

Free Speech and Workplace Harassment in Canada



Introduction

Few issues cause HR managers more stress than drawing the line between free expression and harassment. Employees and students want to debate, criticize, and sometimes confront ideas. Employers, meanwhile, have statutory obligations under occupational health and safety (OHS) laws to protect staff from harassment, including psychological and social harm.

The recent **Pickle v University of Lethbridge, 2025 ABCA 318** decision shows how complex this balancing act can be. A controversial speaker was invited to campus to argue that "woke-ism" threatens academic freedom. Faculty and students objected, claiming the event would create a hostile environment. The University cancelled the talk, citing its OHS duties to protect against harassment and violence. The speaker and a would-be attendee sued, alleging breach of free expression rights. When they tried to expand their claim to challenge Alberta's OHS Act definition of harassment, the courts refused.

The case leaves HR managers with a fundamental question: when does speech cross into workplace harassment, and what must employers do to fulfill their duties without trampling on legitimate expression?

What Counts as Workplace Harassment

Every Canadian jurisdiction prohibits workplace harassment, though the definitions and processes vary. Most statutes define harassment to include "objectionable conduct" that is known or should reasonably be known to cause offence, humiliation, or harm. Importantly, many now include **psychological and social hazards**.

This means harassment is not just about physical aggression or sexual advances. It can include persistent demeaning comments, exclusionary conduct, intimidation, and—in some contexts—public speech or expression that undermines the dignity of employees.

The challenge is that harassment is judged contextually. A robust policy debate in a classroom or town hall may be protected expression in one context but become harassment if it targets an identifiable individual or group in a way that undermines

dignity. Arbitrators and courts ask: would a reasonable person know that this behaviour could harm?

Free Speech vs. Harassment Duties

Canadian law does not treat free expression as absolute in the workplace. In public-sector contexts, Charter rights may be engaged, but they are balanced against statutory OHS duties and an employer's legitimate business interests. In the private sector, free speech protections are more limited, and contractual loyalty and respectful workplace policies usually govern.

The University of Lethbridge case illustrates this. The Alberta Court of Appeal accepted that the University was entitled to weigh OHS obligations in cancelling the event. Even though the plaintiffs framed it as a free speech issue, the Court was clear that employers cannot ignore harassment duties.

Cases in other sectors confirm this balance:

- **Wasaya Airways v Unifor (2021 ONLA)**: A pilot was terminated for repeatedly posting derogatory comments about Indigenous colleagues online. The arbitrator upheld the dismissal, citing the employer's duty to protect employees from discriminatory harassment.
- **Smith v Vauxhall Co-Op Petroleum (2020 ABQB)**: The court confirmed that workplace harassment includes non-physical, psychological harm and that employers must intervene even if the conduct is framed as "joking" or "opinion."

The Employer's Duties

Under OHS laws across Canada, employers must:

- Take every reasonable precaution to protect employees from harassment and violence.
- Investigate complaints promptly and fairly.
- Provide policies, training, and reporting channels.
- Protect employees from reprisal when they raise concerns.

Failure to meet these duties can lead to regulatory orders, fines, reputational harm, and liability in wrongful dismissal or constructive dismissal claims. A 2023 survey by the Canadian Labour Congress found that **62 percent of workers reported experiencing workplace harassment or violence in the previous two years**, with psychological harassment being the most common form.

The numbers are stark: ignoring "non-physical" harm is not an option.

Workplace Harassment: High Court Nixes Constitutional Challenge of OHS Harassment Ban

Responding to significant criticism from faculty and students, the University of Lethbridge decided to cancel a guest lecture by a controversial speaker on how "woke-ism" threatens academic freedom. The speaker and a would-be attendee sued the University for violating their free speech rights. The University argued that cancelling the event was necessary to ensure compliance with its OHS duties to protect workers and students from workplace violence and harassment. The plaintiffs then moved to amend their complaint to add a claim contesting listing "psychological"

and social" hazards in the OHS Act definition of "harassment." The lower court refused to allow the OHS claim and the Alberta Court of Appeal upheld the ruling. According to the high court, the judge didn't make an obvious legal error in finding that the OHS claim was irrelevant and fundamentally altered the case, which was really about the reasonableness of the University's decision to cancel the event [[Pickle v University of Lethbridge](#), 2025 ABCA 318 (CanLII), September 23, 2025].

