



Types of law:  
**CRIMINAL LAW, CIVIL LAW, & HUMAN RIGHTS LAW**

A 2018 Alberta Guide to the Law

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# Harassment



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# Harassment

## Criminal Harassment S. 264 of the Criminal Code

For Criminal Harassment:

1) The accused must engage in at least one of the prohibited forms of conduct without lawful authority,

### PROHIBITED CONDUCT

Repeatedly communicating with a person,

Repeatedly following a person from place to place,

Watching a person at the place where they live, work, or happen to be,

Engaging in threatening conduct directed towards a person or member of their family.



2) The accused must cause someone to reasonably fear for his/her or another person's safety, and



3) The accused must know, be reckless to, or be wilfully blind to the fact that his/her actions caused another person to be harassed.

*Actions that could be Criminal Harassment include:*

*Stalking someone;  
Spying on someone;  
Sending threatening letters, emails, gifts, text messages, or phone calls;*

*Threatening to assault someone;  
Scaring someone;  
Chasing someone;  
Cyberbullying*

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## WHAT IS HARASSMENT?

Harassment is a form of discrimination. It involves any unwanted physical or verbal behaviour that offends or humiliates you.



Generally, harassment is a behaviour that persists over time. Serious one-time incidents can also sometimes be considered harassment.

**There are three types of law that deal with harassment:**

<b>CRIMINAL LAW</b>	<b>HUMAN RIGHTS LAW</b>	<b>CIVIL/TORT LAW</b>
<i>Seeks to punish people who break the law and prevent dangerous harassment from continuing.</i>	<i>Protects you under the Human Rights Act if you are harassed because of your membership to a particular group described in the Act.</i>	<i>Allows you to take someone to court and ask the judge for a remedy to compensate you.</i>
<p>Criminal law seeks to penalize wrongdoers. If you think that your harasser is extremely dangerous, the harassment is severe, and it has happened repeatedly, this might be an option for you.</p> <p>However, be aware that the criminal law focuses on punishing your harasser and if the police lay charges you will not be the opposing party in the case. The court case would be between your harasser and the government. If you are looking for personal compensation then the criminal law might not be a good option for you.</p>	<p>Human rights law seeks to ensure that you are not harassed or targeted because of your membership to a particular group.</p> <p>The <i>Alberta Human Rights Act</i> protects you from discrimination based on fifteen enumerated grounds.</p> <p>If you choose to proceed under human rights law, the Alberta Human Rights Commission will resolve your complaint.</p>	<p>Civil law seeks to compensate the person who has been wronged. This could be in the form of monetary compensation. Civil law is private and the court case would be between you and the accused person (unlike criminal law).</p> <p>However, be aware that conducting a trial and hiring a lawyer is expensive. The costs that add up throughout this process may not be worth the compensation that you receive. Also, if you do not win, you may have to pay the court fees of the person you brought to court.</p>

## HARASSMENT: A CRIMINAL LAW ISSUE

*What is criminal harassment?*



Section 264 of the Criminal Code prohibits criminal harassment. Criminal harassment always includes conduct that causes someone to reasonably fear for his or her safety, or the safety of another person known to them.

In order for a person to be convicted of criminal harassment,

1. (s)he must engage in at least one of the prohibited forms of conduct (listed below) without lawful authority,
2. (s)he must cause someone else to reasonably (considering all the circumstances) fear for his/her or another person's safety, and
3. (s)he must know, be reckless to, or be wilfully blind to the fact that his/her actions caused another person to be harassed.

When someone is harassed, (s)he may feel tormented, troubled, chronically worried, plagued, or badgered as a result of someone else doing prohibited conduct.



Prohibited conduct includes:

- repeatedly following a person, or anyone known to them, from place to place;
- repeatedly communicating with a person, or anyone known to them (either directly or indirectly);
- watching the person, or anyone known to them, at the place where they live, work, or happen to be; and
- engaging in threatening conduct directed towards a person or any member of their family.

