the workforce and changing the workplace culture of perceived tolerance for gender stereotypes and sexual harassment.⁶⁶ Research indicates that increasing the representation of women and gender-diverse individuals to 30% in junior, mid-level and senior positions in occupations in which they are underrepresented helps organizations achieve the “demonstration effects” of critical mass.⁶⁷

Diversifying the workforce and eliminating systemic barriers to gender inclusion are significant shared priorities among sector stakeholders. The federal government’s Canadian Minerals and Metals Plan (CMMP) was released in 2019, identifying the following principles related to addressing sexual harassment:

- Responsible mineral development integrates the concept of sustainability—human, social, economic, and environmental.
- Respect for jurisdictional authority, effective legislative and regulatory frameworks, community engagement, and partnerships are foundational.⁶⁸

The CMMP envisions “a more diverse workforce that meets the needs of a modern mining industry” with a particular focus on Indigenous peoples, women and immigrants.⁶⁹ It communicates the importance of advancing the participation of Indigenous peoples through economic opportunities, supporting the process of reconciliation through respecting Indigenous and treaty rights, ensuring

appropriate and meaningful engagement, enhancing capacity building and supporting Indigenous women to participate throughout the sector.

Towards Sustainable Mining (TSM) is a globally recognized program of MAC that activates the sector's commitment to responsible mining.⁷⁰ Its guiding principles,⁷¹ along with its protocols focused on Safety and Health, Indigenous and Community Relationships and the Prevention of Child and Forced Labour, create opportunities for companies to address workplace sexual harassment and violence. In 2020, MAC issued a statement of commitment to equity, diversity and inclusion (EDI) and is currently working with stakeholders to activate its values through the drafting of a related TSM protocol.

CIM has an active Diversity and Inclusion Advisory Committee focused on encouraging diversity and inclusion among its 10,000 members and within the sector more broadly. CIM hosts awareness-raising opportunities and campaigns, such as its webinar involving White Ribbon, a Canadian not-for-profit organization whose mission is to engage men and boys in the prevention of gender-based violence by promoting equity and transforming social norms.⁷² The webinar *How Men in the Mining Industry Can Become Gender Equality Allies*⁷³ provided examples of how to develop and implement workplace sexual harassment prevention programs.

PDAC issued a statement on Racism and Discrimination in June 2020, followed by a policy on Equity, Diversity and Inclusion later that year. This complements PDAC's ongoing work in this area which includes a Gender, Diversity and Inclusion Guide for Explorers, part of the *e3Plus: A Framework for Responsible Exploration*.

MiHR works in collaboration with sector stakeholders to support the sector's workforce needs. This includes providing timely, relevant labour market analyses and research, advancing EDI and raising awareness and sustaining dialogue with respect to sexual harassment and violence in mining. In addition to this project focused on PLEI, MiHR's Gender Equity in Mining Works (GEM Works) is an educational program that cultivates gender inclusion in the sector by building networks among like-minded mining companies or sites. Mining Essentials and Mining Potential help to diversify the mining workforce by offering essential and work readiness skills training to Indigenous peoples and women, newcomers and youth. MiHR's ongoing EDI objectives and sector supports are guided by a standing committee made up of equity, reconciliation and human resources practitioners.

Early in 2022, RioTinto released an external review of workplace culture across its operations globally titled *Everyday Respect*. The report is significant for a number of reasons not least of which are: the dialogue it has catalysed in the sector, including informing the TSM EDI protocol process; the connections it draws across harassing behaviours generally, sexual harassment and cross-cutting dynamics like racism; and its attention to the elevated number of incidents of all types involving LGBTQ2S+ employees or people who prefer not to identify.

The Canadian mining sector may also learn from Australia's efforts to address workplace sexual harassment and violence. The Australian Human Rights Commission's National Inquiry Report into workplace sexual harassment, *Respect@Work*, highlighted the elevated dynamic of harassment risk in its mining sector. Subsequently, the Minerals Council of Australia developed its Industry Code on Eliminating Sexual Harassment. It includes an implementation framework, a policy document and a commitment statement.⁷⁴ Finally, the results of Western Australia's parliamentary inquiry into sexual harassment against women in the FIFO mining industry⁷⁵ may also provide helpful context, recommendations and strategies.

Enhanced focus on CSR and related frameworks, particularly among investors, may also facilitate engagement among sector stakeholders. CSR is a voluntary framework that describes how business firms of any size "may integrate social, environmental and ethical responsibilities to which they are

connected into their core business strategies, structures and procedures within and across divisions, functions as well as value chains in collaboration with relevant stakeholders.”⁷⁶

ESG objectives represent a stakeholder-centric approach to doing business which places the onus on companies to achieve the following specific outcomes:

- Environmental indicators include sustainability, preservation, and stewardship of the natural environment and natural resources.
- Social indicators reflect aspects of social relationships, including adherence to human rights.
- Governance indicators focus on a company’s decision making, includes its processes and policies, the behaviour of executives towards its various stakeholders, and financial and accounting transparency and integrity.⁷⁷

CSR and ESG factors are increasingly important to socially conscious investors and investment firms and consequently to the sector.⁷⁸ Therefore, these considerations can complement compliance with human rights and OH&S legislation, offering organizations further incentive and guidance to act.

