

MACLEAN'S

What a season of sexual harassment suits says about the modern office

The creep in the cubicle next door

by [Anne Kingston](#) on Friday, August 20, 2010 9:31am -

Just as 1967 is remembered as the summer of love, 2010 will be the summer of sexual harassment—or at least of sexual harassment claims. The latest in an ongoing parade of allegations led to the resignation of Hewlett-Packard CEO Mark Hurd earlier this month, after a contract employee who planned VIP events said he'd sexually harassed her.

HP investigated Jodie Fisher's charge and concluded it "was not supported by the facts." But Hurd was out in any case, on grounds that he had violated the company's expense account policies and "misused" corporate assets. The probe also found that he had not reported his "close personal relationship" with Fisher, a former soft-core porn actress, which constituted a conflict of interest.

Of all the accusations lobbed in the workplace these days, sexual harassment remains the most fraught—and attention-grabbing. It also appears to be pandemic. Actor Casey Affleck is fighting accusations from two women who worked

for him on a film he directed. In July, Steve McPherson, an executive with ABC, resigned amid an ongoing investigation.

Canada, too, has contributed to the pile-up. In June, a media firestorm erupted over news that the sudden resignation of David Davidar, the high-profile president of Penguin Canada, was linked to sexual harassment claims made public when Lisa Rundle, a former executive, filed a wrongful dismissal lawsuit against the company. Later that month, Stacey Walker, a black 27-year-old medical imaging technologist, came forward about being fired from Toronto Western Hospital after she complained she was sexually harassed and subjected to racial taunts. The caper: a \$2.3-million defamation case launched by David Cowling, a senior partner at Toronto law firm Mathews, Dinsdale & Clarke, known for advising employers on workplace issues, including sexual harassment. Two junior female lawyers who have since left the firm reported Cowling engaged in inappropriate sexual conduct at a nightclub after a company function last year.

The notion that we're returning to the 1960s of *Mad Men*—even as we continue to be amused by the shenanigans of those anachronistic ad executives on TV—was reinforced by the lurid details that emerged from the recent class-action discrimination suit against the U.S. subsidiary of Swiss pharmaceutical giant Novartis. A jury found the company guilty of systemic gender discrimination in pay, promotions and pregnancy policy in connection to more than 5,600

women workers. Female employees testified one manager invited female colleagues to sit on his lap and showed them pornographic pictures; sales reps alleged they were expected to put up with sexual propositions from doctors. Pregnant women were routinely demoted and fired. The company was ordered to pay punitive damages of US\$250 million.

So what, exactly, is going on here? It's now four decades since "sexual harassment" entered the lexicon and companies began instituting policies and confidential tip lines to protect employees from creepy bosses abusing their power—and themselves from litigation and bad publicity. Yet the current spate of accusations and lawsuits reflects a new boiling point. The 1960s identified the issue, and the late 1980s and 1990s ushered in an era of awareness and outrage sparked by high-profile class-action lawsuits against Wall Street firms that revealed that female employees were subjected to chauvinistic behaviour and overtly shut out of the boys' club. These days, when you'd think we should be beyond it, we're in sexual harassment's third wave, an era cloaked in the veneer of enlightenment and tinged with shades of grey.

And, for all of the studies and policies, very little has changed on the ground in 20 years, including the fact women remain the targets, says Susan Vella, a lawyer at Rochon Genova in Toronto. "We all know it's a bad thing," she says. But the underlying power dynamic remains the same: "It's as hard for the woman to make the decision to call her boss out on the carpet as it was 10, 15 years ago," Vella says. "You fear the same things you feared before: am I going to be

believed? If I'm believed, am I going to be any better off? Am I going to have a job? If I'm not believed, I'm for sure not going to have a job. Who's going to hire me? I'm going to have a reputation as a troublemaker."

What is obviously different is the institutionalization of sexual harassment policies, which like most HR initiatives, protects the company first. But raised consciousness about this issue is itself used as a shield by those doing the harassing, notes Susan Douglas, author of *Enlightened Sexism: The Seductive Message that Feminism's Work Is Done*. "A woman who complains is told, 'Come on, you're reading this wrong. Of course, I know sexual harassment is bad. I couldn't possibly be doing anything that offensive by telling you how great your butt looks in that skirt.'" It's the reality of a "post-sexist" society which sanctions boorish behaviour and then expects it to be understood as a joke, Douglas points out. And that can make it even more difficult to speak up.

The realities of the modern workplace complicate the matter. Lines can blur—and excuses can be made—in offices that are more casual than ever before, from dress codes to collegial relationships. Social and professional lives have become so entwined that people talk of their "office husband" or "office wife." Douglas points to the new dilemma of an employee getting sent a sexually explicit YouTube video by a superior: "Usually they're funny, too, so you're supposed to be getting the joke and not pointing

out that this contributes to an uncomfortable workplace environment.”

The climate, arguably, can be more insidious than the overt leering come-ons in the steno pool 40 years ago, because it comes with an additional barb: “Oh, don’t take yourself so seriously.” That’s a pattern in several of the recent cases: the woman complained—often about egregious behaviour—only to be told by her superiors or HR that the man was just being friendly, or complimentary, or funny.