Jurisdictional Differences

The table below summarizes how workplace harassment is defined and regulated in OHS laws across Canada.

Jurisdiction	Definition of Harassment	Psychological/Social Hazards Included	Key Features
Federal (Canada Labour Code, Part II; Bill C-65)	Harassment and violence include any action, conduct, or comment that can cause physical, psychological, or sexual harm.	Yes, explicitly	Requires joint workplace risk assessments, policies, and updated training every 3 years.
Alberta	"Harassment" includes objectionable conduct that causes humiliation, offence, or harm.	Yes	Explicitly includes bullying, repeated conduct, and a single serious incident.
British Columbia	Bullying and harassment defined as inappropriate conduct that the person knows or should know would cause humiliation or harm.	Yes	WorkSafeBC requires policies, complaint procedures, and worker training.
Saskatchewan	Harassment includes any inappropriate conduct that detrimentally affects dignity.	Yes	One of the earliest provinces to codify psychological harassment.
Manitoba	Harassment includes objectionable conduct creating a risk to health and safety.	Yes	Requires harassment prevention policies and procedures.
Ontario	Harassment defined as a pattern of comments or conduct that is known or ought to be known to be unwelcome.	Yes	Includes workplace violence prevention program; harassment policy must be reviewed annually.
Québec	Psychological harassment includes vexatious behaviour that undermines dignity or creates a harmful environment.	Yes	Québec Labour Standards Act provides robust remedies for psychological harassment.
Nova Scotia	Harassment is inappropriate conduct that detrimentally affects dignity or creates an unhealthy environment.	Yes	Policies required; harassment complaints can lead to OHS orders.

Jurisdiction	Definition of Harassment	Psychological/Social Hazards Included	Key Features
New Brunswick	Harassment includes objectionable conduct, comments, or actions that create an unsafe workplace.	Yes	Requires harassment policy and investigation procedures.
Prince Edward Island	Harassment includes objectionable conduct creating a risk to health and safety.	Yes	Employers must develop harassment policies.
Newfoundland and Labrador	Harassment is behaviour that demeans, humiliates, or threatens.	Yes	Explicit prevention duties under OHS regulations.
Territories (YT, NT, NU)	Similar definitions tied to dignity, humiliation, or unsafe work.	Yes	Policies and complaint processes required.

Practical Takeaways for HR

So where does this leave HR managers? A few lessons emerge.

First, **policies must reflect modern definitions of harassment**. Do not treat it as only physical or sexual. Psychological and social hazards are legally recognized across Canada.

Second, **training should help managers and employees understand the grey zone**: respectful debate versus targeted harassment. Make sure supervisors know how to intervene when speech starts to cross into personal attacks.

Third, **provide internal feedback channels** that are safe, confidential, and taken seriously. Employees who feel ignored will resort to public forums, which complicates your OHS duties and reputation.

Finally, **apply proportionality** in discipline. As in Wentworth-Nord, neutral criticism is not the same as harassment. Over-penalizing speech risks grievances or overturned discipline. The focus should be on constructive dialogue and early resolution.

Conclusion

The University of Lethbridge case shows that Canadian courts will respect an employer's reliance on OHS duties when restricting speech. But HR must tread carefully, ensuring that decisions are proportionate and rooted in statutory obligations. Across Canada, the duty to protect employees from psychological and social harassment is clear and growing. By setting fair policies, building safe feedback channels, and training managers to recognize when speech crosses the line, HR managers can protect both free expression and workplace dignity.