Opportunities through Public Legal Education & Information Materials

More than 70 PLEI materials were reviewed in support of this research’s objective. All materials reviewed were electronically available to the public in various formats, including PDF documents or posters, webinars, videos, infographics, web pages, blog posts, frequently asked questions, glossaries and toolkits. Materials were presented as or in conjunction with policy documents, academic papers, statistical reports or highlights, recommendations and strategies for addressing sexual harassment, commentaries in blog post, and guidelines or policy documents in relation to legislation. They were produced, sponsored or commissioned by government agencies, including human rights commissions, not-for-profit organizations, academia and the private sector, from within and beyond the sector.

Most PLEI reviewed included a definition of sexual harassment and examples of harassing behaviours as well as highlighted behaviours that are not harassing in nature, such as reasonable performance management. Some of the materials also outlined the detrimental impact of sexual harassment on individuals and communities. They highlighted the human rights component associated with underrepresented groups, including intersectional considerations, for women and gender-diverse individuals including LGBTQ2S+ individuals, Indigenous peoples, racialized groups including newcomer and immigrant populations and workers with disabilities. Intersectionality also considers the human rights dynamics affecting workers in precarious employment such as those in temporary, casual, low-waged or entry-level positions within an organization’s hierarchy.⁷⁹ Another recurring theme in the PLEI materials is an acknowledgement of the evidence that sexual harassment as sex-based discrimination is more prevalent in historically homogenous workplaces such as the military, law enforcement, mining and construction. Along this vein, some resources investigated men as targets of workplace sexual harassment,⁸⁰ while other materials engage men as change agents in ending gender-based violence.⁸¹ Another common recurring theme is an acknowledgment that sexual harassment is sex- and gender-based discrimination with gender inequities and power imbalances at its core.⁸²

The PLEI review demonstrated their utility as a learner-centred approach to workplace sexual harassment and violence. They assist organizations to establish common understanding and language through which awareness and dialogue may be enhanced. PLEI are communication tools that use clear, consistent definitions and provide helpful examples of harassing behaviours as well as clarifying roles, responsibilities, reporting and resolution mechanisms. Because the PLEI used plain, accessible language, aligned with legislation and organizational policies and procedures, they held the potential to serve as a tool for sustained change and impact. Equally important is the adoption of an integrative systems

approach to PLEI content and dissemination. This can be supported by infusing the principles of intersectionality and EDI along with applying trauma-informed approaches into PLEI development. This includes accounting for power dynamics among workplace stakeholders and PLEI users, particularly when trying to engage subjects, survivors, witnesses and (potential) perpetrators of harassment. Paired with facilitated dialogue, PLEI can support sustained awareness and systems-level focus on workplace sexual harassment and violence.

PLEI Recommendations

1. Create a series of resources that reinforce a positive reporting culture, breaking the culture of silence around reporting sexual harassment and violence in the workplace.
2. Provide employers with matrices analyzing opportunities for creating a positive workplace culture, addressing sexual harassment and violence, using various strategies such as ESG, performance management, competency development.
3. Develop an infographic that helps to make connections among related concepts like respectful workplace cultures, reconciliation, EDI and accessibility.
4. Develop tools to sustain dialogue on workplace sexual harassment and violence in the sector.
5. Highlight mining's opportunity to lead society in eradicating sexual harassment and violence.

Conclusion

This research report is part of a larger project focused on addressing sexual harassment and violence in the mining sector. Its purpose is to inform MiHR's development of effective PLEI materials for use by employers, unions and employees as well as to increase awareness and understanding of related obligations, risks and opportunities for companies and organizations by discussing relevant legislative, policy and procedural frameworks. Finally, this report is written with a view to helping to sustain dialogue around sexual harassment and violence in the sector and society. It is the foundation for other project activities: the creation of an infographic depicting legislative obligations, the development of PLEI and the identification of mechanisms, such as an online network, for sustaining dialogue with respect to harassment, violence and related issues.

Workplace sexual harassment and violence are present in the sector as well as in the broader society. As an industry made up largely of individuals who identify as men, mining is subject to gender-based inequalities, power disparities, norms and stereotypes that amount to sexual harassment and violence as well as poison the work environment. This research report details the legislative obligations, workplace and organizational risks and the sector-wide opportunities that enable mining to address sexual harassment and violence in its workplaces as well as position the industry to play its part in preventing sexual harassment and violence in society.

When aligned with legislative requirements, PLEI can support employers, employees and unions alike to understand, prevent, respond to and resolve/address sexual harassment and violence. It can build common understanding, provide reliable, relevant, timely, clear and accessible information and help to sustain both learning and dialogue. To be effective, an integrative systems approach to PLEI content and dissemination is needed. This means not only infusing the content across operational areas – given related risks, obligations and opportunities – but also integrating the principles of intersectionality and EDI along with applying trauma-informed approaches into PLEI development. In this way, individuals and organizations alike will be better equipped to contribute to a physically and psychologically safe workplace supported by a positive reporting culture.

Endnotes

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