It’s what happened to Stacey Walker after she went to work at Toronto Western Hospital in September 2008. A co-worker assigned to show her the ropes began rubbing her shoulders when they were alone in a dark processing room. “He told me he wished I wasn’t wearing a bra so he could give me a better massage,” Walker told Maclean’s. She fled. When she told co-workers, they warned her not to rock the boat; the man was popular and had been there a long time. Other women said he’d done the same thing and it hadn’t bothered them. “They were like, ‘Loosen up, Stacey; you’re so serious.’ ” Her female supervisor was dismissive, she says: “She told me, ‘He’s a good guy; he’s not like that.’ ”

Calling out a superior is even more difficult for women in high-level positions, says a female publishing executive. “It’s expected you should just be able to handle unwanted overtures—physical, emotional, whatever it is,” she says. “You’re expected to roll with it.” And that was the very recommendation given recently by Slate’s advice columnist

to a young female lawyer who complained about male co-workers' unwanted compliments and obnoxious conversation. It sparked huge backlash online: one blog post titled "Do women in the law need to get thicker skins?" spurred virulent comments, one that suggested that women need to "toughen up."

The other overriding message women get is that they're misreading the situation. When Lisa Rundle complained to HR about years of sexual harassment by Davidar—receiving lovesick emails, his lurking outside of her home and kissing her against her will in a hotel room while they were at the Frankfurt Book Fair—he responded she'd misread his "friendliness." (Davidar's former assistant also complained to HR and was told the same thing.) The issue came to a head after Rundle received a promotion that required her to be in closer contact with Davidar. She asked for her old job back, but was let go. This isn't surprising: she was the more dispensible of the two. Only when she went public after she was fired, and no longer had anything to lose, did Davidar get the boot.

In a statement issued through his lawyer, Davidar portrayed his relationship with Rundles as "flirtatious" but "consensual." He called her his "closest friend and confidante at work" and admitted he kissed her but claimed she had not objected. The matter was settled out of court with a confidentiality agreement that prevents anyone from talking. In July, Rundle was rehired by Penguin.

Bobbi Olsen, a lawyer with Ricketts, Harris LLP, defended Rundle. She believes sexual harassment is what it always has been: “a vexatious course of conduct or behaviour that is known, or ought to be known, to be unacceptable.” In this new climate, asking someone in the office for a date is not, in and of itself, harassment, says Olsen, unless there is a clear power imbalance. A consensual relationship with a colleague is also not harassment, she says—as long as one doesn’t have power over the other. Problems can also begin, Olsen says, in a consensual relationship that ends: “Then the person dumped can possibly claim, with the benefit of hindsight, harassment.”

As the slew of cases this summer attests, sexual harassment policies offer little protection to the complainant. Toronto Western Hospital, for instance, is part of the University Health Network (UHN), which prides itself on its sensitivity to “diversity” and harassment issues. Yet the institution garnered headlines in the last decade after two female medical researchers claimed they were sexually harassed by male doctors. In 2004, the *Toronto Star* quoted a staffer at the University of Toronto graduate students’ union saying complaints from students working at UHN were routine but “a lot of people just suck it up or leave the program.”

In fact, shortly after Walker started, she attended a sexual harassment awareness seminar under UHN’s “Fostering Respect in the Workplace” initiative. Yet when she met with the senior manager of HR she was brushed off, she says, and told to take an “assertiveness training course.” After that, her

life at work became “hell,” Walker says. She was snubbed and the target of vicious rumours. Co-workers uttered racist taunts, calling her “Shaniqua” and “LaToya.” She filed a formal complaint in January 2010 after the colleague who touched her was looking at a photo taken at the office Christmas party. He referred to her breasts as “ninjas” and asked: “How are you able to conceal them in your scrubs?”

At that point all the right steps were taken: a wide-ranging investigation resulted in a 45-page report that confirmed Walker’s allegations, concluded the workplace was “very poisoned” for her, and that the hospital had made no attempt to fix the situation. It revealed a big machine with broken parts: the senior manager of HR had thrown out her notes from her meeting with Walker and failed to pass the complaint to “workplace diversity” for investigation. And yet Walker was let go in June, a month after the report came out. She was denied her request for a transfer to another location, on grounds she didn’t have the qualifications, and was given three months’ severance.

That would have been the end of it, had Walker not taken her story to the *Toronto Star*. UHN president and CEO Robert Bell told the paper he could not comment on a “confidential” complaint (Bell was unavailable for comment for this story), but in a message to employees, Bell wrote, “We need to work with this area to re-establish a formal, collegial and respectful work environment for all of the staff.”

Yet the system chugs along: as at Penguin, no other employees have lost their jobs. Walker is skeptical change

will come. “The hospital had all these procedures and policies on paper but you dare not use them,” she says. “You’ll be seen as an instigator and troublemaker.” She’s looking for another job, worried about her employability.

She’s also considering legal action. It’s an expensive last resort, but, as Rundle’s example attests, a way to be heard when there isn’t another. Katherine Kimpel, a Washington-based lawyer who represented the female employees at Novartis, agrees. She calls the Novartis victory “part of the cultural narrative to empower women to feel that they have the right to stand up.”

Vella says change must come from the top. “It requires better messaging from the bosses who have the power—and who are sometimes the culprits in these cases.” Law offices are not exempt, notes Vella, who says she has seen senior women take on the role of enforcers: “I know of situations in which women partners in a law firm get together once they get wind of bad behaviour,” she says. “They descend on him and close the door and say: ‘Hey buddy, you think this is fun. It’s not. Stop it.’ That’s often the best we can do.” In the absence of such vigilante justice, other women are finally figuring out they’re on their own.