

High-profile sexual harassment cases causing ‘sea change’

Lawyers and HR experts say recent cases, such as the allegations against former Canadian Olympic Committee head Marcel Aubut, are prompting others to come forward.



MELISSA RENWICK / TORONTO STAR FILE PHOTO

CBC mishandled allegations of workplace harassment against Jian Ghomeshi, an investigation found.

By: [Dana Flavelle](#) Economy, Published on Sat Oct 10 2015

A powerful Canadian Olympic Committee president, a marquee radio host, and a former Ontario premier — the list of high-profile men accused of sexual harassment in the workplace just keeps growing.

More victims are coming forward to challenge what was once tolerated, whether it's inappropriate hugging and kissing, in the case of former COC head Marcel Aubut, or more serious accusations as in the Jian Ghomeshi case.

“I think Ghomeshi caused a sea change in the same way Clarence Thomas did (25) years ago in terms of people understanding what sexual harassment was,” says Howard Levitt, senior partner in Levitt & Grosman LLP. “I’ve seen a flood of new claims.”

Thomas, chosen to sit on the U.S. Supreme Court, was accused during public hearings in 1991 by attorney Anita Hill of sexual harassment — including references to pornographic films — during the time she had worked for him.

Thomas denied the allegations and was confirmed in the job, which he still holds, but the highly publicized case raised awareness of the issue.

Many more complaints are being handled out of the spotlight in workplaces big and small, public and private, say employment lawyers and human resources experts.

Often not as dramatic as the ones that make headlines, they're part of a wider conversation about what is and what isn't appropriate in the workplace these days.

“The number of investigations I’ve been involved in as a consultant where there’s a complaint of bullying or harassment has increased significantly,” says human resources consultant Antoinette Blunt, president of Ironside Consulting Services.

That doesn't mean it's easy for victims to come forward, women's organizations say. Many who have contacted reporters have insisted on anonymity, fearing reprisals either in their careers or on social media.

"I think there's an increased general awareness that leads to more complaints," says Andrea Gunraj, program director at METRAC, a non-profit group that works to prevent violence against women.

"It's still really difficult to come forward," she adds. "People might decide to accept a situation, maybe tell a friend, but not tell the employer. They don't want to make waves, especially if it's their boss."

It's not that there's more harassment now than in the bad old days. In fact, there may be less due to laws like Ontario's Bill 168, which brought harassment under the Health and Safety Act.

But there is less tolerance, more accountability and more reporting since the law came into effect in 2010, employment lawyers say.

"It goes further than discrimination or misogyny and treats harassment as a workplace hazard," says Brian Wasyliw, at employment and labour law firm, Sherrard Kuzz LLP. "It's just like a machine without a guard on it."

High-profile cases like Aubut's are also having an impact. And not just on victims. They're making employers more cautious as well, said David Whitten, a partner with Whitten & Lublin in Toronto.

"Back in the day, employers would wait until absolutely the last minute, try to push it under the covers," Whitten says. "Now, the slightest hint of a harassment allegation and they're engaging in a process."

"Unfortunately, we're still seeing the rare case, where men in high positions — and it's usually men, though there are a few women — just really haven't got the big picture. They think, 'Hey I'm at the top of the organization, I've got a storied history. Why wouldn't a woman want to hear a compliment from me about her looks?'"

Aubut, 67, initially stepped aside and then resigned amid accusations he had a penchant for unwanted physical contact, kisses and sexual references. The allegations are unproven and he has not been charged. The Olympic committee has appointed Toronto-based employment lawyer Christine Thomlinson to review policies and recommend improvements. Aubut also issued a public apology.

Other highly publicized cases have been far less straightforward.

The CBC was publicly castigated for bungling [its response to allegations about Ghomeshi](#). The radio host was later fired and charged with criminal offences. In court at a pre-trial hearing on Oct. 1, [he pleaded not guilty](#) to charges of sexual assault and choking.

Janice Rubin, the Toronto employment lawyer hired by CBC to investigate its handling of the situation, found CBC had failed to provide a safe workplace "free from disrespectful and abusive behaviour" and that CBC's failure to act on complaints effectively "condoned this behaviour."

In David Peterson's case, both the ex-premier and the TO215 Pan Am/Parapan Am Games, which he then chaired, said they would defend against [allegations contained in a \\$10-million lawsuit](#).

The complainant, Ximena Morris, 34, a manager with the Games, filed a statement of claim in August alleging Peterson inappropriately embraced her and publicly suggested she would make a good flamenco dancer and should get up on the table. She also claimed she'd been demoted after complaining about Peterson to senior managers.

The allegations have not been proven in court.

Bill 168 requires employers to train employees on what constitutes behaviours they know or ought to have known would be unwelcome, and also set up a process for handling complaints.

When a complaint is laid, the accuser is asked to provide any evidence they may have, such as emails, witnesses or names of confidantes. The accused is asked to respond.

In some cases, the accused is asked to step aside during an investigation.

The penalties, depending on the accusation, can range from a warning to a suspension or firing.

The bill was passed after Lori Dupont, a nurse in Windsor, paid the ultimate price in a case of workplace harassment. Her ex-boyfriend, Marc Daniel, a doctor at the hospital, stabbed her to death after she ended their turbulent relationship. Hôtel-Dieu Grace Hospital was aware Daniel had faced previous harassment complaints and had attempted suicide, but was uncertain how to proceed.