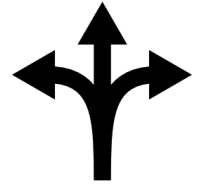
Actions that could be criminal harassment include:

- stalking someone;
- spying on someone;
- sending threatening letters, emails, gifts, text messages, or phone calls to someone;
- threatening to assault someone;
- scaring someone;
- chasing someone; and
- cyberbullying



## *What options are available to victims of criminal harassment?*

If you are being criminally harassed, there are several options you can take to put the harassment to a stop. You do not have to tolerate harassment, whether in the work place or in any other environment. It is important to report harassment.



### **Pressing Charges**

If the offender will not stop bothering you, you can call the police. The police will investigate to find out what happened before they lay charges. You will be asked to give the police a statement explaining what has been happening. Usually, the police will lay a charge if they believe there is enough evidence.

If the police do not lay a charge and you want to continue the matter, you can press charges yourself. To do so, you must call the Provincial Court - Criminal Division Clerk's Office and tell them that you want to "lay a private information" for Criminal Harassment. The Clerk's Office will set up an appointment for you to speak to a Justice of the Peace. During that meeting, you will get to tell your side of the story and the Justice of the Peace will decide whether there are reasonable and probable grounds to lay a charge of Criminal Harassment. If the Justice of the Peace allows you to proceed, he or she will forward your complaint to the Crown Prosecutor's Office. The Prosecutor's Office will then decide if there is enough evidence to go ahead with the charge and, if so, you will get a chance to tell your story in court. It is essential that everything told to the Justice of the Peace is honest and accurate; you may be charged if you lay a false information.



Documenting evidence of the harassment would help prove that you reasonably feared for your safety. It would also help show that the person bothering you had knowledge of, or was reckless to, whether his or her conduct was harassing. It is important to record the details of every incident, including time, date, place, who was involved, and what was said or done. Keep letters, notes, voicemail messages, emails, texts, instant messages, and social media and internet posts. Give copies of them to the police.

### **Getting a Peace Bond**

Usually, a person who is being harassed is interested in having the offender stay away from them. A peace bond is a Court Order which requires a person who has caused another to fear for their safety to keep the peace, be of good behaviour and follow other conditions the Court believes are needed for the victim's safety for up to one year. The most common condition is that the



accused stay away from the victim and not have any contact with them. In situations where a complainant's family or friends have also been harassed, they may be included on the peace bond. It can take weeks or months to get a peace bond and the bond can be granted for a maximum of 12 months. A violation of a peace bond is a criminal offence which results in a sentence, such as a fine or jail, and a criminal record.

A person can get a peace bond in much the same way that he/she lays a private information. A person does not need a lawyer to get a peace bond. To get a peace bond in Edmonton, a person can start by calling the Provincial Court - Criminal Division Clerk's Office and telling them that he/she needs to make an appointment with a Justice of the Peace to request a peace bond. The Justice of the Peace will take down the details of his/her complaint and will forward the information to the Crown Prosecutor's Office to be dealt with if there are grounds for a peace bond. The Justice of the Peace will set a court date and the other party will be served with a summons to appear in court. If the other party does not show up in court on the set date after being served with a summons, the peace bond might be issued ex parte, which means in the offender's absence.

### **Getting a Restraining Order**

Another way to have someone stay away is to get a restraining order. A restraining order is a court order like a peace bond, but they are not exactly the same. A restraining order is issued from civil court, rather than criminal court like a peace bond, and you may need a lawyer's help. A restraining order can be attached to another action like a divorce or a civil action for assault, or you can ask for a restraining order alone.



Restraining orders may be granted without notice of the hearing to the harasser. However, he must be served with a copy of the order and there is an automatic review of the order within two weeks at the Court of Queen's Bench. The Respondent and you will likely have to be present at this hearing. At this hearing, the Judge will decide if the order will remain in effect.

Your restraining order must be very carefully worded to make sure that you get the protection that you need. You must make sure that you tell your lawyer what you want in the restraining order.

Some important things to remember include:

- You can ask that the order include a 'police enforcement clause' to ensure that the police have the authority to make an arrest if the order is being violated. A police enforcement clause is a section of the order that says the police shall make an



- arrest if the respondent does not follow the conditions of the restraining order
- Make sure that the restraining order mentions all of the places that your harasser could try to contact or follow you. You will want to have your harasser prohibited from coming near you at your home, your place of work, and anywhere else you spend time on a consistent basis. If your order also prohibits your abuser from seeing your children, make sure that their schools and/or daycares are listed as well. You may also want your order to prohibit your harasser from contacting you by telephone, mail or email.

A restraining order does not have a specified time limit, you may ask for however long you believe will be necessary (1 month – 1 year is common) and it may be extended, if necessary. You should keep a copy of your order with you at all times so that you can show it to the police if the order is violated. In addition, the restraining order should be registered with the police and given a case number. This will enable the police to have immediate access to the order's provisions. Sanctions for breaching a restraining order may include arrest and criminal charges or a finding of civil contempt.

### **Taking Civil Action against the Offender**



In addition to pressing criminal charges, sometimes victims want to be compensated for the suffering they underwent as a result of being harassed. Depending on the circumstances, they may be able to take civil action (sue) for assault or intentional infliction of mental suffering. Civil actions can be very costly if you choose to hire a lawyer. As it is often difficult to prove that a person's harassing behaviour caused monetary damages, the time and effort of pursuing a civil claim will sometimes outweigh any damages (money) awarded to the victim.

**Assault** - means doing anything which makes the victim reasonably afraid that he or she is about to be physically injured in some way.

**Intentional Infliction of Mental Suffering** - means that the defendant has done an act, which is clearly meant to cause a reaction in the victim, and the reaction is in fact caused. The victim must show that the defendant's actions have caused visible physical symptoms such as migraine headaches, ulcers or other known illnesses.

The victim in a civil suit must prove, on a balance of probabilities, that the harassment happened. This means that the victim must show that it is more likely that the harassment took place than that it did not. In other words, the judge must think that it is at least 51% likely that the victim is right.

To start a civil action, the victim should hire a lawyer, especially if the damages he or she wants are large. It is not a good idea to represent yourself if the amount of money you want is too large for Civil Provincial Court (\$50,000). If the victim wins, he or she may be compensated for any losses caused by the harassment, including lost wages, medical expenses, counselling expenses, and/or pain and suffering.



*What happens if you are convicted of criminal harassment?*

Criminal harassment is a hybrid offence. This means that it is an offence where the case may be prosecuted either summarily or by indictment. Summary offences are minor crimes while indictable offences are more serious crimes. The power to choose under which class a hybrid offence will be tried rests with the Crown. If the Crown proceeds by indictment, the maximum sentence is 10 years imprisonment. If the Crown decides it is a summary offence, then the maximum penalty is either a fine or 6 months in jail, or both.

If an offender was already subject to a peace bond, recognizance, or any other court order at the time of the offence, the court will usually consider that an aggravating factor for sentencing purposes. If the court decides not to give effect to the aggravating factor in sentencing, then it must explain why. Generally, the court will give an offender a harsher sentence for criminal harassment if the offender already had a court order to stay away from the victim at the time of the harassment. In such a case, the offender could also be convicted for breaching the initial court order on top of being convicted for criminal harassment. Double jeopardy (which prevents a person from being punished twice on the same charges and facts) does not preclude convictions for criminal harassment and breach of court order based on the same facts.

It is a good idea to contact a lawyer if you are charged with criminal harassment.



## **HARASSMENT AND DISCRIMINATION: A HUMAN RIGHTS ISSUE**

**You are protected within the *Alberta Human Rights Act* if you are discriminated against or harassed based on the grounds of:**

*The descriptions below are not legal definitions. For more information about protected grounds, contact the Alberta Human Rights Commission.*

## 1. Race

- Belonging to a group of people related by common heritage

## 2. Religious beliefs

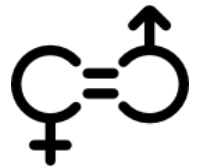
- System of beliefs, worship and conduct (includes native spirituality)

## 3. Colour

- The colour of a person's skin
- This includes, but is not limited to, racial slurs, jokes, stereotyping, and verbal and physical harassment

## 4. Gender

- Being male, female, transgender or two-spirited
- Also protected under gender are pregnancy and sexual harassment



## 5. Gender identity

- A person's internal and individual experience of gender; their sense of being a woman, a man, both, neither, or anywhere along the gender spectrum
- It may be the same as or different from a person's birth-assigned sex
- It is fundamentally different from a person's sexual orientation

## 6. Gender expression

- How a person presents their gender publicly
- It can include behaviour and outward appearance such as dress, hair, makeup, voice and body language
- A person's chosen name and pronoun are also common ways of expressing gender

## 7. Physical disability

- Any degree of physical disability, deformity, malformation or disfigurement that is caused by injury, birth defect or illness
- This includes, but is not limited to, epilepsy; paralysis; amputation; lack of physical coordination; visual, hearing and speech impediments; and physical reliance on a guide dog, wheelchair or other remedial appliance or device



## 8. Mental Disability

- Any mental disorder, developmental disorder or learning disorder regardless of the cause or duration of the disorder

## 9. Ancestry

- Belonging to a group of people related by a common heritage

## 10. Age

- Age is defined in the Act as “18 years or older.”
- Persons who are 18 years or older can make complaints on the ground of age in all of these areas:
  - statements, publications, notices, signs, symbols, emblems or other representations that are published, issued or displayed before the public
  - employment practices
  - employment applications or advertisements
  - membership in trade unions, employers’ organizations or occupational associations
- Persons under the age of 18 can make complaints on all grounds except the ground of age. For example, a 16-year-old can make a complaint of discrimination in the areas of employment, tenancy, employment practices, etc. based on the grounds of physical disability, race, gender, etc, but not on the ground of age
- There are also some other exceptions, contact the Alberta Human Rights Commission for more information



## 11. Place of origin

- Place of birth

## 12. Marital status

- The state of being married, single, widowed, divorced, separated or living with a person in a conjugal relationship outside marriage



## 13. Source of income

- Source of income is defined in the *Act* as lawful source of income
- The protected ground of source of income includes any income that attracts a social stigma to its recipients (e.g. social assistance, disability pension, and income supplements for seniors). Income that does not result in social stigma would not be included in this ground.

## 14. Family status

- Being related to another person by blood, marriage or adoption



## 15. Sexual orientation

- This ground includes protection from differential treatment based on a person's actual or presumed sexual orientation, whether homosexual, heterosexual, bisexual or asexual

In addition to the areas and grounds discussed above, the Act protects Albertans in the area of **equal pay**. When employees of any gender (female, male or transgender) perform the same or substantially similar work, they must be paid at the same rate

*What options are available to victims of discriminatory harassment?*

If you believe that you may have been subject to harassment as a form of discrimination, the first step is to record the time, place, nature of the behaviour, and names of all people involved. Keep this record in a safe place. This documentation may be very useful later, and it will help you clarify what happened.

If, and only if, you feel safe in doing so, you can speak respectfully but directly to the person whose behaviour is affecting you.

You can also make a complaint to the *Alberta Human Rights Commission*. A complaint must be made to the *Commission* within one year after the alleged incident of discrimination. The one-year period starts the day after the date on which the incident occurred. For further information, you can call the Alberta Human Rights Confidential Inquiry Line at 780-427-7661. To call toll-free within Alberta, dial 310-0000 and then 780-427-7661.

If you are a student and you have been discriminated against and/or harassed by a teacher or a fellow student, you can seek advice from a support service at the institution at which you study.

For example, at the University of Alberta, students can discuss their concerns with an advisor at the Student OmbudService (780-492-4689), the Sexual Assault Centre (780-492-9771), or the Office of Safe Disclosure and Human Rights (780-492-7325). Advisors can help students consider:

- a) whether the matter meets the definition of harassment or discrimination,
- b) whether the student can or should approach the person directly and how to best broach the topic,
- c) whether anyone else should be made aware of the complaint, and

- d) whether the matter should be brought forward through the informal or formal resolution process.

If the discriminatory harassment has occurred at your workplace, you may also consider writing a letter of complaint to senior management, your personnel department, or your union representative.

## **HARASSMENT: A CIVIL/TORT LAW ISSUE**



*What is civil law and torts?*

Civil law deals with private relations between individuals or institutions. The word “tort” comes from Latin and it means “wrong, injustice.” Tort law provides compensation for victims who have been injured by the wrongdoing of others.

*What does tort law do and how does it work?*

The purpose of tort law is not to punish wrongdoers but to provide damages or compensation to victims in order to compensate their losses. In tort law, financial settlements are used whenever possible to help victims.



*What is an intentional tort?*

Intentional torts are the most serious. They are deliberate acts intended to injure others or to interfere with another person’s rights. A person can also sue for acts intended to cause emotional distress. Sexual or workplace harassment can fall under this tort and, in these cases, a tort may award extra or “punitive” damages to punish the wrongdoer, although this is rare.

*If someone is charged for criminal harassment can that person also be sued in civil court?*

Yes. When a person is injured by a criminal act, the offender may be prosecuted, as well as sued through civil court for damages. Often criminals do not have the funds to pay tort judgements, so recovery of damages is available through victim compensation funds in most provinces and territories.

## HARASSMENT IN THE WORKPLACE

*What does harassment in the workplace look like?*

Harassment occurs in the workplace when a person is subjected to unwelcome verbal or physical conduct. It can include inappropriate or sexually explicit comments, questions, jokes, name-calling, images, email, social media, sexual advances, touching and other unwelcome and ongoing behaviour that insults, demeans, harms or threatens a person in some way. If the harassment is based on one or more of the 15 protected grounds listed above, then it is a form of discrimination and is contrary to the *Alberta Human Rights Act [AHR Act]*. Harassment that is not based on a protected ground is not contrary to the *AHR Act*.

*What if I am being harassed for a reason NOT listed in the AHR Act?*

This second kind of harassment is sometimes called general workplace harassment or personal harassment.



*Can I do anything about general workplace harassment or bullying?*

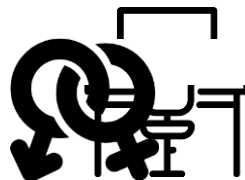
While a person cannot make a complaint under the *AHR Act* regarding general workplace harassment, alternatives may be available to the person including through an employer's employment policies, a collective agreement, or the courts.

*If I am being sexually harassed at work will human rights law protect me?*

Yes! The Supreme Court of Canada decided in the 1989 case called *Janzen v Platy Enterprises Ltd* that sexual harassment in the workplace is discrimination on the basis of gender.

## SEXUAL HARASSMENT IN THE WORKPLACE

*What is Sexual Harassment?*



Sexual harassment is discrimination on the basis of gender, which is prohibited under the *Alberta Human Rights Act*. It is any unwelcome sexual behaviour that may affect, or threaten to affect, a person's job security, prospects for promotions or earnings, or working conditions. Sexual harassment may also prevent a person from getting a job, living accommodations, or any kind of public service.

In Alberta, it is an employer's responsibility to maintain a work environment free from sexual harassment for all employees, customers and clients. A supervisor who neglects to follow up on a complaint of sexual harassment may be liable under the *Alberta Human Rights Act* for failing to take prompt and appropriate action.

Sexual harassment can be done by anyone: a supervisor, a co-worker, a customer, a landlord, a service provider, or anyone else. However, it often involves one person trying to exert power over another. Sexual harassment in the workplace violates an individual's right to work without worrying about any kind of sexual pressure. It is emotionally abusive and fosters an unhealthy and unproductive work environment.

Sexual harassment is NOT workplace romance or flirting or anything that both people consent to. If the behaviour feels uncomfortable, humiliating or offensive to you then that is a sign it may be considered sexual harassment.

The key elements of sexual harassment include:

- behaviour that has a sexual element;
- behaviour that is not welcomed by the person at whom it is directed; and
- behaviour that could reasonably offend, humiliate or intimidate someone else.

Actions that could be sexual harassment include:

- verbal abuse;
- offensive humour or language related to gender;
- unwanted sexual remarks;
- leering or ogling;
- teasing, taunting or suggestive words about your clothing, your body, or your sexual past;
- showing suggestive material or obscene or pornographic pictures;
- unwanted requests or invitations to do sexual acts;
- unwanted physical contact or closeness such as patting, pinching, rubbing, leaning over or standing too close;
- physical assaults sexual in nature.



Sexual harassment may also be less obvious. Sexual harassment may exist if an individual refuses sexual requests and then is fired, demoted, or has his or her job duties changed.



### *What can I do about Sexual Harassment?*

If you believe you have been sexually harassed, you can first make it clear to the offender or a person in authority that such action has occurred and is unwanted. You may also wish to contact your union or employee association.

If the harassment persists and corrective action is not taken by your employer, you can make a complaint to the *Alberta Human Rights Commission*. You must do this within one year of the event.

**If you believe your safety is at risk or if the harasser threatens or commits physical assault, call the police.**

**You can call the *Alberta Human Rights Commission's* Confidential Inquiry Line at:**



780-427-7661 Edmonton  
403-297-6571 Calgary  
310-0000 toll free, and enter the 10-digit regional  
office number after the prompt.

## WHERE CAN I GET HELP OR MORE INFORMATION AND HELP?

<b>Alberta Human Rights Commission</b> 800 - 10405 Jasper Avenue NW Edmonton, Alberta T5J 4R7	<b>Contact:</b> <b>Web:</b> <a href="http://www.albertahumanrights.ab.ca">www.albertahumanrights.ab.ca</a> <b>Ph:</b> 780-427-7661
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The Alberta Human Rights Commission will help when an individual has faced harassment in a variety of settings.

<b>Labour Canada</b>	<b>Contact:</b> <b>Ph:</b> 1-800-641-4049 <b>Web:</b> <a href="http://www.labour.gc.ca">http://www.labour.gc.ca</a>
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Website with the federal labour standards in Canada and information on making complaints.

<b>Lawyer Referral Service</b>	<b>Contact:</b> <b>Toll free:</b> 1-800-661-1095
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When an individual calls, they will speak to an operator and describe the nature of their issue. The operator will then provide them with the contact information for up to three lawyers who may be able to assist them. When contacting these referred lawyers, the first half hour of the conversation will be free since they were referred by lawyer referral service.

<b>Victim Services</b>	<b>Contact:</b> <b>Ph:</b> 780-421-2760 <b>Email:</b> <a href="mailto:vsu@edmontonpolice.ca">vsu@edmontonpolice.ca</a>
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Applications for financial benefits for victims of violent crime, support making a victim impact statement for the court, other support and information

<b>Student Legal Services</b> 11036 88 Ave NW Edmonton, AB T6G 0Z2	<b>Contact:</b> <b>Ph:</b> 780-492-2226 <b>Web:</b> <a href="http://www.slsedmonton.com">www.slsedmonton.com</a>
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Law students able to provide free legal information and may be able to assist you in court depending on your income and the circumstance of the offence

<b>Native Counselling Services of Alberta</b> 14904 121a Ave NW Edmonton, Alberta T5V 1A3	<b>Contact:</b> <b>Web:</b> <a href="http://www.ncsa.ca">www.ncsa.ca</a> <b>Ph:</b> 780-451-4002
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Native Counselling Services can help guide individuals through the court process and also provide emotional support as well as the legal help.

<b>Elizabeth Fry Society of Edmonton</b> 10523 100 Avenue NW Edmonton, AB T5J 0A8	<b>Contact:</b> <b>Ph:</b> 780-422-4775
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Court workers explain court procedure and terminology, provide legal referrals, and offer practical assistance and support to those appearing in court

<b>Edmonton John Howard Society</b> 10010 105 St NW, Edmonton, AB T5J 1C4	<b>Contact:</b> <b>Ph:</b> 780-428-7590 <b>Web:</b> <a href="https://johnhoward.org/">https://johnhoward.org/</a>
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The John Howard Society provides assistance and support through the court process (example preparation to testify as a witness, court orientation and accompaniment)

<b>Centre for Public Legal Education Alberta</b>	<b>Contact:</b> <b>Ph:</b> 780-451-8764 <b>Web:</b> <a href="http://www.cplea.ca/">http://www.cplea.ca/</a>
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Webpage regarding workplace harassment: <http://www.cplea.ca/rightsatwork/questions-about-discrimination-and-bullying/>